

BMSS PRESENTS:

A Manufacturing & Distribution Industry Update

**THURSDAY
MAY 9TH**

8:30 AM - 10:00 AM



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BUTLER | SNOW

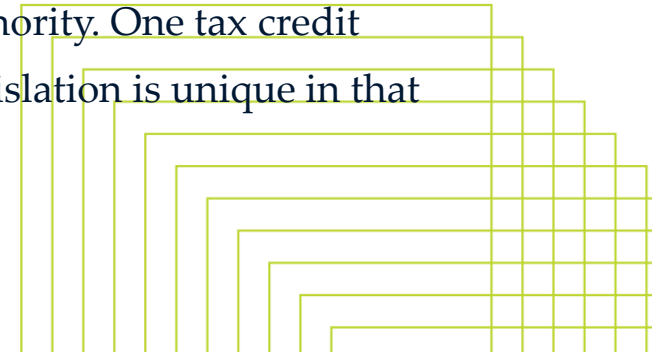
**Economic
Development
Incentives and
Finance Programs**

John F. England

LAW ELEVATED

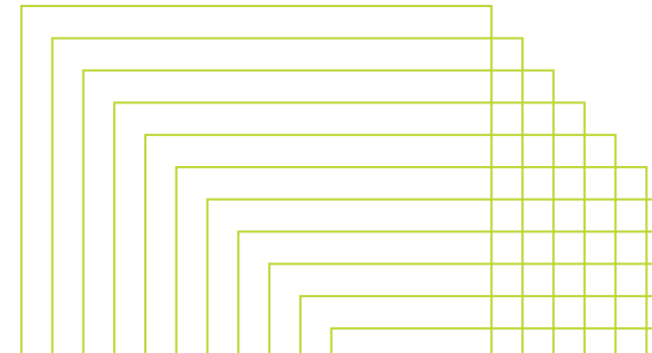
Economic Development Incentives and Finance Programs

- A company which is considering locating a new facility in Mississippi or expanding its existing facilities in Mississippi should focus on finance programs and economic development incentives which may benefit them. The starting point for this analysis should be identifying finance programs which may provide lower effective borrowing costs and economic development incentives which are customized to be fit the company.
- A company should analyze both the MBFC finance and incentive programs and the new MFLEX incentive program in structuring the optimal “financing and incentive package”.
- The Mississippi Business Finance Corporation (“MBFC”) serves as a statewide financing source which allows companies to consider financing and incentive alternatives. MBFC is a public corporation of the state organized pursuant to Miss. Code Ann. §57-10-167 and §57-10-201 et seq. (1972, as amended).
- MFLEX is a streamlined universal tax credit awarded by the Mississippi Development Authority. One tax credit that the company may apply to its Mississippi state tax liabilities. This groundbreaking legislation is unique in that these credits may be customized for each certified industry.



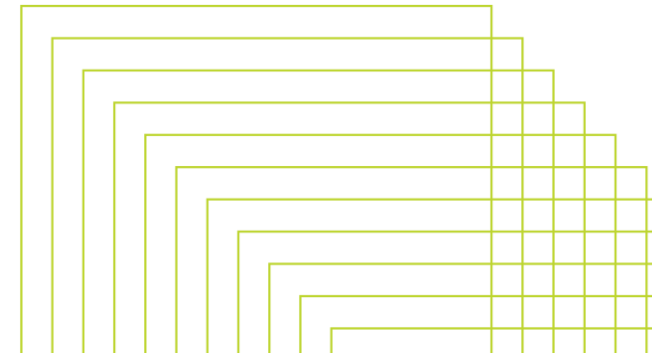
Who is MBFC?

- The Mississippi Business Finance Corporation (“MBFC”) is a public corporation of the State of Mississippi organized pursuant to Miss. Code Ann. §57-10-167 (1972, as amended) that serves as a statewide financing source allowing companies to consider financing and incentive alternatives through a single contact.
- MBFC is authorized to issue taxable industrial development revenue bonds and loan the proceeds thereof to eligible companies pursuant to Miss. Code Ann. §57-10-201 et seq. and §57-10-401 et seq. (1972, as amended).



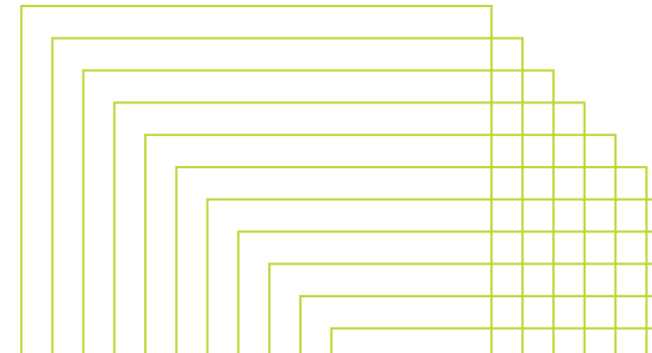
Why would a business locating in Mississippi participate in MBFC's IRB program?

- Allows a Borrower to avail itself of (1) state income tax credits through the Rural Economic Development Assistance Program ("RED Credits"), (2) sales/use tax exemptions for eligible expenditures and (3) ad valorem tax abatements (subject to approval of local authority).



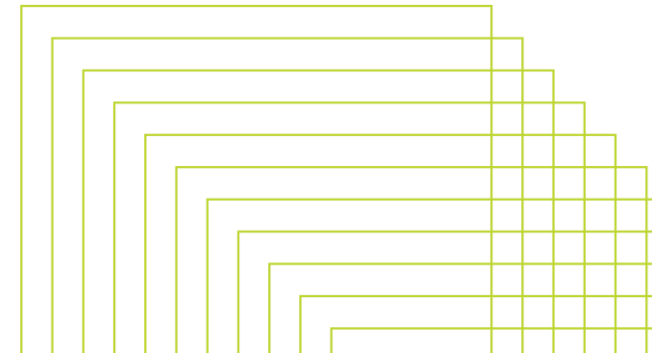
Is Bond financing any different than traditional bank financing?

- While bond financing may initially seem foreign as compared to traditional financing, it is important to note that whatever bond structure is chosen (i.e. affiliate bond purchase, letter of credit, private placement, etc.), the documentation can easily be drafted to fit standard loan terms and conditions associated with traditional financing.



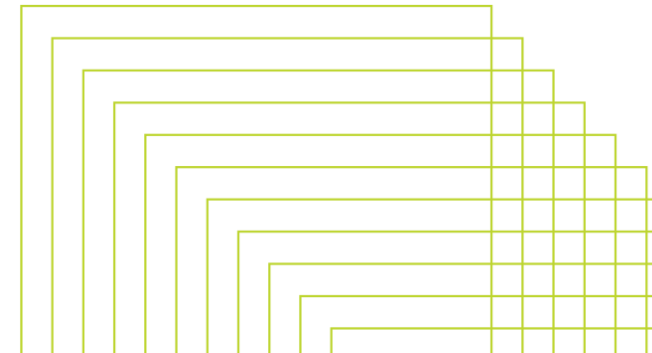
What types of businesses are eligible to participate?

- Any eligible commercial business approved by MBFC.



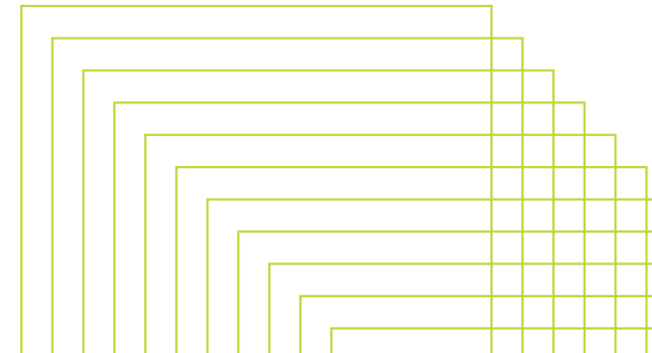
Is MBFC limited in the amount of Bonds it can issue?

- No. There is no maximum amount for a taxable IRB.



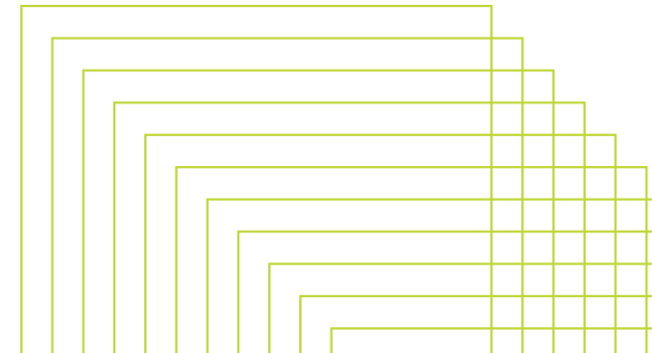
What is the maximum term of the Bonds?

- The term of the Bonds cannot exceed 30 years (Note: if Red Credits are used, the max term is 25 years).



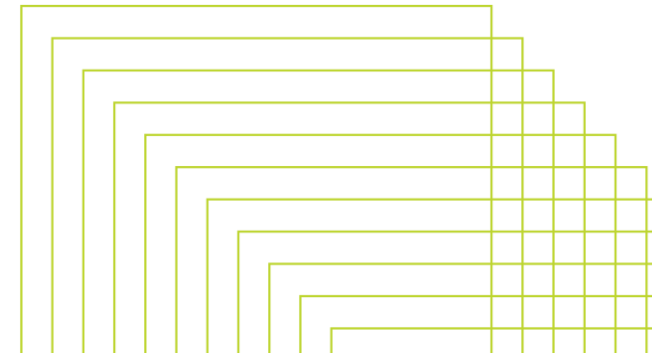
Variable or Fixed Rate?

- The interest rate on the Bonds may be variable or fixed, depending on the financing structure chosen by the Bank/Bond purchaser and the Borrower.



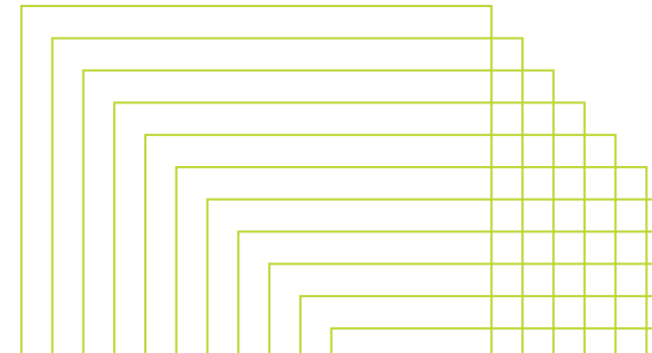
What are typical interest rates?

- The interest rate on the Bonds depends entirely on the credit of the Borrower, or on the credit enhancement provided through a Letter of Credit or a guaranty, if applicable. Bonds will be sold publicly or directly purchased by a Bank or an affiliate of the Borrower. In certain instances, Bonds may be placed with private investors.



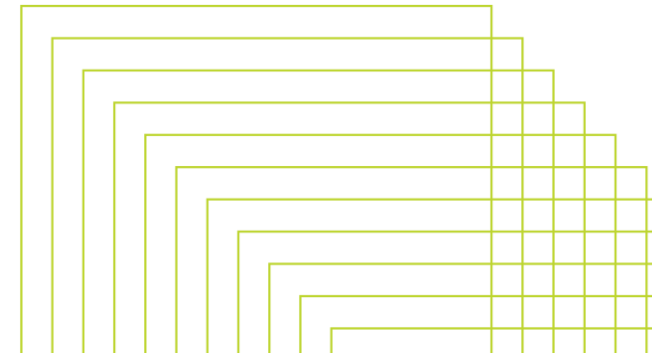
What type of collateral does MBFC require?

- If MBFC issues publicly offered bonds, such bonds will be required to be investment grade credit (typically achieved via an irrevocable direct-pay letter of credit issued by a “rated” U.S. financial institution or a U.S. Branch of a foreign financial institution or the corporate credit rating of the Borrower).
- If the Bonds are purchased directly by a bank, MBFC will not require any additional collateral outside of what is required by the Bank purchasing the Bonds (i.e., leasehold deed of trust, guaranty, etc.).
- If the Bonds are purchased by an Affiliate of the Borrower, no additional collateral is required.



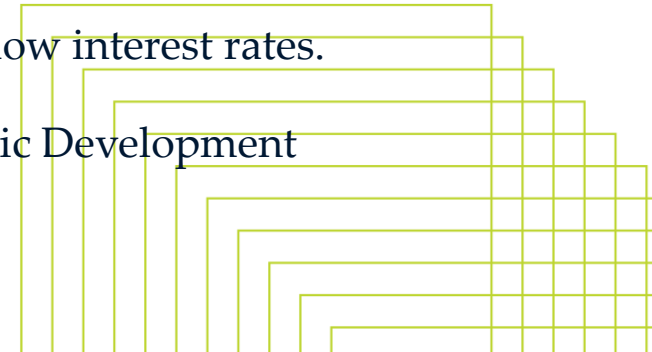
From the time the Project is “induced” by MBFC, how long before Bonds are actually issued?

- Assuming a Bank has provided a Term Sheet/ Commitment Letter, generally 60 – 75 days



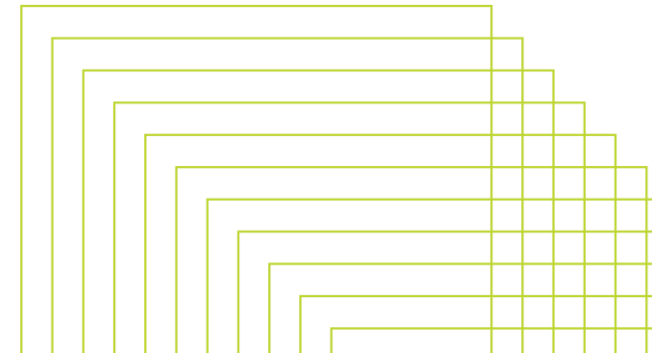
Industrial Development Revenue Bond Program – Tax Exempt

- Through its Tax-Exempt IRB Program, MBFC provides long-term financing at tax-exempt interest rates. The bond issue may be structured as a fixed interest rate or variable interest rate financing. As security for the IRB's, MBFC may require a letter of credit from a qualifying bank or other collateral.
- MBFC is authorized to issue tax-exempt revenue bonds and loan the proceeds thereof to eligible companies pursuant to Miss. Code Ann. §57-10-201 et seq. and §57-10-401 et seq. (1972, as amended).
- Bonds issued under this Tax-Exempt IRB Program may meet the requirements for a Qualified Small Issue Bond as set forth in IRC Section 144(a) or an Exempt Facility Bond as a facility described under IRC Section 142(a). MBFC is further authorized to issue tax-exempt revenue bonds as qualified 501(c)(3) Bonds under the provisions of IRC Section 145 to support non-profit entities.
- The company may finance the eligible project through tax-exempt bond financing at low interest rates.
- The company may be eligible for state income tax credits through the Rural Economic Development Assistance Program and sales/use tax exemptions for project expenditures.



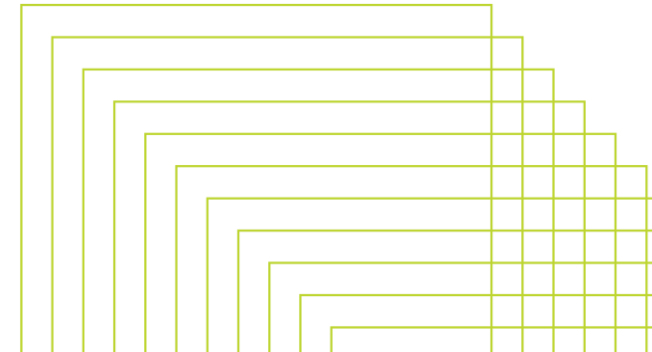
Mississippi Tax Incentives and Savings

- There are many other state law incentives or other incentives that could apply in certain circumstances depending on the nature of the project and whether the business obtains financing through the MBFC. These include RED debt service income tax credits, income tax job credits, and local property tax exemptions.



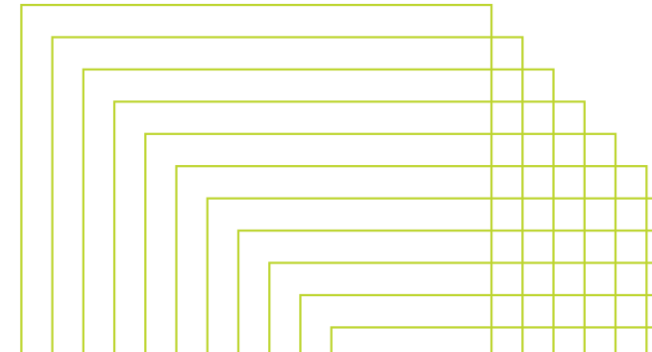
RED Debt Service Income Tax Credits

- Projects financed with MBFC bonds may also be granted credits against the State income tax under the Rural Economic Development (RED) Program. However, “RED” is a misnomer, since it is available throughout the state – not just rural areas, although it is not available to all enterprises that qualify for bond financing. Projects must be approved by MBFC for participation in the RED program.
- The annual RED Credit is the amount of the debt service payments (principal and interest) made for that year under the bonds for the project. It is available for both new facilities and expansions. Unused RED Credits can be carried over for 3 years; are available for the term of the bonds (but not to exceed 25 years for a total of 28 years with carryover); are limited annually to 80% of Mississippi income tax from the project; and can be combined with other credits.



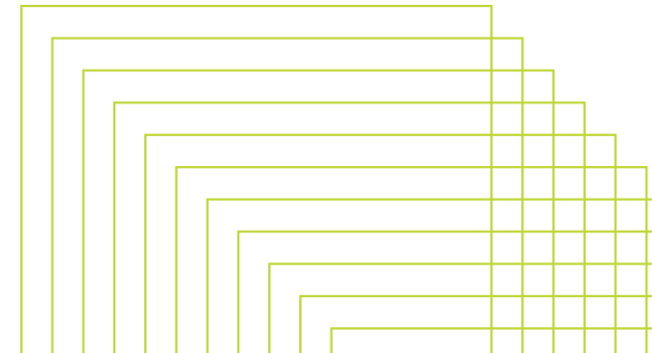
Income Tax Job Credits

- The requirements for qualification and amount of the credit for new jobs vary with the State Tax Commission's annual county designation. All of the State's 82 counties are divided into three equal categories or tiers based on economic criteria. The minimum number of net new full-time jobs required in a single year in order to qualify for new job credits varies by category. Qualification of each project must be pre-certified as "qualified" by the State Tax Commission.
- Once the minimum number of jobs is created, the enterprise will be eligible for an annual new jobs credit for each net new full-time employee of 2.5%, 5% or 10% of the payroll for the net new jobs depending on the county. The credit can offset 50% of the business' annual State tax liability, and unused credits may be carried forward for 5 years.



Other Job Incentives

- The “Mississippi Advantage Jobs Act” provides quarterly incentive payments from the State to qualified business or industry for a period generally not to exceed 10 years. The amount of the incentive is directly related to jobs created as a result of an establishment locating in the State.



Exemptions from Property Taxes

- All are discretionary with local taxing authorities (city and/or county governing authorities). The new enterprise/additions exemption exempts all real and tangible personal property (including raw materials and work-in-process inventories but excluding finished goods inventories and automobiles and trucks) from ad valorem real and personal property taxation, *except* taxes for school district purposes. It covers new enterprises, additions to or expansion of an enterprise, replacements of equipment used in connection with or necessary to the operation of the enterprise, and renovations of an existing facility (at least in conjunction with an otherwise qualifying expansion of such enterprise). It is available for a maximum of 10 years and is non-renewable but is available annually.
- All real and personal property purchased with MBFC bond proceeds (whether taxable or tax-exempt) is also exempt from property taxes. However, there are no property tax advantages over the new enterprise/additions exemptions and these exemptions are still subject to the approval of the appropriate local taxing authority. As a general rule, even if bonds are issued, new enterprise/additions exemption should still be obtained.
- There is also a free port exemption which is applicable to the portion of finished goods shipped out of Mississippi. Unlike any other type of property tax exemptions, the free port exemption can be granted to include an exemption from school taxes and for longer than a 10-year term.

SUMMARY OF POTENTIAL FINANCING OPTIONS

Presented below are four different options for project financing which may be utilized singly or in combination. Significant features of the options for the Project are shown on the chart and illustrations of possible financing structure are shown on succeeding pages.

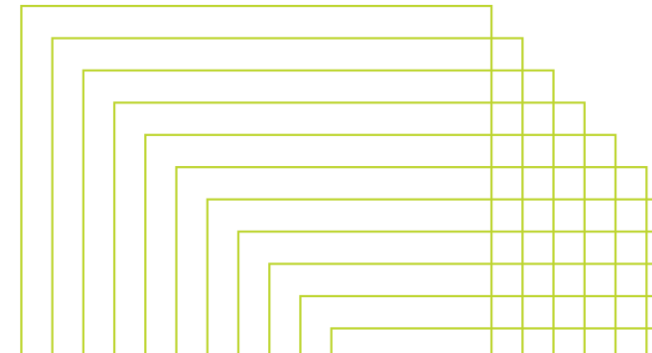
#1: Standard commercial bank loan for comparison purposes only

#2: Affiliate purchase of MBFC bonds – simplest bond option

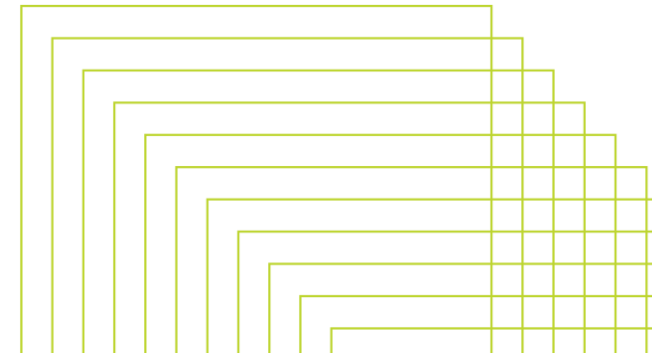
#3: Direct bank purchase of MBFC bonds

#4: Use of Letter of Credit to publicly market MBFC bonds

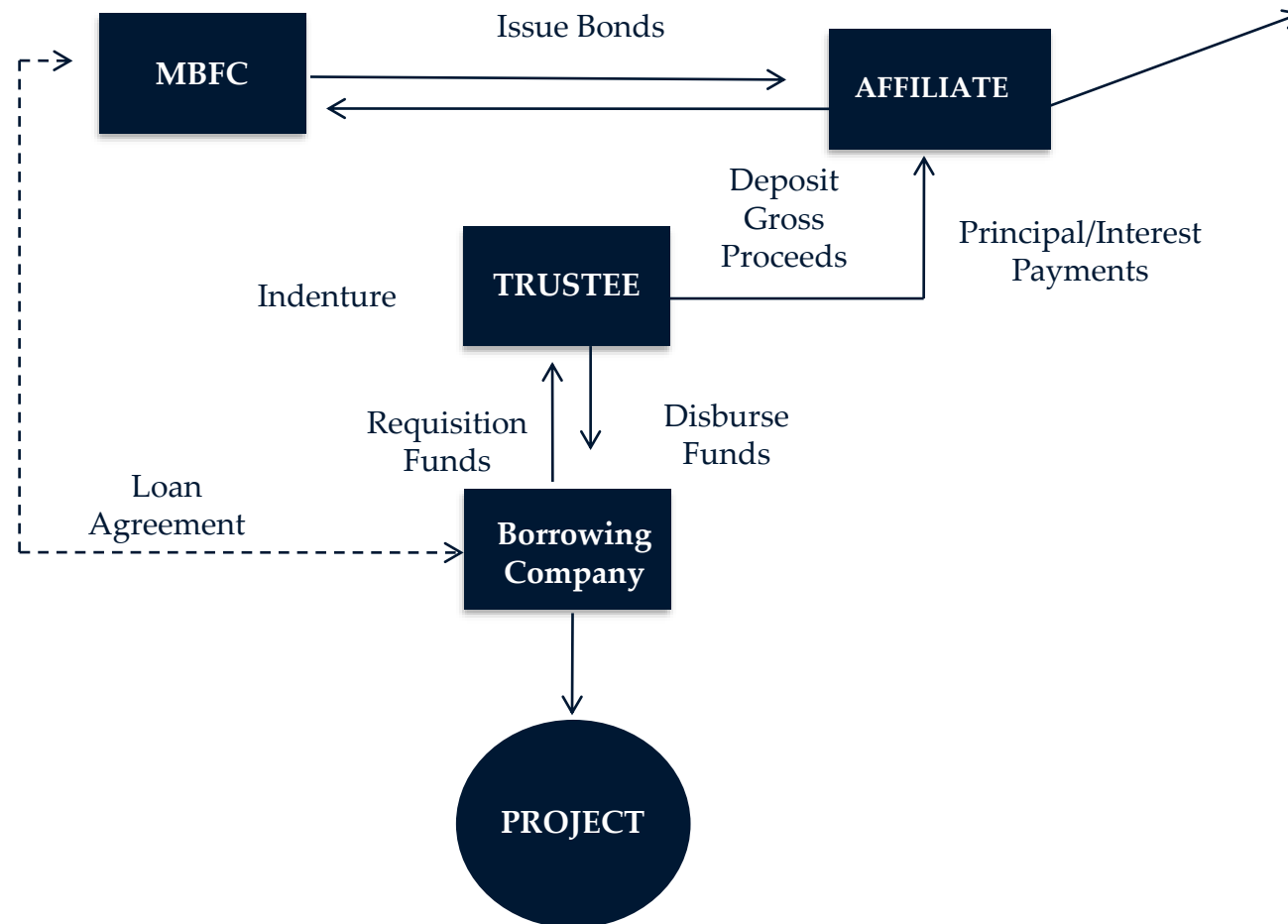
	1	2	3	4
	Commercial Bank <u>Loan</u>	<u>Affiliate Purchase</u>	<u>Direct Bank Purchase</u>	<u>Letter of Credit</u>
Sales/use tax exemption?	No	Yes	Yes	Yes
State income tax credit (RED)?	No	No	Yes	Yes
Draw Down Proceeds as needed?	Yes	Yes	Yes	No



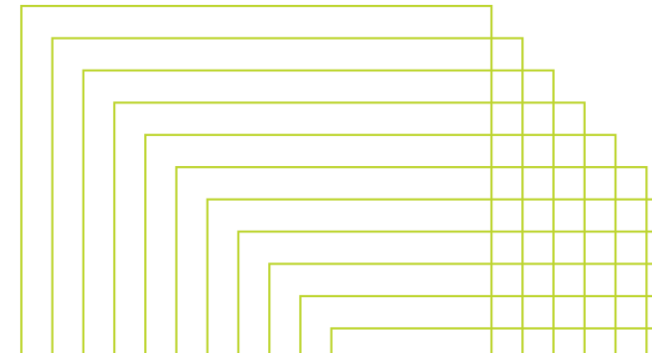
Commercial Bank Loan



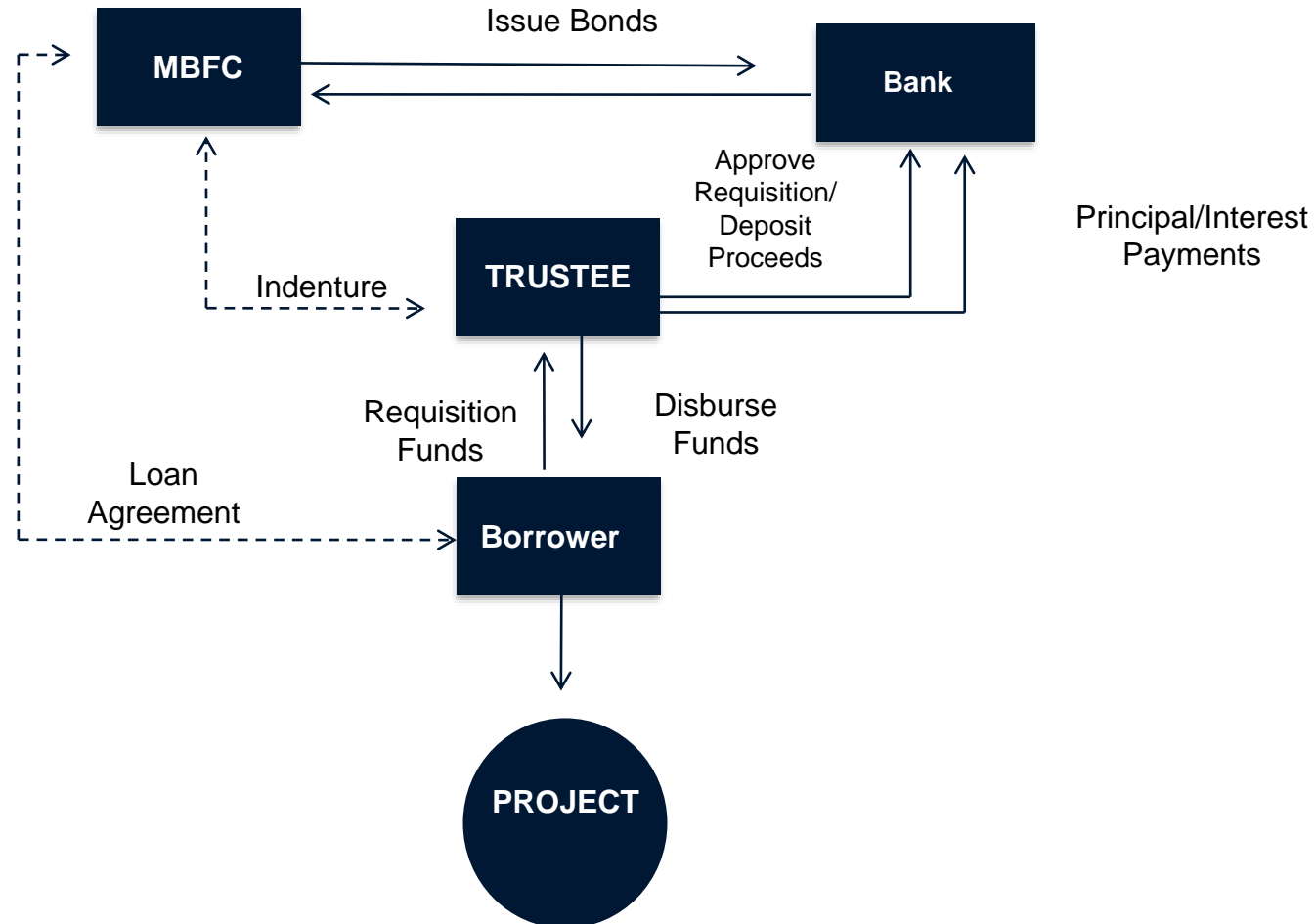
Affiliate Purchase through MBFC Only State Sales Tax incentive – No State Income Tax Credit (RED)



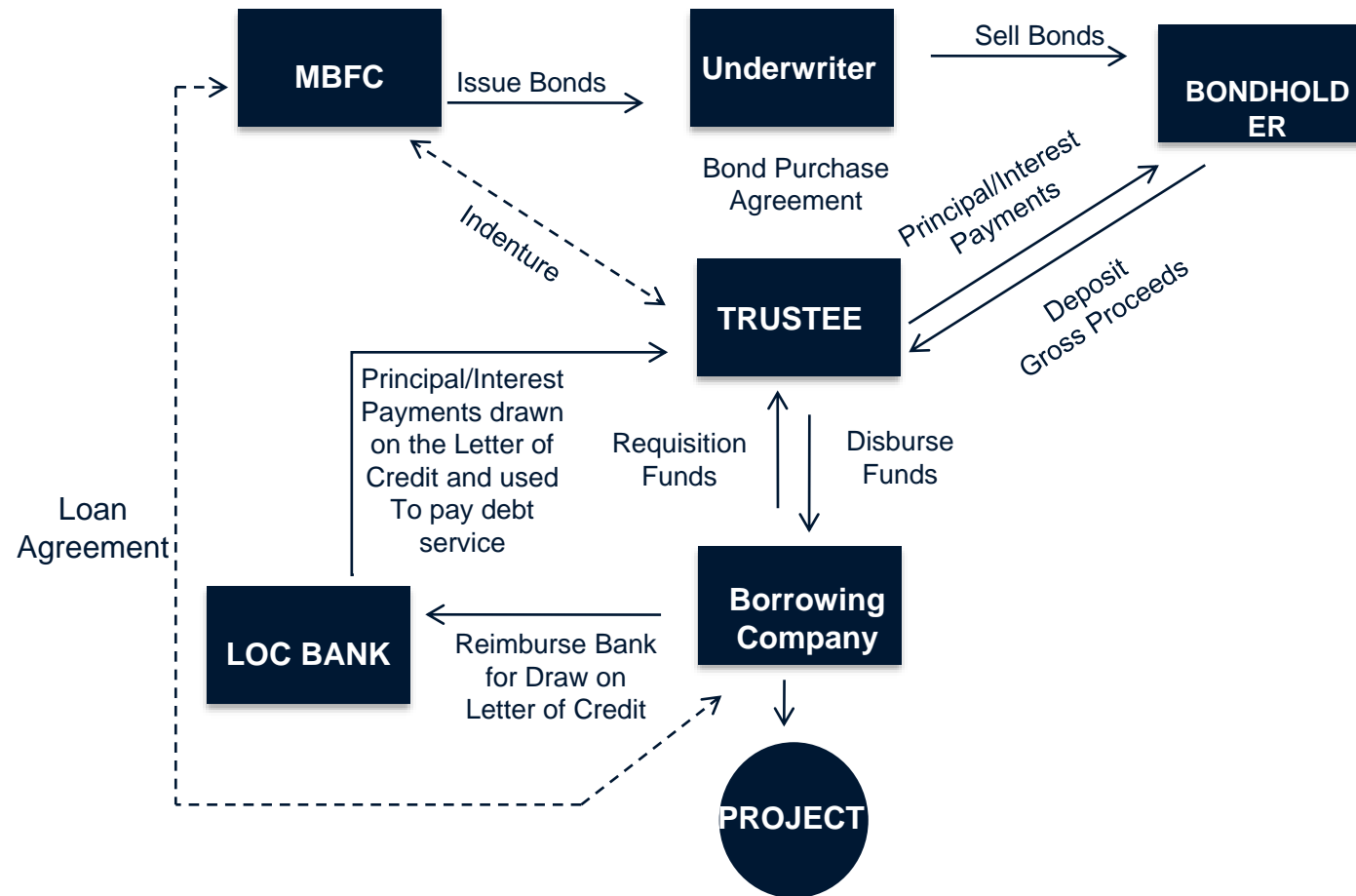
Cash used by Affiliate to buy bonds from MBFC is funded to Affiliate from company equity or other sources such as commercial bank loan



Direct Bank Purchase through MBFC State Sales Tax incentive and State Income Tax Credit (RED)

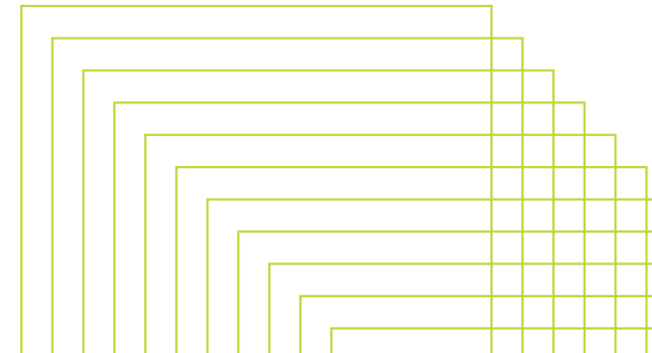


Letter of Credit through MBFC State Sales Tax incentive and State Income Tax Credit (RED)



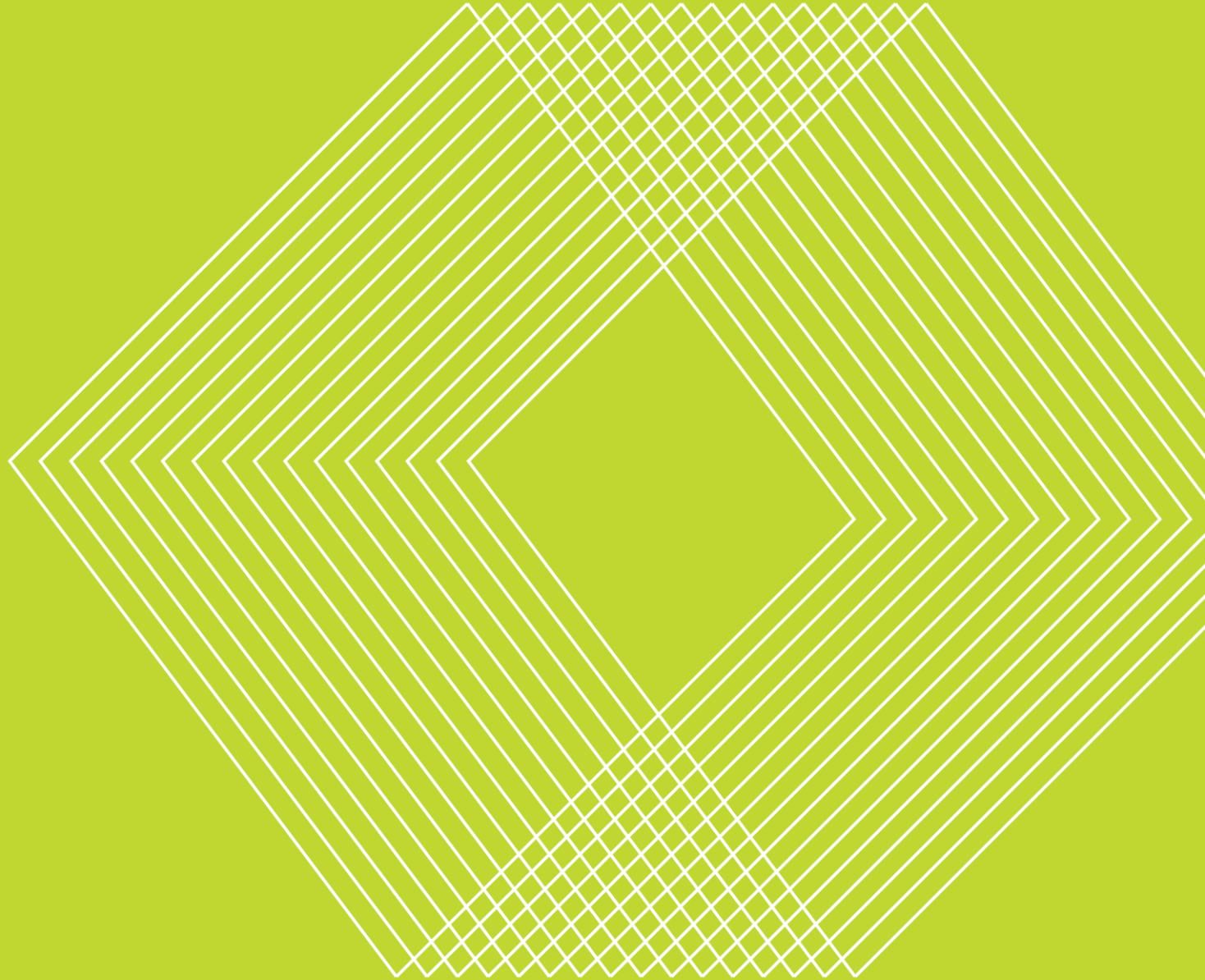
What needs to happen in order to move forward?

- Formal discussions between the Borrower and the respective Banks
- Secure commitment from a Bank
- Begin negotiating the terms of the financial commitment
- Receive a Final Term Sheet outlining the “terms of the deal”

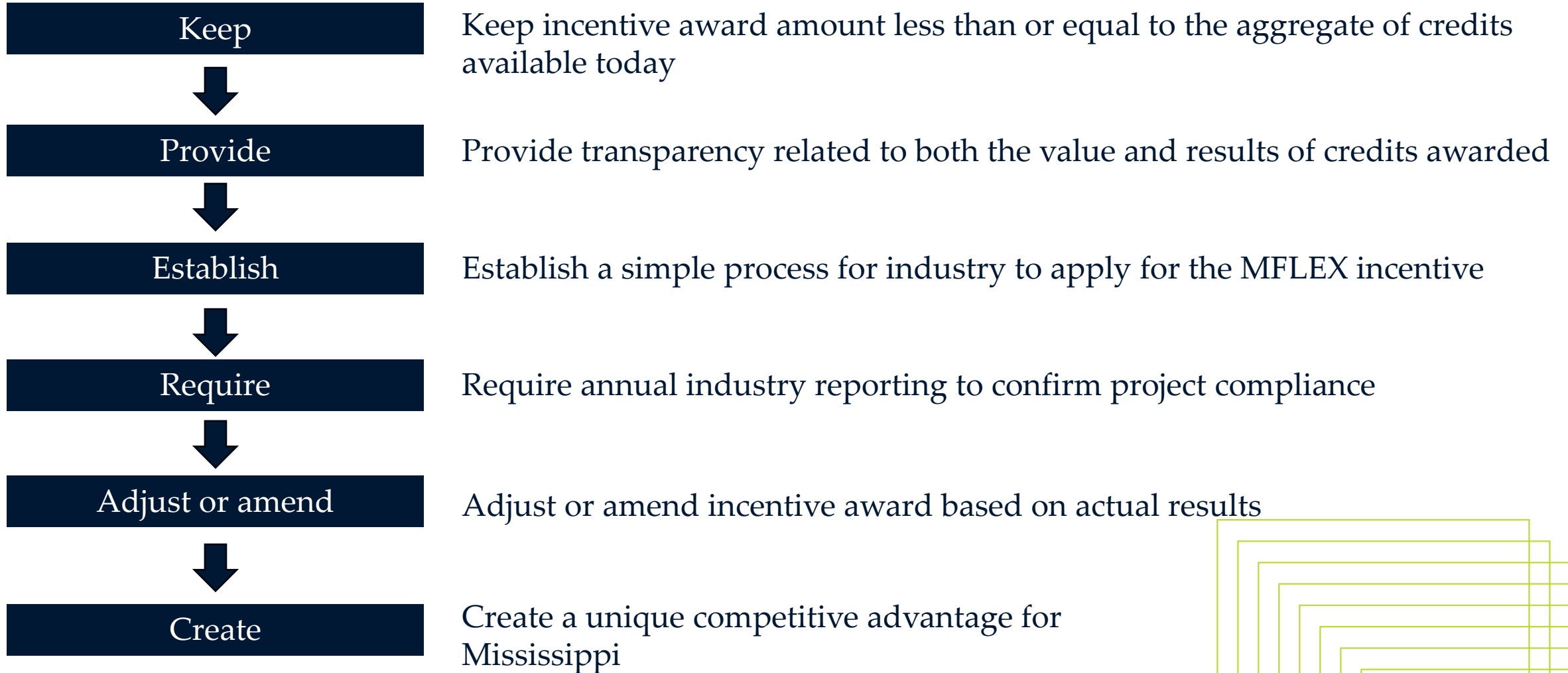


MFLEX

Incentive

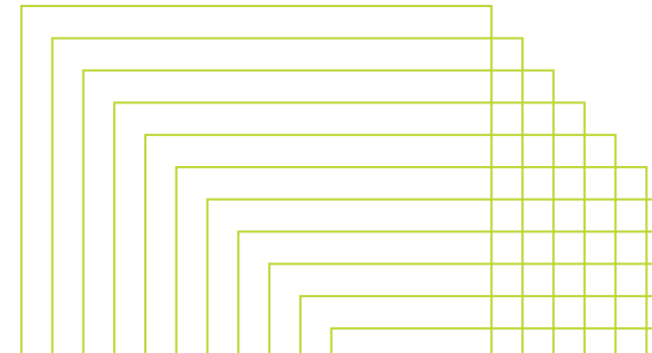


Goals



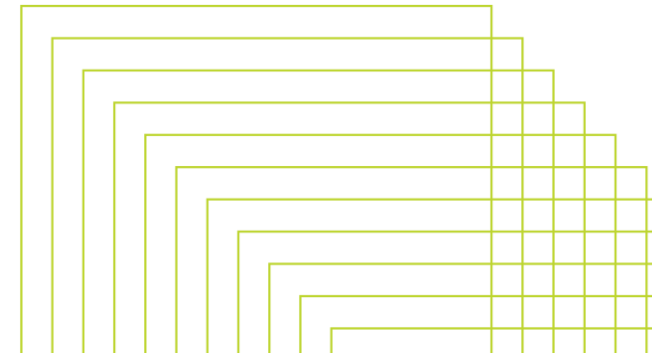
Flexibility

- Mississippi and most other states provide credits against specific state-level taxes.
- Most state programs require multiple applications which may make quantifying the value of credits more complicated.
- RESULT: the state offers the credit, but companies may assign a significant discount to the value of these credits due to uncertainties and complexity.
- MFLEX is a single tax credit that can be awarded by the MDA and then utilized by a company to offset most types of state tax liability.



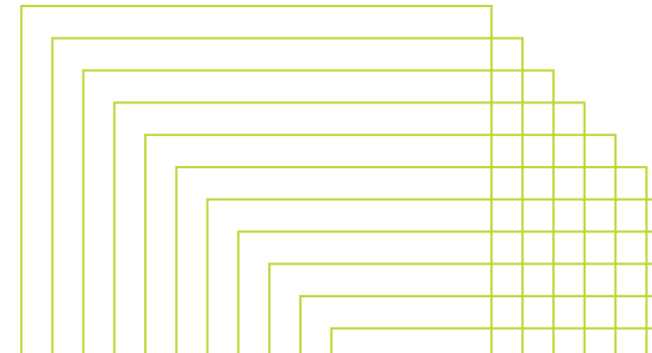
Eligibility

- Creation of at least 10 new, full-time jobs
- A new capital investment of at least \$2.5 million



Eligibility

1. Manufacturing, remanufacturing, assembly, processing and/or refinery enterprise
2. Warehouse and/or distribution enterprise
3. Research or research and development enterprise
4. Regional or national headquarters enterprise
5. Air transportation and/or maintenance enterprise
6. Data/information processing enterprise
7. Technology intensive enterprise
8. Telecommunications enterprise
9. Data center enterprise



Calculation of MFLEX incentive value:

1.5%

Of the total purchase price, sales price or value, including installation of all **manufacturing equipment** or processing machinery purchased, leased or moved into the state for the project



7%

Of the total purchase or sales price or value including installation costs of all **non-manufacturing equipment** or processing machinery purchased, leased or moved into the state for the project



2%

Of the total contract price or compensation paid to any contractor for building construction or repair



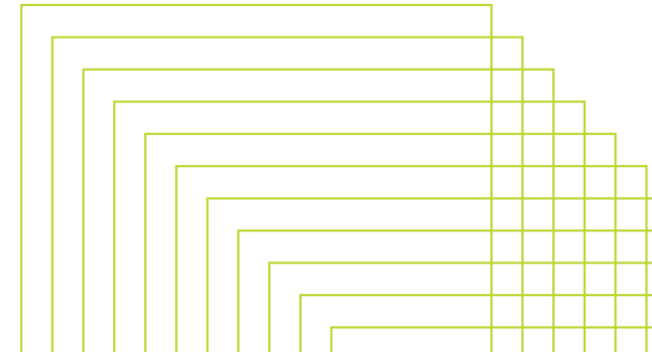
15%

Of the product derived by multiplying the average employer wage by the number of new full-time jobs if the average employer wage is equal to or more than 75% of the average state or county wage



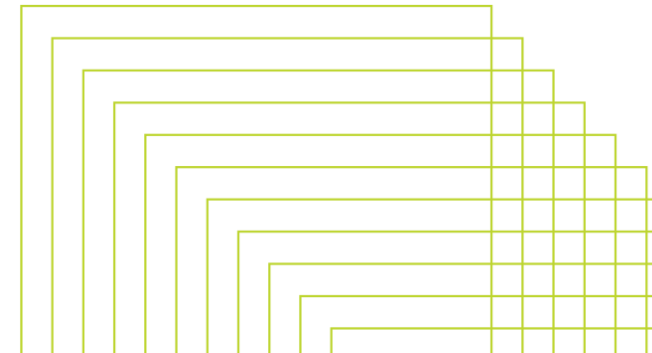
30%

Of the product derived by multiplying the average employer wage by the number of new full-time jobs if the number of new full-time jobs is greater than 50, the average employer wage is equal to or more than 110% of the average state or county wage, and healthcare benefits are offered to full-time employees. If this qualified project is not a warehouse distribution or manufacturing facility but is another eligible business, the number of new full-time jobs must be greater than 25, the average employer wage must be equal to or more than 125% of the average state or county wage and healthcare benefits must be offered to all full-time employees.



Calculation of MFLEX incentive value: (cont.)

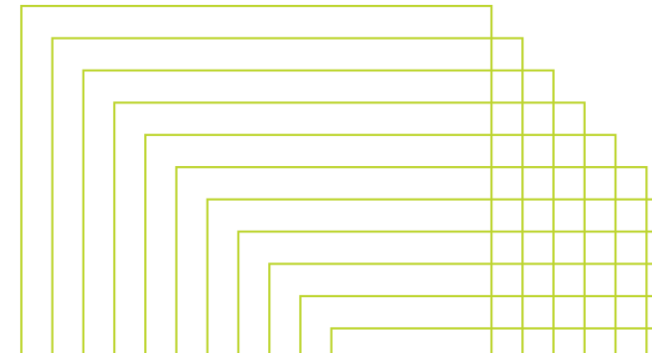
- If the qualified project is financed by Mississippi Business Finance Corporation issued bonds, the MFLEX amount calculated removes the 1.5% of manufacturing equipment, 7% on non-manufacturing equipment, and 2% on the contractor's price.
- All costs used in the MFLEX incentive calculation must have been incurred after the certification date.
- Average employer wage = qualified annual payroll for all new full-time jobs in Mississippi divided by the number of new full-time jobs.



Application Process

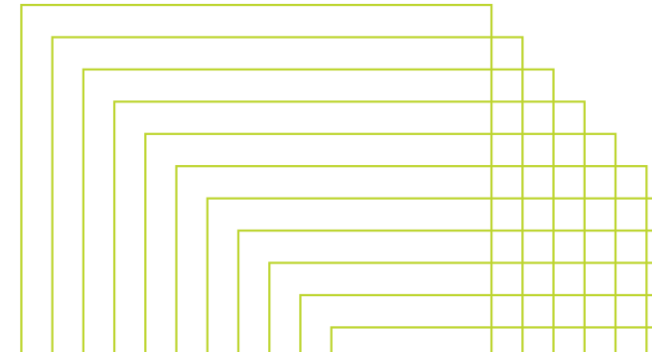
A single application would be submitted to the MDA containing, at a minimum, the following:

1. A brief overview of the applicant's business or industry, including its formation type, date of incorporation or formation, and the location of its global headquarters, together with its principal place of business in the state and any other facilities located in the state.
2. The location selected project site(s)
3. A detailed description of the proposed project
4. The amount of the qualified investment proposed to be made as a result of the proposed project
5. If the proposed project will be an expansion of an existing business or industrial operation, the current number of full-time jobs
6. The number of new full-time jobs proposed to be created as a result of the proposed project



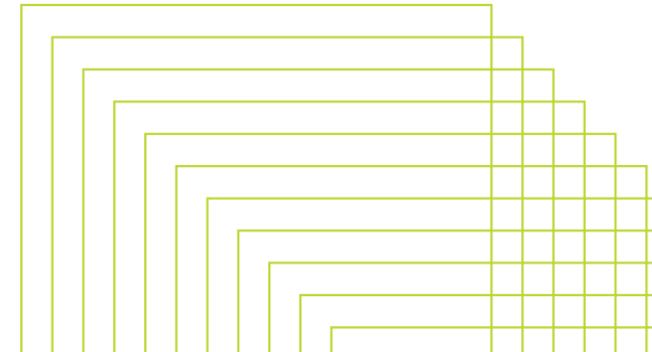
Application Process (Cont.)

7. The average annual salary/wage proposed to be paid by the applicant for new full-time jobs disclosed in the application
8. A description of benefits to be made available to employees, as well as any employees who would not qualify
9. The length of time necessary for the applicant to meet its qualified investment and new full-time job creation objectives
10. A list of all affiliates of the qualified business or industry known at the time of the application, including the Federal Employer Identification Number for each such affiliate, which have or are expected to have any state tax liability that may be offset by MFLEX tax incentives awarded to the qualified business or industry.
11. An acknowledgement that the applicant, if awarded an MFLEX tax incentives by the MDA, will be required to provide the annual report prescribed by the MFLEX Act to demonstrate the actual amount of its qualified investment, including actual expenditures on manufacturing machinery, non-manufacturing equipment and construction of real property, and the number and average salary of new full-time jobs created and maintained as a result of the project.
12. Any other information as may be requested by MDA.



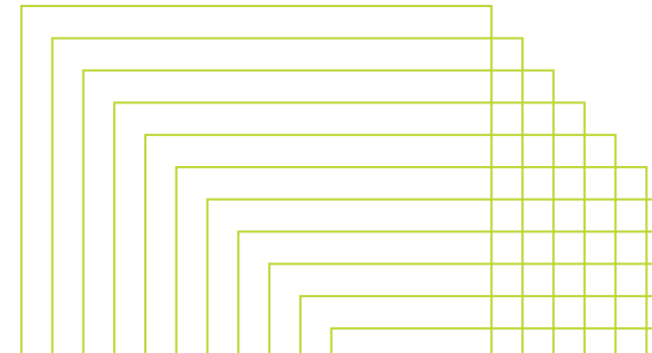
Project Certification Process

1. MDA will evaluate each application and determine eligibility
2. Upon approval, MDA will issue a certification:
 - A. Designating the projects as “qualified” for MFLEX;
 - B. Awarding the initial MFLEX incentive amount calculated per the statutory formula; and
 - C. Imposing all statutory and any discretionary conditions.



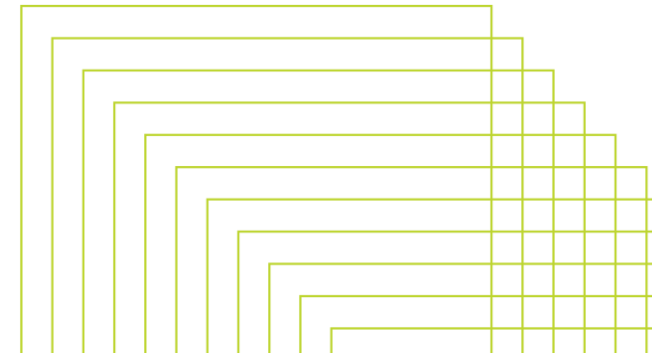
MDA Agreements

- **Each qualified business or industry must enter into an agreement with the MDA which sets out, at a minimum:**
 - A. The company's agreement to provide an annual report to the MDA stating the actual amount of investment, including actual expenditures on manufacturing machinery, non-manufacturing equipment and building construction, the number and average wages of new full-time jobs created and maintained as a result of the project, and any other relevant information as may be required by the MDA
 - B. Terms for readjustment or recapture of all or a portion of the MFLEX tax incentive awarded if the applicant:
 - Fails to satisfy the minimum job creation requirement, if applicable
 - Fails to satisfy the minimum investment requirement, if applicable
 - Fails to satisfy any other additional requirements that are imposed by the MDA
 - C. Agree to provide additional certifications regarding annual reporting, limits on transfer of credits and compliance with all state and local laws.



The Hand-Off to DOR

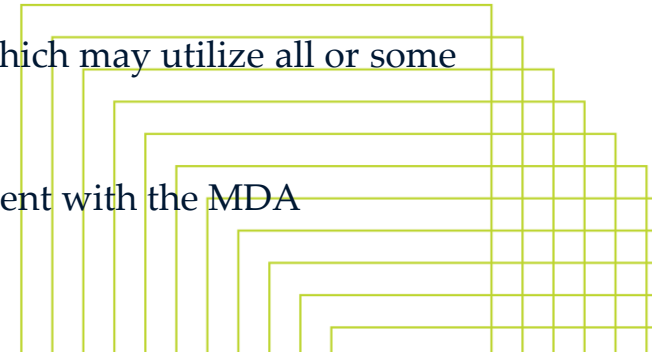
- Upon certifying a company and project as eligible for, and awarding, an MFLEX tax incentive, the MDA will forward the certification along with any other necessary information to the Department of Revenue so that the MFLEX tax incentive awarded can be recorded by the Department of Revenue and used to verify each state tax credit subsequently taken by the company or its approved affiliates.



Annual Report Process

Each awardee must submit an annual report to the MDA, disclosing, at a minimum, the following information:

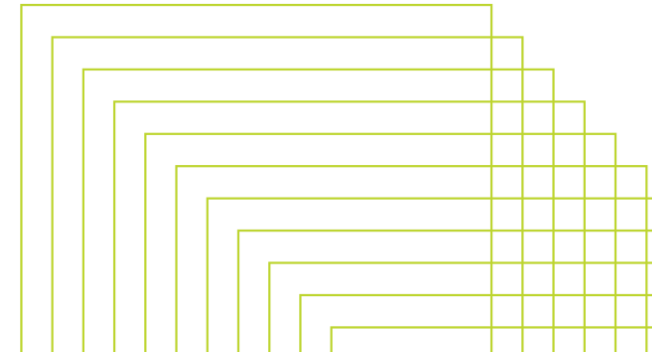
1. The total qualified investment made for the reporting year, including a breakout of actual expenditures for manufacturing machinery, non-manufacturing equipment and construction contracts to establish and equip the qualified economic development project
2. If applicable, the total number of full-time jobs at the time for certification for MFLEX
3. The total number of people employed in new full-time jobs as of the last day the year preceding the reporting year
4. The total number of people employed in new full-time jobs as of the last day of the reporting year
5. The average annual salary/wage per full-time employee for the reporting year
6. The percentage and number, as of the last day of the reporting year, of new full-time employees who are eligible for and offered a health insurance coverage funded in whole or in part by the qualified business or industry
7. A description of employee benefits, as well as a description of any employees to whom such benefits are not made available (e.g., part-time employees)
8. A list of affiliates of the qualified business or industry, including the FEIN each such affiliate, which may utilize all or some portion of the MFLEX tax incentives awarded to the qualified business or industry
9. Any other information required to be submitted to the MDA per the Company MFLEX Agreement with the MDA



Annual Evaluation Process

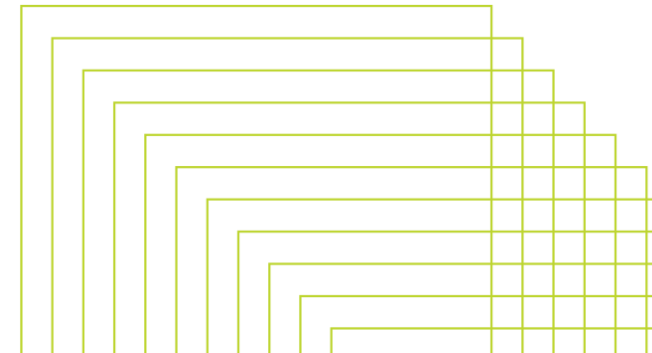
The MDA will evaluate each awardee's progress and compliance to determine if an award adjustment is warranted:

1. An MFLEX award may be subject to suspension or revocation for an uncured failure to submit an annual report.
2. An MFLEX award may be subject to adjustment (an increase or reduction) based upon the actual investment made and/or jobs created.
3. The MDA will issue an MFLEX recertification each year for a company following receipt of its annual report, which reaffirms the current award or makes an adjustment based on actual performance.
4. A copy of each recertification will be provided to the DOR.
5. This process permits the MDA to annually measure and report on each company's actual performance compared to its commitments and incentive utilization.



MFLEX Process Recap

- **Step 1:** Initial MFLEX Estimate to Industry
- **Step 2:** Application to MDA
- **Step 3:** Certification by MDA
- **Step 4:** Tax Returns filed claiming credits issued on MDA Certificate
- **Step 5:** Company Files Annual Reconciliation Report to MDA
- **Step 6:** Annual Reconciliation approved by MDA with Credit “True Up”
- **Step 7:** MDA Annual Transparency Reporting



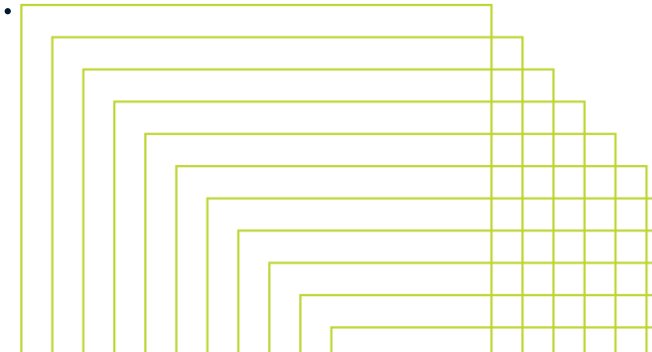
MFLEX plus Bond Exemption

	Estimated Taxes (5-Year Estimate)	IRB Tax Incentives	MFLEX Credit Application	Estimated Taxed Paid by Company (5-Year Estimate)
Sales/Use Tax	\$4,472,663	\$4,472,663		\$0
Withholding Tax	\$1,088,049		\$1,088,049	\$0
Franchise Tax (estimate) (until phased-out)	\$1,000,000		\$1,000,000	\$0
Income Tax (assumes \$9mm/year income and 5% tax rate)	\$2,250,000	\$1,800,000	\$360,061	\$89,939
SUM	\$8,810,712	\$6,272,663	\$2,448,110	\$89,939

MFLEX plus Bond Exemption (cont.)

Notes to Estimates:

1. Sales tax calculation includes tax for all equipment and the materials portion of the construction contract
2. The Withholding calculation assumes a standard withholding rate of 4%. This number will vary slightly based on withholding elections made by employees.
3. The Franchise tax calculation is simply an estimate to show how MFLX credits can be used to offset all taxpayer liabilities paid to the MS Department of Revenue.
4. The income tax liability is an estimate for purposes of this example.

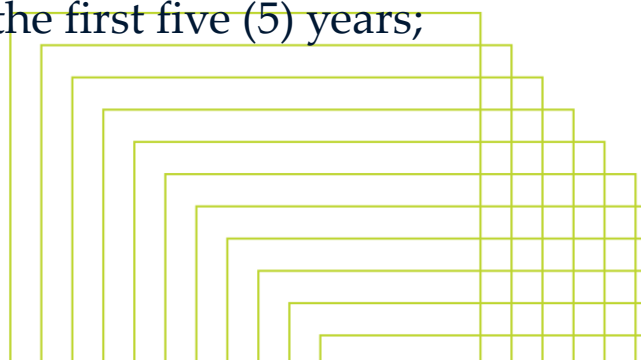


Bond Exemption Only (No MFLEX)

	Estimated Taxes (5-Year Estimates)	IRB Tax Incentives	Advantage Job Tax Credit and Job Tax Credit	Estimated Taxed Paid by Company (5-Year Estimates)
Sales/Use Tax	\$4,472,663	\$4,472,663		\$0
Withholding Tax	\$1,088,049		\$1,088,049	\$0
Franchise Tax (estimate) (until phased-out)	\$1,000,000			\$1,000,000
Income Tax (assumes \$9mm/year income and 5% tax rate)	\$2,250,000	\$1,800,000	\$450,000	\$0
SUM	\$8,810,712	\$6,272,663	\$1,538,049	\$1,000,000

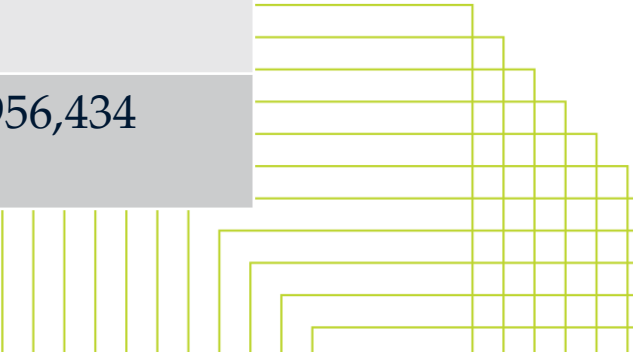
Bond Exemption Only (No MFLEX)

Notes to Estimates:

1. Sales tax calculations includes tax for all equipment and the materials portion of the construction contract.
 2. The Withholding calculation assumes a standard withholding rate of 4%. This number will vary slightly based on withholding elections made by employees.
 3. The Franchise tax calculation is simply an estimate to show how MFLEX credits can be used to offset all taxpayer liabilities paid to the MS Department of Revenue.
 4. The Income tax liability is an estimate for purposes of this example.
 5. Only \$450,000 of the total of \$2,720,122.50 Job Tax Credits would be utilized in the first five (5) years; the remainder can be carried forward for 5 years.
- 

MFLEX Only

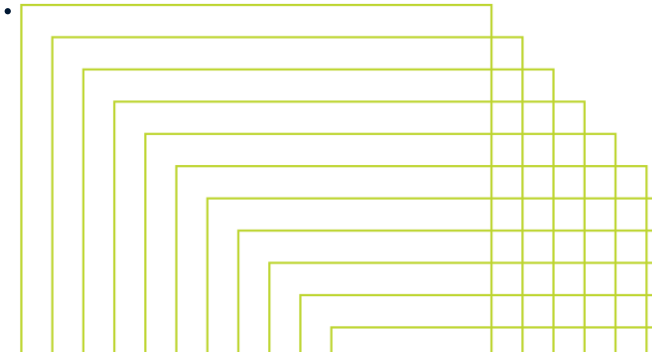
	Estimated Taxes (5-Year Estimates)*	MFLEX Credit Application	Estimated Taxes Paid by Company (5-Year Estimates)
Sales/Use Tax	\$4,472,663	\$4,472,663	
Withholding Tax	\$1,088,049	\$1,088,049	
Franchise (estimate) (until phased-out)	\$1,000,000	\$1,000,000	
Income Tax (assumes \$9mm/year income and 5% tax rate)	\$2,250,000	\$293,566	\$1,956,434
SUM	\$8,810,712	\$6,854,278	\$1,956,434



MFLEX Only

Notes to Estimates:

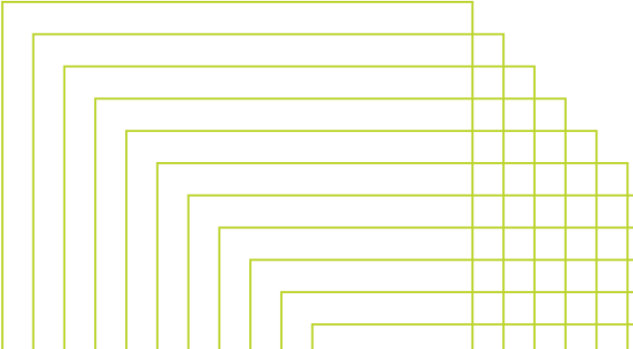
1. Sales tax calculation includes tax for all equipment and the materials portion of the construction contract.
2. The Withholding calculation assumes a standard withholding rate or 4%. This number will vary slightly based on withholding elections made by employees.
3. The Franchise tax calculation is simply an estimate to show how MFLX credits can be used to offset all taxpayer liabilities paid to the MS Department of Revenue.
4. The income tax liability is an estimate for purposes of this example.



Inputs for Incentive Calculator

MFLEX Calculation for XYZ Corp.

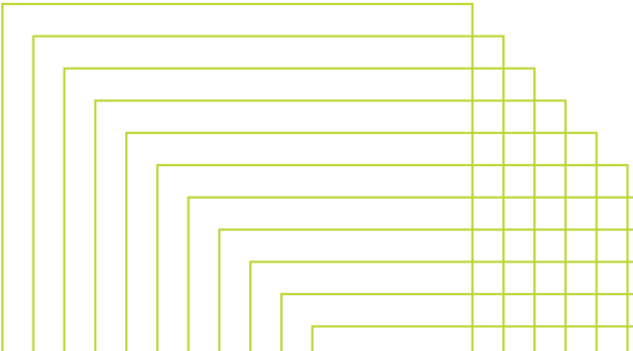
INPUTS:			
Wages	\$	56,085	
Number of Jobs		97	
Manufacturing Equip	\$	204,146,936	
Non-Mfg Equip	\$	8,537,639	
Construction Contract	\$	37,316,425	
Average County Wage	\$	35,274	
Average State Wage	\$	42,476	
Required Salary for ADJ	\$	38,801	
Taxes without Incentives			
Sales			
MFG	\$	3,062,204	\$4,472,663
Non Mfg	\$	597,635	
Contractor (Material Only)	\$	812,824	
Withholding			
	\$	1,088,049	



MFLEX Calculation – No Bond Financing

MFLEX Calculation for XYZ Corp.

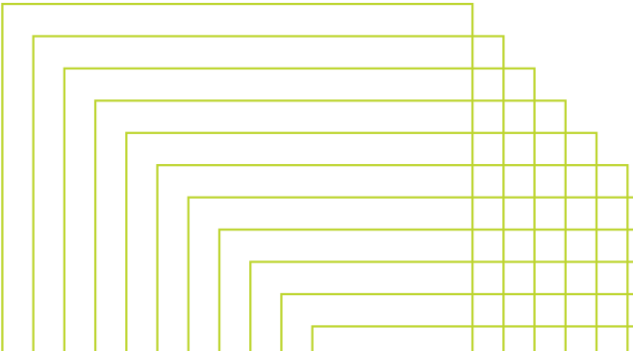
JTC		\$	816,036.75
ADV Job		\$	1,632,073.50
MFG		\$	3,062,204.04
Non-Mfg		\$	597,634.73
Const		\$	746,328.50
Total MFLX Credit		\$	6,854,277.52



MFLEX Calculation – With Bond Financing

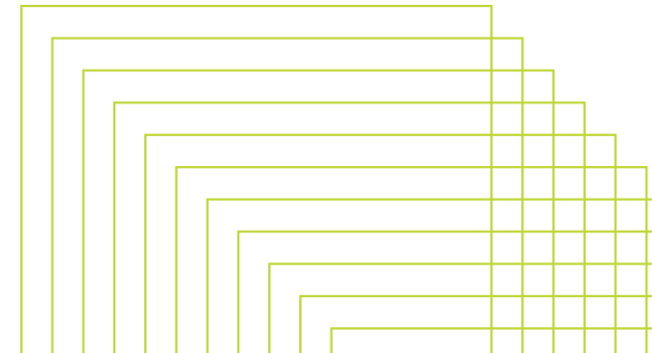
MFLEX Calculation for XYZ Corp.

JTC		\$ 816,036.75	
ADV Job		\$ 1,632,073.50	
Total MFLX Credit		\$ 2,448,110.25	





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Questions?

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*If you have a question that you'd like to ask, please use the **Q&A Button** at the bottom of your screen.*

CPE certificates will be issued approximately two weeks after the presentation.