

MONEY MATTERS...\$...\$...\$

FOR KIDS, FOR COMMUNITIES, FOR KENTUCKY

A Fiscal and Budget Policy
Research Brief

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Special points of
Interest:

- Last year, Kentucky authorized over \$354 million in tax credits to companies promising a total of 11,279 jobs, for an average of \$31,000 in tax credits per job promised.
- Kentucky is behind other states in the development of corporate incentive disclosure laws, which allow public review and evaluation.
- Kentucky should: 1) provide public information on incentives; and 2) allow analysts to compare incentive deals.



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Show Me the Money: A Comparison of Corporate Incentive Disclosure Laws

In light of the budget crises facing many states, and the need to generate new sources of revenue to fill these budget gaps, policy analysts have begun to take a closer look at discretionary economic development incentives, or in plain language, tax breaks to businesses.

Last year alone, Kentucky authorized over \$354 million in tax credits to companies promising a total of 11,279 jobs, for an average of \$31,000 in tax credits per job promised. This includes a tax incentive deal made with Westlake Vinyls at a cost of nearly \$1.5 million per job [See Table 1]. Between 1992 and 2000, Kentucky authorized an additional \$3.5 billion in previous tax credits for companies relocating here or expanding their operations in the state.¹

For the sake of definition, subsidies and tax exemptions to businesses, including tax breaks, tax credits, tax abatements, grants, loans, and industrial revenue bonds are generally referred to as “incentives.”² They are designed to improve the state’s business climate and enhance the ability to attract and retain local jobs. State and local governments may offer to forego collection of taxes that the

business would otherwise owe. The business’s bottom line is enhanced; however, the government receives less revenue resulting in fewer services or the need to collect the lost revenue from other sources.

Should this foregone revenue be recaptured as the State of Kentucky seeks ways to close a projected \$150 million budget deficit this fiscal year? Without public access to information, it is hard to tell. Useable information on incentive deals and measurable impacts of the policy in general are difficult to come by, mainly because Kentucky does not have a definitive disclosure law on the books. Some states do, however, and we can learn from their examples.

Public access is one of three broad categories of state and local accountability legislation and will be the focus of this Money Matters issue. Subsequent issues will explore:

- ? Laws that require corporations qualifying for incentives or public assistance to observe conditions and minimum standards; and
- ? Laws that enforce these conditions and standards.

Why Disclosure?

“Information is an essential precondition for accountability.”³ Without it citizens cannot address the two most important questions surrounding any economic development policy: “Who pays? Who benefits?”

Taxpayers clearly pay, but the question of who benefits remains unanswered. Kentuckians currently have no way of knowing how many jobs a company receiving incentives actually provided, only the number promised. We also do not know the wages or benefits associated with these jobs, or any other details of the deal.

Corporate incentive “abuse” [also known as subsidy abuse] cases have been well documented by groups like Good Jobs First, a nonpartisan, non-profit research and education organization tracking government tax and spending policy issues. They have labeled Kentucky a “black hole of economic development” due to reported cases of incentive/subsidy abuse by groups such as the Democracy Resource Center (DRC). DRC lists the top ten “High-Priced Deals” worth over \$100,000 per job created in its groundbreaking 2000 report: “Kentucky’s Low Road to Economic Development: What Corporate Subsidies are Doing to the Commonwealth.”

Why does the state continue to participate in these types of deals? Because companies threaten to take their jobs elsewhere if their demands are not met. It has become common practice for companies to play one state off against another in a bidding war now known as the “Economic

War Among the States.”⁴ For example, Intel Corp. reportedly visited six states until New Mexico finally granted them concessions such as “low or zero income tax” and a right to increase air pollution emissions by 100 tons per year.⁵ Closer to home, Kentucky competed against two other states this year in attracting automaker Hyundai. Kentucky eventually lost to Alabama.

Disclosure laws might include certain provisions which make it more difficult for companies to play one state against the other. An example would be a provision requiring corporations seeking incentives to disclose all information about other incentive offers they have received.⁶

Not surprisingly, in the current climate of limited disclosure and accountability, corporate requests for government-sponsored financial assistance, or tax breaks, appear to be on the increase. “Using their increased capital mobility and the pressures of global competition as justification, companies are asking for more financial assistance from state and local governments.”⁷ In an era of economic globalization, should financial assistance to corporations not bound by geography be the role of governments or financial institutions?

Finally, disclosure laws make good fiscal sense from a budgetary perspective as well. Increasingly, corporate revenues are declining in state budgets across the country, while deficits are growing, services are being cut, and new sources of revenue are being sought. [See KYA’s *Money Matters: Kentucky’s Corporate Income Tax and the State’s \$620 Million Budget Deficit*]

“Corporate ‘subsidy abuse’ cases have been well documented ...”

What’s Happened in Kentucky

Kentucky has no incentive disclosure law per se, but does have some positive developments that could become the building blocks for disclosure laws in the future. General reports on incentives issued to companies are available to the public, but individual company records are largely inaccessible, even to the Attorney General.

1. Reporting.

Kentucky has made some strides in the reporting arena. In 2000 the Kentucky Economic Justice Alliance (KEJA) was able to introduce language into the budget that required the Economic Development Cabinet to compile incentive information into a quarterly report and send it to the Legislature. This information was already accessible through the Open Records Law but the new budget language required it to be compiled into one unified report. The report lists items such as the names of companies that received incentives, the number of jobs promised, and the tax credit amount they are eligible for [vs. the amount of credits actually

claimed].

Table 1 provides an excerpt from the report. This excerpt highlights the top five [out of 248] incentive deals issued by the Cabinet during fiscal year 2001. Information on the initial incentive agreements made with companies is available, but no information on their actual progress [how much of the incentive was actually claimed and how many jobs were actually created] is provided.

In addition to this unified report, the Office of the State Budget Director publishes a tax expenditure report. (Kentucky is one of 35 states that publish such a report.) The expenditure report lists the total expenditure amount for 21 economic development incentive programs, and even includes limited liability companies as expenditures, as they are “entities not subject to Kentucky’s corporate license tax.” The report does not describe whether public policy objectives (e.g., expanding employment) are being achieved. It does, however, provide a general estimate of the fiscal impact and legal basis for each identified tax expenditure in the interest of providing “information leading

“...Nine West Group, Inc. received nearly \$1 million in tax breaks to create 28 jobs in Boone County. At the same time, the company fired about 700 workers in Fleming and Lewis counties.”

Excerpt from Tax Incentive Summary Report for 2001					
Program	Company	Project Date	Incentive Amount	Jobs Promised	Price Per Job
KREDA	Rexam Closures Kentucky Inc.	1/31/2002	\$13,600,000.00	100	\$136,000.00
KJDA	Wal-Mart Stores East I, Limited Partnership	10/25/2001	\$15,000,000.00	480	\$31,250.00
KREDA	NSA, Ltd. AND Century Aluminum of Kentucky LLC	4/25/2002	\$26,500,000.00	110	\$240,909.09
KJDA	Citicorp Credit Services, Inc.	3/28/2002	\$26,735,150.00	569	\$46,986.20
KIRA	Westlake Vinyls, Inc.	8/30/2001	\$29,987,000.00	20	\$1,499,350.00

(Obtained through Open Records Request to the Economic Development Cabinet)

Table 1

“...unified reports are a good first step towards broader tax expenditure disclosure, but Kentucky still has a long way to go toward the establishment of disclosure laws per se.”

to a fairer tax structure.”⁸

These types of unified reports are a good first step towards broader tax expenditure disclosure, but Kentucky still has a long way to go toward the establishment of a full-fledged disclosure law.

2. Individual Company Records.

Some states, including Minnesota and Maine, allow full public access to individual company records so that citizens can scrutinize a corporation’s labor history and incentive track record. This is not the case in Kentucky, where such details within individual company records are largely unavailable to the public, and in most cases, the Attorney General as well.

The Cabinet for Economic Development is currently allowed to exempt entire applications rather than parts of applications from the Open Records Law.⁹ These exemptions were written into the Kentucky Open Records Act in 1992, which allowed the Economic Development Cabinet to “shield” certain records from public disclosure, including files containing financial data about companies. This exemption was one reason for the 1997 lawsuit by the Attorney General’s office against the Economic Development Cabinet.

The suit occurred after lawyers with the Attorney General’s office sought to review the documents of one company, Alliance Research, which had received incentives with the promise of creating jobs. The company subsequently moved out of state after only a few years. The Attorney General wanted to learn if the company had violated any contractual agreements

with the State. However, the Cabinet would not release the documents, citing financial confidentiality of the companies.

Another company in question at the time was Shoemaker Nine West Group Inc. Nine West received nearly \$1 million in tax breaks to create 28 jobs in Boone County. At the same time the company fired about 700 workers in Fleming and Lewis counties. The Economic Development Cabinet sued the Attorney General’s office, arguing that the files in this case included financial information that would put companies at a competitive disadvantage if their financial information was publicized.

The Supreme Court recently ruled that the Cabinet must disclose Alliance Research’s records to the Attorney General, but said that the records are not to be made available for public review. Furthermore, since no cross-appeal was filed by the Attorney General, this ruling only pertains to accessing the records of Alliance Research only.¹⁰

In summary, Kentucky citizens may access a summary report [described below] but may not view individual company records or applications. The Attorney General can only access the records of one company, Alliance Research.

What Other States Have Done

At least seven other states have already enacted disclosure laws or procedures that generate annual, company-specific data about state incentives given to companies. [See Table 2]¹¹

Comparison of Selected State Corporate Tax Subsidy Disclosure Laws					
STATUTORY REQUIREMENT	CT	ME	MN	WV	KY
Disclosure of Company-Specific Data	Yes	Yes	Yes	Yes	No
Disclosure of value of subsidies	Yes	Yes	Yes	In Dollar Brackets	Yes
Disclosure of wages and benefits	No	Yes	Yes	No	No
Disclosure of actual job creation and or retention vs. goals	Yes	Yes	Yes	No	No
Who reports to the state agency?	Firms receiving subsidies	Firms receiving subsidies	Firms receiving subsidies	Firms receiving subsidies	Firms receiving subsidies
Disclosure of job and wage goals	Jobs only	Yes	Yes	No	Job only
Frequency of Reporting	Annually	Annually	Annually	Annually	Quarterly
Agency that reports disclosed data	DECD, CDA, and CII	Dept. of Economic and Community Development	Dept. of Trade and Economic Development	Tax Commissioner	Cabinet for Economic Development
General Subsidy Disclosure Law	PA93-382	13070-L	116J.994	11-10-5s(b)(1)	None-possible budget language

Source: Good Jobs New York www.goodjobsny.org

Table 2

Table 2 shows how Kentucky measures up to other states with disclosure laws in place.

Two of the four states with disclosure laws provide wage and benefit information (ME and MN). West Virginia gives the dollar amount of incentives in bracket form, but does not provide wage and benefit information.

Most importantly, individual company information is available in all states that have disclosure laws. Kentucky has no formal disclosure

law, however, but has limited disclosure created through budgetary language that requires the production of a unified quarterly report.

What Kentucky Needs to Do

Here are the standards that should be used to develop a state incentive disclosure law in Kentucky. First, information on business incentives and financing agreements should, in general, be available in a timely, complete, and accessible way to the public for evaluation and review. Second, public information should allow

“...accountability measures will never be enforceable without proper disclosure laws in place.”

analysts to adequately assess the policy in general, the incentive deals specifically, and compare different incentive deals.

Kentucky needs to build on successes in the reporting arena and immediately adopt a comprehensive incentive disclosure law that includes the following elements:

1. Access to the names of companies receiving incentives and the agency and/or program source of the incentive;
2. The dollar amount the company received and the date received;
3. The number of jobs actually created and/or retained; and
4. The quality of those jobs, including wages, healthcare, and full-time versus part-time jobs.
5. This data should be collected in a central place, covered by the Freedom of Information Act, and published (preferably on the Web) in a form that enables citizens to readily analyze deals or programs.
6. It should be updated at least annually.¹²

States that meet the above requirements [currently Minnesota and Maine] are considered the “Cadillac” states when it comes to incentive disclosure laws.¹³ Maine, for example, provides company-specific job, wage, and benefit information for all deals over \$10,000, including the number of jobs by occupational type, wage

and benefit levels of jobs retained, any changes in employment levels, the total amount of incentive assistance, and details about the type and purpose of each form of assistance. Minnesota requires the same information plus a statement of goals identified in the incentive agreement, the date by which the job and wage goals will be met, the reason for relocating from within Minnesota if applicable, and a list of *all financial assistance received*.

Conclusion

Increasingly, states are taking steps toward corporate incentive disclosure. For example, according to Good Jobs First, the number of states with “clawbacks”—requirements for return of incentives if a firm tries to leave or doesn’t provide the new jobs it promises—has risen from 9 to 17 in the past decade. In 1992 only eight states attached job quality standards to their incentives; today 37 do.¹⁴

Despite the growing proliferation of corporate incentive accountability measures across the country the fact remains that access to accurate data on economic development incentives is nearly impossible to obtain, especially in Kentucky.

In light of the budget crises facing many states—including Kentucky—proper analysis of incentives to businesses is more important than ever. Among the questions that such data should be able to answer include: Are corporate incentives providing the Commonwealth with an appropriate return on its [i.e. taxpayer’s] investment? Are there other investments that might provide a better return for the Commonwealth, such as invest-

“...public scrutiny of how tax dollars are spent, especially economic development programs, should be as strict as any other public spending activity.”

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ments in education or health care? Furthermore, public scrutiny of how tax dollars are spent, especially economic development programs, should be as strict as any other public spending activity.

Public disclosure of incentive information serves as a vital check on both corporate and governmental effectiveness. The public has an inherent right to information that details how its tax dollars are spent. Corporate incentive disclosure laws must be the first step toward increased accountability. Greater accountability can lead to improved resource allocation and improved public policy decisions. Until corporate incentive information is made public, however, the value and effectiveness of such programs can and should be continually questioned.

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