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Utah's Black Hole of Tax Incentives

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CUNY JOURNALISM capstone
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Part One: Jobs

For three years before the Royal Bank of Scotland announced plans to expand in Utah in 2010, the company lost billions of dollars. The financial crisis had ravaged the bank's balance sheets and left it on uncertain ground, even after a multi-billion dollar bailout from the British government. But RBS was looking to bounce back and grow again. To help it do that in Utah, the state's economic development agency offered the troubled company a little help.

The state considers losses in revenue or profits to be red flags that can disqualify a company from an incentive offer. But the Governor's Office of Economic Development (GOED) offered RBS up to $8.6 million in tax rebates to create 260 jobs in 2010. RBS ramped up employment for a few years, but by 2014 those billions in global losses forced the company to cut thousands of jobs from its workforce all over the world, including in Utah. The company shuttered its office near Millcreek for good, laying off over 100 Utahns. And because of the state's opaque policies, it's impossible to know how many tax dollars the company received before it left town.

RBS is one of dozens of private companies that Utah's main tax incentive program has promised hundreds of millions of dollars to create jobs in the state over the past 11 years. Some of those companies invest and hire new Utahns every year. But many companies that the state incentivizes do not live up to their promises.

More than half of incentivized companies did not meet their job-creation goals, according to an analysis by the Salt Lake Tribune that used publicly available employment data from the Department of Workforce Services to track the companies over time. The Tribune's analysis focused on the 18 deals that had completed the term of their contract, out of about 130 total incentives, some of which have life spans of up to 20 years and have not yet finished.

Some companies fell short by a small margin, such as Air Liquide which was at least five jobs short of its goal, while others were hundreds of jobs short, such as Kraftmaid Cabinetry, which laid off all of its workers two days before Christmas of 2008, about three years after it signed an incentive deal with the state.

How it works

The incentive program, Economic Development Tax Incentive Financing, aims to offer tax rebates to companies that agree to create high-paying jobs, defined as jobs that pay 10 percent higher than the average county wage.

An incentivized company in Utah has to create 50 new jobs and then hit yearly job targets to receive any tax dollars. At the beginning of each year, the company sets a goal for itself and then provides documentation to GOED that it reached the goal. If it meets the target, then GOED approves a tax rebate that the company can file with the Utah State Tax Commission.

"I think we've been able to only get deals where they wouldn't come without the incentive," said Ben Hart, GOED deputy director. "Those who do get the incentive will be those most likely to perform so that it will be the greatest benefit for the communities they locate in."

Transparency

It's difficult for the public to track the performance of incentives because while deals are announced by GOED, little is reported to the public or to state legislators about the progress of individual companies.

While companies should only receive tax rebates when they create jobs, GOED will not say how many jobs each company created or the amount of a company's annual tax rebate because they say that information is protected by tax privacy laws.

This lack of transparency makes it difficult for independent analysts to scrutinize the impact the incentive program has on attracting companies to Utah, according to Tim Bartik, senior economist for the nonprofit research organization W.E. Upjohn Institute.

"If you don't have data on what you're handing out and who you're handing it out to, it might be hard to ascertain the probability of inducing an expansion decision," Bartik said.

Other states provide much more information to the public than Utah does. Florida, for example, posts online updates about the progress of economic incentives.

In Connecticut, the state's economic development agency interprets the tax privacy issue similarly to Utah, but they err on the side of transparency. State officials disclose the amount of tax rebate a company qualifies for each year, but not whether or not the company actually claimed it on their return.

GOED does disclose job creation numbers in aggregate. Since the program started in 2006, the incentive program has created over 12,000 jobs and issued $12-$14 million every year, more than $120 million overall, according to a publically available GOED document from 2016. That amount is enough to hire at least 340 new elementary school teachers a year, based on the statewide median salary, according to the Department of Workforce Services.

But that general disclosure does not show if a company is creating a fraction of the promised goal. The yogurt company Dannon, for instance, signed a deal to receive $8.3 million to create 295 jobs over 10 years starting in 2007. By the end of the deal it had only added at most, 149 new employees. Dannon could have claimed a tax rebate for those workers, despite only fulfilling half of their agreement.

State officials see any job creation as a positive, even if the incented company does not create the full amount of jobs in the agreement.

“We wouldn’t consider it a failure,” Hart, the GOED deputy director, said. “While they’re creating jobs and making good efforts to getting toward the numbers they told us they would, they would get the incentive.”

And because GOED also does not disclose how much it pays each company per job, it’s impossible to know if a company that only creates 50 percent of the promised jobs could be claiming a higher percentage of the promised reward.

Other basic information, like which companies are actually benefiting from the program can be complicated for the public to obtain. While the governor’s office announces when the GOED board approves an incentive for a company, many of those deals never actually materialize. There are nearly 200 companies that have incentive deals, according to documents on the GOED website. But only 124 subsequently signed contracts.

Each company has different reasons for why they did not go through with signing on for an incentive. Sometimes the market may have changed from when they first applied for the incentive to when the time came to sign the contract. One company for example, L-3 Communications, a defense communications contractor, was approved for an incentive of up to about $5.5 million to create 500 jobs over 10 years starting in 2011. The company decided not to expand in Utah after changes to federal defense spending meant they would not expand and actually laid off more than 200 workers in Utah a couple years later, according to a statement from L-3.

Even though the deal never went through, L-3 is still listed as an incentivized company on the GOED website and a quote from an L-3 executive is featured prominently on the incentives homepage, praising Utah as a great place to do business.

Missed warnings and jobs lost

Every company that applies for an incentive must disclose information like its sales, liabilities and number of employees at various locations. GOED vets that information and does additional research before it recommends an incentive to the board. A decline in revenue or unprofitability during the previous three years and recent bankruptcies are considered red flags. But there are a number of instances where these flags were either not seen or not heeded.

At least two companies had filed for bankruptcy within 10 years of being approved for an incentive to grow in Utah.

“The board considers red flags when evaluating the proposed incentive, but red flags do not necessarily make a company statutorily ineligible for a post-performance incentive,” said Sara Adelman, public information officer for GOED. “They may impact the terms of the agreement such as the rebate percentage or project lifespan.”

But that does not alway appear to be the case.

The billions of losses that RBS had in the years leading up to its incentive were not a deterrent for GOED to offer an incentive. It also had more favorable terms than other, better-performing companies. The state agreed to rebate up to 25 percent of RBS’s tax obligation, a better rate than more than half of incentivized companies.

For some of the laid-off workers, the failure of RBS was devastating.

Kevin Johnson, 41, of Stansbury Park, UT**,** had been working at RBS in Taylorsville for about three years when the company closed its Utah branch in October 2014.

“It was a tough time being unemployed and not really having anything, it was going into the holidays with bills and other things to pay,” said Johnson. “It’s definitely been a huge impact on us. I’m still trying to recover from the financial crisis it put us in.”

RBS could keep any tax dollars it received before the layoffs because Utah has no clawback provision. If a company fails to create all the jobs or if it lays off workers during or after the term of the deal, the state will not request a refund for any money already paid.

“In terms of a rebate back or clawback, if the state’s already received a benefit, it’s probably not necessary,” said GOED board chair Jerry Oldroyd.

Even if a company lays off its workers, GOED officials still consider the temporary job growth to be positive, because the the company generates tax revenue for the state.

“In those cases where we may see some layoffs or it doesn’t pan out, they’ve come in, they’ve been able to give the benefit that we want them to give,” said GOED’s Hart. “If they don’t meet the number of years, they don’t get any more money and they performed according to the agreement.”

But for some workers, that helps create a false appearance of stability.

“With the economic incentive plan, it gave this sense of security for everybody that was employed there when there wasn’t actually any job security,” said Mark Mueller, 29, who worked at RBS from 2012 to 2014. “They made a bad business decision and were rewarded for it.”

Part Two: Other flags

In December 2000, steel producer Nucor Corporation agreed to pay the largest settlement of its kind in the history of the Environmental Protection Agency (EPA) – more than $98 million over alleged violations at facilities in seven states, including Utah. Three years later, Nucor employees initiated a lawsuit alleging pervasive racial discrimination against black workers, eventually yielding a $1.2 million total payout. The following year, seven more workers launched a separate racial discrimination complaint that is currently pending as a class-action lawsuit.

But in 2006, Nucor qualified for Utah's Economic Development Tax Increment Financing program, securing a contract offering more than $2.3 million in tax rebates to create jobs in the state over 10 years.

The Utah Governor's Office of Economic Development (GOED) says a company's past is considered in the vetting process when awarding these contracts. But the Salt Lake Tribune's review of more than 150 companies formerly or currently involved in the program found dozens of environmental violations, discrimination lawsuits, workplace deaths and bankruptcy filings prior to or during partnerships with GOED.

Three years before joining the tax rebate program, Nucor, for instance, became embroiled in the first of at least two cases alleging widespread racial discrimination against black employees.

The initial claims – which could have comprised more than 100 employees and applicants at plants in four states – were whittled down to a group of six black plaintiffs at a Nucor plant in Blytheville, Arkansas.

The allegations, according to court documents, included the regular use of various racial epithets against black workers in person, over email and broadcast on the workplace radio system; Confederate flags being prominently displayed throughout the plant, including on a number of items sold in the on-site employee store; and a simulated "lynching" with a rubber chicken near a black employee's workstation.

The six workers' additional claims of racial bias in job promotions were discarded, along with some other discrimination charges decided in Nucor's favor by an Arkansas district court. Following a trial in October 2009, however, the workers were awarded $200,000 each in damages for a total of $1.2 million.

Another racial discrimination case, this time involving seven workers at a Nucor plant in South Carolina, is currently pending. The most recent ruling in 2015 from a federal appeals court, which certified the case as a class-action suit, described the evidence of a racist work environment as “ubiquitous.” The court also cited numerous examples of racial harassment alleged to have occurred at the South Carolina plant.

Racially hostile sounds, including monkey noises and the songs “Dixie” and “High Cotton,” were broadcast over the plant radio system. Hangman’s nooses were “prominently displayed.” An employee once presented a noose to a black co-worker. Black workers were frequently referred to in racist terms, such as “nigger,” “bologna lips,” “porch monkey” and other epithets. The Confederate flag was branded on items sold at the plant’s gift shop.

Furthermore, the plaintiffs claim opportunities for advancement were racially biased. “No more than one black supervisor worked in the Nucor production departments until after the EEOC charge that preceded this litigation,” the appeals court said. “It strains the intellect to posit an equitable promotions system set against that cultural backdrop.”

The case first arose in August 2004, two years before Nucor became a beneficiary of Utah’s economic incentive program.

But Nucor is not the only EDTIF-connected company to face accusations of discrimination from its workforce. At least 234 job discrimination cases have been filed against 13 companies that partnered with Utah through the program – all within five years before they were approved or during the term. Of these cases, 67 involved sex- or race-based discrimination.

Nucor had also been cited for 12 hazardous workplace violations totaling over $8,000 in fines before Utah approved the deal. The company had at least three accidents before it was given the incentive deal, one of which resulted in the death of an employee.

Other companies have faced similar charges. Juan Gomez, 44, from Santaquin, had been working at a Young Living farm in Utah for two and a half years before he was killed in an accident at an herb distillery on Aug. 17, 2000. Gomez was standing next to a large distillation vessel, which extracts essential oils from plants through high pressure steam, when the lid of the cooker popped off and struck him in the head.

The Department of Labor charged Young Living with 11 violations from the accident, including violating rules for respiratory protection and control of hazardous energy.

“He was a tractor driver, so he wasn’t familiar with the machine. That wasn’t even his area. But that day they asked him to work one of the machines,” said his son-in-law Jeronimo Avila, who also worked at the farm.

Gomez’s family was given enough money through worker’s compensation to provide a funeral for him in Mexico. But Maria, Gomez’s wife, was left with car and house payments along with two young children to care for.

“She got stuck with everything,” said Mayra Avila, the eldest daughter. “She’s still paying for this house 17 years later, and she still has debt.”

The family tried to sue Young Living in 2003 through a wrongful death suit, but additional compensation was not permitted under the Utah Workers Compensation Act at the time.

Twelve years later, Young Living was awarded a deal offering rebates worth $8.8 million to create more jobs at their distillery.

In all, at least 22 companies had workplace violations before they acquired EDTIF deals, resulting in just under $130,000 in fines from the Occupational Safety and Health Administration. Fourteen companies reported workplace accidents before securing their deals; four of those accidents resulted in the death of an employee.

Lifetime Products, which manufactures plastic sporting goods, was promised over $3 million from the government in 2012 to create nearly 500 jobs. The company had 24 workplace violations between 2000 and 2012, according to the U.S. Department of Labor – twice as many as the nearest company involved in the EDTIF program.

Lifetime also had two serious accidents before their incentive was awarded, one of which resulted in a death. And in 2004, Lifetime was ordered to pay $800,000 to the Consumer Product Safety Commission for failing to report a hazardous basketball hoop it manufactured.

At least six companies benefiting from the program have also been cited by the EPA for environmental destruction. French chemical producer Air Liquide was accused in June 2001 of using industrial refrigeration systems that released ozone-depleting gases into the atmosphere.

The chemical byproducts from the equipment, which violated the Clean Air Act, were used at 22 facilities in 18 states, including a plant in Vineyard, Utah.
Air Liquide reached a settlement that included a $4.5 million civil penalty, as well as $500,000 in land donations.
Six years later, the state awarded Air Liquide an EDTIF incentive worth about $1.1 million to create 43 jobs in the state. The company came up short of that goal, creating a maximum of 38 jobs over the 10-year period, according to Department of Workforce Services data.

In another instance, five years before it signed a $2.3 million incentive deal with the state in 2006, Nucor paid the largest environmental settlement for a steel producer in EPA history. The company reached an agreement with the EPA in December 2000 to pay more than $98 million in pollution-related penalties at its facilities in seven states, including Utah.

The government accused Nucor, which was and remains the nation’s biggest steel maker, of pouring thousands of tons of nitrogen oxide and other smog-causing pollutants into the atmosphere each year from its facility in Plymouth.

The company agreed to spend $85 million on new equipment to mitigate air pollution, as well as a $9 million civil fine and $4 million in measures to address pollution in the areas surrounding its steel plants.

At least two companies with Utah facilities currently under EDTIF contracts have agreed to pay out settlements to the EPA in excess of $1 million.

The Home Depot agreed to pay a $1.3 million penalty for alleged violations to the Clean Water Act in 2008, four years prior to the start of its term with Utah’s incentive program.

An EPA investigation five years earlier found polluted stormwater runoff from the company’s stores entering sewers and drainage systems without a permit or a prevention plan.

“Stormwater can pick up pollutants, including sediment, used oil, pesticides, solvents and other debris” from construction sites, according to the EPA news release for the case. “Polluted runoff can harm or kill fish and wildlife and can affect drinking water quality.”

The home improvement supplies company was accused of violating the Act, in varying forms and degrees of severity, at 34 locations in 28 states. Two Utah sites, in Provo and American Fork, were included among the violators.

In 2012, The Home Depot signed an EDTIF contract with Utah to create a projected 691 jobs over 10 years. The company will receive up to $521,867 as part of the job incentive program.

Another company, ATK Launch Systems, was ordered to pay more than $2.2 million in total cost recovery for the removal of hazardous waste at a storage unit facility in Perry, Utah.

The total cost recovery, which dictates the amount of compensation the EPA receives for its cleanup efforts, also required ATK to "provide for appropriate lab-packing, or over-packing of containers or drums containing hazardous wastes and/or substances," according to the civil enforcement case report.

ATK signed an EDTIF contract in 2014 projecting to create 200 jobs over a 20-year term. The company can receive up to $19,307,734 through the program.