Washington and Lee Journal of Civil Rights and Social Justice

Volume 25 | Issue 2 Article 4

7-29-2019

A Typology of Place-Based Investment Tax Incentives

Michelle D. Layser
University of Illinois College of Law, mlayser@illinois.edu

A Typology of Place-Based Investment Tax Incentives

*Michelle D. Layser**

Table of Contents

---

* Assistant Professor at University of Illinois College of Law. The author would like to thank Kiel Brennan-Marquez, Samuel Brunson, Laura Coordes, Arden Rowell, and Genevieve Tokic for their feedback on drafts of this Article. In addition, this Article has benefited from comments received by participants of the 2017 Critical Tax Conference; the Spring 2017 Georgetown University Law Center Fellows Workshop Series; the 2017 Georgetown University Summer Faculty Workshop Series; the 2018 American University Poverty Law Conference; the 2018 Chicagoland Junior Scholars Works-in-Progress Conference; the 2018 Illinois 10-10-10 Workshop Series; and the 2018 Washington & Lee Journal of Civil Rights & Social Justice "Always With Us? Poverty, Taxes, and Social Policy" Symposium. This project would not have been possible without the help of my research assistants, Daniel Choi and Piljung Kang, and assistance from members of the University of Illinois library staff and research assistants, including Christopher Galanos and Travis McDade. Any mistakes are, of course, my own.

I. Introduction

A new tax break may drive as much as $100 billion in investments to impoverished neighborhoods over the next ten years.[1] The tax break, which was buried within the Tax Cuts and Jobs Act of 2017,[2] provides tax relief to individuals and businesses that make indirect investments in low-income communities designated as "Opportunity Zones."[3] Notwithstanding the undeniable enthusiasm among many investors and members of the development community,[4] industry watchers and anti-poverty

---

1. Jon Banister, *Investors Lining Up to Pour Billions into Opportunity Zones*, BISNOW (Oct. 4, 2018), https://www.bisnow.com/national/news/economic-development/investors-lining-up-to-pour-money-into-opportunity-zones-93572 (explaining the national interest in the new Opportunity Zone investment areas) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); Richard Rubin, *New 'Opportunity Zone' Tax-Break Rules Offer Flexibility to Developers*, WALL ST. J. (Oct. 19, 2018), https://www.wsj.com/articles/new-opportunity-zone-tax-break-rules-offer-flexibility-to-developers-1539948600 (explaining the Trump Administration's business-friendly clarification on Opportunity Zone rules and regulations) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

2. *See* Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) ("An Act To provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018.").

3. *See* I.R.C. § 1400Z-1 (2018) (defining a qualified opportunity zone). Under the new tax law, taxpayers who sell appreciated property can defer or, sometimes, exempt taxes they would otherwise owe on capital gains by reinvesting sale proceeds in so-called "Opportunity Funds." *See id.* In turn, Opportunity Funds are required to make new equity investments in businesses located in designated Opportunity Zones. *Id.*

4. *See* Dane Stangler, *Turning Opportunity Zones into Real Opportunities with Launch Pad*, FORBES (Feb. 6, 2019, 12:36 PM), https://www.forbes.com/sites/danestangler/2019/02/06/turning-opportunity-zones-into-real-opportunities-with-launch-pad/#793d49b73bfe (emphasizing potential utilization of opportunity zones to develop place-based policy) (on file

advocates continue to debate whether Opportunity Zones hold promise as a solution to impoverished communities.[5]

This debate is not new.[6] Tax incentives used to drive investment to low-income areas, which this Article refers to as "place-based investment tax incentives," have been controversial since they first appeared in 1980s.[7] Yet, despite a considerable amount of empirical research,[8] their impact on poor communities

---

with the Washington & Lee Journal of Civil Rights & Social Justice).

5. *See, e.g.*, Edmund Andrews, *Will "Opportunity Zones" Lift Neighborhoods Out of Poverty*, INSIGHTS BY STAN. BUS. (June 1, 2018), https://www.gsb.stanford.edu/insights/will-opportunity-zones-lift-neighborhoods-out-poverty (analyzing how incentives may work and mapping the demographic and economic characteristics of tracts now being designated as Opportunity Zones) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

6. *See* Noah Buhayar, *Will 'Opportunity Zones' Help the Rich, the Poor or Both?*, WASH. POST: BLOOMBERG QUICK TAKE (Jan. 4, 2019), https://www.washingtonpost.com/business/will-opportunity-zoneshelp-the-rich-the-poor-or-both/2019/01/04/2a1e153a-0fe1-11e9-8f0c-6f878a26288a_story.html?utm_term=.1c41dcf6a93d (comparing Opportunity Zones with the previous Empowerment Zones) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

7. *See, e.g.*, Noah Buhayar, *For Goldman, a Tax Break Makes Helping Poor More Lucrative*, BLOOMBERG (Aug. 29, 2018), https://www.bloomberg.com/news/articles/2018-08-29/goldman-sachs-leads-race-for-tax-break-helping-poor-communities ("Opportunity funds are both innovative and controversial. They have to focus their investments in roughly 8,700 low-income communities selected by state governors and other officials. Zones range from gritty urban neighborhoods to shrinking Rust Belt towns.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

8. *See, e.g.*, Deirdre Oakley & Hui-Shien Tsao, *A New Way of Revitalizing Distressed Urban Communities? Assessing the Impact of the Federal Empowerment Zone Program*, 28 J. URB. AFF. 443, 443–71 (2006); ROBERT RHERMANN, ET AL., EVALUATION OF THE ENTERPRISE ZONE TAX CREDIT (2014), http://dls.maryland.gov/pubs/prod/TaxFiscalPlan/WEB-Evaluation-of-the-Enterprise-Zone-Tax-Credit.pdf (on file with the Washington & Lee Journal of Civil Rights& Social Justice); DAVID STOKES, THE EFFECTIVENESS OF ENTERPRISE ZONES IN MISSOURI 20 (2013) https://showmeinstitute.org/sites/default/files/14_EnterpriseZ ones_Singles_0.pdf (on file with the Washington & Lee Journal of Civil Rights & Social Justice); Matthew Freedman, *Targeted Business Incentives and Local Labor Markets*, 48 J. HUM. RESOURCES 311, 311–44 (2013); Devon Lynch & Jeffrey S. Zax, *Incidence and Substitution in Enterprise Zone Programs: The Case of Colorado*, 39 PUBLIC FINANCE REV. 226–55 (2011); Jed Kolko & David Neumark, *Do Some Enterprise Zones Create Jobs?*, 29 J. POL'Y ANALYSIS MGMT. 5–38 (2010); Joel A. Elvery, *The Impact of Enterprise Zones on Resident Employment: An Evaluation of the Enterprise Zone Programs of California and Florida*, 23 ECON. DEV. Q. 44–59 (2009); Stephen Billings, *Do Enterprise Zones Work?: An Analysis at the Borders*, 37 PUB. FIN. REV. 68, 68–93

remains unclear. This Article analyzes the current legal landscape of place-based investment tax incentives, and it develops a typology to aid tax researchers, poverty law researchers, social scientists, and policymakers as they work to understand the limits and potential of tax law as a tool to fight neighborhood poverty.

Among the most pessimistic views of place-based investment tax incentives is that such laws are mere giveaways to businesses and their high-income shareholders.[9] From this perspective, not only do such laws undermine progressivity in the tax system while utterly failing to benefit poor communities, but they also reinforce structural inequality in ways that actively harm the poor.[10] Indeed, many studies cast doubt on whether place-based investment tax

(2009); Daniele Bondonio & Robert T. Greenbaum, *Do Local Tax Incentives Affect Economic Growth? What Mean Impacts Miss in The Analysis of Enterprise Zone Policies*, 37 REG. SCI. URBAN ECON. 121, 121–36 (2007); Robert T. Greenbaum & John B. Engberg, *The Impact of State Enterprise Zones on Urban Manufacturing Establishments*, 23 J. POL'Y ANALYSIS & MGMT. 315, 315–39 (2004); JOEL A. ELVERY, THE IMPACT OF ENTERPRISE ZONES ON RESIDENT EMPLOYMENT: AN EVALUATION OF THE ENTERPRISE ZONE PROGRAMS OF CALIFORNIA AND FLORIDA (2004), http://drum.lib.umd.edu/handle/1903/1793 (on file with the Washington & Lee Journal of Civil Rights & Social Justice); Karen Mossberger, *State-Federal Diffusion and Policy Learning: From Enterprise Zones to Empowerment Zones*, 29 PUBLIUS: J. FED. 31, 31–50 (1999); Margaret G. Wilder & Barry M. Rubin, *Rhetoric Versus Reality: A Review of Studies on State Enterprise Zone Programs*, 62 J. AM. PLAN. ASSOC. 473, 473–91 (1996); Audrey G. McFarlane, *Empowerment Zones: Urban Revitalization Through Collaborative Enterprise*, 5 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 35, 35–54 (1995); Dina Schlossberg, *The Empowerment Zones/Enterprise Communities: New Cure for Distressed Urban Communities or the Same Old Band-Aid*, 2 HYBRID 33, 33–42 (1994); Elizabeth M. Gunn, *The Growth of Enterprise Zones: A Policy Transformation*, 21 POL'Y STUD. J. 432, 432–49 (1993); Wayne E. Ruhter, *Enterprise Zones: Some Empirical Observations Symposium on the New Federalism and Urban Opportunities: Comment*, 2 CATO J. 407, 407–10 (1982).

9. *See* Steven M. Rosenthal, *Opportunity Zones May Create More Opportunities for Investors and Syndicators Than Distressed Communities Tax Policy Center*, TAX POL'Y CTR. (Aug. 2, 2018), https://www.taxpolicycenter.org/taxvox/opportunity-zones-may-create-more-opportunities-investors-and-syndicators-distressed (raising the alarm on the lack of government oversight with Opportunity Zones) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

10. *Id.*

incentives help create jobs,[11] reduce unemployment,[12] or reduce poverty levels.[13] Others provide strong evidence that a significant portion of tax-subsidy value is often captured by private market investors, syndicators, and developers rather than flowing into poor communities.[14] Still others suggest that some place-based investment tax incentives contribute to gentrification and displacement.[15]

---

11. *See, e.g.*, Daniele Bondonio & Robert T. Greenbaum, *Do Local Tax Incentives Affect Economic Growth? What Mean Impacts Miss in the Analysis of Enterprise Zone Policies*, 37 REG. SCI. & URB. ECON. 121, 133 (2007) ("The results indicate that positive zone-induced increases in employment, sales, and capital expenditures in new and existing establishments are offset by zone-induced losses among firms that close or leave the zone area."); Jed Kolko & David Neumark, *Do Some Enterprise Zones Create Jobs?*, 29 J. POL'Y ANALYSIS & MGMT. 5, 20 (2010) ("In light of the fact that the average effect of enterprise zones is near zero, evidence of variation in the effects of enterprise zones could suggest that some enterprise zones increase employment, while others decrease it.").

12. *See, e.g.*, Andrew Hanson, *Local Employment, Poverty, and Property Value Effects of Geographically-Targeted Tax Incentives: An Instrumental Variables Approach*, 39 REG. SCI. URB. ECON. 721, 730 (2009) (showing that property values may be impacted more than unemployment); Joel A. Elvery, *The Impact of Enterprise Zones on Resident Employment: An Evaluation of the Enterprise Zone Programs of California and Florida*, 23 ECON. DEV. Q. 44, 57 (2009) (detailing the problems with estimating the impact of enterprise zone programs).

13. *See* Douglas J. Krupka & Douglas S. Noonan, *Empowerment Zones, Neighborhood Change and Owner-Occupied Housing*, 39 REG. SCI. URB. ECON. 386, 394 (2009) (examining the direct price effects on neighborhood price levels, including housing stock).

14. *See* Gregory S. Burge, *Do Tenants Capture the Benefits from the Low-Income Housing Tax Credit Program?*, 39 REAL EST. ECON. 71, 72 (2011) (finding that tenants capture less than half of the credit benefits in the form of rental savings and that such savings are highest in the early years of a projects' occupancy); Michael Eickhoff & Steve Carter, *Accessing Capital Through the New Markets Tax Credit Program*, 29 J. ST. TAX. RIVERWOODS 17 (2011) (explaining that the NMTC is typically transferred to a third-party investor at a discount ranging between $0.68 and $0.74 per dollar of credit in exchange for capital infusion into the project); Mihir A. Desai, Dhammika Dharmapala & Monica Singhal, *Tax Incentives for Affordable Housing: The Low Income Housing Tax Credit*, 24 TAX POL'Y ECON. 181, 185 (2010) (explaining that LIHTC investors "purchase" credits a discount and that syndication costs may consume 10–27% of equity invested in LIHTC projects).

15. *See, e.g.*, Matthew Freedman, *Teaching New Markets Old Tricks: The Effects of Subsidized Investment on Low-Income Neighborhoods*, 96 J. PUB. ECON. 1000, 1013 (2012) (finding that the NMTC has some positive effects on neighborhood conditions in low-income communities but observing that the observed impacts are attributable to changes in the composition of residents as

But not all of the empirical studies have such dire conclusions. Some have found positive impacts on communities, including lower poverty rates,[16] increased employment[17] and higher home values.[18] Though such studies are in the minority and tend to focus on economic indicators (as opposed to factors like health, crime, or education that also impact communities),[19] they nevertheless provide some hope that place-based investment tax incentives could lead to positive outcomes for poor communities if appropriately designed. Meanwhile, policymakers have long presented place-based investment tax incentives to the public as anti-poverty programs,[20] and some recent legal scholarship has categorized place-based investment tax incentives as a subset of anti-poverty tax laws.[21]

Setting aside the question of whether current place-based investment tax incentives are intended as or designed to be anti-poverty laws,[22] it is essential to understand their impact on poor communities. To do so, we must move beyond mere debates

---

opposed to improvements in the welfare of existing residents).

16. *See* Hanson, *supra* note 12, at 730 ("[I]t may be more likely that geographically-targeted tax incentives and grants benefit land owners, therefore caution should be used when crafting policy that is tied to location if the intended effect is to improve labor market outcomes for residents.").

17. *See, e.g.*, Freedman, *supra* note 15, at 1000 ("Poverty and unemployment rates fall by statistically significant amounts in tracts that receive NMTC-subsidized investment relative to similar tracts that do not.").

18. *See* Krupka & Noonan, *supra* note 13, at 394. ("We find these results striking in light of the goals and rationale of the policy. Empowerment Zones were not billed as property value enhancement programs.").

19. *See, e.g.*, Freedman, *supra* note 15, at 1002–03 (utilizing an "econometric" approach to analyze the effect of tax-based incentives).

20. *See* Ellen P. Aprill, *Caution: Enterprise Zones Los Angeles*, 66 S. CAL. L. REV. 1341, 1341–42 (1992) (describing President Bush's effort to use enterprise zones to reduce poverty).

21. *See* Susannah Camic Tahk, *The Tax War on Poverty,* 56 ARIZ. L. REV. 791, 810–15 (2014) (categorizing place-based investment incentives in exactly that way).

22. In a companion article, I have argued that most place-based investment tax incentives have their origins in pro-gentrification policies and are designed to subsidize businesses, but that the strongest justifications for such laws rest on pro-social grounds. As such, place-based investment tax incentives should be redesigned to better advance anti-poverty goals. This can be accomplished by prioritizing poor communities over other beneficiaries of the tax laws. *See* Michelle D. Layser, *The Pro-Gentrification Origins of Place-Based Investment Tax Incentives*, WIS. L. REV. (forthcoming 2019).

over the merits of place-based investment tax incentives and find a way to navigate the morass of contradictory empirical findings about these tax laws. To help fill this need, this Article develops a typology of place-based investment tax incentives that can be used to evaluate the relevance of empirical findings, identify new areas of research, and predict the impact of specific tax incentive designs.

This Article makes several contributions to tax, poverty, and empirical legal literature. First, it defines the category of place-based investment tax incentives and identifies key elements of variation across the category. Despite their prevalence at all levels of government, place-based investment tax incentives remain undertheorized and largely undefined in the literature. The typology presented here reflects an analysis of three federal tax incentives (the New Markets Tax Credit,[23] the Low-Income Housing Tax Credit,[24] and the new Opportunity Zones law[25]) and a detailed survey of tax incentives included in state enterprise zone laws.[26] By defining this category of tax laws and identifying the basic types of place-based investment tax incentives that exist—or may not yet exist—under current law, this Article helps situate the conversation about these tax laws within broader tax policy debates.

Second, the typology presented here can be used by both tax and poverty law researchers to help assess the applicability of

23. I.R.C. § 45D (2018); *see New Markets Tax Credit Program*, U.S. DEP'T OF TREASURY, https://www.cdfifund.gov/programs-training/Programs/new-markets-tax-credit/Pages/default.aspx (last visited Apr. 4, 2019) (explaining the incentives of using the NMTC program to attract private investment to distressed communities) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

24. I.R.C. § 42 (2018); *see Low-Income Housing Tax Credits*, OFF. OF HOUSING & URB. DEV., OFF. OF POL'Y DEV. & RES., https://www.huduser.gov/portal/datasets/lihtc.html. (last visited Apr. 4, 2019) (identifying the most important resource for creating affordable housing in the United States) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

25. I.R.C. § 1400Z-1 (2018); *see Opportunity Zones Frequently Asked Questions*, INTERNAL REVENUE SERV. (Jan. 11, 2019), https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions. (providing a list of common questions about Opportunity Zones) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

26. Michelle D. Layser, *How Do Place-Based Investment Tax Incentives Target Low-Income Communities? A Multi-State Survey of Enterprise Zone Tax Incentives*, Working Paper (May 1, 2019), *available at* https://papers.ssrn.com/abstract_id=3381243.

existing empirical studies to specific types of place-based investment tax incentives. Social scientists have published dozens of impact studies focusing on a wide variety of place-based investment tax incentives.[27] Those studies, which have focused on both state and federal tax laws and their impact throughout the country, have sometimes reached contradictory conclusions.[28] The ability of legal researchers to advance the debate over place-based investment tax incentives—and to predict the impact of new laws like Opportunity Zones—depends upon making sense of these studies.

Third, this Article identifies areas for further legal and empirical research. As will be explained, community-oriented types of place-based investment tax incentives, which contain features specifically designed to benefit residents of poor communities, are uncommon under existing law. These rare types of tax incentives are theoretically promising and enjoy some empirical support;[29] nevertheless, due in part to their rarity, they have been largely understudied. The most complete understanding of place-based investment tax incentives, therefore, will require additional research about the ideal design and impact of community-oriented investment tax incentives.

Accordingly, this Article proceeds as follows. Part II introduces a two-dimensional typology to describe the category of place-based investment tax incentives. Part II.A. presents the first dimension, which asks whether the tax laws subsidize businesses directly or indirectly through subsidized financing. Part II.B. presents the second dimension, which asks whether the tax law prioritizes improved profitability within a space, or whether it prioritizes improved neighborhood conditions for the benefit of the community that lives in that space. Part III applies the typology to identify four distinct types of place-based investment tax incentives and revisits existing empirical literature with respect to each type in order to identify gaps in the literature and areas for future research. Part IV concludes with final observations about

27. *See supra* note 8.

28. *See infra* Part III (identifying four distinct types of place-based investment tax incentives as well as revisiting existing empirical literature with respect to each type in order to identify gaps in the literature and areas for future research).

29. *See* Layser, *supra* note 22, at 61–64; *see also infra* Part III.

how this typology can be applied and used by future researchers and policymakers.

II. The Typology

This Part presents a two-dimensional typology to describe place-based investment tax incentives.[30] The goal of the typology is twofold. First, it aims to disaggregate key elements of variation in the concept of place-based investment tax incentives so that the design choices—and the limitations associated with those choices—will be more salient to legal researchers and lawmakers. Second, it seeks to provide a conceptual framework to help assess the relevance of empirical studies to different types of tax incentives. Identifying what we know, and what we do not know, about place-based investment tax incentives is the first step toward understanding their potential as anti-poverty tools.

Place-based investment tax incentives are distinguishable by characteristics along two dimensions. As explained below, the first dimension draws from tax expenditure theory to consider the mechanism by which the tax incentives subsidize investments.[31] It asks whether the tax incentives deliver tax subsidies directly to businesses that invest in low-income communities, or whether they deliver tax subsidies to those businesses indirectly via tax benefits claimed by third-party investors.[32] Accordingly, the first dimension

---

30. Significantly, the typology presented here is "based on the notion of an ideal type, a mental construct that deliberately accentuates certain characteristics and not necessarily something that is found in empirical reality." *See* Kevin B. Smith, *Typologies, Taxonomies, and the Benefits of Policy Classification*, 30 POL'Y STUD. J. 379, 380–81 (2002) (clarifying the advantages that a taxonomic approach to policy classification may above and beyond traditional typologies). Throughout the analysis, this Article will refer to current tax law as illustrative examples; nevertheless, this typology seeks to reach beyond existing law in order to help imagine alternative types of incentives that are rare or absent within existing federal and state tax systems.

31. *See infra* notes 34–35 and accompanying text.

32. *See* Tahk, *supra* note 21, at 810–15 (offering commentary on the efficacy on poverty of various forms of tax credits). Note that to the extent that they ultimately confer benefit to poor communities, any place-based investment tax incentives (direct or indirect) can be understood as *indirect* subsidies to the poor. *Id.*

divides place-based investment tax incentives into *direct tax subsidies* and *indirect tax subsidies*.

The second dimension draws from geographic theories about space and place to consider the mechanism by which the tax incentives target investments to low-income areas. It asks whether tax incentives target low-income areas by emphasizing economic and physical conditions within spatial boundaries, or by emphasizing how community members experience those conditions.[33] In this way, the second-dimension divides place-based investment tax incentives into *spatially-oriented* investment tax incentives and *community oriented* investment tax incentives.

Together, this two-by-two typology yields four possible combinations of place-based investment tax incentives: Both direct and indirect forms of spatially-oriented investment tax incentives, and both direct and indirect forms of community-oriented investment tax incentives. The remainder of this Part will elaborate upon the two dimensions of the typology and will identify issues presented by each dimension that may have bearing on their capacity for use as anti-poverty tools.

A. The First Dimension: Direct vs. Indirect Tax Subsidies

Tax expenditure theory emphasizes the economic equivalence of tax preferences and direct expenditures.[34] Under the theory, all investment tax incentives can be understood as "tax subsidies" used to promote investment.[35] Accordingly, the first dimension of the typology focuses on the way that the tax incentives subsidize investment. To understand the distinction between direct and indirect tax subsidies, however, it is helpful to understand the concept of tax incidence.

---

33. *See infra* note 134 and accompanying text (examining the history of federal investment in urban neighborhoods that leaves unresolved the benefits for people of color).

34. *See* Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. L. REV. 705, 706, 711 (1970) (arguing that tax incentives are generally inferior to direct subsidies as a means of achieving social goals).

35. *Id.*

Tax incidence describes the person or persons who bear the burden of a tax or enjoy the benefit of a tax preference.[36] The actual, economic incidence of a tax law may be distinct from its technical incidence.[37] In other words, the taxpayer who claims a tax preference on a tax return may not be the sole beneficiary of its value.[38] For example, a subsidy theory is used to explain the function of charitable donations deductions.[39] That theory assumes that the deduction subsidizes *charities*, not the taxpayers who claim the deduction.[40] In other words, charities receive an indirect tax subsidy when donors increase the size of their charitable contributions in response to the deduction.

---

36. *See* Linda Sugin, *Tax Expenditures, Reform, and Distributive Justice*, 3 COLUM. J. TAX L. 1, 7 (2011) (arguing that the elimination of tax expenditures is a flawed approach to tax reform).

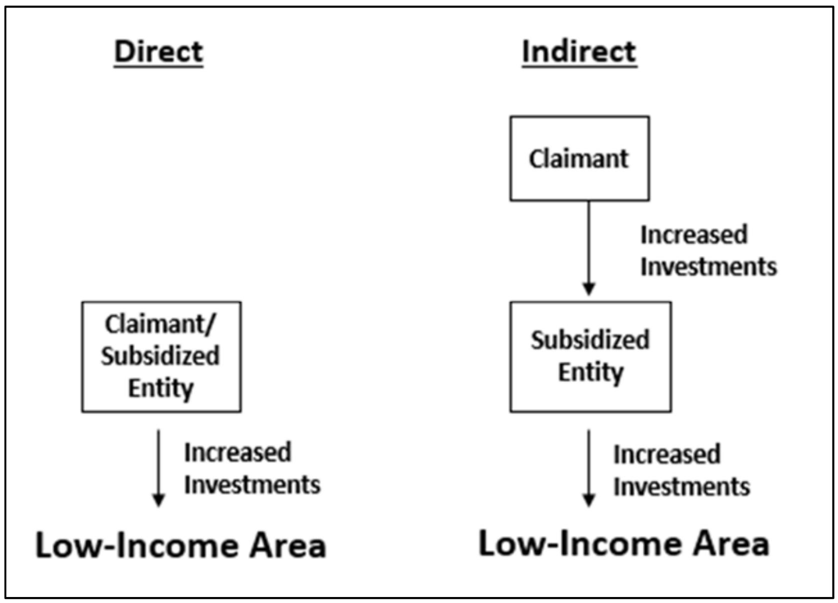
37. Technical incidence refers to the taxpayer who claims the tax preference, and the specific activity that gives rise to the tax preference. For example, as explained below, a taxpayer may claim a tax credit for investing in a Community Development Entity. The technical incidence falls on that taxpayer claimant on the CDE investment. Nevertheless, if the tax preference ultimately helps increase the amount of money that the CDE invests in low-income businesses, then the economic incidence may inure to the low-income business.

38. *See* Sugin, *supra* note 36 (arguing that the elimination of tax expenditures is a flawed approach to tax reform).

39. *See generally* Miranda Perry Fleischer, *Theorizing the Charitable Tax Subsidies: The Role of Distributive Justice*, 87 WASH. UNIV. L. REV. 505 (2010) (arguing the need to explicitly address distributive justice to enhance understanding of tax subsidies).

40. *See* Sugin, *supra* note 36 (arguing that the elimination of tax expenditures is a flawed approach to tax reform).

Here, a justification for place-based investment tax incentives is to subsidize businesses that invest in low-income communities.[41] This tax subsidy may be delivered directly to such businesses in the form of tax credits or deductions.[42] Nevertheless, as this Section will explain, the tax subsidy may also be delivered to those businesses indirectly by providing tax credits or deductions to investors who increase the amount that they invest in such businesses. The figure below displays the distinction between direct and indirect tax subsidies.



Stated somewhat differently, the goal of any investment tax incentive is to motivate taxpayers to make a financial or business investment.[43] But a choice must be made as to whether to use tax incentives to subsidize financing, or to use tax incentives to influence businesses' decisions about how to put their capital to work through labor or capital investment. Depending on how this choice is resolved, the tax incentives may target radically different types of claimants, give rise to different types of tax-motivated

41. *See* Fleischer, *supra* note 39, at 517–18 (arguing the need to explicitly address distributive justice to enhance understanding of tax subsidies).

42. Surrey, *supra* note 34, at 711 (arguing that tax incentives are generally inferior to direct subsidies as a means of achieving social goals despite economic equivalence).

43. *See id.* (noting the goals of investment taxes).

transactions, and present a range of unique but predictable challenges.

As a result, the choice between direct and indirect tax subsidies can have important implications for the effectiveness of the tax incentives as anti-poverty tools. This Section will elaborate on this division of place-based investment tax incentives—those targeting businesses and those targeting third-party investors. In addition, it will explain how the choice between direct and indirect tax subsidies affects the types of claimants and transactions motivated by the tax incentives.

1. Direct Tax Subsidies

Direct tax subsidies provide tax breaks directly to businesses that invest in low-income communities.[44] A defining feature of tax incentives within this dimension is that they are claimed directly by eligible businesses to subsidize costs associated with starting, expanding, or operating a business.[45] Stated simply, direct tax subsidies make it cheaper for eligible taxpayers to do business.[46] With this basic definition in mind, this Section identifies two characteristics of direct tax incentives that have bearing on their impact.

First, the direct form confers a significant amount of power to lawmakers to determine which businesses should be eligible for the tax preferences.[47] This is because direct tax incentives are available to any business defined by lawmakers as eligible.[48] These businesses often do not compete with other businesses for the tax subsidies; as long as they satisfy the statutory criteria, they can

44. *See, e.g.*, COLO. REV. STAT. § 39-90-105.1 (2016) (providing an example of direct tax subsidies).

45. *See id.* (providing tax breaks for starting, expanding, or operating a business).

46. This goal is distinct from the other major category of place-based investment tax incentives, which are designed to increase the amount of low-cost financing available to these businesses.

47. *See, e.g.*, I.R.C. § 1397C (2018) (defining "qualified business entities" for the purposes of this section).

48. *See id. (*providing a tax break for business that meet the statutory requirements of a "qualified business entity").

claim the tax benefits.[49] For example, many state enterprise zone programs provide direct tax subsidies that are more valuable to capital-heavy businesses like manufacturers and producers than labor-heavy businesses like retail.[50] In fact, some states specifically exclude common labor-heavy businesses from eligibility.[51] Because capital-intensive businesses may create fewer jobs than labor-intensive businesses,[52] the type of businesses that respond to the tax incentives can profoundly affect their impact. If job creation is an important objective of the tax law, then a direct tax incentive that broadly targets capital-intensive businesses is likely to fail.

Second, direct tax subsidies are heavily reliant on businesses' actual, current tax exposure. Direct tax subsidies may take the form of tax credits or tax deductions,[53] but in either instance, their

---

49. *See id.* (allowing any qualified business entity to gain tax benefits).

50. *See, e.g.*, COLO. REV. STAT. ANN. §§ 39-30-105.1(6)(b), (f) (noting that eligible taxpayers include manufacturers, producers, storage facilities, certain agricultural businesses). The federal Empowerment Zones laws and most state enterprise zone laws described above follow this model: Eligibility for the tax incentives usually requires the taxpayer to be located in the zone. *See, e.g.*, I.R.C. § 1397C (2018); ALA. CODE § 41-23-24 (2019) (dictating the process of selecting enterprise zones in Alabama); CAL. REV. & TAX. CODE § 17053.73(b)(11)(A) (West 2019) (defining "qualified taxpayer" for purposes of the credit as an entity that is engaged in a trade or business within a designated census tract or economic development area); COL. REV. STAT. ANN. § 39-30-105.1(1)(a)(I) (West 2019) (allowing a tax credit for any taxpayer who establishes a new business facility in an enterprise zone); CONN. GEN. STAT. ANN. § 12-217(e) (West 2019) (allowing a tax credit for any manufacturing facility located in an enterprise zone); R.I. Gen. Laws § 42-64.3-7 (West 2019) (defining corporation for purposes of the section); TENN. CODE ANN. § 13-28-203(4) (West 2019) (defining qualified businesses for purposes of the tax benefit); UTAH CODE ANN. 1953 § 63N-2-212 (West 2019) (defining business entities that qualify for the tax incentive); WIS. STAT. ANN. 238.399(5)(a-c) (West 2019) (defining airport development zones that can qualify for tax credits). Tying taxpayer eligibility to a specific location creates an incentive for some existing businesses to relocate to that area. *See* April, *supra* note 20, at 1348; *see also infra* Appendix A (showing that 11/33 state enterprise zone laws include tax incentives that promote investment in manufacturing or production activities).

51. *See, e.g.*, CAL. REV. & TAX. CODE § 17053.73(b)(11)(C) (2019) (excluding retail trade businesses and food services businesses, among others).

52. AMANDA ROSS & KAITLYN WOLF, DO MARKET-BASED TAX INCENTIVES ATTRACT NEW BUSINESSES? EVIDENCE FROM THE NEW MARKETS TAX CREDIT 18 (June 25, 2014), https://www.econstor.eu/bitstream/10419/124360/1/ERSA 2014_00653.pdf (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

53. *See Policy Basics: Tax Exemptions, Deductions, and Credits*, CTR. ON

value derives from decreasing a business's tax liability.[54] For example, tax credits may be available to businesses that expand in a particular area.[55] Tax credits enable a taxpayer to offset the amount of tax it would otherwise owe on a dollar-for-dollar basis.[56] Nevertheless, unless the tax credit is refundable, the taxpayer cannot use the tax credit unless it has actual tax liability to offset.[57] Because many new businesses have little current tax liability, they would be unable to use the tax credits.[58]

Even if a business does have current tax liability, the value received from tax savings would not necessarily enable it to make capital-intensive investments, such as large projects or new construction.[59] This is because the tax subsidy represents only a percentage of the business's actual investment (e.g., a refund of 50% of dollars spent on an employee's salary or a capital investment), and it does not provide the subsidized capital needed to finance those investments.[60] If a business needs capital for its project, then the project may remain unfunded, and the eligible investment may not be made. As a result, the direct form may not be appropriate if the goal is to encourage new business startups or other capital-intensive projects.

2. Indirect Tax Subsidies

In contrast, indirect tax subsidies target third-party investors as claimants, with the ultimate goal of subsidizing businesses that

---

BUDGET & POL'Y PRIORITIES (Apr. 10, 2018), https://www.cbpp.org/research/federal-tax/policy-basics-tax-exemptions-deductions-and-credits (explaining tax credits and deductions) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

54. *See id.* (describing the value of direct tax subsidies).

55. *See id.* (noting that some credits incentives business to expand).

56. *See id.* (explaining the mechanics of a tax credit).

57. *See* Michelle D. Layser, *Improving Tax Incentives for Wind Energy Production: The Case for a Refundable Production Tax Credit*, 81 MO. L. REV. 453, 453 (2016) (arguing that the production tax credit should be a refundable credit).

58. *See id.* (explaining that many tax credits can be carried forward for use in later years when the taxpayer has tax liability; nevertheless, the value of the tax credit erodes with time, and the uncertainty of future income may make the incentives less powerful).

59. *See* Layser, *supra* note 22.

60. *See id.*

engage with low-income communities. Unlike direct tax subsidies, which create incentives for businesses to perform certain activities in low-income areas (e.g., starting or expanding a business, or hiring certain employees),[61] indirect tax subsidies create incentives for investors to make capital contributions (debt or equity) in those businesses.[62] By subsidizing the investments, these tax laws decrease the cost of capital for businesses that engage with low-income communities, and generally increase the availability of financing.[63] In this way, the tax laws deliver indirect tax subsidies to these businesses in the form of subsidized capital.

Indirect tax subsidies are distinct from their direct counterparts in at least two ways that can affect their impact. First, unlike direct tax incentives that give lawmakers the sole power to determine what kinds of businesses will be subsidized, indirect tax incentives transfer some of that power to the private market.[64] At a minimum, investors are free to choose among the field of eligible projects in order to decide which projects to fund.[65] This allows investors to contribute to the selection process, and it allows the private market to help identify high-value projects.

Lawmakers could narrowly define the category of underlying businesses that are eligible to receive the tax subsidized capital, thereby constraining investors' choices.[66] But as a practical matter, such laws are often written broadly to ensure a large field of eligible businesses, thereby ensuring that the private market has significant discretion to choose which projects to finance.[67] Nevertheless, investors' preferences may not always match the objectives of lawmakers. To the extent that a particular type of

---

61. *See, e.g.*, COLO. REV. STAT. § 39-90-105.1 (2019) (providing an example of direct tax subsidies).

62. *See, e.g.*, I.R.C. § 45D (2018) (providing the new markets tax credit to applicable taxpayers).

63. *See, e.g.*, *id.* (providing the new markets tax credit to applicable taxpayers).

64. *See, e.g.*, *id.* (allowing the credit for qualified equity investments and investment in qualified community investment entities).

65. *See, e.g.*, *id.* (same).

66. *See infra* Part III.B.2 (discussing indirect community-oriented investment tax incentives).

67. *See, e.g.*, I.R.C. § 45D (2018) (allowing the new markets tax credit for eligible taxpayers).

investment is desired, it would make sense for lawmakers to draft narrow definitions of eligible projects.

Second, unlike direct tax subsidies, which do not subsidize capital and are generally unable to support projects with significant financing needs,[68] indirect tax subsidies do have this capacity. In fact, indirect tax subsidies help address a significant challenge faced by affordable housing and community development: The inability of developers to attract sufficient equity financing to satisfy creditors' required debt-equity ratios.[69] CDEs and affordable housing developers rely on tax credit monetization transactions to convert tax credit value into financing,[70] enabling them to finance their projects (or invest in low-income communities) with public money.

While some state tax laws provide tax credits to investors that contribute directly to eligible entities in tax favored zones,[71] current law also contains two significant variations of indirect tax subsidies. Both of these variations are capable of financing large,

---

68. *See, e.g.*, COLO. REV. STAT. § 39-90-105.1 (2019).

69. *See* Telephone Interview with Anonymous Source No. 2 (May 11, 2017) (on file with the author); *see also* COHN REZNICK LLP, THE LOW-INCOME HOUSING TAX CREDIT PROGRAM AT YEAR 25: AN EXPANDED LOOK AT ITS PERFORMANCE (2012), https://www.cohnreznick.com/sites/default/files/2012lihtc/cohnreznick-lihtc-2012-fullreport.pdf (describing net tax credit equity) (on file with the Washington & Lee Journal of Civil Rights & Social Justice). Without subsidies, investors are unwilling to make equity investments in affordable housing or community development projects because the expected rate of return is too low—and creditors are unwilling to lend to projects without sufficient equity. *Id.* The LIHTC and NMTC exist to provide this subsidy and to encourage and enable equity investments in projects that serve low-income communities.

70. In monetization transactions, investors make equity contributions in exchange for the ability to claim the tax credits as they are earned in future years. *See generally* Thomas W. Giegerich, *Monetization of Business Tax Credits,* 12 FLA. TAX REV. 709 (2012) (describing tax credit monetization). The tax credits are earned over a period of ten years (in the case of the LIHTC) and seven years (in the case of the NMTC). *See* I.R.C. §§ 42, 45D (2018).

71. *See, e.g.*, 72 PA. STAT. ANN. § 8904-A(a) (West 2019) (allowing a tax credit for business that engages in a range of statutorily defined activities in impoverished areas); DEL. CODE ANN. tit. 30, § 2004 (West 2019) (allowing a tax credit for Delaware businesses that contribute to "a neighborhood organization" or that provide "neighborhood assistance in an impoverished area"); *see also* Rick Cohen, *Nonprofits and State Tax Systems: The Big Picture*, NONPROFIT Q. (Apr. 18, 2013), https://nonprofitquarterly.org/2013/04/18/nonprofits-and-state-tax-systems-the-big-picture/./ (providing an overview of the tax diversity from state to state) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

capital intensive projects. The first are tax credits that are monetized through transactions with third-party investors in low-income communities.[72] This Article refers to this model as the "tax equity model." The second variation are tax laws that provide temporary or permanent tax exemptions with respect to money or property used to help finance businesses that invest in low-income areas.[73] This Article will refer to this model as the "fund model." Both models are explained in detail below, and their advantages and disadvantages are discussed.

a. Tax Equity Model

Indirect tax subsidies adopting the tax equity model facilitate project financing through a combination of public and private investment. A key characteristic of the tax equity model is that the size of the tax subsidy is often large enough to cover a substantial portion of project costs, but access to the subsidy typically depends on a process called tax credit monetization.[74] As a practical matter, monetization refers to "purchases" of tax credits by the third-party investors, who size their investments based on the amount of tax credits allocated.[75] In other words, monetization transactions can be understood as investments in tax credits. In addition to explaining how the tax equity model works, this section will explain how the identity of investors—and their motivation—may affect the impact of these tax incentives.

Tax credit monetization is best explained through an illustration, whereby a prototypical example is the approach taken by the federal New Markets Tax Credit (NMTC).[76] In the most basic sense, the NMTC allows a tax credit to taxpayers who invest in entities that, in turn, invest in businesses that engage with

72. *See infra* Part III.A.2.

73. *See infra* Part III.A.2.

74. *See generally* Giegerich, *supra* note 70 (describing tax credit monetization).

75. *See id*. (characterizing tax credit monetization).

76. *See* I.R.C. § 45D (2018) (providing the new markets tax credit to applicable taxpayers). The NMTC was introduced under the Clinton Administration about seven years after the federal Empowerment Zone laws went into effect. Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, § 1(a)(7), 114 Stat. 2763.

low-income communities.[77] In practice, however, the value of the NMTC is realized through sophisticated tax credit monetization transactions. In the typical transaction, an investment group certified as a "community development entity" (CDE)[78] will apply to the federal Community Development Financial Institutions (CDFI) Fund for tax credit allocations.[79] Nevertheless, despite the allocation process, CDEs neither earn, nor claim, the tax credits.[80]

77. *See* I.R.C. § 45D(a) (2018) (providing a tax credit to taxpayers who make "qualified equity investments," which mean investments in a "qualified community development entity"); I.R.C. §§ 45D(a), (b) (2018) (defining eligible taxpayers); *see also* I.R.C. § 45D(c) (2018) (defining qualified community development entity for purposes of 45D); I.R.C. § 45D(b)(3) (2018) (providing a safe harbor); I.R.C. § 45D(d) (2018) (defining qualified low-income community investments by). As such, the definition of "low-income community" dominates the statutory scheme. *See* I.R.C. § 45D(e) (2018) (defining low-income community).

78. To obtain certification as a CDE, the investment group must have a primary mission of "serving, or providing investment capital for, low-income communities or low-income persons." *See* I.R.C. § 45D(c) (2018) (defining qualified community development entity). As a practical matter, most CDE investments are directed to statutorily defined "low-income communities." Under the statute, low-income communities refer to census tracts with a poverty rate of at least 20 percent, or which meet certain median family income thresholds. I.R.C. § 45D(e) (2018):

> The term "low-income community" means any population census tract if—the poverty rate for such tract is at least 20 percent, or –in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or –in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. Id.

79. *See* DONALD J. MARPLES & SEAN LORY, CONG. RESEARCH SERV., RL34402, NEW MARKETS TAX CREDIT: AN INTRODUCTION 2 (2016) (describing the criteria an organization must meet to become certified as a CDE); *see also New Markets Tax Credit Program*, CDFI FUND, https://www.cdfifund.gov/programs-training/Programs/new-markets-tax-credit/Pages/default.aspx (last visited Mar. 19, 2019) (explaining the NMTC application process) (on file with the Washington & Lee Journal of Civil Rights & Social Justice); *CDE Certification*, CDFI FUND, https://www.cdfifund.gov/programs-training/certification/cde/Pages/default.aspx (last visited Mar. 19, 2019) (explaining the CDE certification process) (on file with the Washington & Lee Journal of Civil Rights & Social Justice). In 2018, the CDFI Fund was authorized to allocate $3.5 billion of NMTCs to CDEs. *See* I.R.C. § 45D(f)(1)(G) (2018).

80. *See* MARPLES & LORY, *supra* note 79, at 2 (describing CDEs as intermediaries able to attract investors using the credits). Most CDEs are taxed as partnerships under Subchapter K of the Internal Revenue Code. Partnership income, loss, and other tax items are not subject to entity level taxation but are instead taxable to the partners on their personal tax returns. *See* I.R.C. § 702

Instead, they offer the tax credits to private equity investors who make equity investments in for-profit CDEs.[81] The amount of an investor's equity investment is sized based on the anticipated future value of the tax credits, which they will earn over a seven-year period.[82]

Another example of an indirect tax incentive that uses the tax equity model is the low-income housing tax credit.[83] Monetization

---

(2018) (providing a rule for tax credits for partnerships). Importantly, however, the New Markets Tax Credit is not earned at the partnership level. Instead, it is earned at the partner level. As explained later in this section, this distinction is material to determining whether the investments may be subject to passive activity loss limitations.

81. *See* MARPLES & LORY, *supra* note 79, at 1 ("After the CDE is awarded a tax credit allocation, the CDE is authorized to offer the tax credits to private equity investors in the CDE."). Note that nonprofit CDEs can also apply for and receive NMTC allocations, but only for-profit CDEs can pass the tax credits along to its shareholders. *Id*.

82. *See* Eickhoff & Carter, *supra* note 14, at 77 ("If implemented successfully the purchaser's [sic] of the NMTC credits will be able to claim the 39 percent NMTC over the subsequent 7 years.").

83. *See* I.R.C. § 42 (2018) (stating the low-income housing credit statute). The LIHTC provides a tax credit to taxpayers who invest in affordable housing projects. The statute does not restrict the location of affordable housing projects, and in that sense, it does not target low-income areas as closely as the NMTC. Nevertheless, the statute does provide for larger tax credits when projects are located in certain high-poverty areas. I.R.C. § 42(d)(5)(B) (2018) (providing for a 30% increase in tax credits for projects located in a "qualified census tract or a difficult development area"). A qualified census tract is any census tract in which "50 percent or more of the households have an income which is less than 60 percent of the area median gross income" or which "has a poverty rate of at least 25 percent." I.R.C. § 42(d)(5)(B)(ii) (2018). A difficult development area is any area designated by HUD as "an area which has high construction, land, and utility costs relative to area median gross income." I.R.C. § 42(d)(5)(B)(iii) (2018). This creates an incentive to produce affordable housing in those targeted locations. *See* Michelle D. Layser, *How Federal Tax Law Rewards Housing Segregation*, 93 IND. L.J. 915, 949 (2018) (describing how projects located in economically and racially segregated areas may be more likely to receive LIHTC allocations). In addition to the NMTC, several other federal and state investment tax incentives adopt the tax equity model. *See generally* Giegerich, *supra* note 70. Energy tax credits, like the wind energy production tax credit and the solar tax credit, also adopt this model, as do several investment tax credits. *See* I.R.C. § 48 (2018) (stating the energy tax credit). The federal Rehabilitation Tax Credit also follows the tax equity model in order to target place, but the targeted areas are not necessarily low-income areas. *See* I.R.C. § 47 (2018) (stating the rehabilitation tax credit). Rather, the Rehabilitation Tax Credit provides a tax incentive to rehabilitate structures in "registered historic districts." *See* I.R.C. § 42(c) (2018) (defining qualified basis and qualified low-income buildings for purposes of LIHTC).

of the Low Income Housing Tax Credit (LIHTC) follows a similar, but distinct, pattern as the NMTC.[84] Affordable housing developers typically engage tax equity investors in monetization transactions rather than using the tax credits directly.[85] Investors contribute capital to partnerships that own affordable housing projects.[86] In exchange for their contributions, the investors receive the right to claim the tax credits as they are earned at the partnership level.[87]

These transactions provide a creative solution to a problem that would otherwise render these indirect tax subsidies ineffective. Namely, the greatest capital needs of projects are in the early years, whereas the tax credits themselves are delivered over a span of seven years (in the case of the NMTC) or ten years (in the case of the LIHTC).[88] An important purpose of tax monetization transactions is to address this timing mismatch.[89] Tax equity investors size their investments according to the expected value of tax credits to be earned in the future, thereby enabling developers to use the entire credit value presently even though much of the value will be unavailable until future dates.[90]

On the other hand, the impact of indirect tax incentives following the tax equity model is likely to be influenced by two factors. First, the identity of investors and their motivation

84. *See* Giegerich, *supra* note 70, at 749–52 (describing the LIHTC as a mechanism for delivering a federal subsidy to clearly defensible intended beneficiaries).

85. *See id.* at 744–52 (describing the LIHTC as a carve-out from pre-tax profit requirements and as a credit monetization technique). For a project to be eligible for tax credits, the developer must first apply to state and local housing authorities for tax credit allocations. As project owners, the developers of approved tax credit projects would be eligible to claim the tax credits. But, in most cases, the developers choose to monetize the tax credits.

86. *See* Desai et al., *supra* note 14, at 184–86 (describing the mechanics of LIHTC allocation).

87. *See id.* at 186 (explaining that the deal is often structured as a limited partnership between investors and developers).

88. *See* I.R.C. §§ 42, 45D (2018) (stating the applicable credit period for LIHTC and NMTC respectively).

89. *See* Giegerich, *supra* note 70, at 748 (explaining that the "investor 'fronts' a rent subsidy on behalf of the federal government . . . and is 'reimbursed' by the Treasury via the LIHTC").

90. *See* Desai et al., *supra* note 14, at 189–90 (stating that the difference between the current purchase price of credits and the value of credits represents the investors' return on investment).

may affect the types of projects that are funded.[91] CDEs and developers are dependent on the participation of a specific pool of investors who are willing and able to participate in tax credit monetization.[92] Nearly all tax equity investors are large

91. *See* JOINT CTR. HOUSE STUDIES OF HARVARD UNIV., THE DISRUPTION OF THE LOW-INCOME HOUSING TAX CREDIT PROGRAM: CAUSES, CONSEQUENCES, RESPONSES, AND PROPOSED CORRECTIVES 3–4 (2009), http://www.jchs.harvard.edu/sites/default/files/disruption_of_the_lihtc_program_2009_0.pdf (describing how the migration of the investor base to financial institutions concentrated investments on a limited number of large metropolitan areas) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

92. *See* COHN REZNICK, *infra* note 98, at 3 (explaining that in 2012, 83% of LIHTC investors were financial institutions); MARTIN D. ABRAVANEL ET AL., NEW MARKETS TAX CREDIT (NMTC) PROGRAM EVALUATION: FINAL REPORT ix–x (2016), https://www.urban.org/sites/default/files/publication/24211/412958-new-markets-tax-credit-nmtc-program-evaluation.pdf (noting that although the types of investors varied, the highest proportion of investors "constituted large international banks") (on file with the Washington & Lee Journal of Civil Rights & Social Justice). Not only is the investor pool limited to those with sufficient cash and tax liability to make the tax-motivated investments possible and worthwhile, but it is further limited by features of the tax system designed to prevent abusive tax shelters. For example, the so-called passive activity loss rules limit the ability to prevent natural persons from claiming tax credits earned from passive activities to the extent that they exceed the taxpayers' income from passive activities. *See* I.R.C. § 469(d)(2) (2018) (defining passive activity tax credit). Passive activities include those involving the conduct of a trade or business in which the taxpayer does not materially participate. *See* 26 C.F.R. § 1.4694 (2016) (defining "Trade or business activities"); 26 C.F.R. § 1.469-5 (2016) (defining "material participation"). Many monetization transactions are subject to this rule. LIHTC investments are generally subject to passive activity loss rules. The typical tax credit claimant is a passive, limited partner of a project partnership. As such, the passive activity loss rules thus restrict the ability of natural persons to claim full tax benefits. *See* I.R.C. § 469(i)(3)(C) (2018) (stating an exception for low-income housing credit); *see also* OFFICE OF THE COMPTROLLER, LOW-INCOME HOUSING TAX CREDITS: AFFORDABLE HOUSING INVESTMENT OPPORTUNITIES FOR BANKS 36 (Mar. 2014) ("The number of taxpayers who can benefit from LIHTCs is limited by passive activity and alternative minimum tax rules."). The practical effect is to limit the capacity of the LIHTC to motivate natural persons to invest in affordable housing projects. As a result, nearly all LIHTC investors are corporations. *See* Forrest David Milder & Ronald S. Borod, *Rehabilitation Tax Credit and Low-Income Housing Tax Credit*, BNA PORTFOLIO 584-1st, § 3:III Passive Activity Limitations. In the context of the NMTC, on the other hand, the IRS has stated that the passive activity loss rules are tested at the taxpayer-level (not the CDE level). *See* Rev. Rul. 2010-16, 2010-26 I.R.B. 769 (June 28, 2010) (ruling that the new markets tax credit will not be a passive activity credit under § 469 in situations where a qualified equity investment in a CDE is not made in connection with a trade or business). Although the taxpayer typically owns an equity interest in the CDE classified as a partnership interest, the tax credit itself

financial institutions.[93]

One reason for this is that banks are cash-rich and are usually capable of absorbing the tax credits.[94] Another reason is that non-tax law encourages these investments.[95] Specifically, the Community Reinvestment Act (CRA) requires financial institutions to invest in the low-income communities they service.[96] Today, nearly all investment in tax-subsidized affordable housing and community development projects comes from financial institutions motivated primarily by the CRA.[97]

---

does not flow through from the partnership (CDE). *See id*. ("The CDE does not pass through the new markets tax credit to the person claiming the new markets tax Credit."). Rather, under the statute, the tax credit is earned at the partner-level when the taxpayer invests in the CDE. *See id*. ("The amount of the new markets tax credit is determined based on a percentage of the amount paid to the CDE for the qualified equity investment at its original issue."). As such, a threshold issue is whether the taxpayer acquired the equity interest in the CDE in connection with conduct of a trade or business. *See id. (*stating that determining whether the new markets tax credit is disallowed depends on whether the acquisition of the qualified equity investment in the CDE arises in connection with the conduct of a passive activity in connection with the conduct of a trade or business). If so, the passive activity loss rules may apply if the taxpayer does not materially participate in that trade or business; nevertheless, the IRS has ruled that if the equity interest was not acquired in connection with conduct of a trade or business, then the passive activity loss rules will not apply. *See id.* ("Where an individual's acquisition of a qualified equity investment in a CDE is not in connection with the conduct of the individual's trade or business (or in anticipation of the individual's trade or business), the new markets tax credit allowable to an individual under § 45D will not be a passive activity credit under § 469."). As such, the passive activity loss rules present a potential tripping point for natural persons who plan to claim the NMTC, but not an absolute barrier.

93. *See* COHN REZNICK, *infra* note 98, at 3 (including the nation's largest financial institutions in a survey of the performance of properties financed with low-income housing tax credits); ABRAVANEL ET AL., *supra* note 92, at x ("The highest proportion of investors consisted of large international banks or other regulated financial institutions.").

94. *See* JOINT CTR. HOUSE STUDIES OF HARVARD UNIV., *supra* note 91, at 3 (stating that widely held corporations, including large financial institutions, can use the credits to offset their incomes).

95. *See* Desai et al., *supra* note 14, at 191 ("The interaction with the CRA opens up the possibility that entities may be willing to bid the price of tax credits above their actuarially fair value as they can jointly realize tax advantages and fulfill CRA obligations.")

96. *See* 12 U.S.C. § 2901 (2018) ("It is the purpose of this chapter . . . to encourage such institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.").

97. *See* JOINT CTR. HOUSE STUDIES OF HARVARD UNIV., *supra* note 94, at 4

One implication of heavy reliance on CRA-motivated investors is that the value of tax credits is linked to the location of major financial institutions.[98] Financial institutions tend to cluster in large urban areas, and in those locations the competition among banks for tax credit deals is high.[99] This high demand pushes up the price of the tax credits, crowding out nonbank competitors and rendering developers still more dependent on financial institutions.[100] Nevertheless, in rural areas with a low-concentration of banks, the demand for tax credits is much lower—and so are the prices.[101] For example, one researcher observed that urban investors would pay up to $1.20 per dollar of tax credit, while rural investors would pay only $0.85 per dollar for those same tax credits.[102] This may render the tax credits less effective in some markets than others.[103]

Second, it is worth noting that financial institutions, syndicators and other parties involved with tax equity transactions are, in this instance, place entrepreneurs—investors who profit on

---

(discussing the motivations of large banks as investors).

98. *See* COHN REZNICK, THE COMMUNITY REINVESTMENT ACT AND ITS EFFECT ON HOUSING TAX CREDIT PRICING 7 (2013), http://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf [hereinafter COHN REZNICK] ("Cohn Reznick concludes that all else remaining constant, the more the market is dominated by CRA-motivated investors who invest only in certain areas of the country, the wider the pricing spread one may expect to see between areas with intense CRA compliance demand and areas without.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

99. *See* Cassandra Jones Havard, *The Community Reinvestment Act, Banks, and the Low Income Housing Tax Credit Investment*, 26 J. AFFORDABLE HOUSING 415, 424 (2017) ("Because the home offices of several large, national banks may be geographically close, the CRA assessment areas may overlap. This creates extreme competition for tax credits in certain locations.").

100. *See* COHN REZNICK, *supra* note 98, at 6 ("Competition for housing tax credit investments in areas with limited investment opportunities tends to create a massive supply/demand imbalance.").

101. *See id.* at 7 (comparing tax credit prices in highly sought-after markets such as San Francisco and New York with prices in smaller metropolitan areas like Indianapolis and Milwaukee).

102. *See* Havard, *supra* note 99, at 424–25 (describing how the presence of large national banks has a deleterious effect on the pricing infrastructure of the LIHTC program due to extreme competition for tax credits in certain locations).

103. *See id.* at 425 (stating that although there may be a significant need for affordable housing in rural markets, lower tax credits and lack of investors lowers supply).

place.[104] This may be especially relevant in the context of community development incentives, because place entrepreneurs are likely to prefer investments in areas they expect to gentrify and yield significant returns, whereas poor communities may be wary of gentrification.[105] In this way, the identity of investors may affect how the tax incentives ultimately impact communities.[106]

b. Fund Model

The second model of indirect tax subsidies is the fund model. Like the tax equity model, the fund model encourages private, third-party investment in entities that, in turn, invest in low-income communities. But, the mechanism used to encourage these investments is distinct. Tax incentives using the fund model do not require monetization. Instead, taxpayers are provided a current tax benefit when they contribute money to an investment vehicle, such as a partnership or corporation, that is required to make certain spatially targeted investments. As this section explains, the fund model expands the pool of investors beyond CRA investors, providing an imperfect answer to one problem presented by the tax equity model.

Specifically, the fund model expands the pool of potential investors by presenting tax savings opportunities for taxpayers beyond the institutional investors who traditionally participate in tax credit monetization transactions. These tax preferences encourage investors to pool together relatively small amounts of capital from a large number of investors.[107] In this way, the funds

---

104. *See* Thomas F. Gieryn, *A Space for Place in Sociology*, 26 ANN. REV. SOC. 463, 469–70 (2000) (stating that place entrepreneurs aim to extract ever greater amounts of exchange value from commodified property).

105. *See* Layser, *supra* note 22, at 25–26 (tracing the pro-gentrification origins of place-based tax incentive programs and conflicts created between place entrepreneurs and poor communities).

106. *See id* (describing the current landscape of place-based investment tax incentives and their impact).

107. Moreover, the anti-abuse rules that limit individual taxpayers' ability to engage in monetization transactions may present less of a barrier in the context of tax incentives adopting the fund model. For example, the passive activity loss rules apply to tax losses and credits, but they do not reach tax exemptions like those that are available under Opportunity Zones laws. Therefore, the pool of potential investors can include individuals in addition to institutional investors.

can accumulate enough capital to make large project investments without the need for tax equity investors. In this respect, the fund model has a significant advantage over the tax equity model; however, there are also disadvantages to the approach.

First, the fund model may present an even larger risk than the tax equity model that the interests of investors will conflict with the interests of low-income communities.[108] The tax equity investors described above may be willing to invest in a project that is unlikely to yield much economic return because the tax credit "purchase" is lucrative once the price is discounted to provide a yield.[109] They may also be relatively indifferent to the economic return because of non-economic motivations, such as the need for credit under the CRA.[110] In contrast, investors motivated by fund model incentives may require real economic returns since the value of the tax benefits may be comparatively small.[111] As a result, investors may press for investments that are most likely to maximize profits, regardless of whether those projects also benefit poor communities.[112]

Second, though the pool of investors is larger under the fund model, it is still likely to be limited to a relatively small number of

---

108. *See infra* notes 111–112 and accompanying text.

109. *See* Eickhoff & Carter *supra* note 14, at 77 (describing how the New Markets Tax Credit is transferred to third-party investors at a discounted price and in return the investor will receive a seven-year tax credit).

110. *See* COHN REZNICK, *supra* note 98, at 4 ("[T]he Community Reinvestment Act has been an enormously successful vehicle for assembling capital for the development of affordable housing").

111. Requirements for tax incentives such as the CRA motivate investors under the tax equity model, but investors under the fund model are not motivated by tax incentives; rather, they are motivated by actual return on their financial investment. *Compare Investors*, OPPORTUNITY FUND, https://www.opportunityfund.org/about/investors/ (last visited Mar. 11, 2019) ("As a Community Development Financial Institution (CDFI) certified by the U.S. Treasury Department, your investment in Opportunity Fund may qualify for Community Reinvestment Act (CRA) credit.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice), *with* Sarah O'Brien, *Heard the Buzz About Opportunity Zone Funds? Here's the Skinny*, CNBC (Nov. 18, 2018, 10:42 AM), https://www.cnbc.com/2018/10/31/heard-the-buzz-about-opportunity-zone-funds-heres-the-skinny.html (describing how funds must be invested in projects within the opportunity zone) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

112. *See* O'Brien, *supra* note 111 ("While the new opportunity zone funds seem poised to attract investors looking to both minimize their taxes and do it in a way that benefits struggling communities, there are skeptics.").

wealthy taxpayers.[113] This may be especially true in the context of tax incentives like the new Opportunity Zones law that offer capital gains tax relief.[114] In 2012, well over half of capital gains were reported by individual taxpayers who had adjusted gross incomes of $1 million or more.[115] That same group was responsible for only 0.27% of tax returns,[116] suggesting that a tiny percentage of taxpayers, comprised by some of the wealthiest Americans, have the greatest need to shelter capital gains. In short, the potential claimants of indirect tax subsidies—whether tax equity investors or fund model investors—are both limited and skewed to the very wealthy.[117]

To summarize, therefore, the first dimension of the typology asks whether the tax-based subsidy is delivered directly to businesses that are located in (or engage with) low-income areas, or whether they are delivered to investors of those businesses.[118] The form of subsidy may affect what parties have the power to control which businesses receive the subsidies and whether the subsidies are capable of supporting large projects.[119] It is important to note, at this point, that all investment tax

113. *Cf.* O'Brien, *supra* note 111 ("I think the program is well-intentioned and not intended as a giveaway to rich guys or anything like that . . . . But it will be hard to measure whether it's working or not.") (internal quotations omitted).

114. *See infra* notes 219–221 and accompanying text.

115. *SOI Tax Stats-Sales of Capital Assets Reported on Individual Tax Returns*, IRS, https://www.irs.gov/statistics/soi-tax-stats-sales-of-capital-assets-reported-on-individual-tax-returns (last visited Mar. 7, 2019) (showing that 50.32% of short-term capital gains and 63.75% of long-term capital gains were reported by taxpayers with adjusted gross income greater than $1 million in 2012) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

116. *See id.* (showing that taxpayers with an adjusted gross income greater than $1 million in 2012 accounted for 288,555 out of the 10,856,594 tax returns with short-term capital gain or loss reported).

117. *See* Aaron Waites & Jason Walker, *Qualified Opportunity Zones: What Investors Should Know*, WELLS FARGO (Aug. 2018), https://www.wellsfargo.com/the-private-bank/insights/planning/wpu-qualified-opportunity-zones/ (advising on wealth planning that "[i]f you are facing significant tax payments as a result of capital gains, investing in a Qualified Opportunity Zone Fund may be worth exploring") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

118. *See supra* Part II.A (describing the two-dimensional typology to describe categories of place-based investment tax incentives).

119. *Compare* Part II.A.1 (discussing characteristics of direct tax subsidies), *with* Part II.A.2 (distinguishing characteristics of indirect tax subsidies).

incentives—regardless of whether they are place-based—can be designed in either direct or indirect forms. The second dimension, which is described in the next section, looks specifically at the spatial component of place-based investment tax incentives.[120]

B. The Second Dimension: Space versus Community

The second dimension of the typology focuses on the spatial component of place-based investment tax incentives.[121] To fully understand how tax law—or any law—targets place, it is important to understand the nature of that target.[122] A "place" can be defined abstractly as a location in space that not only has natural and built physical forms like rivers, buildings and streets, but also has a social interpretation.[123] The social interpretation is what makes a place a home, a school, a church, a playground—or a neighborhood, like those targeted by place-based investment tax incentives.[124]

A neighborhood connotes a geographic location with material form—natural and built environments—that is interpreted, named, and given meaning and value by the people who live and invest there.[125] Specifically, a neighborhood is an interpretation of

120. *See supra* Part II.B (discussing whether tax law prioritizes profitability of space or whether it prioritizes improved neighborhood conditions for the benefit of the community that lives in that space.)

121. *See generally* EDWARD L. GLASSER, THE ECONOMICS OF LOCATION-BASED TAX INCENTIVES (Harv. Inst. Econ. Research Oct. 29, 2001) ("In general, I argue that tax incentives will generally lead to more efficient locational decisions.").

122. *See infra* notes 128–131 and accompanying text.

123. *See* Gieryn, *supra* note 104, at 464–66 (describing the relationship between geographic location, material form, and investment with meaning or value). Stated differently, where space itself is a geometric concept based on metrics like distance, direction, size and shape, place can be understood as a space filled with people, practices, objects and representation. *See id.* at 465 ("Space is what place becomes when the unique gathering of things, meanings, and values are sucked out.").

124. *See* HILARY GELFOND & ADAM LOONEY, LEARNING FROM OPPORTUNITY ZONES: HOW TO IMPROVE PLACE-BASED POLICIES 10 (2018), https://www.brookings.edu/wp-content/uploads/2018/10/Looney_Opportunity-Zones_final.pdf ("The geographic targeting of incentives is crucial for determining whether place-based incentives are effective and benefit residents of distressed areas.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

125. *See* Gieryn, *supra* note 104, at 465 (defining the neighborhood by

place that references a space filled with the following elements: Physical structures (e.g., buildings, roads, parks, public spaces); neighbors (e.g., people who may be rich or poor, integrated or segregated, home owners or renters, employed or unemployed, married or unmarried, politically powerful or politically marginalized); resources (e.g., service agencies and nonprofits, stores and groceries, transportation); and local institutions (e.g., schools, churches, libraries, hospitals, police and fire stations, major businesses).[126]

Scholars have articulated a variety of theories to describe the subject of geographic study in ways that account for the combination of locational characteristics, on the one hand, and social meaning, on the other.[127] Among these are theories that distinguish between space and place.[128] In a study of distressed communities and community business entrepreneurship, business scholar Harvey Johnstone and geographer Doug Lionais explained the complexity of areas labeled as "depleted communities:"[129]

> Depleted communities are manifestations of uneven development. They are communities where the economy is in decline and the resources of the area, according to profit-seeking capital, are 'used up.' However, depleted communities are more than simply locations that lack growth mechanisms; they are also areas to which people retain an attachment. A depleted community, therefore, continues to exist as a social entity

---

adopting a definition of place, set forth by sociologist Thomas Gieryn, as comprised of three prongs: Geographic location, material form, and investment with meaning and value).

126. *See id.* (defining "place" as comprised of geographic location (e.g. "your favorite armchair, a room, building, neighborhood, district, village, city, county, metropolitan region"), material form (e.g. "physicality, whether built or natural—a compilation of things or objects at some particular spot in the universe"), and an investment with meaning and value).

127. *See, e.g.*, B.S. Morgan, *Social Geography, Spatial Structure and Social Structure*, 9(3) GEOJOURNAL 301, 301 (1984) ("[S]patial structure is largely a reflection of aspects of social structure.").

128. *See* Harvey Johnstone & Doug Lionais, *Depleted Communities and Community Business Entrepreneurship: Revaluing Space Through Place*, 16 ENTREPRENEUR REG. DEV. 217, 217 (May 2004) ("Depleted communities . . . can be seen as areas that have lost much of their economic rationale as *space*, while retaining high attachments and social relations of *place*.").

129. *See id.* (arguing "that depleted communities can act as hosts to a unique form of enterprise that combines good business practices with community goals").

> because it is shaped by positive social forces as well as by negative economic forces.[130]

For this reason, Johnstone and Lionais distinguish between *space,* which is "the location of profitable enterprise," and *place*, which is "the location of social life."[131] This second dimension of the typology draws upon these theories about space and place to describe the spatial component of place-based investment tax incentives.

Specifically, the second dimension asks whether the tax law prioritizes improved profitability within a space, or whether it prioritizes improved neighborhood conditions for the benefit of community residents. Tax laws that prioritize profitability are referred to as *spatially-oriented*, a description that maps on to Johnstone and Lionais's definition of space.[132] In contrast, tax laws that prioritize improved neighborhood conditions, such as by addressing environmental needs of community residents, are referred to here as *community-oriented*. This latter description corresponds to Johnstone and Lionais' definition of place.[133]

Stated differently, legislators must choose whether to use tax incentives to improve the economic and physical conditions within spatial boundaries—regardless of how those changes impact communities—or to use tax incentives to improve how community members experience those conditions.[134] This decision, in particular, may have a notable impact on the tax laws' effect on poor residents. This is because, at minimum, community-oriented conceptions of place include safeguards to protect poor residents from harms associated with neighborhood change, while spatially-oriented investment tax incentives lack such features.

Place-based investment tax incentives can be sorted along this dimension by assessing whether they include safeguards for local

---

130. *Id.* at 218.

131. *Id.* at 219 (separating the ideas of space from place can help determine how depleted communities can improve responsiveness to new business development).

132. *See id.* at 218 ("[S]pace . . . is an economic (capitalistic) evaluation of location based on its capacity for profit.").

133. *See id.* ("[P]lace . . . is a social evaluation of location based on meaning.").

134. This choice mirrors the debate between traditional place-based programs and people-oriented place-based programs. *See, e.g.*, Amy T. Khare, *Putting People Back into Place-Based Public Policies*, 37 J. URB. AFF. 47, 49 (2015) (contrasting policies that implicitly prioritize "spatial conceptions of community" to programs that "invest in groups of people who live in areas being targeted").

residents, whether they are designed to encourage firms to engage with the community, and whether their objective is clearly to benefit local residents.[135] The remainder of this section will elaborate on this dimension, focusing not only on what can be observed in the current landscape of place-based investment tax incentives, but also on ideal characteristics.

1. Spatially-Oriented Tax Incentives

In the most general sense, a tax incentive can be described as *spatially-oriented* if it promotes investments within geographic boundaries with the sole purpose of maximizing economic growth within that area. For example, the incentives may be designed to encourage new businesses to locate in a low-income area, or they may be designed to help existing businesses expand. They may encourage developers to site projects in a particular neighborhood. They may include incentives for businesses to create jobs or rehabilitate housing.

Any of these activities may, under the right circumstances, benefit local residents. But spatially-oriented incentives leave their impact on residents entirely to chance.[136] Tax subsidized businesses may create jobs, or they may invest instead in new computer technology.[137] When they create jobs, the tax subsidized businesses may hire local residents, or they may employ commuters from other parts of the region.[138] Tax subsidized developers may rehabilitate dilapidated housing to create new,

---

135. *See* Layser, *supra* note 22, at 68–69 (setting forth the following three principles for designing community-oriented investment tax incentives: Confer power to community members; link place to community; and include clear and measurable objectives).

136. *See infra* notes 137–139 and accompanying text for examples of how businesses that receive spatially-oriented incentives use the financial benefit to impact entities other than local communities.

137. *See generally* Daniel G. Garrett, et al., NAT'L BUREAU ECON. RES., *Tax Policy and Local Labor Market Behavior*, NBER Working Paper No. 25546 (Feb. 2019), http://www.nber.org/papers/w25546 (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

138. *See* Freedman, *supra* note 15, at 1013 ("I find some evidence that investment subsidized under the NMTC program reduces poverty and unemployment rates in relatively low-income census tracts").

higher-quality affordable housing in the area, or they may create condominiums for a higher-income demographic.[139]

The key feature of spatially-oriented tax incentives is the absence of safeguards for poor communities.[140] To analyze whether a place-based investment tax incentive is spatially-oriented, the key inquiry is whether the law contains features to increase the likelihood that that poor residents in a targeted area will benefit.[141] A variety of factors are relevant to the analysis.[142] Three factors that tend to suggest that an incentive is spatially-oriented are the following: (1) very broad or undefined categories of eligible investments;[143] (2) general incentives to invest in human capital through hiring or job training;[144] and (3) taxpayer eligibility requirements based solely on the location of the taxpayer.[145]

---

139. *See* Mark L. Joseph, *Is Mixed-Income Development an Antidote to Urban Poverty?*, 17 HOUSING POL'Y DEBATE 209, 212–13 (2006) (describing the displacement of poor tenants whose buildings were replaced with mixed income units).

140. In approaching this inquiry, one should keep separate the empirical question of what kind of investments the tax incentives *tend* to subsidize from the issue of what kind of investments they are *permitted* to subsidize. It is at least theoretically possible that, even without safeguards for poor communities, investors may use the tax incentives to subsidize investment that benefit poor communities. However, even if these tax incentives were proven to consistently benefit poor communities, their *design* would still be spatially-oriented due to the lack of safeguards. Such empirical results would merely suggest that spatially-oriented tax incentives may be effective anti-poverty tools, and that safeguards for the poor would be unnecessary for tax incentives used for this purpose.

141. *See* Helen F. Ladd, *Spatially Targeted Economic Development Strategies: Do They Work?*, CITYSCAPE 193, 195 ("A more direct approach to dealing with pockets of urban distress in urban areas involves using place-specific assistance to help the residents—especially the disadvantaged residents—of distressed urban areas.").

142. *See, e.g.*, *infra* notes 146–156 and accompanying text (describing the factors suggesting a spatially-oriented incentive).

143. *See infra* notes 146–148 and accompanying text (explaining how broad or undefined categories of eligible investments fail to assure that investments benefit poor communities).

144. *See infra* notes 149–152 and accompanying text (explaining how general job hiring or training requirements fail to assure that investments benefit poor communities).

145. *See infra* notes 153–156 and accompanying text (explaining how eligibility requirements based solely on location fail to assure that investments benefit poor communities).

First, broad or undefined categories of eligible investments suggest a spatial-orientation because they allow market participants to determine the specific types of investments to be subsidized, and there is no assurance that profit-seeking investors will choose investments that benefit poor communities.[146] To the contrary, the interests of place-entrepreneurs—investors who profit through place-based investments—often conflict with the needs of local communities.[147] To avoid such results, a law may require certifications from project developers or include mechanisms to monitor outcomes.[148] The failure to include any such features suggests the law is spatially-oriented.

Second, general incentives to invest in human capital tend to suggest a spatial-orientation because they encourage businesses to develop their workforce in the way they deem most profitable, without regard to whether area residents benefit.[149] In other words, general incentives to hire employees do not encourage businesses to hire residents, and businesses may well look to commuters to meet their hiring needs.[150] When this happens, poor residents may be passed over for jobs.[151] In addition, they may

---

146. *See* Gieryn, *supra* note 104, at 470 (discussing how local investors "sometimes face resistance from community organizers more concerned about the use-value of place, who oppose growth because of its detrimental consequences for neighborhood quality of life or environmental health").

147. The fact that the government requires monitoring of local outcomes resulting from investments indicates that investors have alternative motivations for investing, other than community benefits. *Cf.* CONG. RES. SERV., TAX INCENTIVES FOR OPPORTUNITY ZONES: IN BRIEF 7 (Nov. 20, 2018) ("NMTC recipients are required to adhere to a set of outcome-based reporting and compliance requirements. These metrics track the location and type of projects funded by NMTC allocations.").

148. *See id.* (describing the reporting requirements for recipients of Opportunity Zones tax incentives that tract outcomes for local communities).

149. *See* Freedman, *supra* note 15, at 1013 ("Although place-based policies have grown in importance in recent decades, many remain skeptical of their efficacy. Lending credence to this skepticism are numerous studies on programs such as state EZs that suggest that there is little to no benefit associated with subsidizing investment in struggling cities and neighborhoods.").

150. *See* Freedman, *supra* note 15, at 1013 (suggesting that place-based incentives may not look to local residents in their hiring, meaning the local communities do not experience any job prospect improvement).

151. *Cf.* Rikha Sharma Rani, *Avoiding Gentrification, How to Use Opportunity Zones to Benefit Communities*, FUSE CORPS (Feb. 12, 2019), https://fusecorps.org/2019/02/12/avoiding-gentrification-how-to-use-opportunity-zones-to-benefit-communities/ ("Public investments can also help ensure that

suffer further harm if commuting outsiders move into the area and displace residents through gentrification.[152]

Third, taxpayer eligibility requirements based solely on the location of the taxpayer suggest a spatial-orientation because they help ensure that the targeted area will become a profit center, but they do not require engagement with the community.[153] Location requirements may help ensure that residents gain the benefit of a local business or that investors improve the environment in their community.[154] As such, most place-based investment tax incentives should—and do—include location among the eligibility criteria.[155] However, merely locating in an area is insufficient to ensure engagement with local residents. Without some requirement that the businesses engage with the local community in some way, eligibility based on location likely belies a spatially-oriented tax incentive.[156]

To a large degree, analyzing whether a tax incentive is spatially-oriented involves the task of proving a negative: The

---

residents and business owners are prepared for opportunity zone projects . . . . Officials are also on the lookout for opportunities to enhance local participation in projects.") (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

152. *See id.* ("In some urban areas, for example, where gentrification has already priced out long-time residents, investments could exacerbate the issue and displace even more of the people meant to benefit from the incentives.").

153. *See* CONG. RES. SERV., *supra* note 147 ("[T]o become eligible for a NMTC allocation, a certified CDE must, among other criteria, have a primary mission of serving or providing investment capital to low-income communities. A governing or advisory board is supposed to hold the CDE accountable to that mission.")

154. *See* CONG. RES. SERV., supra note 147 ("QOFs are not required to be mission-oriented for the primary purposes of serving low-income communities or persons.").

155. *See infra* Appendix C (showing that all but two states that have current enterprise zone programs require the taxpayer's business or property to be located in the enterprise zone).

156. *See* CONG. RES. SERV., supra note 147, at 1 (explaining that Opportunity Zone tax incentives, for example require investment in a qualified low-income community but does not require any additional engagement within the community); *see also* Lorraine Mirabella, *Hogan Proposes $56.5 Million to Spur Development and Business Creation in Maryland 'Opportunity Zones'*, BALT. SUN (Jan. 3, 2019, 2:00 PM), https://www.baltimoresun.com/business/bs-bz-hogan-opportunity-zone-state-invesmtment-20190103-story.html (stating that some states have implemented grant programs that provide training programs for residents of these zones) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

absence of features expressly linking benefits to the local community.[157] This task is made especially difficult by the rarity of community-oriented incentives to serve as a foil.[158] Nevertheless, the current legal landscape does include multiple imperfect examples of community-oriented tax incentives that contrast with spatially-oriented incentives, thereby helping to guide the inquiry. The next section will elaborate upon the characteristics of community-oriented tax incentives.

2. Community-Oriented Tax Incentives

A tax incentive is *community-oriented* if it includes features that help ensure that residents will benefit from the investments.[159] In other words, where spatially-oriented tax incentives promote economic growth within a space without any safeguard for local communities, community-oriented tax incentives seek to improve neighborhood conditions *for the benefit of community residents*. Ideally, they would be designed or implemented with input from community residents; they would maintain the link between community members and the targeted place; and they would articulate clear objectives and include a mechanism for monitoring outcomes.[160]

Under current law, few (if any) tax incentives embody the ideal. The key feature of community-oriented investment tax incentives is the inclusion of safeguards to help increase the chances that poor communities will benefit from the tax law. Unlike their spatially-oriented counterparts, community-oriented investment tax incentives do not leave their impact on poor

---

157. *See supra* notes 146, 149, and accompanying text (describing factors that must seek to discover the absence of local impact generated by spatially-oriented incentives); *supra* note 156 and accompanying text (same).

158. *See* Part III.B (discussing the spatial component of place-based investment tax incentives).

159. *See* Khare, *supra* note 134 (criticizing the history of federal investment into urban neighborhoods in ways that overtly prioritize change to the spatial environment—these communities as places—while leaving unresolved the conflicts over how the communities of people living there are intended to benefit).

160. *See* Layser, *supra* note 22, at 68 ("Though these principles should guide the design of any community oriented investment tax incentives, the specifics may vary widely as different communities seek to address their unique circumstances.").

communities entirely to chance.[161] Instead, they are designed with the specific goal of benefiting poor communities, and they include features specifically for this purpose.[162] The presence of such features is sufficient to designate a tax law as community-oriented, *regardless* of whether such safeguards ultimately prove effective.

In other words, the empirical question of impact should be separate from the inquiry into whether the tax law is designed as a community-oriented incentive. Even ideal models of community-oriented investment tax incentives may sometimes fail to benefit the community.[163] This is because community-oriented investment tax incentives, like all place-based policies, are likely to be constrained by mobility effects.[164] In other words, people are mobile, and neighborhood conditions may affect who comes and goes from the community, regardless of whether the law includes safeguards.[165] For example, instead of displacement through gentrification, community-oriented tax incentives may increase the likelihood of voluntary exiting of the community.[166]

To see why, consider incentives that specifically encourage businesses to hire community residents. If successful, there is a risk that residents may become more mobile, and less willing to remain in an otherwise distressed neighborhood, as their economic

161. *See id.* at 68 ("The primary goal of any community oriented investment tax incentive should be to improve neighborhood conditions in poor communities.").

162. *See id.* at 18 ("At a minimum, a community oriented investment must include some safeguard to prevent poor residents from being harmed, while spatially oriented investment tax incentives lack such safeguards.").

163. *See id.* at 68 ("[I]t is difficult to find examples of pure, community oriented investment tax incentives under current law.").

164. *See* Nestor M. Davidson, *Reconciling People and Place in Housing and Community Development Policy Essay*, 16 GEO. J. ON POVERTY L. & POL'Y 1, 2 (2009) ("[E]very public investment in a given place not only has a direct impact on the people in that place but more importantly shapes the incentives that people have to remain, leave, avoid, or move to that place."). Focusing on gentrification, Davidson points out that place-based strategies like investment tax incentives "change[] the underlying incentive structure for individual mobility, making displacement—and its associated harms—an enduring risk." *Id.* at 8.

165. *See id.* at 8. ("People move or stay based on the resources they have as well as the opportunities they can access, and mobility programs directly target resource questions.").

166. *See id.* (discussing how the resources that a person has access to affects their decision to stay in or leave their community).

conditions improve.[167] If those residents leave, they may harm the community they left behind, potentially exacerbating concentrated poverty.[168] However, other factors may help mitigate this risk. First, the social context that helps give meaning to places and communities also serves as an anchor.[169] Within economically distressed communities, the "emotional bonds and [ ] social benefits of living there create a powerful resistance to leaving."[170] Those same ties would continue to exist even as community members become more mobile, helping to keep those people within the community even as they become more economically stable.[171]

Second, the risk that residents will leave may be mitigated through other types of investment in the community, such as improvements to the built environment or the expansion of area businesses that meet specific community needs. Such improvements are, after all, often an important component to improving neighborhood conditions,[172] and they may affect whether community members are willing to remain even as their

---

167. *See id.* at 7 ("As people move, the social fabric of a community can be damaged by the loss of certain members and a strategy that incentivizes that movement can have direct consequences on the communities from which people are escaping.").

168. *See id.* (discussing how this can further isolate those not able or unwilling to leave). One theory that has been advanced to explain the causes of concentrated poverty is the class-selective migration of middle- and working-class blacks out of poor neighborhoods; however, Douglas Massey and his colleagues disputed this theory, concluding that patterns of out-migration from poor ghetto areas had relatively little to do with the accumulation of poverty in black neighborhoods. *See* Douglas S. Massey, Andrew B. Gross & Kumiko Shibuya, *Migration, Segregation, and the Geographic Concentration of Poverty*, 59 AM. SOC. REV. 425, 433 (1994) ("Rather, our results suggest that the geographic concentration of poor blacks is caused by the residential segregation of African-Americans in urban housing markets.").

169. *See* Johnstone and Lionais, *supra* note 128, at 218 ("[D]epleted communities are more than simply locations that lack growth mechanisms; they are also areas to which people retain an attachment.").

170. *Id.*

171. *See* Davidson, *supra* note 164, at 7 (discussing how the movement of certain individuals out of the community can damage the community's social fabric). This same phenomenon has been noted as a restraint on mobility programs that depend on voucher-holding residents choosing to leave their communities in search of higher-opportunity neighborhoods.

172. *See* Johnstone and Lionais, *supra* note 128, at 217 ("While conditions in depleted communities can limit possibilities for traditional development, entrepreneurial responses are not similarly constrained.").

economic position stabilizes.[173] To be sure, such improved conditions may also serve to attract higher-income clientele, thereby presenting a risk of gentrification.[174] But again, such risk may not be as high as it seems, particularly if the laws are used to target areas with a high concentration of poverty—over 40% poverty rate[175]—which may be less likely to gentrify, at least in the near term. In other words, we will not know to what extent that mobility effects limit the efficacy of community-oriented incentives, notwithstanding their safeguards, until such tax laws are studied empirically.

To analyze whether a place-based investment tax incentive is community-oriented, then, the core inquiry mirrors that of spatially-oriented incentives: Ask whether the tax law contains features to increase the likelihood that poor residents in the targeted area will benefit. Here, three factors that tend to suggest that an incentive is community-oriented are: Relatively narrow or defined categories of eligible investments of a variety that is likely to benefit poor communities; incentives to invest in workforce development for the benefit of residents of targeted communities; and taxpayer eligibility requirements based on the extent to which the taxpayer engages with community residents.

First, relatively narrow or defined categories of eligible investments may be used to limit the scope of eligible investments to those most likely to benefit poor communities. Such constraints on eligible investments can serve as a safeguard for the targeted community by making it less likely that the incentive will subsidize businesses that primarily benefit higher-income populations. As explained in Part III.B.2 below, this feature is rare under current law.[176]

---

173. *See id.* at 229 (discussing how entrepreneurs can use certain assets within depleted communities to motivate the community's residents to remain).

174. *See* Davidson, *supra* note 164, at 9 ("As communities become more desirable, more affluent residents are drawn in.").

175. *See* Andrew Jordan Greenlee, A Relational Analysis of Mobility Within Illinois' Housing Choice Voucher 27 (2012) (unpublished Ph.D. dissertation, University of Illinois at Chicago) ("[A] poverty rate of 40 percent tends to correlate strongly with other indicators of disadvantage and lack of opportunity.").

176. *See infra* Part III. B.2 (discussing examples of community-oriented investment tax incentives that exist under current law and pertinent studies).

Second, tax incentives to invest in workforce development may be community-oriented if they specifically encourage the taxpayer to hire or train poor residents of targeted communities. Such a requirement can serve as a safeguard against the possibility that new jobs ultimately inure to outsiders. For example, as explained in Part III.B.1 below, some states provide incentives to hire community residents.[177]

Third, tax incentives may be community-oriented if, instead of focusing on a taxpayer's location as the sole eligibility criteria, the tax incentive makes engagement with residents an eligibility requirement. This factor looks to the location of community residents, and the extent to which the taxpayer engages with those residents, as indicative of a community-orientation. This is because such incentives do not treat the targeted place as an economic space, where economic activity must occur entirely within its boundaries, but rather as the location of a community that should be targeted for benefits. For example, as explained in Part III.B.1[178] below, Texas provides hiring tax credits to firms—from any location—that hire from three pools of employees, one of which includes those who reside within zones.[179]

In sum, on the broadest level, lawmakers must decide whether to target spaces—geographic boundaries where businesses or property must locate—or communities, which exist within such places, giving them social meaning. This choice is revealed through the decision to include safeguards for local communities, or to exclude them, and it must be made regardless of whether the tax law is structured as a direct or indirect tax subsidy. The next Part will use the two-by-two typology to identify four basic categories of place-based investment tax incentives, and it will revisit empirical studies within this framework.

---

177. *See infra* Part III. B.1 (discussing community-oriented tax incentives in several states).

178. *See id.* (discussing Texas's enterprise zone law and how it benefits economically-disadvantaged residents).

179. *See* TEX. GOV'T CODE ANN. § 2303.402 (West 2019) (providing that businesses outside of the enterprise zone are eligible for benefits if 35% of their newly created positions are held by residents of an enterprise zone, veterans, or economically-disadvantaged persons). The other two categories are veterans or economically disadvantaged persons. *See infra* Part III. B.1 (discussing community-oriented tax incentives in several states).

III. Application of the Typology

The previous Part described two dimensions by which place-based investment tax incentives can be analyzed. The next step is to use the two-by-two typology to identify four types of place-based investment tax incentives characterized along these two dimensions: (1) spatially-oriented direct tax incentives; (2) spatially-oriented indirect tax incentives; (3) community-oriented direct tax incentives; (4) community-oriented indirect tax incentives.

In connection with this project, I surveyed the state enterprise zone laws for all states that currently have enterprise zone laws,[180] plus a variety of federal laws (the New Markets Tax Credit,[181] the Low-Income Housing Tax Credit,[182] and Opportunity Zones[183]). The survey revealed only a handful of examples of features that reflect community approaches to targeting place.[184] The table below provides examples of each type, which are explained in greater detail in this Part.

180. *See generally* Michelle D. Layser, *How Do Place-Based Investment Tax Incentives Target Low-Income Communities? A Multi-State Survey of Enterprise Zone Tax Incentives* (Working Paper, May 1, 2019).

181. I.R.C. § 45D (2018).

182. I.R.C. § 42 (2018).

183. I.R.C. § 1400Z-1 (2018).

184. *See infra* Appendices A–C.

Dimension #1: Form of Subsidy	Dimension #2: Approach to Targeting Place	
	Spatially-oriented	**Community-oriented**
Direct	Most enterprise zone laws	Some enterprise zone laws
Indirect	NMTC, Opportunity Zones	Some state tax credit programs

A. Spatially-Oriented Tax Incentives

1. Direct Tax Incentives

Most tax incentives included in state enterprise zone laws are spatially-oriented direct tax incentives. First, the incentives are properly characterized as direct tax subsidies because the tax preference available through these programs are claimed directly by the eligible businesses, not by investors.[185] Second, most—but not all—enterprise zone tax incentives lack safeguards for community residents and include factors that tend to indicate a spatially-oriented incentive.[186]

185. *See* Layser, *supra* note 22, at 17 ("[I]f a business is entitled to a tax break because it expands its activities in a low-income community, then the tax law provides a direct tax subsidy to that business.").

186. *See id.* at 38–39 ("The pro-gentrification origins of enterprise zone laws help explain the dominance of spatially oriented investment tax incentives that do not include any safeguards for poor communities.").

Specifically, enterprise zone laws often have broad descriptions of eligible businesses.[187] Many states limit the subsidy to certain types of businesses, such as manufacturers and producers,[188] but there is little indication that such businesses are categorically more likely to benefit community residents, and the laws rarely require eligible taxpayers to engage with the community.[189] The tax incentive package available to those businesses varies by state, but in most cases, it includes some combination of capital and labor incentives.[190] However, the labor incentives usually take the form of general incentives to invest in human capital through hiring or job training, and they rarely require firms to hire local residents.[191] And in almost all cases, eligibility is based at least partially upon the location of the firm within zone boundaries, regardless of the firm's level of engagement with the community.[192]

Many empirical studies have sought to measure the impact of enterprise zone laws, providing some insight into how spatially-oriented direct tax incentives affect poor communities.[193]

---

187. *See infra* Appendix A (showing that 18/33 state enterprise zone laws have broad or undefined descriptions of eligible investment types).

188. *See infra* Appendix A (showing that 11/33 state enterprise zone laws include incentives that promote manufacturing or production activities).

189. *See infra* Appendix C (showing that only 10/33 state enterprise zone laws require taxpayers to engage with poor communities, and of those, only seven include incentives to specifically engage with zone residents); *see also* Layser, *supra* note 22, at 55 ("Spatially oriented investment tax incentives are inefficient to the extent that they encourage businesses to engage in tax-motivated behaviors that do not correct a market failure.").

190. *See* Michelle D. Layser, *How Do Place-Based Investment Tax Incentives Target Low-Income Communities? A Multi-State Survey of Enterprise Zone Tax Incentives* (Working Paper, May 1, 2019), *available at* https://papers.ssrn.com/abstract_id=3381243 (presenting a multi-state survey of state enterprise zone laws that shows the mix of capital and labor investments included in most state enterprise zone incentive packages).

191. *See id.* ("Some states mandate that to collect credits, a certain percentage of the company's new hires must be zone residents . . . ."); *see also infra* Appendix B (showing that 19/33 state enterprise zone programs include incentives to invest in human capital without including any specific incentive to target zone residents).

192. *See* Layser, *supra* note 190 ("In addition to being located within the zone's boundaries, a company may be required to create new jobs or make a substantial capital investment within a zone.").

193. *See generally* Kolko & Neumark, *supra* note 11; Hanson, *supra* note 12; Elvery, *supra* note 12.

Most of these studies have focused solely on economic indicators like unemployment rates, poverty rates, and property values within enterprise zones.[194] Of these, job creation is most likely to be cited as a reason for introducing spatially-oriented direct tax incentives;[195] however, the empirical support has been mixed, at best. One study found that enterprise zones "had, at best, no effect on employment and, at worst, a small negative effect" in some areas, noting that "zone residents were less likely to be employed than residents of observationally similar areas."[196]

Several other studies have also noted that the effect of enterprise zones on unemployment rates is uneven, and they have often concluded that gains in one zone tend to be offset by losses in another.[197] For example, one study found the average effect of enterprise zone incentives on zone employment rates to be "near zero, evidence of variation in the effects of enterprise zones [that] could suggest that some enterprise zones increase employment, while others decrease it."[198] Another study concluded that "although enterprise zone incentives affect job creation positively, they also increase job destruction, leading to a negligible or negative impact, on average."[199]

---

194. *See* Kolko & Neumark, *supra* note 11, at 24 (discussing the effect of enterprise zones on employment); *see also* Hanson, *supra* note 12, at 730 (discussing the effect of enterprise zones on property value); Elvery, *supra* note 12, at 57 (discussing the effect of enterprise zones on employment). One can easily imagine other relevant metrics, such as health outcomes, crime rates, or educational performance; however, such studies are rare in the existing literature.

195. *See* Hanson, *supra* note 12, at 722 ("The majority of past analyses of geographically-targeted tax incentives study programs initiated at the state l, and focuses on how these programs affect employment outcomes.").

196. *See* Elvery, *supra* note 12, at 57 (discussing enterprise zones in California and Florida).

197. *See* Kolko & Neumark, *supra* note 11, at 13, 24; *see also* Robert T. Greenbaum & John B. Engberg, *The Impact of State Enterprise Zones on Urban Manufacturing Establishments*, 23 J. POL'Y ANALYSIS & MGMT. 315, 315 (2004) (discussing the positive and negative effects of enterprise zones on employment).

198. Kolko & Neumark, *supra* note 11, at 13, 24.

199. Greenbaum & Engberg, supra note 197, at 315*; see* Bondonio & Greenbaum, *supra* note 11, at 133 ("The results indicate that positive zone-induced increases in employment, sales, and capital expenditures in new and existing establishments are offset by zone-induced losses among firms that close or leave the zone area.").

Evidence about these types of tax incentives' effect on poverty rates is similarly mixed.[200] One study observed that some enterprise zones experienced decreased poverty rates, but overall found no statistically significant effect on neighborhood demographics.[201] Another study found a reduction of poverty rate in enterprise zones using some statistical models, but no effect with others.[202] These studies suggest that the effect of these tax laws on poverty rates has also been negligible. Meanwhile little evidence exists about other possible demographic changes in targeted neighborhoods.

The most consistent finding with respect to spatially-oriented direct investment tax incentives is increased property values.[203] Several studies have observed that property values increase in targeted areas.[204] Though it may be impossible to know for sure who benefits from increased property values, some researchers have observed that it is "likely that geographically-targeted tax incentives and grants benefit land owners," which is more likely to include landlords than homeowners.[205] In other words, landlords may be able to capitalize enterprise zone tax credits into rent

---

200. *Compare* Krupka & Noonan, *supra* note 13, at 394 (finding an increase in the poverty rate)*, with* Hanson, *supra* note 12, at 730 (finding a reduction of poverty rate in enterprise zones using some statistical models, but no effect with others).

201. *See* Deirdre Oakley & Hui-Shien Tsao, *A New Way of Revitalizing Distressed Urban Communities? Assessing the Impact of the Federal Empowerment Zone Program*, 28 J. URB. AFFS. 443, 465 (2006) (explaining the study's findings).

202. *See* Hanson, *supra* note 12, at 730 (explaining the results of the Busso and Kline and HUD testing).

203. *See* Krupka & Noonan, *supra* note 13, at 394 (stating that one result of the EZ designation is as much as a 25% increase in median home value); *see also* Hanson, *supra* note 12, at 730 (stating that Krupka and Noonan found increased median property value in designated areas).

204. *See* Krupka & Noonan, *supra* note 13, at 394 (stating how the MSA study also showed an increase in property value).

205. Hanson, *supra* note 12, at 730; *see* Stephen Billings, *Do Enterprise Zones Work?: An Analysis at the Borders*, 37 PUB. FIN. REV. 68, 87 (2009) (noting that "landowners are able to capitalize these tax credits into rents").

increases,[206] potentially to the detriment of community residents.[207]

In sum, most studies of place-based investment tax incentives to date have focused on the impact of spatially-oriented direct tax incentives. The results of these studies have been mixed, at best, suggesting that this type of tax incentive may be ineffective for anti-poverty goals. The next section will identify examples of indirect tax incentives under current law and will explain what we know—and what we do not yet know—about their impact.

2. Indirect Tax Incentives

Spatially-oriented indirect tax incentives are the most common form of federal place-based investment tax incentives. The New Markets Tax Credit (NMTC) is a clear example of this type of tax incentive.[208] The NMTC is claimed by third parties who

---

206. *See* Billings, *supra* note 205, at 87 (explaining how the landowners can use the tax credit to charge a high rent, so the business owners do not get the benefit of the tax credit).

207. *See* DAVID CHRISTAFORE & SUSANE LEGUIZAMON, NEIGHBORHOOD INEQUALITY SPILLOVER EFFECTS OF GENTRIFICATION 1, https://doi.org/10.1111/pirs.12405 (explaining how rent hikes that develop through revitalization programs can displace the poor) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

208. *See* I.R.C. § 45D (2018) (explaining how the tax credit is based on the location). Note that the federal LIHTC arguably also includes spatially-oriented indirect tax incentives. *See supra* note 83 (stating the LIHTC does not directly target low income areas, but does increase the tax credit depending on location). In some respects, the LIHTC is not a place-based investment tax incentive as contemplated by this typology. That is because, although the LIHTC serves to subsidize physical structures, the law does not specify where LIHTC projects must be located. In this regard, the LIHTC is place-neutral. However, the LIHTC does contain two place-based components in Qualified Census Tracts and Difficult Development Areas. *See* I.R.C. § 42(d)(5)(B) (2018) (stating two place-based components are qualified census tracts and difficult development areas). Both of these provisions define geographic areas where projects are eligible for larger tax subsidies than projects located elsewhere. The QCT and DDA provisions increase the profitability of projects located in high poverty areas, ostensibly to offset the heightened risk and expense incurred by development in those areas. And since the LIHTC is used to subsidize affordable housing projects that benefit poor tenants, it may be tempting to classify the LIHTC as a community-oriented indirect tax incentive; however, the LIHTC is more properly classified as a spatially-oriented incentive for several reasons. First, there is no reason to think that new or rehabilitated affordable housing in a QCT or DDA will benefit community residents. To the contrary, it is reasonable to assume that such

invest in entities that, in turn, invest in targeted places.[209] In targeting place, the NMTC adopts a spatially-oriented approach.[210] Specifically, the law permits a broad range of investment types.[211] The primary statutory criteria is the location of businesses and projects within the geographic boundaries of the targeted areas.[212] Although specific projects must be approved by the CDFI Fund through a competitive application process, the statute does not require that projects benefit the local communities or involve community stakeholders.[213] The broad definition of eligible investments, which turns primarily on the location of the investment, reflects a spatial-orientation.

As in the case of spatially-oriented direct tax incentives, the empirical case for this type of tax law is relatively weak. One study found that the NMTC causes industry sorting across location, leading to increase investment in capital intensive industries like manufacturing but deters investment in more labor-intensive industries.[214] Others found that the NMTC does have a positive

---

housing will benefit newcomers to the community, as preexisting residents presumably already had housing. Nothing in the law requires that community residents would have priority with respect to new or rehabilitated housing. These lack of safeguards suggest that the QCT and DDA are better viewed as spatially-oriented investment tax incentives. These provisions have been critiqued as contributing to concentrated poverty and residential segregation, potentially making conditions worse for the preexisting communities.

209. *See* I.R.C. § 45D (2018) (explaining how the tax credit applies when invests in a qualified community development entity, which makes the qualified entity investment on behalf of the taxpayer).

210. *See* I.R.C. §45D(e) (2018) (defining the low-income community where the investment must be made for the tax credit).

211. *See* I.R.C. § 45D (2018) (stating the law permits new buildings and other buildings).

212. *See id.* (explaining the definition of low-income communities and stating the investment must be in this community to be applicable).

213. *See id.* (stating that there is preference to projects that help concerted community plans, but it is not mandatory); *see also* Martin D. Abravanel et al., *New Markets Tax Credit (NMTC) Program Evaluation*, URB. INST. X, 67x (2016), http://www.urban.org/research/publication/new-markets-tax-credit-nmtc-program-evaluation (noting that "the NMTC program does not necessarily involve local or community agencies as program participants" and that "emphasis on producing community benefits was uneven across early-year NMTC projects") (on file with Washington & Lee Journal of Civil Rights & Social Justice).

214. *See* Kaitlyn Harger & Amanda Ross, *Do Capital Tax Incentives Attract New Businesses? Evidence Across Industries from the New Markets Tax Credit*, 56 J. REG. SCI. 733, 734 (2016) (explaining the study).

impact on employment but that newly created jobs tend to go to non-residents,[215] and that some of the positive neighborhood changes are attributable to gentrification.[216] To this point, it is worth reiterating that indirect investment tax incentives like the NMTC are capable of delivering deeper subsidies than those associated with direct incentives. This may make them more effective at supporting new construction and other capital-intensive projects that can contribute to gentrification.

At least one legal scholar has reviewed the types of projects that have been funded by the NMTC and found that it "has been used to subsidize the development of performing arts centers for opera, ballet, symphony orchestras, hotels, high priced condominiums, theatres, mixed use commercial developments, and even convention centers."[217] It is difficult to know how investments like these impact community residents, but it is reasonable to conclude, as the researcher did, that "such uses are not well designed as *primarily* for a community and population" experiencing the effects of concentrated poverty, and the "salient issue is whether the people's tax dollars are used to meet the *needs* of the low-income residents as earmarked by Congress."[218]

The new Opportunity Zones tax law is another example of a spatially-oriented, indirect tax incentive.[219] Notwithstanding recent comparisons of the new law with enterprise zone programs, Opportunity Zone laws are more analogous to the NMTC. Under the new Opportunity Zones tax law, taxpayers who sell appreciated property can defer—or even permanently avoid—taxes they would otherwise owe on capital gains by reinvesting the capital gains in so-called "Opportunity Funds."[220] Opportunity

---

215. *See* Freedman, *supra* note 15, at 1013 (explaining how the NMTC's impact may not directly help the residents of the area).

216. *See id.* (finding that the NMTC has some positive effects on neighborhood conditions in low-income communities but observing that the observed impacts are attributable to changes in the composition of residents as opposed to improvements in the welfare of existing residents).

217. Roger M. Groves, *The De-Gentrification of New Markets Tax Credits*, 8 FLA. TAX REV. 214, 216 (2007).

218. *Id.* at 231.

219. *See* I.R.C. § 1400Z-1 (2018) (explaining how the Opportunity Zone tax law is based on low income communities in qualified opportunity zones).

220. *See* I.R.C. § 1400Z-2(a)(1)(A) (2018) (stating that treatment of gains in gross income "shall not include so much of such gain as does not exceed the

Funds are required to make new equity investments in businesses located in designated low-income areas called "Opportunity Zones."[221]

The Joint Committee on Taxation has estimated that the Opportunity Zones program will cost between $1.2 and $1.8 billion of lost revenue per year,[222] amounts that correspond to $6–9 billion of capital flowing into Opportunity Funds (assuming a 20% capital gains rate) each year.[223] This suggests that Opportunity Zones may help direct roughly two to three times as much capital into low-income areas than the NMTC program, which provides for $3.5 billion of tax credit allocations annually.[224]

While it is too early to assess the impact of the Opportunity Zones law, the Opportunity Zones statute and available agency guidance provide no reasons to expect the Opportunity Zones laws to benefit poor communities any more effectively than the NMTC. Instead, they include several reasons to expect the new laws to target poor communities even less closely than the NMTC. For example, the Opportunity Zones laws define low-income communities by reference to the same definition in the NMTC statute.[225] As a result, Opportunity Zones are comprised of a subset

---

aggregate amount invested by the taxpayer in a qualified opportunity fund during the 180-day period beginning on the date of such sale or exchange").

221. *See* I.R.C. § 1400Z-2(d)(2) (2018) (defining qualified opportunity zone property as property which is qualified opportunity zone stock, qualified opportunity zone partnership interest, or quality opportunity zone business property); I.R.C. § 1400Z-2(d)(1) (2018).

222. *See JCX-67-17, Estimated Budget Effects of the Conference Agreement for H.R. 1, the "Tax Cuts and Jobs Act,"* JOINT COMM. TAX'N (Dec. 18, 2017), https://www.jct.gov/publications.html?func=startdown&id=5053 (estimating the potential lost revenue stemming from the Opportunity Zones program per year over the course of ten years) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

223. *Id.* at 222.

224. *See* I.R.C. § 45D(f)(1)(G) (2018) (identifying the new markets tax credit limitation for 2010–2019).

225. Any population census tract if the poverty rate for such tract is at least 20 percent, or (i) in the case of a tract not located within a metropolitan area, the median family income for such tract does not exceed 80 percent of statewide median family income, or (ii) in the case of a tract located within a metropolitan area, the median family income for such tract does not exceed 80 percent of the greater of statewide median family income or the metropolitan area median family income. I.R.C. § 45D(e) (2018) (defining low-income community under the NMTC); *see* I.R.C. § 1400Z-1(c)(1) (2018) (stipulating that low-income community

of NMTC-eligible census tracts. No further guidance is provided as to the types of investments that should be made in Opportunity Zones, and the law contains no downstream requirements related to job creation or community-oriented activity.

In addition, where the NMTC program is administered jointly with the Treasury Department's CDFI Fund, which makes tax credit allocations to CDEs based on a competitive allocation process,[226] the new Opportunity Funds program will rely on self-certification by Opportunity Funds and very little ongoing oversight.[227] This is a departure from the structure of other federal indirect incentives, which have been administered by the IRS in coordination with nontax federal, state and local agencies.[228] While so-called "hybrid delegations" like these have not always been successful in practice, they do help respond to an important critique of tax expenditure laws generally, which is that the IRS is ill-equipped to administer nontax substantive policies.[229]

In sum, the introduction of Opportunity Zones will provide new opportunities for researchers to gather data about the impact of spatially-oriented indirect investment tax incentives. As noted, this type of incentive may be more likely to spur gentrification and affect neighborhood demographics than spatially-oriented direct

---

has the same meaning in both I.R.C. §1400(Z)-1(c)(1) and §I.R.C. §45D(e)).

.

226. *See* CMTY. DEV. FIN. INST. FUND, INTRODUCTION TO THE NEW MARKETS TAX CREDIT PROGRAM (2018), https://www.cdfifund.gov/Documents/2018%20 Introduction %20to% 20the%20NMTC%20Program%20-%20FINAL.PDF (providing an overview of the administration of the NMTC program, the ability for CDEs to apply for the program, and the nature of the competitive allocation process) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

227. *See* Investing in Opportunity Funds, 83 Fed. Reg. 54279 (proposed Oct. 29, 2018) (to be codified at 26 C.F.R. pt. 1) (proposing the taxpayer be able to self-certify as a Qualified Opportunity Fund and the Commissioner's ability to determine the time, form, and manner of self-certification); s*ee also* Prop. Reg. § 1.1400Z2(d)-1(a) (outlining how taxpayers could elect to be considered a Qualified Opportunity Fund and the impact the election could have on the taxpayers gains and interests under the proposed regulation).

228. As mentioned, the NMTC is administered in cooperation with the CDFI Fund. The LIHTC is administered jointly with state and local housing authorities.

229. *See* David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 955, 1015 n.198 (2003) (using the food stamp program and the provision of school lunches as an example of how the IRS is ill-equipped to administer non-tax substantive policies).

investment tax incentives. Though empirical studies have failed to yield clear evidence that the NMTC has resulted in gentrification, those results may be a function of program size. Given that Opportunity Zones is a much larger program, it provides new opportunities to study the impact of spatially-oriented indirect investment tax incentives. In the meantime, it is reasonable to predict that Opportunity Zones will have similar—or exacerbated—effects as the NMTC, suggesting that the law's potential as an anti-poverty program is limited.

3. Community-Oriented Investment Tax Incentives

Examples of community-oriented investment tax incentives are rare under current law. This fact alone raises both theoretical and empirical questions to be answered by researchers. First, *why* are community-oriented investment tax incentives so uncommon under current law? What political and social conditions contribute to the continued use of spatially-oriented investment tax incentives—and the bipartisan support of those incentives—despite what many would view as disappointing empirical results? To the extent that community-oriented investment tax incentives exist under current law, what were the political and social conditions that made them viable, and what are the barriers to their use by other jurisdictions?

Second, what impact do community-oriented investment tax incentives have on neighborhoods and community residents? To answer this question, researchers need to be able to identify examples of community-oriented investment tax incentives in order to deliberately study their impact. As this Section will explain, few pure examples of community-oriented investment tax incentives exist under current law, making it challenging for researchers to gather the data needed to assess their impact. This section will describe examples of community-oriented investment tax incentives that exist under current law and pertinent studies.

1. Direct Tax Incentives

A handful of state enterprise zone programs include at least one community-oriented direct tax incentive.[230] These tax incentives generally exist alongside other, spatially-oriented direct tax incentives.[231] Under current law, few, if any, rules restrict eligible investments to those most likely to benefit poor communities.[232] However, some state enterprise zone laws do include workforce development incentives with safeguards for poor residents.[233] In addition, two state laws make taxpayer eligibility contingent on engagement with community residents, as opposed to the location of the firm.[234] Enterprise zone tax incentives like these are community-oriented direct investment tax incentives.

For example, enterprise zone laws in Connecticut, Florida and Texas offer taxpayers larger incentives for hiring community residents than most nonresidents;[235] however, they also offer

---

230. *See generally* NAT'L CONFERENCE ON STATE LEGISLATURES, ENTERPRISE ZONES: DEVELOPMENT FOR DISTRESSED COMMUNITIES (2005), http://www.ncsl.org/documents/econ/EntZonesDev.pdf (outlining the purposes, incentives, and community effects of enterprise zone programs) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

231. Michelle D. Layser, *How Do Place-Based Investment Tax Incentives Target Low-Income Communities? A Multi-State Survey of Enterprise Zone Tax Incentives* (Working Paper, May 1, 2019), *available at* https://papers.ssrn.com/abstract_id=3381243. For example, several states combine incentives that encourage taxpayers to hire zone residents with incentives to invest in a broad range of eligible investments that are not designed to target community residents. *See infra* Appendix A, Appendix B, and Appendix C.

232. *See infra* Appendix A (demonstrating that even when the eligible types of investments are narrowly defined, those laws tend to promote manufacturing and production activities, which are not as likely to benefit low-skilled residents as service-oriented jobs); *see also* Ross & Wolf*, supra* note 52, at 18.

233. *See infra* Appendix B (showing that only two out of 33 states with current enterprise zone law include incentives that require business to hire zone residents). *See generally* NAT'L CONFERENCE ON STATE LEGISLATURES, ENTERPRISE ZONES: DEVELOPMENT FOR DISTRESSED COMMUNITIES (2005), http://www.ncsl.org/documents/econ/EntZonesDev.pdf (showing how different states, like Louisiana and Illinois, only get the incentives if a certain percentage of workers are from a specified disadvantaged group) (on file with the Washington & Lee Journal of Civil Rights & Social Justice).

234. *See* LA. REV. STAT. § 51:1787(B)(3) (tying eligibility to hiring zone residents, not the firm location); Tex. Gov't C. § 2303.402 (tying eligibility to hiring zone residents, not the firm location).

235. *See* CONN. GEN. STAT. ANN. § 12-217(e) (West 2019) (providing that the group's net income be calculated in compliance with §12-218(a), which states the

equivalent tax benefits to firms that hire vulnerable populations of nonresidents, such as people who are eligible for benefits under state welfare programs, veterans, or other economically disadvantaged persons.[236] Because these laws contain specific incentives to benefit community residents, they can be properly categorized as community-oriented direct incentives, but their impact may be diluted by the alternate incentives. As a result, studies of their impact may convey limited information about the impact of community-oriented direct investment tax incentives.

Nevertheless, at least one study of community-oriented direct investment tax incentives in Texas provided some evidence to suggest that the laws helped reduce poverty rates in the targeted area.[237] The Texas enterprise zone law, "creates explicit incentives to hire from, although not necessarily create jobs in, areas designated as EZs."[238] Texas law creates tax incentives for hiring

---

"combined group's net income shall be the aggregate net income or loss of each taxable member and nontaxable member of the combined group derived from a unitary business . . . ."); FLA. STAT. ANN. § 212.096 (West 2019) (outlining the hiring and compensation requirements needed in order for an eligible business to qualify for the credit); TEX. GOV'T CODE ANN. § 2303.402 (outlining how a business qualifies as a qualified business and requiring that 25% of the worker live within the zone). In addition, at least two states tie the availability of hiring tax credits to employees' residence within the county or municipality that contains the zones. *See* UTAH CODE ANN. § 63N-2-212 (West 2019) (limiting tax incentives to business entities for which at least 51% of the employees employed at facilities of the business entity located in the enterprise zone are individuals who, at the time of employment, reside in the county in which the enterprise zone is located; or an enterprise zone that is immediately adjacent and contiguous to the county in which the enterprise zone is located); N.J. STAT. ANN. § 52:27H-78 (requiring that employee be residents of the municipality in which the zone is located, or a resident of a municipality in which another enterprise zone has been designated).

236. *See* CONN. GEN. STAT. ANN. § 12-217(e) (outlining how a combined group can qualify); FLA. STAT. ANN. § 212.096 (describing the kinds of new employees that qualify under this section); TEX. GOV'T CODE ANN. § 2303.402 (including inmates, those unemployed for three months, and individuals with disabilities, among others, in the definition of economically disadvantaged for the purpose of this section).

237. *See generally* Matthew Freedman, *Targeted Business Incentives and Local Labor Markets*, 48 J. HUM. RESOURCES 311 (2013) (outlining the program structure of the Texas Enterprise Zone project and showing empirical evidence that the program leads to growth in work-place employment and resident employment).

238. Matthew Freedman, *Targeted Business Incentives and Local Labor Markets*, 48 J. HUM. RESOURCES 311, 312 (2013) (focusing on one state allows the author to isolate outcomes and achieve better results).

community residents, veterans, or economically disadvantaged persons.[239] Those tax incentives are available to firms *regardless* of whether the firm itself is located in the enterprise zone.[240] A study of the impact of these laws found that they helped increase resident employment in high-poverty zones (near 20% poverty rate) by 1–2 percent per year.[241] This is an encouraging result for those who hope place-based investment tax incentives may be effective anti-poverty tools. However, more research would be needed to confirm results like these, and one should be cautious of making policy decisions based on a single study.

Moreover, more research would be needed to assess what specific design feature might drive such results—the specific incentive to hire area residents, or the widespread availability of the incentives to firms located outside zone boundaries. Here, it is worth noting that a California law that provided tax incentives for firms to hire employees from "targeted employment areas" (as long as the hiring firm was located within the zone) was repealed in 2013.[242] The legislature cited findings that the program had been unsuccessful.[243] This may suggest that it is not enough to tie incentives to hiring community residents. In short, more research is needed to fully evaluate the impact of community-oriented direct tax incentives.

2. Indirect Tax Incentives

Few, if any, pure community-oriented indirect investment tax incentives exist under current law. One reason for this gap may be that, of the factors that tend to suggest a community-oriented approach, the feature that can be most easily incorporated into this model would be a narrow definition of eligible investments. This approach is rarely seen under current law.

---

239. *See* TEX. GOV'T CODE ANN. § 2303.402 (providing incentives for qualified businesses to hire different groups of community residents).

240. *Id.* (allowing the qualified business to either reside in the state or provide commitment to initiating conduct and business activity within the zone).

241. Freedman, *supra* note 238, at 312.

242. *See* CAL. REV. & TAX. CODE § 17053.74(b)(4) (2019) (repealed 2019).

243. *See* Cal. A.B. No. 93 § 1(c) (July 11, 2013) (calling for comprehensive reform to lead to statistically significant increases in employment levels and growth).

Nevertheless, so-called neighborhood assistance tax credits fit imperfectly into this model.[244] For example, Pennsylvania law provides tax credits to individuals who contribute to entities that provide "neighborhood assistance, comprehensive service projects, affordable housing, domestic violence or veterans' housing assistance, job training or education for individuals, community services or crime prevention in an impoverished area."[245] This law subsidizes contributions to nonprofit entities, which invest in low-income communities;[246] however, one can imagine similarly restrictive language incorporated into the design of incentives to subsidize for-profit investment.

To date, little is known about the impact of community-oriented indirect tax incentives. Since so few examples exist under current law, the best chances for researchers to gather data to evaluate their potential as anti-poverty tools may be to work with policymakers to introduce pilot programs. More research is needed to determine the ideal tax incentive design and to assess implementation challenges. Until such research is available, our understanding of the potential and limitations of place-based investment tax incentives as anti-poverty tools will remain incomplete.

IV. Conclusion

This Article has developed a typology that identifies four basic types of place-based investment tax incentives, two of which are relatively common under current law, and two that are exceedingly rare. While it is possible that any given place-based investment tax incentive may include a combination of features that straddle the categories, making it more difficult to apply the typology,[247] there

---

244. Layser, *supra* note 22, at 66–68 (including "financial assistance, labor, material and technical advice to aid in the physical, economic and community improvement" in neighborhood assistance programs through "community services, crime prevention, economic development, education, housing, and job training.").

245. *See* 72 PA. STAT. ANN. § 8904-A(a) (West 2019) (allowing tax credits for businesses taking part in the aforementioned activities).

246. *Id.* (explaining one of the effects of the law).

247. *See* Smith, *supra* note 30, at 380 (asserting that the problem of sorting real-life cases into theoretical categories is a challenge under any typology).

are both practical and theoretical reasons to adopt this typology despite such challenges.

First, as this Article showed, most current laws adopt a monolithic spatially-oriented approach, making it relatively simple to categorize them despite the theoretical difficulty. Second, even if multi-faceted approaches to targeting place become more common, legal analysis is well suited to deal with this complication. Balancing tests are prevalent in legal analysis and can be applied here as well. To the extent that spatially-oriented features dominate, the incentive can be categorized with other spatially-oriented incentives, even if some community-oriented features are present. Thus, this typology holds promise as a tool to enable more deliberate research into how tax law design affects the impact of place-based investment tax incentives.

Finally, the typology presented in this Article describes a conceptual, theoretical ideal. To that end, it is immaterial whether every place-based investment tax incentive can be easily sorted into one category or another. Rather, one of the most important functions of this typology is to provide benchmarks that force lawmakers to confront the assumptions about place that are built into these tax laws and affect their performance. In so doing, we may finally be able to move beyond the debates about place-based investment tax incentives and take steps to reform and expand knowledge in this area of tax law and poverty.

Appendix A: Eligible Investments

State	**Broad or Undefined**	**Narrow or Defined**	**Preference for Manufacturing / Production**	**Statutory Reference**
Alabama	X			Ala. Code § 41-23-24; Ala. Code § 41-23-26
California		X		Cal. Rev. & Tax Code § 17053.73(b)(11)
Colorado		X	X	Col. Rev. Stat. § 39-30-104(1)(a)
Connecticut		X	X	Conn. Gen. Stat. §32-9l
Delaware		X	X	Del. Code tit. 30 § 2020; Del. Code

				tit. 30 § 2010
District of Columbia	X			Unspecified
Florida	X			Unspecified
Georgia	X			Ga. Code Ann., § 36-88-3(2 and 8), and Ga. Code Ann., § 36-88-4(a-c).
Hawaii		X	X	Haw. Rev. Stat. § 209E-2.
Illinois	X			35 Ill. Comp. Stat. 20 § 5/201(f)
Indiana		X		Ind. Code § 6-3-3-10
Louisiana	X		X	La. Rev. Stat. § 51:1787(B)(3)
Maryland	X			Md. Code Econ. Dev. § 9-103
Michigan		X		Mich. Comp. L. § 207.777
Minnesota	X			Minn. Stat. § 469.1732
Missouri	X			Mo. Rev. Stat. tit. X § 135.230; Mo. Rev. Stat. tit. X § 135.100
Montana	X		X	Mont. Code Ann. § 7-21-3710
Nevada	X			Nev. Rev. Stat. tit. 22 § 274.270
New Hampshire		X	X	N.H. Rev. Stat. 12 § 162-N:6
New Jersey	X			N.J. Stat. § 52:27H-74; N.J. Stat. § 52:27H-62
New Mexico		X		N.M. Stat. § 7-2-18.4; N.M. Stat. § 7-2-15
New York	X			N.Y. Tax L. § 210-B (repealed)
North Carolina		X		N.C. Gen. Stat. § 105-129.83
North Dakota		X		N.D. Cent. Code § 40-63-04
Ohio		X	X	Ohio. Rev. Code §§§ 5709.631
Oklahoma		X	X	Okla. Stat. 5A § 690.4; Okla. Stat. 68

				§ 2357.4
Oregon		X	X	Or. Rev. Stat 26A § 285C.135
Pennsylvan ia	X			72 Pa. Stat. § 8904-A
Rhode Island	X			Unspecified
Tennessee	X			Unspecified
Texas	X			Tex. Gov't C. § 2303.404; Tex. Gov't C. § 2303.405
Utah		X	X	Utah Code § 63N-2-213; Utah Code § 63N-2-302; Utah Admin. C. R357-15-4; Utah Admin. C. R357-15-4
Wisconsin	X			Wis. Stat. § 238.399(5m)

Appendix B: Incentives to Invest in Human Capital or Affordable Housing

State	**Incentives Do Not Target Zone Residents**	**Incentives Target Zone Residents (Non Exclusive)**	**Incentives Target Zone Residents (Exclusive)**	**Statutory Reference**
Alabama	X			Ala. Code § 41-23-24(a)(1)
California	X			Cal. Rev. & Tax. Code § 17053.73(b)(10)(A)
Colorado	X			C.R.S. § 39-30-105.1(1)(a)(I); C.R.S. § 39-30-105.1(6)(c)
Connecticut		X		Conn. Gen. Stat. § 12-217(e)
Delaware	X			Del. Code tit. 30 § 2020; Del.

				Code tit. 30 § 2011
District of Columbia	X			D.C. Code § 2-219.01-219.05.
Florida		X		Fla. Stat. tit. XIX § 212.096; F.S.A. § 220.03(q)
Georgia	X			Ga. Code Ann., § 36-88-3(2, 6-8), and Ga. Code Ann., § 36-88-4(a-c).
Hawaii	X			Haw. Rev. Stat. § 209E-9(3).
Illinois				None
Indiana			X	Ind. Code § 6-3-3-10
Louisiana		X		La. Rev. Stat. § 51:1787(A)(2)
Maryland	X			Md. Code Econ. Dev. § 10-702
Michigan		X		Mich. Comp. L. § 207.777
Minnesota	X			Minn. Stat. § 469.171
Missouri		X		Mo. Rev. Stat. tit. X § 135.110; Mo. Rev. Stat. tit. X § 135.230
Montana	X			Mont. Code Ann. § 7-21-3710
Nevada		X		Nev. Rev. Stat. tit. 22 § 274.270
New Hampshire	X			N.H. Rev. Stat. 12 § 162-N:6
New Jersey	X			N.J. Stat. § 52:27H-76
New Mexico				None
New York	X			N.Y. Tax L. § 210-C (repealed)
North Carolina		X		N.C. Gen. Stat. § 105-129.83
North	X			N.D. Cent.

Dakota				Code § 40-63-04
Ohio		X		Ohio. Rev. Code §§§ 5709.64; Ohio. Rev. Code §§§ 5709.65
Oklahoma	X			Okla. Stat. 5A § 690.4; Okla. Stat. 68 § 2357.4
Oregon	X			Or. Rev. Stat 26A § 285C.135
Pennsylvania	X			72 Pa. Stat. § 8904-A
Rhode Island		X		R.I. Gen. L. 1956 § 42-64.3-6
Tennessee			X	Tenn. Code § 13-28-208
Texas		X		Tex. Gov't C. § 2303.402
Utah	X			Utah Code § 63N-2-213(7)
Wisconsin	X			Wis. Stat. § 71.07(3w)

Appendix C: Taxpayer Eligibility

State	**Taxpayer's Business or Property Must be Located in the Zone**	**Taxpayer Must Engage with Poor Communities (Does Not Targets Zone Residents)**	**Taxpayer Must Engage with Poor Communities (Targets Zone Residents)**	**Statutory Reference**
Alabama	X			Ala. Code § 41-23-24; Ala. Code § 41-23-26
California	X	X		Cal. Rev. & Tax. Code § 17053.73(b)(11)(A); Cal. Rev. & Tax. Code § 23626
Colorado	X			C.R.S. § 39-30-104

				(investments); C.R.S. § 39-30-103.5 (contribution); C.R.S. § 39-30-105.1(1)(a)(I) (hiring tax credits).
Connecticut	X		X	Conn. Gen. Stat. § 12-217(e)
Delaware	X			Del. Code tit. 30 § 2020; Del. Code tit. 30 § 2010
District of Columbia	X	X		D.C. Code § 6-1504; DC ST § 2-219.01
Florida	X			Fla. Stat. tit. XIX § 212.096
Georgia	X	X		Ga. Code Ann., § 36-88-3(2 and 8), and Ga. Code Ann., § 36-88-4(a-c).
Hawaii	X			Haw. Rev. Stat. § 209E-9
Illinois	X			35 Ill. Comp. Stat. 20 § 5/201(f)
Indiana	X		X	Ind. Code § 6-3-3-10
Louisiana			X	La. Rev. Stat. § 51:1787(B)(3)
Maryland	X			Md. Code Econ. Dev. § 5-707
Michigan	X		X	Mich. Comp. L. § 207.777; Mich. Comp. L. § 207.773
Minnesota	X			Minn. Stat. § 469.171
Missouri	X		X	Mo. Rev. Stat. tit. X § 135.230; Mo. Rev. Stat. tit. X § 135.240
Montana	X			Mont. Code Ann. § 7-21-3710
Nevada	X			Nev. Rev. Stat. tit. 22 § 274.260
New Hampshire	X			N.H. Rev. Stat. 12 § 162-N:2
New Jersey	X			N.J. Stat. § 52:27H-74; N.J. Stat. § 52:27H-62; N.J. Stat.

				§ 52:27H-76.
New Mexico	X			N.M. Stat. § 7-2-18.4; N.M. Stat. § 7-2-15
New York	X			N.Y. Code Rules & Reg. § 11.1
North Carolina	X			N.C. Gen. Stat. § 105-129.83
North Dakota	X			N.D. Cent. Code § 40-63-04
Ohio	X			Ohio. Rev. Code §§§ 5709.61; Ohio. Rev. Code §§§ 5709.64
Oklahoma	X			Okla. Stat. 5A § 690.4
Oregon	X			Or. Rev. Stat 26A § 285C.135; Or. Rev. Stat 26A § 285C.200
Pennsylvania	X			72 Pa. Stat. § 8904-A
Rhode Island	X			R.I. Gen. L. 1956 § 42-64.3-3
Tennessee	X		X	Tenn. Code § 13-28-208
Texas			X	Tex. Gov't C. § 2303.402
Utah	X			Utah Code § 63N-2-213; Utah Code § 63N-2-215; Utah Admin. C. R357-15-5
Wisconsin	X			Wis. Stat. § 238.399