Salvaging Incentives

Open Communications Can Reduce Problems

By Leslie Rubin

Incentive packages are awarded because government believes a recipient company's contribution to the community will exceed the value of incentives awarded. In this way, governments often influence site location decisions. The agreement between the public/private entities can unravel occasionally because the dynamics of the local, regional or national economy shift.

Failure to meet growth goals

Company management needs to clearly understand the consequences of incentive program non-compliance. Some programs are self-regulating and carry little or no risk to taxpayers if the company fails to perform. These incentive benefits are typically spread out over time and accrue to the company once certain thresholds have been met. Typically, training grants and training tax credits fall into this category.

Other programs carry clawback clauses in the event that a company does not meet agreed upon outcomes. How and when economic assistance program penalties are triggered is dictated by state code and program policies. Income tax credits and tax abatements are often cited in this group of incentives.

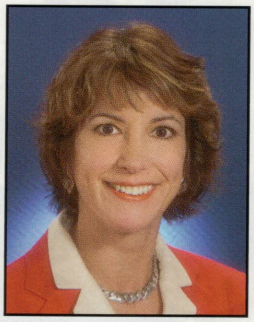
Lack of communication

Government representatives, like company managers, hate surprises. So, when a company fails to communicate changes, access to and benefit from incentives can be limited and even halted.

Communicating with government representatives before the media reports employee reductions or other negative company news will put the company in a better negotiating position. The advance notification and explanation convey a respect for the relationship between the two entities.

But don't assume a company's challenges will disappear because management made a phone call. Government agencies, like any institution that puts capital at risk, wants plausible explanations and assurances that the current situation will be resolved.

The most difficult task ahead for the company is assessing whether recovery to the previously stated goals is still achievable. If so, does the timeline change? If not, is the deviation from the original growth plan substantial?



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Negotiable terms, conditions

Renegotiation with government representatives revolves around the same criteria used in previous discussions: the number of jobs retained and created, the company average wage and projected capital investment.

Most community and state governments understand that negative changes in the economy impact a company's ability to meet incentive program obligations. Clawback clauses were introduced to diminish the potential for incentive program abuse, not to hold companies accountable for macro-economic fluctuations.

Nevertheless, failing to amend the employment, wage and capital investment goals of a program that has penalties for non-compliance will eventually trigger clawback provisions. Once these measures are activated, there is limited opportunity for the company to respond.

Government doesn't deliver

On the rare occasion that government agencies fail to follow through with incentive agreements, the probability that the situation can be resolved depends on the circumstances surrounding the change, the relationship between the company and government, and the consequences to government of not fulfilling its obligation.

Sometimes development incentives change because of a shift in the political climate. A newly elected official may question the use of incentives offered by a former administration. If a company has already begun the project, it may be too late to regain an incentive that is withdrawn.

State government is typically more insulated from the repercussions of failed assistance than local government. Nevertheless, officials are elected into office. In this situation a discreet conversation among the involved parties can often lead to a creative and equitable solution.

If government chooses not to fund an ongoing incentive program, then all private sector recipients are in the same predicament. Under these conditions, a company could attempt to negotiate an extension to the active period of the incentive program but in all likelihood will simply have to wait until funding is reinstated.

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Incentive commitments are linked to a company's best projections conveyed at one point in time. All economies are dynamic, so how is a company going to realize maximum benefit? The key to success is actively managing incentives.

INFORMATION LINK

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