

SUM  
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CREDITS

DISCUSSION ON CREDITS &  
INCENTIVES

# FEDERAL PROVISIONS UPDATE

- 60 Credit / Deduction Provisions expired on 12/31/11
  - Incentives for Biodiesel and renewable diesel (§ 40A)
  - R&D Credit (§41)
  - New Markets Tax Credit (§45D)
  - Work Opportunity Tax Credit (§51)
  - Empowerment Zone Incentives (§1391-1397F & 1400)
  - Deduction for State & Local Sales Tax (§164(b)(5))
- 41 Additional provisions expiring by end of 2012

# FEDERAL PROVISIONS UPDATE

- House Committee on Ways and Means will held initial hearing on April 26<sup>th</sup> to begin discussions about extending expired provisions
  - Since then it seems like nothing but deadlock
  - Possibility that nothing could be done until November

# AMNESTY PROGRAMS

State	Amnesty Dates	Tax Types	Benefits
CA	Oct 4, 2011 - Oct 3, 2012	City of Los Angeles Business Tax	Late Payment Penalties Waived
OH	May 1, 2012 - Jun 15, 2012	Most all Unpaid back Taxes	Waiver of Penalties and pay only ½ of interest
OH	Oct 1, 2011 - May 1, 2013	Use Tax	Waive Penalties and Interest and use tax due prior to Jan 1, 2009

# AMNESTY PROGRAMS - SSTP

## AMNESTY

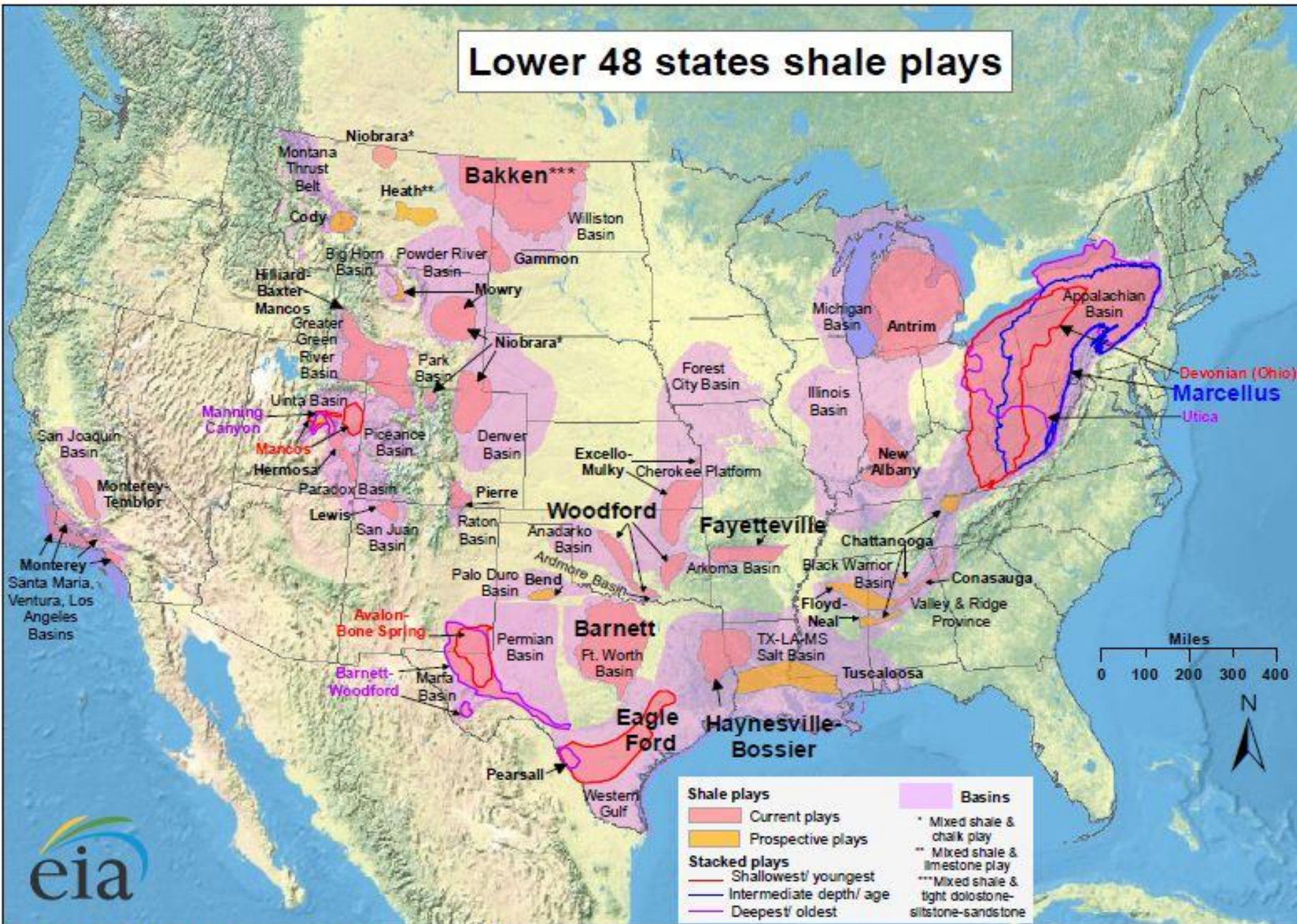
State	Amnesty Dates	Tax Types	Benefits
GA	Jan 1, 2011 - Jul 31, 2012	Sales/Use Tax	Waiver of All Tax, Penalties & Interest
OH	Oct 1, 2005 - 12 Months after full member of SST	Sales/Use Tax	Waiver of All Tax, Penalties & Interest
TN	Oct 1, 2005 - 12 Months after full member of SST	Sales/Use Tax	Waiver of All Tax, Penalties & Interest
UT	Oct 1, 2005 - 12 Months after full member of SST	Sales/Use Tax	Waiver of All Tax, Penalties & Interest

# AMNESTY PROGRAMS (CONT.)

## TEXAS - PROJECT FRESH START

- June 12, 2012 - August 17, 2012
- Applies to ANY state or local taxes or fees administered by Comptroller's Office (except Public Utility Gross Receipts)
- Includes past due reports, delinquent taxes, underreported tax on previously filed report, and voluntary disclosure
- Benefit - Waiver of Penalties and Interest
- <http://www.freshstart.texas.gov/>

# Lower 48 states shale plays



Source: Energy Information Administration based on data from various published studies.  
 Updated: May 9, 2011

# COMMON STATES / INCENTIVES

## “MARCELLUS SHALE”

	<u>PA</u>	<u>WV</u>	<u>OH</u>	<u>NY</u>
Property Tax	Limited to KOZs	Limited to local	Location Based or Certain Projects	Limited by location and industry (non-shale)
Sales Tax	Limited to KOZs (MFG Exemption)	None - MFG Exemption	None - MFG Exemption	None - MFG Exemption
Income Tax	Yes - \$1,000 per new job	Up to 30% of investment	Yes - Retained Jobs, etc...	Investment Tax Credit
Jobs Grants	Not for shale operations	Forgivable Loans	Refundable Jobs Tax Credit	Excelsior Program - MFG only eligible shale operation
Infrastructure Grants	Limited by local	Yes	Yes - TIF or Other Programs	JOBS Now
Training Incentives	Limited	Yes - \$2,000 per employee	Yes	Workforce Training Grants
Comments	Single Business App ( <a href="http://www.newpa.com/what-can-pa-do-for-you/single-application">www.newpa.com/what-can-pa-do-for-you/single-application</a> )	WV Economic Development Authority ( <a href="http://www.wveda.org">www.wveda.org</a> )	OH Department of Development ( <a href="http://www.development.ohio.gov">www.development.ohio.gov</a> )	NY Empire State Development ( <a href="http://www.nyfirst.ny.gov">www.nyfirst.ny.gov</a> )



# COMMON STATES / INCENTIVES

## “BAKKEN / ROCKIES”

	<u>ND</u>	<u>WY</u>	<u>CO</u>
Property Tax	Local - Not likely (PPT on oil & gas)	Local - Not likely	Local level - quite possible
Sales Tax	None - MFG & Gas Processing Exemption	None - MFG Exemption	Oil & Gas Equipment Exempt if in an EZ (MFG Exemption)
Income Tax	None	No Corporate Tax	Sizable Jobs Credits & EZ Investment Credits
Jobs Grants	Yes -ND withholding for Training	None	None
Infrastructure Grants	None	IDR Bonds	Yes - Initiate at local level
Training Incentives	See Jobs Grants	Up to \$4,000 per new trainee	Up to \$800 per trainee
Comments	ND reluctant to include oil & gas industries as “primary	WY Economic Development Association	CO Office of Economic Development <a href="http://www.colorado.gov/cs/Sat">www.colorado.gov/cs/Sat</a>

# COMMON STATES / INCENTIVES

## “TEXAS / LOUISIANA”

	<u>TX</u>	<u>LA</u>
Property Tax	Yes - Locally Negotiated	ITE - 100% for 10 Years
Sales Tax	Yes - EZ Program - \$2,500 per job (MFG Exemption)	EZ - 4% for creation of 5 jobs (MFG Exemption)
Income Tax	None currently	EZ - \$2,500 per net new job
Jobs Grants	Texas Enterprise Fund = oil & gas a hard sell / Locally = have \$ to spend on oil & gas	QJ - payroll rebate of up to 6% of wages for 10 years
Infrastructure Grants	Yes - Locally Negotiated	Economic Development Award Program
Training Incentives	Skills Development Fund - Weak	FastStart & Incumbent Worker Training
Comments	Economic Development & Tourism <a href="http://governor.state.tx.us/ecodev">http://governor.state.tx.us/ecodev</a>	Louisiana Economic Development <a href="http://www.louisianaeconomicdevelopment.com">www.louisianaeconomicdevelopment.com</a>

# WYOMING

- Very limited incentives in general
- Great Training Grant Program
  - \$4,000 per employee
- No Corporate Tax

# PENNSYLVANIA

- ◉ Income Tax Credits for almost any business creating jobs
  - \$1,000 per job
- ◉ Limited Incentives for Oil & Gas Operations
  - Mentality = They are coming anyway
- ◉ Single Business Application for All Incentives
- ◉ GREAT INCENTIVES - If located in a KOZ

# OHIO

- ◉ Most incentives/credits require pre-notification (negotiation up-front)
- ◉ Fantastic “refundable” jobs tax credit
- ◉ Can provide a pretty aggressive incentive package & quickly
- ◉ Property Tax Incentives for projects located in an Enterprise Zone (which are prolific)

# COLORADO

- Offers sizable Jobs Tax Credits, its main incentive
- Expansive Enterprise Zones
  - Exempts Oil & Gas Equipment from sales tax in EZ
- Property Tax Exemptions negotiated at local level
- Training Incentive can be refunded to company - \$800 per new employee

# WEST VIRGINIA

- ◉ Still very open to incentives for oil & gas related operation expansions
- ◉ Offers a significant Investment Tax Credit
  - 30% if minimum net new jobs are created and paid high wages
- ◉ Provides Forgivable Loans for new jobs
- ◉ Sizable Training grants at \$2,000 per trainee

# NORTH DAKOTA

- ◉ Does not consider Oil & Gas operations to be primary sector industry
  - Thus, no incentives offered, except for portion of operations that qualify as manufacturing
- ◉ Great Training “Cash” Grant IF you can get state to agree site’s operations fall within the primary sector definition



# NEW YORK

- Recently eliminated its Enterprise Zone Program and replaced it with a Jobs Grant program limited to certain industries
  - Only Manufacturing type “oil & gas operation” would qualify
- Has a good Investment Tax Credit of 5%
- Excelsior Jobs Program rebate of up to 6.85% of wages for 10 years

# TEXAS

- Has an EZ program to allow for sales tax rebates
  - Approved at local level - limited to \$2,500 per new & retained job
- Enterprise Fund - but typically not offered for operations that are tried to state because of its natural resources
- Local authorities have ability to offer significant incentives:
  - Property Tax Exemptions
  - Cash for Jobs
  - Infrastructure Grants

# NEW MEXICO

- **High Wage Jobs Tax Credit - REFUNDABLE**
  - Credit of 10% of wages for 4 years for EVERY net new job created paying over \$28K in rural areas and \$40K in urban areas
  - Available to Manufacturers and companies with 50% or more of sales out-of-state
  - Can go back to 2004
  - Applied against gross receipts (sales) tax, compensating (use) tax, and withholding tax, remainder refunded
- **2008-2009 Compensating Tax Refund**
  - 2008 NM Supreme Court (*Dell Catalogue v NM*) changed definition of “New Mexico sale” to include property delivered to New Mexico by out of state seller (with or without Nexus)
  - Opportunity for refund of Comp Tax for property delivered to state by out of ST seller without nexus

# LOUISIANA

- Incentives for each tax burden:
  - Property Tax Abatement - 100% for 10 years
  - Sales Tax - Rebate of 4% under EZ Program
  - Payroll Grant - Rebate of 6% of net new wages for new jobs
  - Infrastructure - EDAP grants
  - Refundable credit for property tax paid on inventory
- The ability to purchase other state credits to lower effective tax rate
  - Films credits - but state now buying back for 85¢
  - Historic credits

# LOUISIANA - 2012 LEGISLATIVE SESSION

## ○ Two new Acts affecting Incentives:

- **Act 32** - Adds four (4) new members to the Board of Commerce & Industry
  - *Chair of Senate Revenue & Fiscal Affairs*
  - *Chair of Senate Commerce, Consumer Protection & International Affairs*
  - *Chair of House Ways & Means*
  - *Chair of House Commerce Committee*
- **Act 45** - Revises EZ programs definition of “Multifamily residential housing” and Mixed-use developments that are eligible to participate in the EZ program

# LOUISIANA - 2012 LEGISLATIVE SESSION

## ◉ Dead Bills (for now):

- **SB 717** - Would have required incentive rebates payments to be approved by legislature prior to being paid
- **SB 463** - Would have allowed LED to offer single sales factor apportionment at Secretary's discretion for projects with "significant positive economic benefit"
- **SB 724** - Would have expanded Quality Jobs Program ("QJ") benefits to "contract" employees of a manufacturer
- **HB 1179** - Would have increased QJ minimum wage threshold from \$14.50/hr to \$19.10/hr

# LOUISIANA - 2012 LEGISLATIVE SESSION

- **Bills On Cusp of Final Passage:**
  - **HB 958** - Creation of Competitive Projects Payroll Incentive Program
    - Up to 15% payroll rebate
    - Limited projects can qualify - Corp HQ, R&D, Clean Tech, Renewable Energy, Aerospace, etc...
  - **HB 937** - Corporate Headquarters Relocation Program
    - Would cover up to 25% of the relocation costs
  - **HB 754** - Allows LED to enter into sales/use tax rebate contracts with Procurement Processing Companies

# LOUISIANA - 2012 LEGISLATIVE SESSION

- **Bills On Cusp of Final Passage (Cont.):**
  - **HB 674 & HB 694** - Constitutional Amendment to allow Property Tax Abatements for “eligible” projects
    - Allows local jurisdiction to “opt-in” and ability to grant abatements
    - Gives LED ability to offer property tax abatements to non-manufacturing projects like:
      - Warehousing
      - Corporate HQ
      - Data Centers
    - Must show 50% or more of sales to out-of-state customers
    - Would require approval of Louisiana voters in Nov-12



# TYPES OF STATE CREDIT PURCHASE TRANSACTIONS

1. “Certified” state tax credits that are freely transferrable
  - LA Films Credit & Historic Credits
  - MA Historic Tax Credit
- Agree to a purchase price and enter into a contract to purchase the credits for some amount less than the full face value
- Claim the tax credits on tax return, will have to report a gain (for federal tax purposes) of:
  - Amount of Credits Purchased/Used MINUS
  - Purchase Amount/Percentage

# TYPES OF STATE CREDIT PURCHASE TRANSACTIONS (CONT.)

## 2. Specially Allocated Tax Credits

- Contribute to the partnership generating the tax credits, an amount less than the total credits that will be allocated
- Limited partner ownership percentage is typically very small (.01%)
- After credits are used, sell interest back to general partner
- **CAUTIONS:** Check state rules on minimum partner ownership periods AND re-characterization of transaction to direct sale and purchase of property (*Federal Fourth Circuit Court Virginia Historic Tax Credit Fund 2001 LP v Commissioner, No. 10-1333*)

# TYPES OF STATE CREDIT PURCHASE TRANSACTIONS (CONT.)

- In most cases the credits CAN be used to offset estimated payments
- Some credits for prior years can still be purchased and used to get out of penalties and interest
  - 2007 LA Films Credits are going for \$1.05
- Utilization of the credit generates capital gain as state tax credits are generally considered “capital assets”

# QUESTIONS?

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