Reclaiming Place-Based Development Incentive

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Michelle D. Layser, *The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and a Path Toward Community Oriented Reform*, __ **Wisc. L. Rev.** __ (forthcoming 2019), available at SSRN.

Professor Michelle Layser's forthcoming article is an attack on the current form of place-based tax incentive programs. Layser argues that while rhetorically such programs are said to help the poor, by design they support gentrification in ways that harm the poor. The article ends with a call to reform place-based incentive programs so that the poor in selected areas actually benefit.

The Pro-Gentrification Origins of Place-Based Investment Tax Incentives and a Path Toward Community Oriented Reform speaks to a number of academic audiences. For tax folks, the article contributes to the expanding universe of critical tax scholarship. For property and local government people, the article does a valuable job connecting tax incentives with both urban redevelopment and place. And for poverty law scholars, Layser takes down an entire program type that might otherwise be seen as a rare bright spot when it comes to how the nation responds to poverty.

Opportunity Zones were created by the Tax Cuts and Jobs Act of 2017, arguably the Trump administration's signature legislative accomplishment. Ostensibly designed to encourage greater investment and siting of businesses in distressed areas, Opportunity Zones offer investors significant long-term tax advantages for siting businesses and investing in designated areas. The Opportunity Zones program is but the latest iteration of a series of place-based tax incentives such as enterprise zones, empowerment zones, and the New Markets Tax Credit Program. Like the programs that preceded it, Opportunity Zones enjoy bipartisan support: Democrats are happy to see money directed at poor communities and Republicans appreciate the business subsidies. Like the Earned Income Tax Credit (EITC), the other major antipoverty program that has been politically popular on both sides of the aisle over the last two decades, the Opportunity Zones program is a market affirming approach to dealing with poverty.

Yet, Layser insightfully observes that place-based incentive programs fit awkwardly alongside the simultaneous move in other antipoverty areas towards people-based strategies. For example, even as housing programs switch from place-based public housing to less geographically restricted vouchers, place-based tax incentive programs are all about designated areas. There is of course a risk of over-extending this contrast, but part of what makes place-based incentive programs attractive is that they seem to respond to the fact that place and poverty are linked. Layser does a tremendous job laying out, in a concise yet rich way, the importance of place and the adverse effects of concentrated poverty.

The article's main argument is that the gentrification facilitated by these place-based tax incentive programs is not a design flaw but a design feature. Gentrification is the goal. Twenty years ago, Audrey McFarlane published one of my favorite poverty articles, *Race, Space, and Place: The Geography of Economic Development*,[1] and in it she questioned development as an unambiguous good for poor urban areas. Though we are now in the era of Opportunity Zones and not Empowerment Zones, reading these two great works side-by-side shows the extent to which these programs continue to reflect a faith that markets, development, and investment will cure all. Promised jobs may not materialize, neighboring communities may be harmed, and even development within the designated areas can be problematic, especially if low-income residents are unable to participate in the growth or are priced out.

Given the problems with place-based tax incentive programs that she lays out so well in the article, one might have expected Layser to argue that it is time to abandon this approach. After all, Layser describes these place-based programs as inefficient and inequitable, which is the ultimate way for a tax professor to call a program "very bad." But Layser is ultimately an optimist of sorts. She explains that her hope is that the article "helps bridge the fields of tax law and poverty law by demonstrating the untapped potential of place-based investment tax incentives as anti-poverty tools." To get from her damning critique of place-based tax incentives as a response to poverty to the possibility that such incentives could help poor communities requires some work.

The article ends with a call to use mental mapping exercises in poor communities as a tool when designing tax incentives in order to ensure the incentives are structured to ensure the right benefits flow to those communities. "Past experience with spatially oriented investment tax incentives provides powerful evidence that the interests of poor communities, private industry, and governments will not align absent deliberate efforts to empower community stakeholders," Layser continues, "One way to empower community stakeholders is through citizen participation." Layser's work fits nicely alongside other academic attempts at reviving community participation and a positive story can be told about how participation can lead to better outcomes.[2] Frankly, I was not convinced by this final section of the article. It seemed too optimistic about both the politics of the moment and the likelihood regulators and investors would get behind a multiplicity of locally-tailored tax incentives. I worry that, worse-case scenario, participation will be window dressing, taking the form of tokenism. Or, best-case scenario, it will provide an effective tool for redirecting tax incentives in such a way that community needs are prioritized and gentrification is protected against, in which case investors will flee. Layser is quite right to acknowledge that her proposal is likely to face opposition by politicians and businesses.

My pessimism regarding the feasibility and workability of Layser's idea of community-oriented tax incentives does not detract from the strength of the article. Though the EITC will continue to enjoy first position perhaps when it comes to scholarship that explores the intersection of tax and poverty,[3] it is wonderful to see so much work coming out that shows how these two fields are deeply intertwined in other ways as well.[4] I am not qualified to say how great a contribution this article makes to the tax literature, but it definitely makes a valuable contribution to the poverty literature. Having heard Professor Layser speak about the work before, I had high expectations and this article meets them. I encourage others to find a time and place to read this important work.

1. 36 **San Diego L. Rev.** 295 (1999).
2. *See*, *e.g.,* Wendy A. Bach, *Mobilization and Poverty Law: Searching for Participatory Democracy Amid the Ashes of the War on Poverty*, 20 **Va. J. Soc. Pol'y & L.** 96 (2012).
3. *See*, *e.g.*, Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 **N.Y.U. L. Rev.** 515 (2013); Francine J. Lipman, *Access to Tax InJustice*, 40 **Pepp. L. Rev.** 1173 (2013).
4. *See*, *e.g.,* Ari Glogower, *Taxing Inequality*, 93 **N.Y.U. L. Rev.** 1421 (2018); Susanna Camic Tahk, *The Tax War on Poverty*, 56 **Ariz. L. Rev.** 791 (2014).

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