



# *“The Incentive Game”*

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## About Mintax, Inc.

- ❑ Mintax, based in East Brunswick, NJ, has been in existence 1980.
- ❑ We employ seventy-five (75) managers, analysts, and associates who provide comprehensive site selection, incentive, and tax services to our clients.
- ❑ Mintax serves clients nationally and internationally, representing one-half of the Fortune 1,000.
- ❑ Mintax's Economic Development Services Group has been responsible for hundreds of successful attraction and retention projects involving incentive awards totaling \$2 billion.



## Session Topics

1. Update on the Cuno Case
  - ✓ Quick case facts
  - ✓ Sixth Circuit Court findings
  - ✓ Supreme Court review
  - ✓ How has this affected site selection projects
  - ✓ How has this affected incentive legislation
2. Recent Incentive Trends
  - ✓ Greater accountability
  - ✓ Payroll-based incentives
  - ✓ Tax reform rather than reductions
  - ✓ Targeting high-impact industries
  - ✓ Sellable credits
3. Recent Legislative Changes in GA
  - ✓ Overview of tax code changes
  - ✓ Impacts to existing incentive programs
  - ✓ Survey Results



# ***Update on the Cuno Case***



## Update on the Cuno Case

- ❑ Quick overview of the case:
  - ✓ Politically motivated by Ralph Nader
  - ✓ Case asks if business incentives are constitutional or if they violate the federal Commerce Clause
  - ✓ Based upon incentives given to DaimlerChrysler for a plant modernization/expansion in Toledo, OH
  - ✓ Sixth Circuit Court covers OH, KY, MI, and TN
  
- ❑ What did the Sixth Circuit Court Find:
  - ✓ Ohio's Machinery and Equipment Tax Credit (a straight ITC) violated the Commerce Clause
  - ✓ Property Tax exemptions were permissible

## Update on the Cuno Case

- ❑ What is the Supreme Court going to do now?
  - ✓ The Supreme Court decided on September 27<sup>th</sup> of this year that they were going to grant separate petitions for review of the *Cuno* decision filed by **BOTH** the State of Ohio and DaimlerChrysler
  - ✓ The Court began hearing the case in February
  - ✓ The Court has also directed that they would like to hear both sides on the issue of “Standing”, meaning that they could determine that Cuno did not have legal justification to bring the case in the first place
  - ✓ Because of the Standing issue, it is possible that no definitive resolve may come of this review



## Update on the Cuno Case

- ❑ How has the decision affected site selection projects
  - ✓ Slowed Development?
  - ✓ Forced companies to question incentives?
  - ✓ Cast a negative light on Sixth Circuit States?
  
- ❑ How has the decision affected incentive legislation
  - ✓ More tax reform, less tax incentives
  - ✓ Less new tax credit based incentives, more cash related incentives

# ***“Recent Incentive Trends”***



## Recent Incentive Trends

- ❑ Overall, state and local governments are being smarter and more focused about providing incentives
  - ✓ Developing longer-term partnerships
  - ✓ Greater return on investment
  - ✓ Ability to justify programs in light of budget deficits
  
- ❑ Steady movement in the incentives landscape over the last few years with the following representing some prevalent trends:
  - ✓ Greater corporate accountability
  - ✓ Development of payroll-based incentive programs
  - ✓ Tax reforms have been instituted
  - ✓ Using incentives to target “high-impact” industries
  - ✓ Allowing for tax credits to be sold
  
- ❑ Federal government has gotten more aggressive with incentives:
  - ✓ Expanded Empowerment Zone program
  - ✓ Federal Jobs Creation Act



## Trend: Greater Accountability

- ❑ States continue to take measures that aim to create strong economic development partnerships with companies
  - ✓ True “win-win” situation
- ❑ A number of states have adopted or introduced comprehensive incentives accountability legislation in recent years
- ❑ Increased use of contractual agreements that include recapture or “clawback” provisions, as well as other types of safeguards
- ❑ Growing focus on the creation and retention of “quality” jobs
- ❑ Stronger “but for” or material factor requirements



## Trend: Payroll-based Incentives

- ❑ Programs based upon incremental withholding taxes generated in order to reward the creation of incremental full-time positions
  
- ❑ Examples of new payroll-based grant and tax credit programs include:
  - ✓ Nebraska Advantage
  - ✓ North Carolina Jobs Development Investment Grant (JDIG)
  - ✓ Missouri Quality Jobs



## Trend: Tax Reform Rather Than Reductions

- ❑ The State of Georgia has made significant alterations to their tax structure reducing taxes overall limiting the need for credits and incentives. Other States have recently followed this model as well:
  
- ❑ Ohio
  - ✓ Eliminated state income (franchise) taxes
  - ✓ Eliminated local personal property taxes
  - ✓ Reduced state sales tax from 6% to 5.5%
  - ✓ Helps them become “Cuno Immune”
  
- ❑ Nebraska
  - ✓ Exempted sales and use tax on manufacturing M&E

## Trend: Targeting High-Impact Industries

- ❑ State and local governments have increasingly developed incentive programs to target high-impact industries
- ❑ Biotechnology
  - ✓ Traditionally, biotech has developed in industry clusters where strong university systems exist
  - ✓ According to the Biotechnology Industry Organization (BIO), at least 30 states now have some sort of biotech investment initiative in place
- ❑ Corporate and Regional Headquarters
  - ✓ Many states have adopted targeted incentives to attract high-impact HQ operations
  - ✓ GA has incentive programs to specific to headquarters
  - ✓ Other states with targeted HQ incentives include FL, MS, SC, TN, and WV.

## Trend: Sellable Credits

- ❑ State and local governments have allowed businesses to sell their unused tax credits
  
- ❑ New Jersey
  - ✓ Companies can sell unused R&D credits
  - ✓ Companies can sell unused NOL's
  - ✓ Recently created the Business Retention and Relocation Assistance Grant (BRRAG) which is sellable
  
- ❑ Missouri
  - ✓ Allow for the sale of many credits including Development Tax Credit



## Trend: Federal Government Getting Involved

- ❑ The Federal Government in the past has been involved with business incentives on a limited basis, however their involvement is growing significantly
  
- ❑ WOTC / WTW
  - ✓ Born out of old Targeted Jobs for Tax Credit (TJTC) program
  - ✓ Allows for federal income tax credits to be given for companies who hire “disadvantaged” individuals
  - ✓ Looks promising that the program will be extended going forward and there has been discussion on expanding the qualification to be a “disadvantaged” individual
  
- ❑ Federal Empowerment Zones
  - ✓ Have expanded the zone program and have extended benefits
  
- ❑ Federal Job Creation Act



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## How do Companies View Incentives?

- ❑ Incentives are increasingly being considered a major factor in the site selection process
  - ✓ Companies want to know about incentives up-front
  - ✓ Generally used as criterion in “short-listing” process
  - ✓ Final incentive packages are factored into the overall cost analysis at end of selection process
  
- ❑ A strong incentive package demonstrates a jurisdiction’s willingness to support a company’s substantial investment within a region!
  - ✓ Does this jurisdiction want my business?
  - ✓ Does this jurisdiction understand my business?
  - ✓ Will this be a good place to do business in the future?

## What is Expected of Economic Developers?

- ❑ Economic developers must be responsive to both companies and the consultants that represent them
  - ✓ Provide accurate, detailed information in timely manner
  - ✓ Address pressing issues immediately
  - ✓ Being unresponsive could affect decision
  
- ❑ Coordinated effort among all members of the economic development team
  - ✓ Single point of contact, single message
  
- ❑ Ability and willingness to be creative and flexible in negotiating and designing incentives package
  - ✓ Getting an “A” for effort



## Anticipated Outcomes of the Incentives Process

- ❑ For company:
  - ✓ Securing maximum incentive package that meets the company's business needs
- ❑ For consultant:
  - ✓ Ensuring client has *monetized* long-term incentive benefits
- ❑ For economic developers:
  - ✓ Securing an investment project that will generate long-term economic impact
- ❑ For all parties:
  - ✓ Developing a long-term business partnership



# ***“Recent Legislative Changes in GA”***

*Economic Incentive Specialists*

TM



## Overview of Tax Code Changes

- ❑ GA will be moving to a “single factor gross receipts” apportionment based upon the sales factor only
  - ✓ Will help companies with high in-state property and payroll that sell tangible personal property
  - ✓ No “throw-back” rule in GA will make them more competitive than other states with similar single factor apportionment
  - ✓ Reduces the risk of Cuno type litigation
  - ✓ Targets manufacturing and distribution companies



## Impacts on Existing Incentive Programs

- ❑ Current GA incentive programs are heavily geared towards reducing income tax liability. These include:
  - ✓ Jobs Tax Credit
  - ✓ Investment Tax Credit
  - ✓ Employee Training Tax Credit
  
- ❑ Reduction of income tax burdens on companies will result in a decrease in the effectiveness of the previous incentive programs that were based on crediting back income taxes otherwise due
  
- ❑ It is harder to communicate tax law changes that deal with apportionment factors than it is to discuss tax rate reductions or tangible income tax credits based upon job creation and investment
  
- ❑ GA still does not have any retention based incentives

## Survey Results

- ❑ In a poll of a sampling of Mintax Clients the following results were obtained:
  - ❑ 67% of client contacts who were in the tax department indicated they “rarely” or “never” get involved in site selection decisions
  - ❑ 45% of client contacts who were in operations or real estate said income taxes factored into their site selection process “often” or “always”
  - ❑ 78% of client contacts said that their company “often” or “always” made decisions based upon ROI numbers of 7 years or less
  - ❑ 85% of client contacts who were in operations or real estate said they preferred “above the line” incentives to “below the line” incentives



## In Conclusion

- ❑ Incentives will play a growing role in the site selection process given that state and local jurisdictions continue to develop lucrative incentive programs to attract and retain businesses
- ❑ Incentives will continue to grow and adjust to the needs of business
- ❑ Cuno decision does have an impact on how states have elected to attract business
- ❑ GA should consider a review of their existing incentive legislation to provide the best fit between tax reduction legislation and incentive legislation



# Q & A



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