



Connect. Engage. Impact.



Annual Conference Scottsdale, AZ

**Adding Value through Tax
Credits and Incentives**

October 25, 2022

4:45 pm - 5:45 pm



Agenda

- Introduction of Panel
- How Does Tax Get a Seat at the Table
- Federal Hot Credits
- SALT – Types of Credits & Incentives
- Incentives Management Technology
- Hot Topic – AUDIT RISK
- Wrap Up + Q&A

Moderator



Mitch Trager
FORVIS



Kerstin Nemec
Synergi Partners

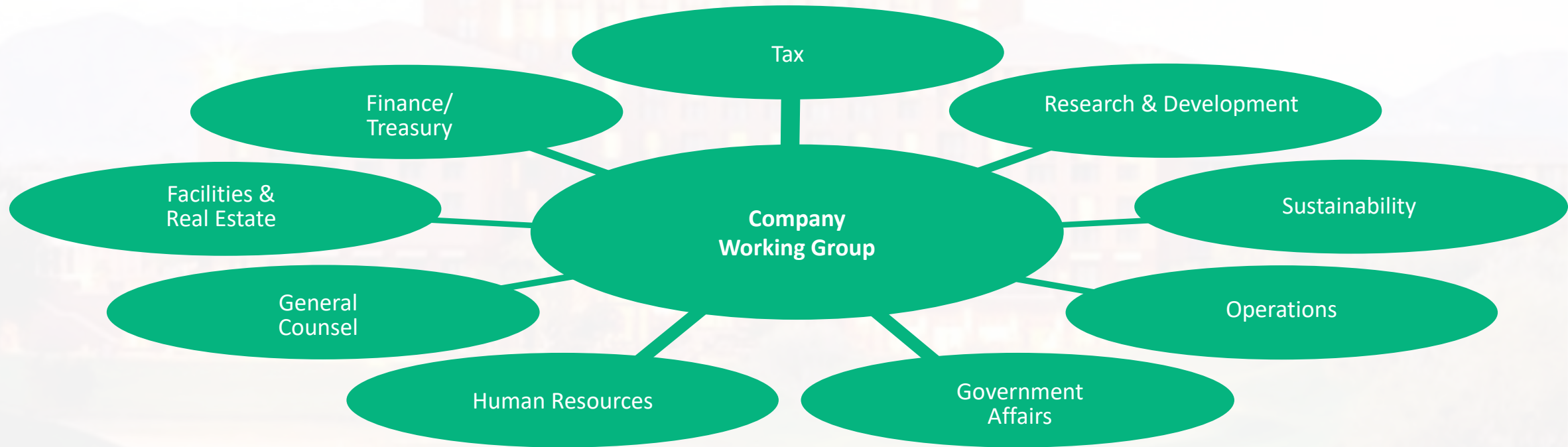


Ewa Cater
ADP



Matt Kelley
Experian Employer
Services

Incentive Selection Internal Stakeholders



Tax to add value must be able to get a seat at the table prior to a planned investment. This takes an effort by Tax to position the team to be successful and to make contacts that it may not have otherwise made from multiple business units within the global organization.

ERC Overview

Refundable Tax Credit

- Refundable Payroll Tax Credit based on Qualified Wages
- Taken Against Employer Federal Payroll Tax Deposit (Not FUTA)
- Refunded to Taxpayer Regardless of Liability

\$26,000 Credit Max

- **50%** of up to \$10,000 in qualified wages in **2020 (Annual Wage Cap)**
- **70%** of up to \$10,000 in qualified wages in **2021 (Quarterly Wage Cap)**
- **\$5K 2020 + (\$7K x 3Q 2021) = \$26K potential**

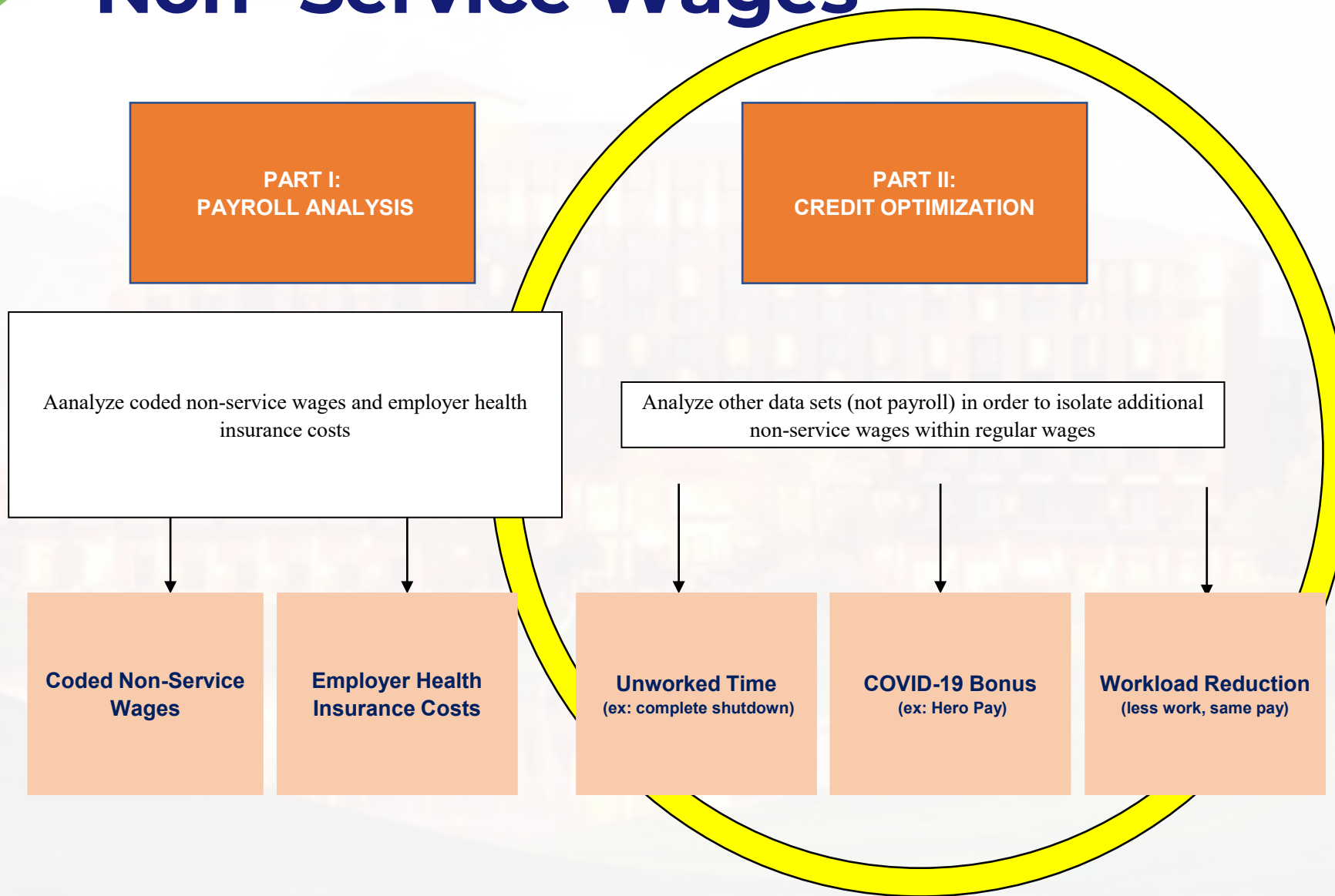
Eligible Employers

- Full or Partial Suspension of Business Operations due to a governmental order; **OR**
- Significant Decline in Gross Receipts (50% in 2020; 20% in 2021)

Government Orders Test (“GOT”)

- The operation of the trade or business ... is fully or partially suspended during the calendar quarter due to orders from an appropriate governmental authority limiting commerce, travel, or group meetings (for commercial, social, religious or other purpose) due to [COVID-19].
- Note:
 - GOT OR GRT
 - Full OR partial
 - Suspension NOT Shutdown
 - NO economic basis in this test for eligibility
 - Government Orders can consist of OSHA regulations, DOT regulations, etc.

Non- Service Wages



What is the Work Opportunity Tax Credit

Work Opportunity Tax Credit (WOTC)

- Rewards employers for new hires who fall into various target groups.
- The program has been in place since the mid-90's.
- WOTC has been enhanced and expanded several times over the past 20+ years.
- Credits are applied to Federal tax liability

New Hire Screening and Application

- Job applicants take a brief ~1 minute survey to determine eligibility
- Tax credit applications must be submitted to the State Workforce Agency within 28 days of the new hire's start date

WOTC Target Groups

The goal of the Work Opportunity Tax Credit program:

- Incentivize workplace diversity
- Facilitate access to good jobs for American workers

The WOTC program:

- Enables workers to move from economic dependency into self-sufficiency by earning a steady income
- Become contributing taxpayers



High Turnover Industry

Moderate Turnover Industry

Eligibility Rate & Average Credit

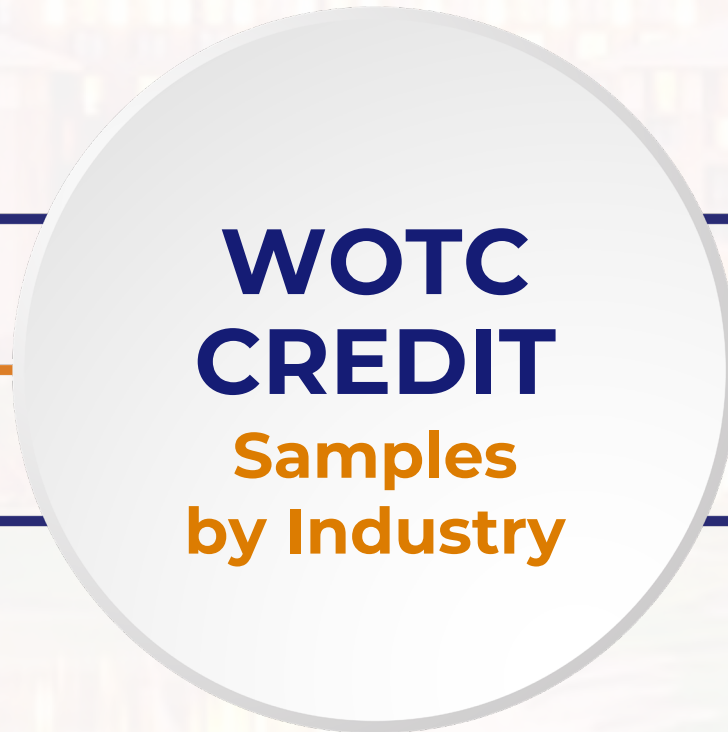
STAFFING
24% TO 31%
\$600 TO \$900



RESTAURANTS
18% TO 32%
\$1,250 TO \$1,500



RETAIL
17% TO 23%
\$1,170 TO \$1,350



MANUFACTURING
16% TO 21%
\$1,850 TO \$2,150



TRANSPORTATION
15% TO 19%
\$1,800 TO \$2,100



HEALTHCARE
16% TO 25%
\$1,600 TO \$2,200



Eligibility Rate & Average Credit

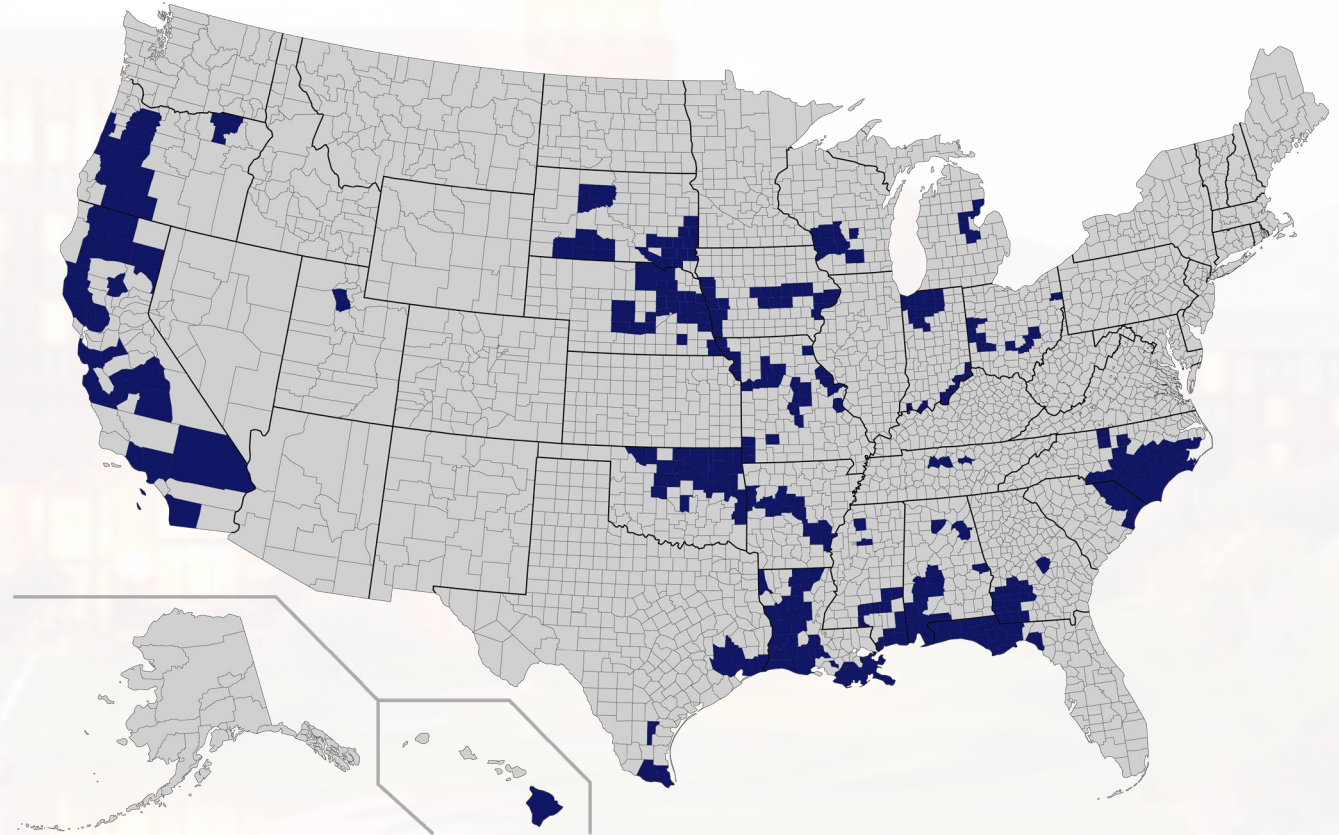
Disaster ERC- History

- 2005: Gulf Opportunities Zone / Go-Zone (Katrina, Rita & Wilma)
 - 2007: Kanas Tornados
 - 2008: Midwest Disasters
 - 2017-2018: California Wildfires
- 2017: Florida, Georgia, Texas & Puerto Rico Storms (Harvey, Irma, Maria)
- 2018 – 2019: Hurricanes Florence & Michael + other natural disasters (AL, AR, IA, MO, MS, NE, OH, OK, SD, TX)
 - 2020: Hurricanes, Wildfires + other natural disasters (AL, CA, FL, IA, LA, MI, MS, OR, PR, SC, TN, UT)
- 2021: Hurricanes, Wildfires + other natural disasters (AL, AR, CA, CO, CT, KY, LA, MI, MS, NC, NJ, NY, OK, PA, TN, TX, WV)
 - 2022 : Hurricanes Fiona Ian



Disaster ERC- Overview

An eligible employer who continued to pay or incur wages after the employer's business became inoperable because of damage from a qualifying major disaster may be able to claim a credit equal to 40% of up to \$6,000 (*i.e.* \$2,400) of qualified wages paid to or incurred for each eligible employee.



Signed into law December 20, 2019 – The Disaster Tax Relief Act of 2018 (H.R. 1865).
Signed into law December 27, 2020 – The Consolidated Appropriations Act, 2021 (H.R.116)

Eligible Employer

- “Eligible Employer”
 - Conducted a trade or business in a qualified disaster zone at any time during the incident period of the qualified disaster; AND
 - Such trade or business was inoperable at a time during the period beginning on the first day of the incident period of such qualified disaster as a result of damage sustained by such qualified disaster.

“Inoperable”

Does NOT mean fully shut down.

Can be any one or a combination of factors such as:

- Partial shutdown or suspension of operations;
- Employees unable to get to work (ex: transportation system shut down; roads flooded, etc.);
- Limited access to goods and/or raw materials;
- Limited access to utilities (ex: power outages);
- Damage to facility impacting operations (ex: flooding);
- Inability to communicate with employees;
- Reduced production/operations; or
- Financial distress as a result of impact from qualified disaster.

Qualified Wages

“Qualified Wages” are defined as:

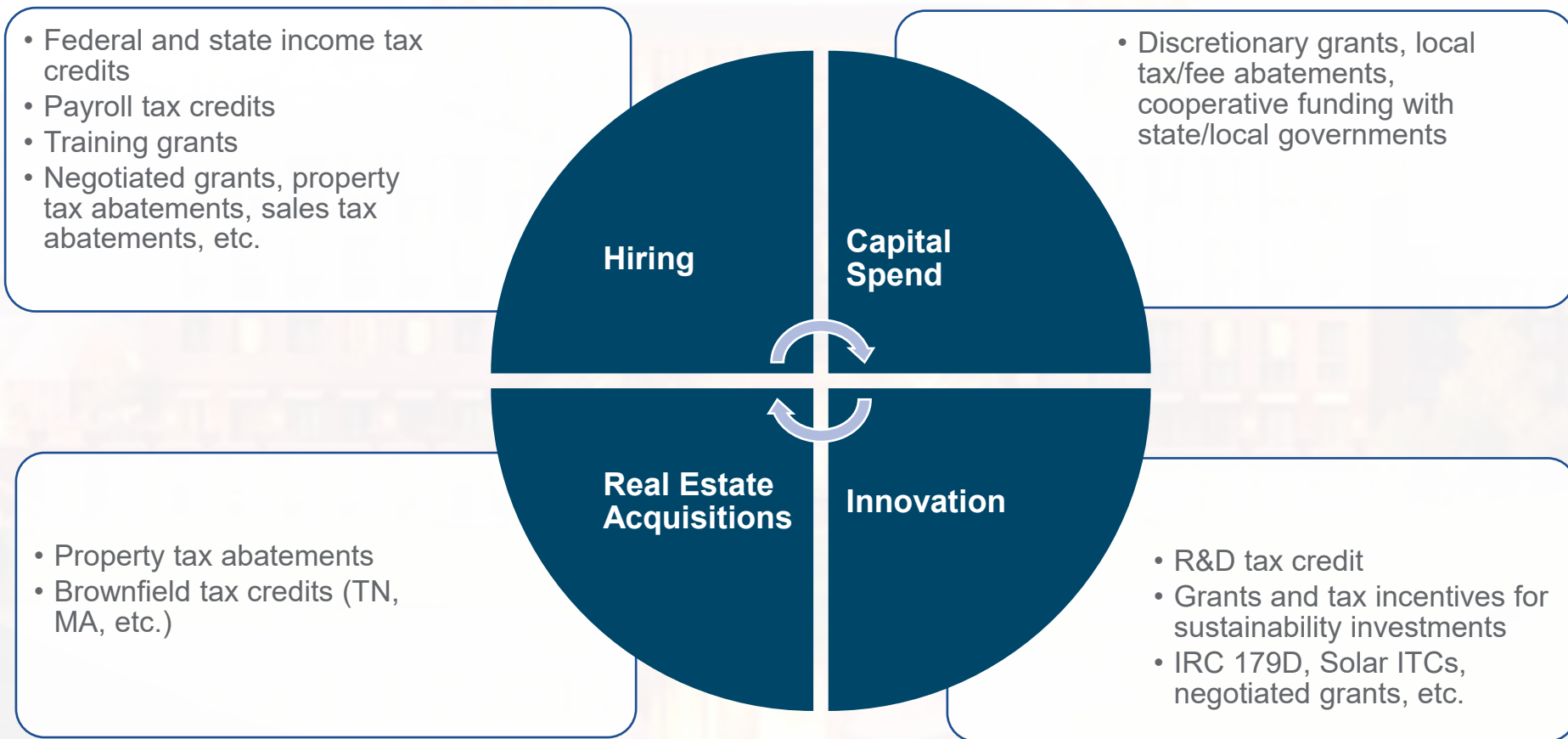
- Wages as defined in 51(c)(1) of the IRC; and
- Paid or incurred by an eligible employer in qualified disaster area with respect to an eligible employee at any time on or after the date on which the trade or business that was inoperable and before the earlier of the date on which such trade or business has resumed significant operations or the date which is 150 days after the last day of the incident period of the qualified disaster.

How do governments use tax credits?

- The focus of tax incentives shifts with the economic/political landscape and is highly dependent upon the goals and needs of federal, state, and local governments
 - Stimulate the economy in focused sectors and geographies
 - Rural development and economic recovery
 - Urban areas with high volume of residents earning near or below poverty level
 - Support families struggling with rising costs of groceries, housing, etc.
 - Manufacturing
 - Disaster recovery – Hurricane disaster zones
 - Encourage reinvestment of capital – Opportunity Zones
 - Support clean/renewable energy – Solar ITC
 - Job creation with emphasis on certain sectors and individuals – State jobs tax credits, WOTC, empowerment zones
 - Manufacturing (may be sector focused)
 - Film production to stimulate local economy through tourism and consumerism

Tax Credits and Incentives

Opportunities in every aspect of the business



Types of Incentives

- **Not all tax incentives are created equal**
- **Know your state and local tax regime!**
 - Income tax vs. franchise tax; apportionment; sales tax; property tax; personal property tax
- Income tax credits provide dollar-for-dollar value to orgs with income tax liability but not all orgs have income tax liability
 - Especially not start-up orgs
 - As the economy recedes, income tax credits lose their value and indirect tax incentives become more valuable
- Indirect tax incentives
 - Payroll tax credits are very close to a cash grant and, in fact, are treated like a cash grant by most accountants
 - Property tax abatements, sales tax exemptions, TIFs, etc.

Tax Credits and Incentives

Management Technology



Widely Used

- Excel



Effective

- C&I Management Technology



Risks

- Stakeholder turnover
- Documentation retention
- Agreement noncompliance penalties
- Incentive clawbacks



Payoffs

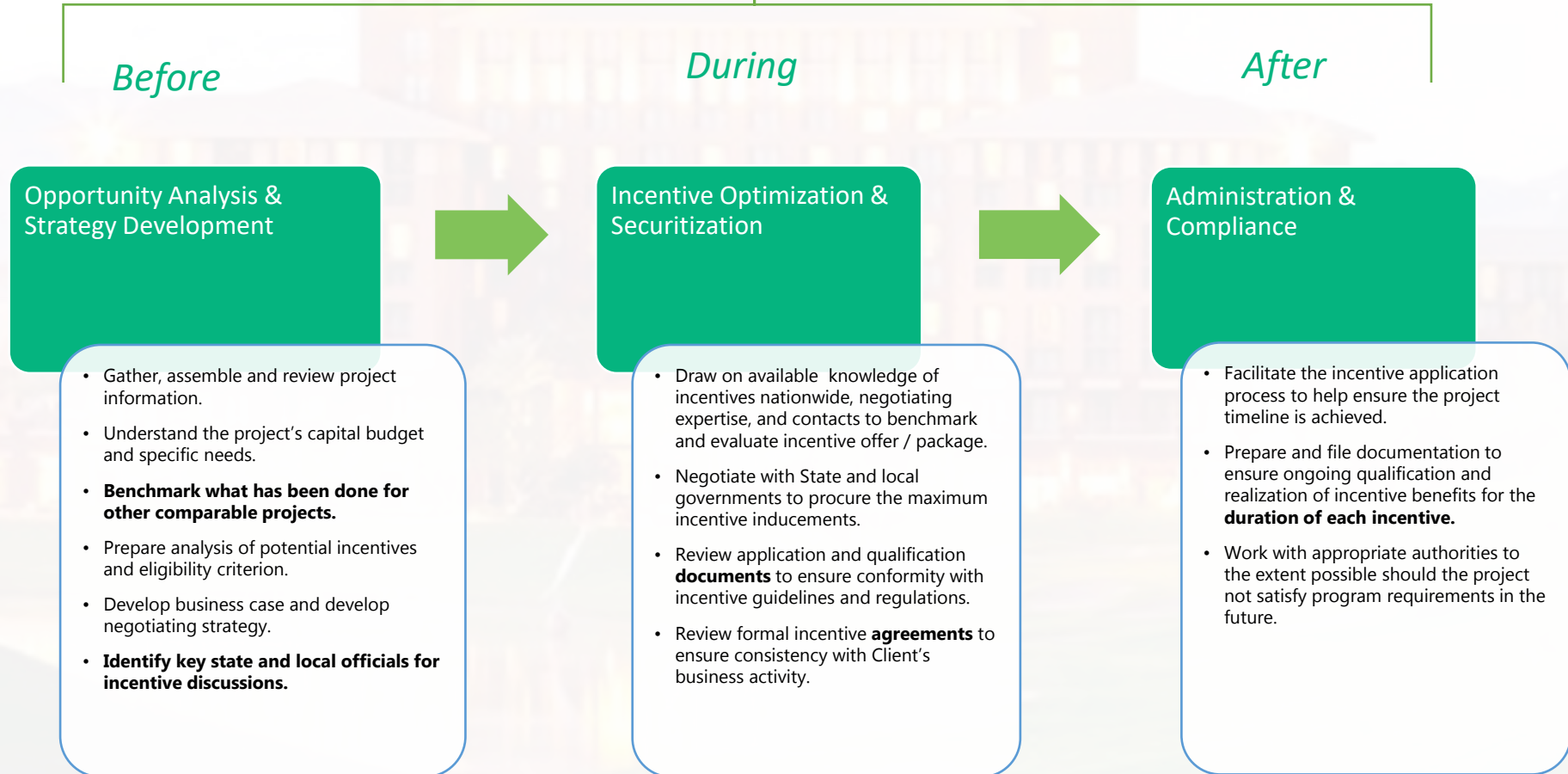
Technology geared specifically towards tax credits and incentives can drive financial return to your organization

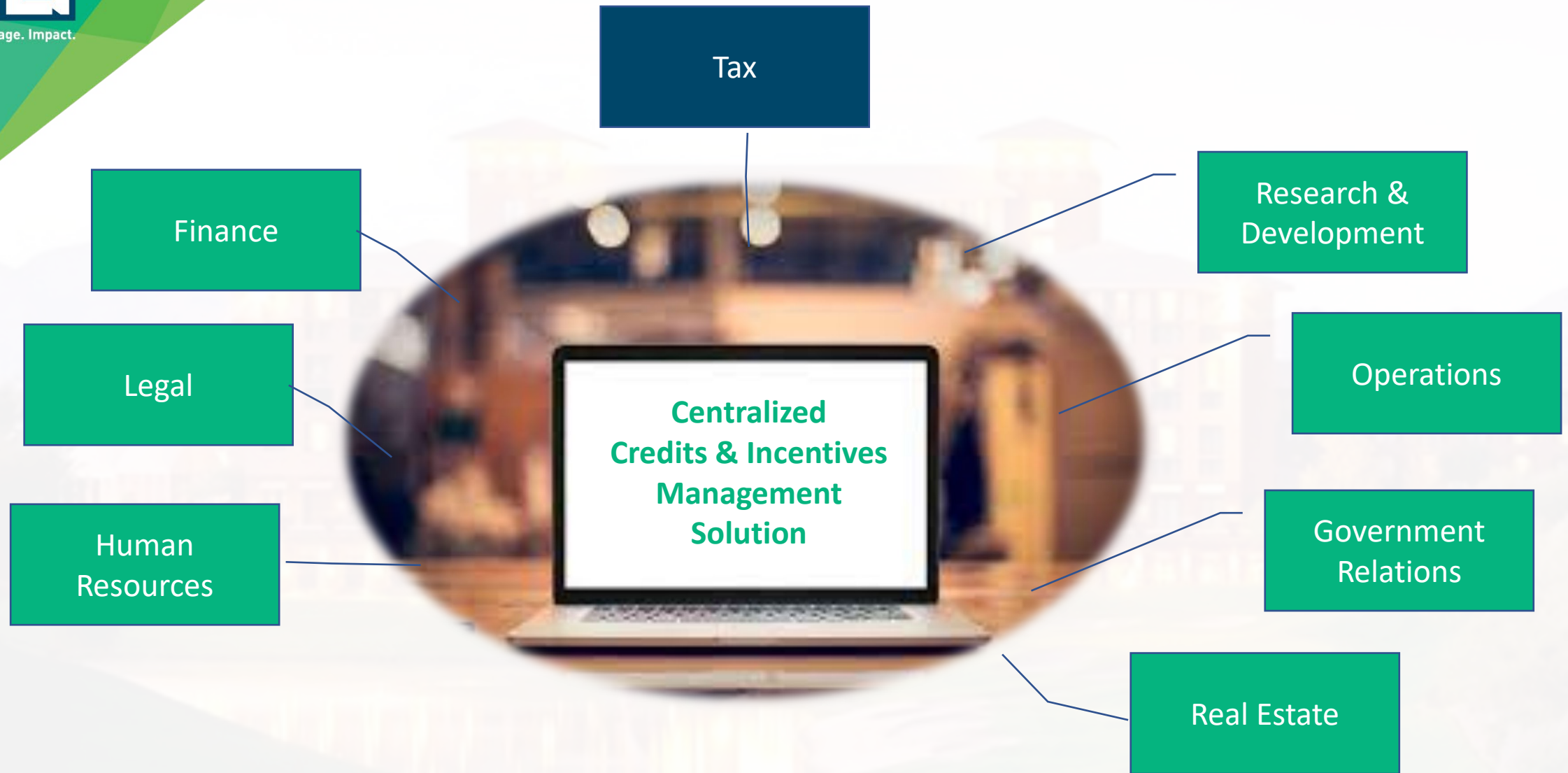
- **Track milestones** for incentive compliance
- **Provides notification** and deadline management
- **Centralizes documentation** and correspondence
- **Collaborates on issues** related to their incentive portfolio

WHY . . .



...EXAMPLE





Tax Credits and Incentives

Management Technology Features

Project Collaboration



Review the status of ongoing negotiations for new facility and expansion projects

Benefit Portfolio Insight



Provide visibility into the status of each incentive, statutory or discretionary

Deadline Management



Track milestones for incentive compliance

Performance Monitoring



Review key performance commitments relative to investments such as job creation, new investment, average wage, etc

Document Management



Manage documents including agreements, applications, annual compliance filings, etc.

Real Time Reporting



Export reports such as incentive benefits summaries including anticipated total incentive value, incentives realized to date, and forecasted incentives in the future

Technology Roadblocks



Price/Budget



Resource
Constraints



Feature
Focus
Dependent



Company
Culture



Executive
Buy-In



Operational
Buy-In

Managing Public Perception

HQ Relocation

- ‘This is a union town’ — NYC councilman says Amazon’s HQ2 is ‘antithetical’ to our values. [REDACTED]

Payroll Protection Program

- CEO of Payment Protection Program Lender MBE Capital Arrested In Connection With Fraudulent Loan And Lender Applications. US DOJ website, March 1, 2022
- Ex-N.J. res [REDACTED] Program fraud. Nj.com March 3, 2022

Opportunity Zones

- Cryptocurrency Investors Are Cashing In On A Trump Tax Break Meant To Help The Poor. Huffpost.com February 10, 2022

Employee Retention Credit

- AICPA has expressed concern with “credit mills”
- TIGTA confirms \$2T in fraud identified

IRS Administration of Tax Incentives

Implementation	Safeguards
Guidance effort and responsiveness to industry <ul style="list-style-type: none">• Over a dozen incentive-related projects on current IRS Priority Guidance Plan• Tax equity safe harbors for PTC, Rehab credit, 45Q• Covid/disaster extensions and other relief	Need to protect against non-compliance & abuse <ul style="list-style-type: none">• Various current and past LBI campaigns related to incentives- e.g., R&D, WOTC, 179D, etc• Syndicated conservation easements – listed transaction, ongoing litigation• New R&D documentation requirements
<ul style="list-style-type: none">• Treasury and IRS have to balance implementation and enforcement; and resource constraints• Manage internal and external feedback and evolving landscape<ul style="list-style-type: none">• TIGTA reports• Congressional Inquiries• News reports• Changing laws	

Common Mistakes

Myopic Approach

- Important to coordinate with multiple stakeholders

Setting Unrealistic Expectations

- Don't overstate job count, capital spend, etc.

Focusing on Incentives above All Else

- Tail wagging the dog scenario

Not Including Incentives in Strategic Moves

- Disregarding incentives costs companies \$millions

No Strategic Timeline

- Strategic timing of press releases, rent agreements, hiring, etc.

Failure to Consider Ongoing Compliance

- Risk of clawbacks and/or lost value in the future

Consequences of Poor Planning/Execution

- Missed opportunity
- Clawbacks
- Audit risk
- Damaged reputation
- Damaged relationships

QUESTIONS

