THE PRO-GENTRIFICATION ORIGINS OF PLACE-BASED INVESTMENT TAX INCENTIVES AND A PATH TOWARD COMMUNITY ORIENTED REFORM

Michelle D. Layser[1]

ABSTRACT

Place-based investment tax incentives, which encourage taxpayers to invest in poor areas, constitute a particularly controversial, yet undertheorized, category of tax laws. The central problem presented by current place-based investment tax incentives is a contradiction between rhetoric and reality. They are presented as laws that benefit low-income communities, yet the dominant types of place-based investment tax incentives are not designed for this purpose. Understanding the reasons for this disconnect is key to assessing the limits and potential of place-based investment tax incentives as anti-poverty tools. By tracing the development of place-based investment tax incentives to their pro-gentrification origins, this Article argues that what many anti-poverty advocates view as a flaw—the lack of safeguards for poor communities that allegedly opens the door to abuses—is, in fact, an intended feature of most current place-based investment tax incentives.

This Article makes several important contributions to the legal literature. First, it helps to establish spatial inequality as an area of inquiry for tax law research. Second, it advances our understanding of how place-based investment tax incentives relate to nontax anti-poverty policies. Third, it provides guidance for policymakers. This Article contends that if place-based investment tax incentives are used at all, then they should be used for anti-poverty goals. Place-based investment tax incentives have a unique advantage over nontax policies in that they continue to enjoy bipartisan support even as the political climate grows increasingly

[1]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.

Please send any comments to mlayser@illinois.edu

polarized. Thus, rather than abandon the tax-based approach, this Article argues that state and local governments should introduce pilot programs of community oriented investment tax incentives. Accordingly, this Article recommends that lawmakers employ mental mapping techniques to design tax incentives that are more likely to benefit residents of poor communities. This would enable researchers to study their impact and evaluate their potential as large-scale anti-poverty programs.

TABLE OF CONTENTS

INTRODUCTION

Place-based investment tax incentives, which encourage taxpayers to invest in poor areas, constitute a particularly controversial, yet undertheorized, category of tax laws.[2] Recent debates over the new federal Opportunity Zones tax incentive, which was quietly included in the Tax Cuts and Jobs Act, are illustrative.[3] Just months after proponents predicted that the new law would attract as much as $100 billion to poor areas,[4] news outlets began to speculate

[2] Place-based investment tax incentives are defined as investment tax incentives used to encourage taxpayers to invest in poor areas. *See* Michelle Layser, *Mapping the Landscape of Place-Based Investment Tax Incentives and Charting a Way Forward*, 23 WASH. & LEE J. CIVIL RTS. & SOC. JUST. __, __ (forthcoming 2019) [hereinafter Layser, *Mapping*]. The phrase "place-based investment" refers to government investment intended to produce positive externalities in areas of concentrated disadvantage. *See* PATRICK SHARKEY, STUCK IN PLACE: URBAN NEIGHBORHOODS AND THE END OF PROGRESS TOWARD RACIAL EQUALITY 129 (2013) (noting that place-based investment can help reverse a long list of social and economic disadvantages in poor communities, including but not limited to: lower political influence, lower-quality public services and schools, a weak economic base, ineffective policing, gang activity and other crime, violence, teenage childbearing, high dropout rates, poor community health, joblessness, homelessness, and blight); Michelle D. Layser, *How Federal Tax Law Rewards Segregation*, 93 IND. L.J. __, __ (2018) [hereinafter Layser, *Segregation*]. This approach contrasts with mobility approaches that attempt to decrease disadvantage by moving people away from areas with concentrated poverty.

[3] I.R.C. § 1400Z-1. Under the new tax law, taxpayers who sell appreciated property can defer—or even permanently avoid—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] 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-

whether the tax incentive had motivated the tech giant Amazon to select a "fast-gentrifying Queens neighborhood across the East River" in New York for its east coast headquarters.[5]

Anti-poverty advocates and watchdog groups were incensed. TalkPoverty.org tweeted to its followers, "Amazon (and Trump) are poised to get rich off a tax break that's supposed to help poor communities."[6] When asked whether the law was really "supposed to help poor communities," another anti-poverty advocate asserted that helping the poor "is the stated mission of the OZ program" but admitted that "it is not designed that way."[7] He added, "That is why we've been trying to sound the alarm and encourage those in power to put in guardrails and regulations to ensure benefits can accrue to residents of these communities."[8]

This Article argues that what anti-poverty advocates view as a flaw—the lack of safeguards for poor communities that allegedly opens the door to abuses—is, in fact, an intended feature of most current place-based investment tax incentives. The development of place-based investment tax incentives and their designs can be explained as a predictable outgrowth of the pro-gentrification business and political environment that produced them. Viewed through this lens, it becomes much easier to reconcile (but harder to justify) the continued use of place-based investment tax incentives despite the lack of empirical evidence that they benefit poor communities.

---

offer-flexibility-to-developers-1539948600. Favorable agency regulations released in October of the following year reinforced that expectation.

[5] Stephen Braun, *Amazon's NYC headquarters in "opportunity zone" eligible for GOP tax breaks PBS NewsHour* (Nov. 14, 2018), PBS NEWS HOUR, https://www.pbs.org/newshour/economy/amazons-nyc-headquarters-in-opportunity-zone-eligible-for-gop-tax-breaks (last visited Dec 28, 2018).

[6] @TalkPoverty, Twitter (Dec. 13, 2018, 12:08 PM), https://twitter.com/TalkPoverty/status/1073308576175685632.

[7] Gbenga Ajilore (@gbenga_ajilore), Twitter (Dec. 14, 2018, 5:47 A.M.), https://twitter.com/gbenga_ajilore/status/1073575186539208704; Gbenga Ajilore (@gbenga_ajilore), Twitter (Dec. 14, 2018, 6:17 A.M.), https://twitter.com/gbenga_ajilore/status/1073582745958408192.

[8] Gbenga Ajilore (@gbenga_ajilore), Twitter (Dec. 14, 2018, 6:17 A.M.), https://twitter.com/gbenga_ajilore/status/1073582745958408192.

It also becomes easier to understand the experiences of poor communities whose neighborhoods have been designated for tax incentives—poor communities like Overtown, Miami.[9] One of the oldest neighborhoods in the city, Overtown was once a relatively prosperous area known as Colored Town,[10] but today it is known instead as the city's busiest opioid marketplace.[11] City leaders have long sought to revitalize Overtown, designating the area for tax and regulatory relief.[12] In 2015, a local redevelopment agency voted to give more than $100 million tax incentives to developers of a "high end shopping, luxury condominium[], and hotel room[]" complex in the neighborhood.[13]

A couple years later, the Miami Herald began to report on the "rise of restaurants" in Overtown, which they said, "has helped breathe new life in the community."[14] An optimistic banner announced the neighborhood's bright, up-and-coming future, proclaiming: "Experience Overtown. Eat, Live, Work, Play."[15] Still, neighborhood residents, religious leaders, and local housing rights and labor activists weren't so sure. Pastor Rhonda Thomas, a longtime community resident, explained, "It's not like I hate developers. Let's just be fair and include the community that you're coming into."[16] If the community had been included in the revitalization plans, then it was hard to

---

[9] Overtown was recently designated as an Opportunity Zone. Sean Patel, *Opportunity Knocks in Miami's "Opportunity Zones,"* MIAMI GRID (Nov. 20, 2018), https://miami-grid.com/2018/11/20/opportunity-knocks/.

[10] Daniel Ducassi, *Overtown's past meets Overtown's future,* THE NEW TROPIC (July 2, 2015, 5:00 A.M.), https://thenewtropic.com/overtown-past-future/.

[11] Kevin Sullivan, *A 10-year-old's overdose death reveals Miami neighborhood's intense struggle with opioids*, WASH. POST (July 20, 2017), https://www.washingtonpost.com/national/a-10-year-olds-overdose-death-reveals-miami-neighborhoods-intense-struggle-with-opioids/2017/07/20/0618e49a-6cee-11e7-96ab-5f38140b38cc_story.html).

[12] CITY OF MIAMI, ECONOMIC INITIATIVES, http://www.ci.miami.fl.us/economicdevelopment/pages/businessincentives/empowermentzone.asp (last visited Jan. 12, 2019).

[13] Ducassi, *supra* note 10.

[14] Randy Grice, *Flourishing Restaurants Reinvigorate Overtown's Historic Business District,* MIAMI HERALD (June 12, 2017), https://www.miamiherald.com/entertainment/restaurants/article155760259.html.

[15] Sullivan, *supra* note 11.

[16] Ducassi, *supra* note 10.

tell just by looking around. The sidewalks were littered with crushed beer cans, and the highway overpass was crowded with homeless people living underneath.[17]

Then, on a hot afternoon in June 2017, a 10-year-old boy left his community swimming pool, walked past the banners and a fancy new apartment building, and returned to his second-floor flat in this poverty-stricken neighborhood.[18] When he arrived at home, he began to vomit, and by that evening he was dead—killed by an overdose of heroin and fentanyl.[19] After it happened, one of his neighbors told a reporter: "'If I had money, baby, I wouldn't be here.'"[20] About her own children, she said, "You really can't shield them from everything."[21]

This Article contends that the failure of most place-based investment tax incentives to improve conditions for residents in neighborhoods with concentrated poverty—neighborhoods like Overtown—is a predictable consequences of laws that were never intended to do so. It argues that, although the political rhetoric around place-based investment tax incentives appeals to anti-poverty sentiments and helps maintain their bipartisan support, the actual laws are best understood as part of a pro-gentrification agenda. Viewed in this light, place-based investment tax incentives look less like failed policies, but they also are less justified. This Article argues that most current place-based investment tax incentives should be abandoned. Instead, lawmakers should introduce community oriented investment tax incentives that are specifically designed to benefit poor communities.

This Article makes several important contributions to the legal literature. First, it helps to establish spatial inequality as an area of inquiry for tax law research. To date, most tax and inequality research has focused on inequality at the individual or family levels, and comparatively little research has asked how tax law relates to spatial inequality.[22] This Article begins to fill that gap

---

[17] Sullivan, *supra* note 11.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id*.

[22] *But see generally*, Ellen P. Aprill, *Caution: Enterprise Zones Los Angeles, April 29, 1992 and Beyond: The Law, Issues, and Perspectives*, 66 S. CAL. L. REV. 1341(1992) (critiquing enterprise zone proposals and arguing that "[w]e should not be confident that a tax enterprise zone

by analyzing the potential for tax laws to be used as tools to fight concentrated poverty. To this end, it provides a positive law theory to explain the current landscape of place-based investment tax incentives and their limitations as anti-poverty tools, and it demonstrates that place-based investment tax incentives may have greater potential to fight concentrated poverty than previously known.

Second, it advances our understanding of how place-based investment tax incentives relate to anti-poverty policies. Tax scholars have recently begun to describe place-based investment tax incentives as anti-poverty tax laws,[23] but relatively little poverty law research has focused on the role of place-based investment tax incentives. A clear understanding of how these tax laws relate to nontax anti-poverty policy will be essential as tax and poverty law experts seek to evaluate and improve these incentives. This 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. It also provides an explanation for why tax law has evolved to support place-based investment strategies even as nontax policies have shifted toward people-based strategies, such as the use of tenant vouchers.

Third, it provides normative and prescriptive guidance for policymakers. The Article contends that, if place-based investment tax incentives are used at all, then they should be used for anti-poverty goals. While nontax policies can and should be used in addition to tax-based approaches, place-based investment tax incentives have a unique advantage over nontax policies in that they continue to enjoy bipartisan support even as the political climate

program will by itself revitalize our inner cities, or even that tax enterprise zones are the best way to start); Louis Kaplow, *Regional Cost-of-Living Adjustments in Tax/Transfer Schemes*, 51 TAX L. REV. 175 (1995) (arguing that tax adjustments for cost-of-living are undesirable); Michael S. Knoll & Thomas D. Griffith, *Taxing Sunny Days: Adjusting Taxes for Regional Living Costs and Amenities*, 116 HARV. L. REV. 987 (2002) (arguing that "the failure to adjust individuals' tax liabilities for different regional living costs misallocates capital and labor throughout the economy, discouraging investment and employment in high-cost regions and encouraging it in low-cost regions"); Layser, *Mapping*, supra note 2 (providing a typology to help evaluate how place-based investment tax incentives impact poor communities); Layser, *Segregation*, supra note 1 (arguing that the mortgage interest deduction and low-income housing tax credit may interact to reinforce economic and racial residential segregation patterns); James M. Puckett, *Location, Location, Location: Using Cost of Living to Achieve Tax Equity*, 63 ALA. L. REV. 591 (2011) (questioning the assumption of taxpayer mobility and arguing that cost of living affects ability to pay).

[23] Susanna Camic Tahk, *Tax War on Poverty, The*, 56 ARIZ. L. REV. 791, 810–15 (2014).

grows increasingly polarized. Thus, this Article argues that state and local governments should introduce pilot programs of community oriented investment tax incentives and provides a roadmap for designing tax incentives that are more likely to benefit residents of poor communities. This would enable researchers to study their impact and evaluate their potential as large-scale anti-poverty programs.

Part I of this Article explains why spatial inequality, including concentrated poverty, is an important area of inquiry for tax law research, and it introduces place-based investment tax incentives as the subject of study. Part II describes the current landscape of place-based investment tax incentives and demonstrates that neither theory nor evidence supports the optimistic rhetoric that drives the bipartisan popularity of these tax incentives. The central problem presented by current place-based investment tax incentives is this contradiction between rhetoric and reality; though they are presented as laws that benefit low-income communities, the dominant types of place-based investment tax incentives are not designed for this purpose. Understanding the reasons for this disconnect is key to assessing the limits and potential of place-based investment tax incentives as anti-poverty tools.

Part III confronts this problem by tracing the development of today's dominant types of place-based investment tax incentives to their pro-gentrification origins in order to provide an explanatory theory about their development. Namely, it argues that the hidden objective of these types of laws is to support gentrification for the benefit of place entrepreneurs and other wealthy parties. Part IV argues that most current place-based investment tax incentives should be abandoned as bad policy. Even if gentrification is a legitimate policy goal, most current place-based investment tax incentives are less efficient or equitable than alternative types of incentives.

Accordingly, Part V argues that lawmakers should introduce alternative types of place-based investment tax incentives designed to improve neighborhood conditions in poor communities *for the benefit of poor communities*. After analyzing imperfect models of these types of incentives under current law, it presents a theoretically and empirically grounded roadmap for using mental mapping techniques to design community oriented investment tax incentives that are more likely to benefit poor communities. Until these community oriented investment tax incentives are tested, our understanding of the potential for place-based investment tax incentives to fight concentrated poverty will remain incomplete.

Please send any comments to mlayser@illinois.edu

I. POVERTY, POLITICAL RHETORIC AND PLACE-BASED INVESTMENT TAX INCENTIVES

A. *Concentrated Poverty as a Problem Faced by Policymakers*

The tax literature includes at least two major lines of research that consider the relationship between taxation and inequality in the U.S., both of which implicitly focus on inequality at the individual or family levels. The first line of research looks at the tax system itself and asks whether tax laws treat similarly situated tax units similarly (horizontal equity) and whether tax burdens are allocated based on tax units' ability to pay (vertical equity).[24] In both cases, the unit of measurement is generally set at the individual or family level.

The second line of research looks at how tax law affects social and economic inequality more generally by considering the overall distribution of resources, or by looking at the distribution of resources across demographics like race or gender.[25] Unlike traditional tax fairness research, which has focused on the equitable distribution of tax burdens, this research considers how well the tax system promotes a fairer distribution of after-tax resources in society.[26] A growing subset of this second strand of tax literature de-emphasizes overall distributional equity and instead emphasizes welfare measures like poverty rates, with a focus on how tax law affects the number of people (or families) experiencing poverty.[27]

These studies have rarely taken up questions about place and spatial inequities.[28] But neither inequality nor poverty exist solely at the individual

[24] DAVID F. BRADFORD, UNTANGLING THE INCOME TAX 151–53 (1986).

[25] *See, e.g.*, Tahk, *supra* note 23, at 796 (analyzing the use of tax laws as anti-poverty tools); David Kamin, *Reducing Poverty, Not Inequality: What Changes in the Tax System Can Achieve*, 66 TAX LAW REV. 593 (2012) (exploring "the limits of the tax system when it comes to inequality and poverty"); Eric M. Zolt, *Inequality in America: Challenges for Tax and Spending Policies*, 66 TAX LAW REV. 641 (2012) (arguing that policy should focus on poverty reduction, not the reduction of inequality per se, and that the U.S. may need less progressive taxes in order to fund more progressive spending programs).

[26] *See* Walter J. Blum & Harry Jr Kalven, *The Uneasy Case for Progressive Taxation,* 19 U. CHI. L. REV. 417, 486 (1951).

[27] *See* Kamin, *supra* note 25, at 594; Zolt, *supra* note 25, at 643.

[28] *But see supra* note 22.

or family levels.[29] Rather, "various forms of inequality are organized or clustered in social settings like neighborhoods, schools, and political districts, and these social settings represent crucial sites at which American inequality is generated, maintained and reinforced."[30]

Violence, unemployment, drug markets, gang activities, and health problems tend to cluster in space, so much so that one sociologist asserted that "[t]o truly understand inequity in America . . . it is necessary to move beyond a focus on income, occupation, and education, the traditional markers of socioeconomic status, and to consider the ways in which inequality is organized in space."[31] The clustering of people experiencing poverty within discrete neighborhood settings is often referred to simply as "concentrated poverty," and it has been increasing over the past four decades.[32] As such, it is essential to understand how the law, including tax law, relates to concentrated poverty and its consequences.[33]

Importantly, the concept (and problem) of concentrated poverty refers to more than a count of people in a location whose income is below the poverty line.[34] In fact, the poverty rate itself may be misleading in geographic studies of welfare, as "areas may appear poor because they are disproportionately made up of groups who tend to be poor . . . which is a spatial reflection of a social effect rather than direct spatial effect."[35] Neighborhood poverty, on the

---

[29] AMARTYA SEN, INEQUALITY REEXAMINED, 102–03 (1992); SHARKEY, *supra* note 2, at 14.

[30] SHARKEY, *supra* note 2, at 14. *See also* Brett Drake & Mark R. Rank, *The racial divide among American children in poverty: Reassessing the importance of neighborhood*, 31 CHILD. YOUTH SERV. REV. 1264, 1265 (2009). The clustering of poverty often reflects decades of racial and socioeconomic segregation. Edward G. Goetz, *Housing Dispersal Programs*, 18 J. PLAN. LIT. 3, 3 (2003).

[31] SHARKEY, *supra* note 2, at 15.

[32] Rolf Pendall, Brett Theodos & Kaitlin Hildner, *Why High-Poverty Neighborhoods Persist: The Role of Precarious Housing*, 52 URB. AFF. REV. 33, at 34 (2016).

[33] *See also* David Delaney, Richard T. Ford & Nicholas Blomley, *Preface: Where is Law?*, *in* LEGAL GEOGRAPHIES READER: LAW, POWER, AND SPACE xvii (Nicholas Blomley, David Delaney, & Richard T. Ford eds., 2001).

[34] Martin Powell & George Boyne, *The Spatial Strategy of Equality and the Spatial Division of Welfare*, 35 SOC. POLICY ADM. 181, at 188 (2001).

[35] *Id.* at 188.

other hand, "emerges when other benefits or penalties compound the advantages or disadvantages of particular groups by virtue of where they live."[36]

Neighborhood poverty tends to permeate all aspects of such places. Poor neighborhoods in the U.S. are "fundamentally interwoven with racial segregation, with the resources available for children and families in a community, with the quality of local institutions like schools, with the degree of political influence held by community leaders and residents, with the availability of economic opportunities, and with the prevalence of violence."[37] In metropolitan areas, the built environment also plays a role "in exacerbating or protecting against rising neighborhood poverty."[38]

The neighborhood poverty rate is therefore a mere proxy that conveys "multiple dimensions of distress and negative effects."[39] At certain thresholds, the poverty rate correlates with other indicators of disadvantage, and one researcher identified 40 percent as the poverty rate threshold "at which neighborhoods are very likely to not have access to opportunities."[40] In other words, negative outcomes are most likely to be observed in neighborhoods where 40 percent or more residents have income below the poverty line.

Indeed, the negative effects of concentrated poverty have been thoroughly documented by social scientists.[41] Researchers have shown that living in neighborhoods with a high concentration of individuals in poverty—not just poverty alone—is a factor that contributes to a range of negative outcomes

---

[36] *Id.* at 189 (citing SMITH, D.M., HUMAN GEOGRAPHY: A WELFARE APPROACH (1977)).

[37] SHARKEY, *supra* note 2, at 28.

[38] Pendall, *supra* note 32, at 34 (noting that "high-poverty neighborhoods are built literally on the bricks and mortar of the durable housing stock").

[39] Andrew Jordan Greenlee, A RELATIONAL ANALYSIS OF MOBILITY WITHIN ILLINOIS' HOUSING CHOICE VOUCHER PROGRAM, at 27 (2012) (unpublished dissertation).

[40] *Id.*; PAUL A. JARGOWSKY, POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY vii (1998).

[41] *See, e.g.*, MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY (2016) (describing the legal, housing and health challenges faced by poor families in Milwaukee); SHARKEY, *supra* note 2 (documenting the generational effects of concentrated poverty on black families); DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID (1998) (linking black poverty to residential segregation).

related to physical and mental health, crime, education and employment.[42] Some effects of concentrated poverty, including reduced cognitive ability and earning capacity, appear to affect not only people who grow up in high-poverty neighborhoods, but also the next generation of children (whether or not they live in high-poverty neighborhoods).[43]

Urban theorists have pointed to concentrated poverty (in addition to sprawl and segregation) as an empirical indicator of structural processes that act upon people and limit their opportunities for achievement.[44] For example, areas with concentrated poverty are associated with higher crime rates,[45] poorer housing conditions,[46] fewer job options,[47] and more health problems[48] than seen in other, more affluent areas. These indicators reflect markets that operate in these areas—such as illicit drug markets, unequal housing markets and weak labor markets—and help shape residents' experiences of the world, the decisions they make and, ultimately, the opportunities they have before them.[49]

Stated simply, when people live in neighborhoods with concentrated poverty, their chance of achieving substantial upward mobility—and escaping poverty, if applicable—are lower than the chances of people who live

---

[42] SHARKEY, *supra* note 2, at 14.

[43] *Id.* at 26.

[44] GREGORY D. SQUIRES & CHARIS E. KUBRIN, PRIVILEGED PLACES: RACE, RESIDENCE, AND THE STRUCTURE OF OPPORTUNITY (2006). *See also* Greenlee, *supra* note 39, at 30.

[45] Tali Cassidy, et al., *A Systematic Review of the Effects of Poverty Deconcentration and Urban Upgrading on Youth Violence*, 26 HEALTH PLACE 78, 78 (2014) ("Violence levels vary greatly across neighbourhoods, and concentrated poverty is correlated with high levels of violence.").

[46] *See* Pendall, *supra* note 32, at 34.

[47] *See* Matthew Freedman, *Place-based programs and the geographic dispersion of employment*, 53 REG. SCI. URB. ECON. 1, 1 (2015).

[48] Megan Sandel, et al., *Neighborhood-Level Interventions to Improve Childhood Opportunity and Lift Children Out of Poverty*, 16 ACAD. PEDIATRICS S128, S128 (2016).

[49] According to urban theorists, people experience these processes (including the effect of institutions like the tax law) as an "opportunity structure" that influences their decision making. George C. Galster & Sean P. Killen, *The Geography of Metropolitan Opportunity: A Reconnissance and Conceptual Framework*, 6 HOUS. POL'Y DEBATE 7, 9–11, 35–36 (1995).

elsewhere.[50] Of course, living in a neighborhood with concentrated poverty is not the sole challenge residents face—family background and family characteristics also play a role, as do other factors[51]—but data suggests that it presents an independent, additional barrier to economic advancement.[52] For example, neighborhood poverty during childhood is associated with less upward mobility as adults.[53]

Moreover, the negative effects of concentrated poverty have been further linked to persistent racial income gaps, particularly between black and white Americans.[54] Researchers have long noted that middle-income African Americans are more likely than whites (of any income level) to live in or near neighborhoods with high poverty rates,[55] and doing so has made it difficult for many to maintain their economic position.[56] The proportion of blacks who have made substantial economic advancements in the two generations

---

[50] SHARKEY, *supra* note 2, at 107.

[51] To be sure, the neighborhood environment is neither a complete explanation for the racial income gap, nor the largest contributing factor. *Id*. Family background explained a 19 percent racial income gap. *Id*.

[52] SHARKEY, *supra* note 2, at 106–07. *See also* George Galster, *Changing the Geography of Opportunity by Helping Poor Households Move Out of Concentrated Poverty Neighborhood Effects and Policy Design*, *in* NEIGHBORHOOD AND LIFE CHANCES 25 (Harriet B. Newburger, Eugenie L. Birch, & Susan M. Wachter eds., 2011).

[53] *Id*. at 114. As used here, economic mobility refers to intergenerational economic mobility, whereby children achieve, as adults, a higher or lower position on the income distribution than their parents. *Id.* For example, if a child's parents had been in the 25th percentile of the overall income distribution, and that child reaches the 26th percentile as an adult, then that child has experienced upward economic mobility. *Id*.

[54] SHARKEY, *supra* note 2, at 107. Note that so far, the research on neighborhood effects has focused most heavily on poor, urban black populations. One reason for the focus on urban blacks, as opposed to other racial demographics or poor people more generally, relates to data availability. *Id*. at 7.

[55] In fact, only 15% of white families with incomes *below* the poverty line live in neighborhoods with concentrated poverty, while 17% percent of blacks who are not poor live in neighborhoods with concentrated poverty. Pendall, *supra* note 32, at 36. One researcher explained: "These neighborhoods tend to have more boarded up houses, more female-headed households, and fewer college graduates than middle class White neighborhoods." Cecily R. Hardaway & Vonnie C. McLoyd, *Escaping Poverty and Securing Middle Class Status: How Race and Socioeconomic Status Shape Mobility Prospects for African Americans During the Transition to Adulthood*, 38 J. YOUTH ADOLESCENCE 242, 244 (2009).

[56] *See* Hardaway and McLoyd, *supra* note 55, at 244.

since the Civil Rights Act has been "extremely low, particularly when compared with whites," and there has been "an extraordinary amount of *downward* economic mobility among African American families that were doing fairly well a generation ago."[57] Living in (or in close-proximity to) neighborhoods with concentrated poverty may be a partial cause of the racial income gap.[58]

In sum, concentrated poverty presents a serious challenge to equality in America and, by disproportionately affecting minority populations, may also contribute to racial inequality. At the most basic level, these inequities are problems faced by lawmakers, who often point to place-based investment tax incentives as tools to help address issues like these.[59] The next section briefly

---

[57] SHARKEY, *supra* note 2, at 4. Where white children from middle- and upper income families have generally achieved "much higher income than their parents when they reach adulthood," black children from similar families have achieved the opposite. *Id*. In other words, black families have been getting poorer while white families have been getting richer. *Id*. As of 2010, blacks had family income that was "roughly 47 percent lower than whites." *Id*. at 105.

[58] *Id*. at 96. Some of the racial income gap is attributable to family background (family income, parents' level of education, parents' occupation) and other family characteristics (parents' marital status, welfare receipts, type of housing). *Id.* at 105–106. But family background and other family characteristics do not explain the entire racial income gap or the reasons why black families are experiencing downward economic mobility at a greater rate than white families. *Id*. When the data is adjusted to compare black and white children who have the same family background and family characteristics—*and* who grow up in the same type of neighborhoods—the racial income gap drops from 47 percent to 17 percent. *Id.* Adjusting for neighborhood type alone closes the gap by 7 percent. *Id.* Sharkey notes "if we were to compare two children, one black and one white, who were raised in the 1970s by families that look extremely similar in every observable way, the black child could expect to have about 24 percent lower annual income as an adult." *Id*. This figure drops to 17%, however, when the comparison accounts for neighborhood type. *Id*. Hispanic and American Indians are also far more likely than their white counterparts to live in areas of concentrated poverty. ALEMAYEHU BISHAW, CHANGES IN AREAS WITH CONCENTRATED POVERTY: 2000 TO 2010 at 12, Table 2 (2014), https://www.census.gov/library/publications/2014/acs/acs-27.html (last visited Aug 10, 2017) (showing that in 2010, 50.4% of blacks, 47.8% of American Indians and Alaska Natives, and 44.1 percent of Hispanics live in poverty areas, as compared to 16.6% of white Americans). Note that the U.S. Census Bureau considers any area with a 20% poverty rate or higher to be a "poverty area." *Id.*

[59] Though some question whether tax law should be used to address societal inequities, even some skeptics have observed that "there is no sense to the position that, while other laws might legitimately be used to achieve greater equality, the tax system must not be given over to such function." Blum and Kalven, *supra* note 26, at 487.

describes the political appeal of place-based investment tax incentives and the rhetoric that surrounds them.

B. Place-based Investment Tax Incentives as a Popular Policy Response

Unlike many nontax policies related to affordable housing and community development, place-based investment tax incentives have traditionally attracted significant bipartisan support.[60] This bipartisan support is bolstered by rhetoric that pitches the incentives as beneficial to a variety of communities, including the investment community, poor communities, and the taxpaying public.

Progressive groups tend to highlight the need to address concentrated poverty and inequality. For example, the left-leaning Center for American Progress has pointed to place-based investment tax incentives as part of the solution for addressing concentrated poverty, arguing that some federal incentives should be made permanent.[61] Other advocacy organizations implicitly regard place-based investment tax incentives as anti-poverty tools, describing them as tax breaks "for low-income communities" and calling the goal of boosting development in poor areas "laudable," as long as funds are directed to places that are really distressed.[62]

Members of the development community view their own activities, which they frame in terms of benefits to poor communities, as dependent on the tax-based subsidies.[63] For example, the Local Initiatives Support Corporation self-describes as "dedicated to helping community residents transform distressed neighborhoods into healthy and sustainable communities of choice

---

[60] Chuck Jordan, *A Game-Changing Tax Program Can Spur Economic Opportunity for All*, THE HILL (Oct. 23, 2018), https://thehill.com/blogs/congress-blog/economy-budget/412754-a-game-changing-tax-program-can-spur-economic-opportunity.

[61] Poverty to Prosperity Program & CAP Economic Policy Team, *Expanding Opportunities in America's Urban Areas Center for American Progress*, CTR. AM. PROGRESS (Mar. 23, 2015), https://www.americanprogress.org/issues/poverty/reports/2015/03/23/109460/expanding-opportunities-in-americas-urban-areas/.

[62] Gbenga Ajilore, *How a Tax Break Meant for Low-Income Communities Became a Mini Tax Haven for the Rich*, TALK POVERTY (Dec. 13, 2018), https://talkpoverty.org/2018/12/13/tax-break-low-income-opportunity-rich/.

[63] *See* Maurice A Jones, *Testimony Before the Joint Economc Committee of the United States Congress* 9 (2018).

and opportunity."[64] In testimony before the Congressional Joint Economic Committee, company representatives pointed to concentrated poverty as a growing problem and described two place-based investment tax incentives as "[t]wo of the most critical federal tools" that support their efforts.[65]

Finally, conservative groups tend to support the tax incentives as pro-growth and likely to increase the tax base; however, they also tend to tout benefits to communities when presenting their case to the public. One conservative lawmaker described the new Opportunity Zones tax incentive as "an exciting tranche of common ground," remarking that "people across the ideological spectrum can agree on this: leveraging modest federal investments to drive private capital into communities that have been sidelined as our national economy booms is a win-win proposition."[66] In voicing his own support for place-based investment tax incentives, he emphasized their capacity to bring "capital to places that have proven their ability to meet community goals *and* investor expectations for financial performance."[67]

Given this rhetoric and their popularity among such diverse groups, it is essential to understand the role—and potential role—of place-based investment tax incentives as a policy response to concentrated poverty. The next section will describe the current legal landscape of place-based investment tax incentives. It will show that despite the rhetoric that fuels their bipartisan support, the dominant type of place-based investment tax incentive is not designed to benefit poor communities.

II. Dominant Types of Place-Based Investment Tax Incentives Are Not Designed To Benefit Poor Communities

A. *The Current Landscape of Place-Based Investment Tax Incentives*

Though there are four basic types of place-based investment tax incentives, two of these types constitute the overwhelming majority of current place-based investment tax incentives.[68] As this section will explain, neither of the most common types of place-based investment tax incentives is likely to

[64] *Id.*

[65] *Id.*

[66] Jordan, *supra* note 60.

[67] *Id.*

[68] *See* Layser, *Mapping*, *supra* note 2, at __.

benefit poor communities. Later parts of this Article will argue that the dominance of these types of place-based investment tax incentives, and the rarity of other types, is consistent with the theory that these tax laws are intended to support gentrification. But first, this section will describe the current landscape of place-based investment tax incentives and their impact.

The four types of place-based investment tax incentives can be described via a two-dimensional typology.[69] The first dimension of the typology divides the tax laws according to whether they provide a tax break directly to taxpayers that conduct business in low-income communities or, alternatively, whether they provide tax benefits to third party investors who contribute capital to such businesses.[70] In other words, if 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.[71] On the other hand, if an investor is entitled to a tax break for contributing capital or extending a loan to that same business, thereby enabling it to expand its activities in a low-income community, then the tax law provides an *indirect* tax subsidy to that business.[72] All investment tax incentives can be divided into direct or indirect forms, regardless of whether they are intended to drive investments to a particular place.[73]

Place-based investment tax incentives can be further divided along a second dimension of analysis that focuses on their spatial component. Accordingly, the second dimension of the typology divides the tax laws according to whether they incorporate features specifically designed to improve local residents' experiences of targeted areas. Thus, in addition to being

[69] *Id.* at __.

[70] *Id.* at __.

[71] *Id.* at __.

[72] *Id.* at __.

[73] For example, wind energy production tax credits are structured as indirect tax subsidies; the tax credits create incentives for investors to contribute capital to entities that will produce renewable energy. In practice, those tax credits are typically claimed by third party investors who provide capital to energy projects, such as wind or solar projects. *See* Michelle D. Layser, *Improving Tax Incentives for Wind Energy Production: The Case for a Refundable Production Tax Credit*, 81 MO. LAW REV. 453, 473–482 (2016). The mechanism used to derive value from the wind energy production tax credit is similar to the monetization transactions described in Part II.B. of this Article. *See also* Thomas W. Giegerich, *Monetization of Business Tax Credits, The*, 12 FLA. TAX REV. 709, 725–27 (2012).

categorized as direct or indirect tax subsidies, place-based investment tax incentives can also be categorized as *community oriented* (if they contain features to benefit local residents) or *spatially oriented* (if they do not). At minimum, a community oriented investment tax incentive must include some safeguard to prevent poor residents from being harmed, while spatially oriented investment tax incentives lack such safeguards.[74]

Here, examples are helpful. Consider a tax law that enables Business X to claim a tax credit for locating in low-income Area X and hiring new workers, regardless of whether those workers are locals or commuters. Such an incentive may drive investment to that geographic area, thereby improving the economic environment within that space. But since nothing in the law encourages Business X to hire or otherwise engage with local residents, any benefit to the community would be incidental. For this reason, this tax law is best described as a spatially oriented investment tax incentive.

Similarly, a tax law that provides a tax break to rehabilitate buildings in low-income Area X, regardless of whether the rehabilitation project benefits local residents, would also constitute a spatially oriented investment tax incentive. For example, a tax law might encourage the transformation of a space used by poor residents into a space that will be used by wealthier people. Such law would improve the built environment in the area, but it would not necessarily benefit local residents. Spatially oriented investment tax incentives like these effectively divorce the goal of improving a space from the goal of improving residents' experience of such places.

On the other hand, consider a tax law that enables Business X to claim a tax credit only if it hires residents of low-income Area X. In this case, the tax law specifically incorporates a feature to help ensure that some benefits flow to the residents. Therefore, this tax law is best described as a community oriented investment tax incentive. Unlike spatially oriented investment tax incentives, community oriented investment tax incentives link the goal of improving a space to the goal of improving residents' experiences in those places.

The two dimensions can be combined to identify four basic types of place-based investment tax incentives.[75] First, *spatially oriented direct tax incentives* provide tax breaks directly to businesses that invest in low-income areas for

---

[74] *See* Layser, *Mapping*, *supra* note 2, at __.

[75] *Id*. at __.

the purpose of improving the economic or built environment.[76] Second, *spatially oriented indirect tax incentives* provide tax breaks directly to third party investors who invest in entities that, in turn, invest in low-income areas for the purpose of improving the economic or built environment.[77] Neither type of law includes features to ensure that local residents benefit from improvements to the space.[78]

Third, *community oriented direct tax incentives* provide tax breaks directly to businesses that invest in low-income communities for the purpose of benefiting local residents through investment in human capital, community services, or other activities that directly benefit low-income people.[79] Fourth, *community oriented indirect tax incentives* provide tax breaks to third party investors who invest in entities that, in turn, invest in low-income communities for these purposes.[80] The table below summarizes these four types of place-based investment tax incentives.

Dimension #1: Form of Subsidy	**Dimension #2: Approach to Targeting Place**	
	Spatially oriented	**Community oriented**
Direct	Spatially oriented direct tax incentives	Community oriented direct tax incentives
Indirect	Spatially oriented indirect tax incentives	Spatially oriented direct tax incentives

The current landscape of place-based investment tax incentives is dominated by spatially oriented investment tax incentives that, by definition, include no

[76] *Id.* at __.

[77] *Id.* at __.

[78] *Id.* at __.

[79] *Id.* at __.

[80] *See* Layser, *Mapping*, *supra* note 2, at __.

safeguards to protect poor communities.[81] Both spatially oriented direct tax incentives and spatially oriented indirect tax incentives are common under current law, whereas community oriented investment tax incentives are comparatively rare.[82]

For example, a common form of place-based investment tax incentives under state law are enterprise zone laws, which designate areas for regulatory and tax relief.[83] Every state enterprise zone law incorporates spatially oriented direct tax incentives, while only a few states include any community oriented investment tax incentives among the mix of tax incentives.[84] Though the exact form varies, every state makes at least some tax preferences available to business located within enterprise zone boundaries, regardless of whether the company hires, serves, or otherwise benefits local residents.[85]

Meanwhile, all current federal place-based investment tax incentives are structured as spatially oriented indirect investment tax incentives. Federal place-based investment tax incentives include the New Markets Tax Credit (NMTC), the new Opportunity Zones tax incentive, and discrete place-based investment tax incentives included with the Low-Income Housing Tax Credit (LIHTC).[86] All three of these laws provide tax benefits to investors who contribute capital to entities that, in turn, invest in low-income areas.[87] And

[81] This conclusion is based on a review of federal place-based investment tax incentives, a detailed survey of state enterprise zone laws, and a high level survey of state place-based investment tax incentives other than enterprise zone laws. Data on file with author.

[82] *See* Layser, *Mapping*, *supra* note 2, at __.

[83] Aprill, *supra* note 22, at 1343.

[84] *See infra* Appendix.

[85] *Id*.

[86] Note that on its face, the LIHTC is not a place-based investment tax incentive at all. To the contrary, the tax credit is available to investors regardless of where affordable housing projects are located. However, the law also provides for larger tax credits when projects are located in certain statutorily defined areas. These higher tax credits create incentives for developers to site projects in those areas and, in fact, a disproportionate number of LIHTC-financed projects are located in those areas.

[87] The indirect form of the tax subsidies enables businesses to access large amounts of capital from investors, enabling them to engage in more expensive projects—such as new business startups, costly rehabilitation projects, or new construction projects—than their direct counterparts.

none of these tax laws include any features to ensure that poor communities will benefit from the tax-driven investments.

The next section provides a theoretical analysis of spatially oriented investment tax incentives and an overview of what is known about their impact. It demonstrates that, despite their prevalence, neither theory nor empirical evidence support the use of spatially oriented tax incentives as tools to address concentrated poverty.

B. Theory and Impact of Spatially Oriented Investment Tax Incentives

Spatially oriented investment tax incentives dominate the current legal landscape of place-based investment tax incentives. However, as this section will demonstrate, theories about mobility predict that wealthy people are more likely to benefit from these types of tax incentives than the poor and, over time, these types of tax incentives are likely to cause gentrification. Moreover, empirical evidence is consistent with these predictions. Thus, this section raises a critical question about place-based investment tax incentives: why do spatially oriented investment tax incentives dominate the current legal landscape despite their predictable failure to benefit the poor?

The answer to this question is key to understanding the limitations and potential of place-based investment tax incentives as anti-poverty tools. To this end, this section will explain the theoretical and practical problems presented by current place-based investment tax incentives, looking first at how mobility effects impact all spatially oriented tax incentives.

1. Tiebout Sorting and Spatially Oriented Investment Tax Incentives

Since spatially oriented investment tax incentives lack safeguards to protect local communities, theory predicts that if they work as intended—to improve neighborhoods through increased investments—then wealthy outsiders will capture at least some of the benefit of these improvements. This is because neighborhood improvements would be expected to "change[] the underlying incentive structure" that affects where people live and work and where businesses locate.[88] In other words, when place-based initiatives increase the opportunities available in an area, mobile residents—who are likely to be

[88] Nestor M. Davidson, *Reconciling People and Place in Housing and Community Development Policy Essay*, 16 GEO. J. ON POVERTY L. & POL'Y 1, 8 (2009).

comparatively wealthy—tend to move into the area to take advantage of those location-based opportunities.[89]

This process is known as "Tiebout sorting," and it is the subject of a large volume of literature.[90] Economist Charles Tiebout famously argued that local governments compete for mobile residents by adjusting the mix of tax burdens and services available in different locations.[91] Place-based investment tax incentives are an example of laws used by local governments to attract mobile capital and residents to poor areas. Though Tiebout sorting does not always take place to the extent that theory might predict,[92] there is empirical evidence that place-based investments do result in wealthier outsiders migrating into the targeted areas following improvements.[93] This suggests that, without specific safeguards to mitigate these effects, mobile outsiders are likely to displace poor residents by taking local jobs and homes.[94]

Empirical studies of the impact of spatially oriented direct investment tax incentives have yielded mixed evidence as to whether the incentives cause Tiebout sorting. For example, numerous studies have tested the impact of enterprise zone laws, which feature spatially oriented direct tax incentives.[95] Some studies have concluded that enterprise zone laws increase the number of jobs in a zone, but note that there is no reason to think the new jobs are

---

[89] Davidson, *supra* note 88, at 8.

[90] *Id.*

[91] Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, at 418 (1956).

[92] *See generally* Naomi Schoenbaum, *Stuck or Rooted: The Costs of Mobility and the Value of Place*, 127 YALE L.J. F. 458 (2017) (identifying costs associated with moving that constrain mobility despite Tiebout's theory).

[93] H. Spencer Banzhaf & Randall P. Walsh, *Segregation and Tiebout Sorting: The Link Between Place-based Investments and Neighborhood Tipping*, 74 J. URB. ECON. 83, 84 (2013).

[94] Davidson, *supra* note 88, at 9.

[95] Note that in addition to tax incentives, enterprise zone laws typically include regulatory relief such as fee waivers or zoning waivers. The mix of incentives makes difficult to assess the impact of any one incentive, so one must take care not to overstate research findings on enterprise zones. Furthermore, since the package of incentives and designs of tax laws vary across programs, it is hard to know whether any single study is generalizable to the enterprise zone approach. *See* Layser, *Mapping*, *supra* note 2, at __.

Please send any comments to mlayser@illinois.edu

filled by residents.[96] Interestingly, most studies have found no significant impact on neighborhood demographics.[97]

However, it is important to note that statistical data about demographics may not tell the whole story about Tiebout sorting, let alone gentrification. Gentrification has traditionally been characterized by displacement of residents,[98] but little data exists to evaluate the rate of displacement of poor residents in communities targeted by spatially oriented direct tax incentives.

---

[96] *See*, *e.g.*, Jed Kolko & David Neumark, *Do Some Enterprise Zones Create Jobs?*, 29 J. POL'Y ANALYSIS & MGMT. 5, 13, 24 (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" but that "there is no reason to believe that enterprise zone employees are enterprise zone residents."). Other studies are skeptical that enterprise zone laws increase the number of jobs in the region, finding that most new enterprise zone jobs are offset by losses to jobs in nearby—and often similarly poor—areas. 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) (finding that enterprise zones of California and Florida "had, at best, no effect on employment and, at worst, a small negative effect in Florida" and that "zone residents were less likely to be employed than residents of observationally similar areas"); 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"); 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) ("Although enterprise zone incentives affect job creation positively, they also increase job destruction, leading to a negligible or negative impact, on average.").

[97] Andrew Hanson, *Local Employment, Poverty, and Property Value Effects of Geographically-Targeted Tax Incentives: An Instrumental Variables Approach*, 39 REG. SCI. URB. ECON. 721–731 (2009) (reaching null results for residential employment); Douglas J. Krupka & Douglas S. Noonan, *Empowerment Zones, Neighborhood Change and Owner-Occupied Housing*, 39 REG. SCI. URB. ECON. 386, 394 (2009). Note, however, that several studies have found that these policies increase area property values and predict that "it may be more likely that geographically-targeted tax incentives and grants benefit land owners," not residents. Hanson, *supra* note, at 730; 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").

[98] Tom Slater, *The Eviction of Critical Perspectives from Gentrification Research*, 30 INT. J. URB. REG. RES. 737, 747 (2006). *But see* Roger M. Groves, *The De-Gentrification of New Markets Tax Credits*, 8 FLA. TAX REV. 213, 227–31 (2006) (discussing and adopting definitions of gentrification that do not turn on displacement).

Measuring the degree of displacement is an infamously difficult task that has presented a challenge to gentrification researchers since such research began in the 1970s.[99] Some scholars have expressed skepticism that measuring displacement is empirically possible, while others have described the task as "'measuring the invisible'" and noted that "'By definition, displaced residents have disappeared from the very places where researchers and census-takers go to look for them."[100] High rates of turnover attributable to eviction may further complicate the task.[101] Due in no small part to these empirical difficulties, many scholars have adopted definitions of gentrification that de-emphasize displacement and recognize other harms associated with neighborhood change that benefits wealthier populations instead of poor residents.[102]

Meanwhile, there is strong evidence that property values increase in enterprise zones,[103] and increased property values often lead to higher rents or property tax assessments—either of which may price out the poorest members of the community.[104] New tenants and homeowners who move into those homes may still be poor, but they will presumably be better off than those who moved out (and more capable of paying the higher rents or taxes). As a result, the poverty rate may fail to capture displacement associated with gentrification.

In sum, there is little empirical evidence that spatially oriented direct tax incentives benefit poor communities, and there is at least some indication that they may actually harm those communities through displacement or other harms associated with gentrification. It is unclear to what extent spatially oriented direct tax incentives have resulted in displacement of residents;

---

[99] Slater, *supra* note 98, 748.

[100] Kathe Newman & Elvin K. Wyly, *The Right to Stay Put, Revisited: Gentrification and Resistance to Displacement in New York City*, 43 URB. STUD. 23, 27 (2006).

[101] DESMOND, *supra* note 41, at 70.

[102] Slater, *supra* note 98, at 747–51; Groves, *supra* note 98, at 231 n.78.

[103] Krupka & Noonan, *supra* note 97, at 395; Hanson, *supra* note 97, at 729.

[104] David Christafore & Susane Leguizamon, *Neighborhood Inequality Spillover Effects of Gentrification*, PAPERS REG. SCI. __, 1 (forthcoming 2018), *available at* https://doi.org/10.1111/pirs.12405.

however, theory predicts that such laws would encourage wealthy outsiders to move into the area and displace residents.

One reason for these mixed empirical results may be that direct tax incentives are simply insufficiently sized to support large development projects or new construction. In fact, there is slightly more evidence that spatially oriented indirect tax incentives, which drive large amounts of capital to poor areas through subsidized financing, do contribute to gentrification. For example, to the extent that the NMTC has been linked to reduced poverty and increased employment rates, researchers predict that some of those changes are attributable to gentrification.[105] This suggests that spatially oriented investment tax incentives do cause Tiebout sorting when the tax subsidies are sufficiently large.

But there is another reason why spatially oriented investment tax incentives are likely to cause Tiebout sorting: place entrepreneurs may actively pursue the types of investments that are most likely to attract wealthy outsiders. The phrase place entrepreneurs refers to investors and other market actors who seek to profit on places.[106] As shown in Part III, all place-based investment tax incentives are influenced by place entrepreneurs, which have played a key role in the development of this category of tax laws. However, spatially oriented indirect tax incentives are particularly vulnerable to the influence of place entrepreneurs. The next section will explain why.

2. Place Entrepreneurs as Significant Stakeholders

Place entrepreneurs are market participants, such as place-based investors, who seek to profit on location and evaluate places "based on assessments of locations as sites of financial reward."[107] This singular focus on profit is often at odds with the needs of poor communities.[108] The conflict has been described as a "struggle between those who produce places for profit and

---

[105] Matthew Freedman, *Teaching New Markets Old Tricks: The Effects of Subsidized Investment on Low-Income Neighborhoods*, 96 J. PUB. ECON. 1000, 1013 (2012).

[106] Thomas F. Gieryn, *A Space for Place in Sociology*, 26 ANN. REV. SOC. 463, 469–70 (2000).

[107] Harvey Johnstone & Doug Lionais, *Depleted Communities and Community Business Entrepreneurship: Revaluing Space Through Place*, 16 ENTREPRENEURSHIP & REGIONAL DEV. 217, 218 (2004).

[108] Gieryn, *supra* note 106, at 470.

those who consume it in their daily rounds."[109] The conflict between place entrepreneurs and poor communities is particularly relevant in the context of spatially oriented indirect tax incentives. To see why, one must have at least some basic understanding of how such indirect tax incentives work in practice.

The most straightforward model of spatially oriented indirect tax incentives is the one adopted by the new Opportunity Zones tax incentive. The new tax law allows taxpayers to defer taxes on capital gains realized during the tax year by investing their capital gains in so-called Opportunity Funds.[110] In this way, the tax law works by encouraging investors to pool their capital in investment funds. By pooling together capital from numerous investors, Opportunity Funds are immediately capable of funding projects with significant capital needs.

But many spatially oriented indirect tax incentives, including the NMTC and the LIHTC, are earned over the course of several years, making it difficult for developers to access the full subsidy during the early years of projects, when the subsidies may be needed most. To solve this problem, a variety of industry actors work together to "monetize" future value from the tax breaks so that federal money can be used as start-up capital. In the most basic case, investors contribute money today for the right to claim the tax credits when they are earned in future years.[111] The amount of money they contribute is based on the amount of tax credits they expect to be able to claim, plus an investment return.[112]

These monetization transactions are best understood through examples. In the case of the LIHTC, developers partner with so-called tax equity investors who contribute capital in exchange for the right to claim the tax credits as they are earned over the ten-year period.[113] Similarly, NMTCs are claimed

---

[109] *Id*. at 470.

[110] I.R.C. § 1400Z-2.

[111] *See* Giegerich, *supra* note 73, at 749–52.

[112] Kirk McClure, *Low and Moderate Income Housing Tax Credits: Calculating Their Value*, 56 AM. PLAN. ASSOC. J. AM. PLAN. ASSOC. CHIC. 363, 366 (1990); Michael Eickhoff & Steve Carter, *Accessing Capital Through the New Markets Tax Credit Program*, 29 J. ST. TAX. RIVERWOODS 17, 17 (2011).

[113] Mihir Desai, Dhammika Dharmapala & Monica Singhal, *Tax Incentives for Affordable Housing: The Low Income Housing Tax Credit*, 24 TAX POL'Y ECON. 181, 185 (2010).

by investors who invest in Community Development Entities that have been awarded the tax credits, which will be earned over a seven-year period.[114] In both cases, the capital investments are sized to equal the present value of the anticipated tax credits, plus an investment return.[115] By monetizing the entire future value of the tax credits, project developers are able to access large amounts of tax-subsidized capital in order to help fund large projects, such as new construction or start-up businesses.[116]

Thus, both investment funds and monetization transactions are effective at directing large amounts of private capital to projects. But the mechanism used to access the subsidy depends heavily on the involvement of third-party investors, fund managers, syndicators, attorneys, accountants and consultants. Those parties, who are essential to fund management and monetization transactions, capture value before it reaches poor communities. They also stand—along with community development entities, developers, and other industry actors—to derive significant value from the process of gentrification.

All of these parties, which ultimately profit on place-based investments, are place entrepreneurs. By relying heavily on place entrepreneurs for monetization or pooling of capital, spatially oriented indirect tax incentives implicitly define place along a "one-dimensional construct of capital logic based on the profit motive" and largely devoid of social meaning.[117] In other words, they treat economic distress as "a process that occurs in economic space,"[118] while communities, which are inherently social, fade into the background.

It is worth noting here that place entrepreneurs are not necessarily bad actors who consciously take advantage of the poor. In connection with this research, I spoke with high level employees at several Community Development Entities and several consultants who represent clients in affordable housing

---

114 *See* Eickhoff and Carter, *supra* note 112, 17.

115 McClure, *supra* note 112, at 366; Eickhoff and Carter, *supra* note 112, at 17 (describing the discounted "price" of NMTC credits to the investor).

116 Giegerich, *supra* note 73, at 749–52.

117 *Id.* at 218–19.

118 Johnstone and Lionais, *supra* note 107, at 218. Note that Johnstone and Lionais distinguish between *spaces* and *places*, where "*space* is the location of profitable enterprise," and "*place* is the location of social life." *Id.* at 219.

and community development industries.[119] The professionals who spoke to me seemed genuine in their belief that the deals facilitated through the NMTC and LIHTC have high social value and benefit low-income communities.[120] Moreover, they expressed deep concern that, without such subsidies, many worthwhile projects would go unfunded.[121]

Indeed, there may be good reasons to use tax incentives to encourage place entrepreneurs to invest in low-income communities. Some theorists have argued that today's neighborhood poverty can often be traced to systematic disinvestment "aided and abetted by federal agencies, as well as the concentration of high-density housing projects within them, constructed by local authorities under federal programs. . . ."[122] Such lack of investment has been blamed for the deterioration of "educational facilities, employment opportunities, health care delivery, security of person and property, and so on."[123] Place-based investment tax incentives have the potential to reverse this trend.

However, the projects pursued by place entrepreneurs do not necessarily address these needs. A case in point, the NMTC has long been criticized for subsidizing projects that fail to benefit poor communities.[124] A 2006 study of the descriptions of projects that were awarded NMTC benefits concluded that "approximately $2 billion of tax credit subsidy has been allocated to projects that appear to be designed primarily for those already with the very

[119] Telephone Interview with David Godschalk, General Counsel, Telesis CDE Corporation (May 11, 2017) (interview on file with author) [hereinafter Godschalk Interview]; Telephone Interview with Peter Lawrence, Director of Public Policy and Government Relations, Novogradac & Co. LLP (May 11, 2017) (interview on file with author) [hereinafter Lawrence Interview]; E-mail from Paul Anderson, Director of Policy & Research, Rapoza Associates, to author (May 10, 2017); E-mail from Eric Klipfer, VP – Manager of Alternative Products, RBC Community Development, LLC, to author (May 11, 2017).

[120] Godschalk Interview, *supra* note 119; Lawrence Interview, *supra* note 119.

[121] Godschalk Interview, *supra* note 119; Lawrence Interview, *supra* note 119.

[122] *See, e.g.*, Thomas McCarthy, *Coming to Terms with Our Past, Part II: On the Morality and Politics of Reparations for Slavery*, 32 POLIT. THEORY 750, 763 (2004).

[123] *Id.* at 764.

[124] Groves, *supra* note 98, at 231.

Please send any comments to mlayser@illinois.edu

access to capital that the low-income residents lack."[125] For example, funded projects included "movie theatres, performing art centers for opera, symphony and ballet, hotels like the Marriott Inn with connected convention centers, museums, upscale commercial office, retail outlets, and even tourist centers."[126]

The Opportunity Zones tax incentive is likely to have a similar impact. The fund model described above is less reliant on place entrepreneurs than incentives that require monetization; however, in practice Opportunity Zones are likely to be combined with the NMTC. Since Opportunity Zones are effectively a subset of NMTC eligible census tracts, some industry experts expect that Opportunity funds will be used to attract equity financing to the same projects that receive subsidized debt capital through the NMTC program.[127]

Therefore, despite adopting different incentive models, both the NMTC and Opportunity Zones tax incentives are likely to be similarly influenced by the interests of place entrepreneurs. Since neither law includes any requirement that businesses benefit local residents—such as through hiring, job training,

[125] *Id.*

[126] Groves, *supra* note 98, at 225.

[127] Barlow George & John Sciarretti, *Pairing NMTCs with Opportunity Zone Incentives*, NOVOGRADAC & COMPANY LLP, April 5, 2018, https://www.novoco.com/periodicals/articles/pairing-nmtcs-opportunity-zone-incentives. As a practical matter, there is substantial overlap between NMTC eligible census tracts and designated Opportunity Zones. Under the statute, census tracts were eligible for designation as opportunity zones if they met the statutory definition of "low-income community," which was defined by reference to the NMTC statute. I.R.C. § 1400Z-2. Under the NMTC statute, "low-income communities" generally refers to census tracts with a poverty rate of at least 20 percent, or which meet certain median family income thresholds. I.R.C. § 45D. State governors were charged with designating [up to half] of eligible census tracts as opportunity zones. I.R.C. § 1400Z-1. In other words, the NMTC law defined certain census tracts as low-income communities, and a subset of those census tracts have since been designated as opportunity zones. Both laws provide tax breaks to investors who make equity investments in entities that, in turn, invest in the eligible zones. Where the NMTC has most often been used for debt financing of "low-income community businesses," the Opportunity Zones tax incentives are expected to encourage equity financing of "qualified opportunity zone businesses." I.R.C. § 45D; I.R.C. § 1400Z-1. Both "low-income community businesses" and "qualified opportunity zone businesses" are defined by tax law. Both definitions require the businesses to meet certain thresholds for owning tangible property located within zone boundaries and to generate income from business activities inside the zones. I.R.C. § 45D; I.R.C. § 1400Z-2.

or providing services—in order to qualify as a low-income community business or qualified opportunity zone business, there is no reason to think that Opportunity Zones tax incentives will be any more beneficial to low-income communities than the NMTC.[128]

In sum, spatially oriented investment tax incentives are the dominant form of place-based investment tax incentives under current law. This is true despite a lack of empirical evidence to suggest that such tax laws help poor communities, even though their proponents claim that helping poor communities is an important goal. This lack of evidence is consistent with theories that predict Tiebout sorting and the impact of place entrepreneurs. And it is not an accident that spatially oriented investment tax incentives have come to dominate the current landscape of place-based investment tax incentives. The next section will argue that the design and impact of these laws is consistent with the pro-gentrification environment that produced them.

[128] The LIHTC, on the other hand, promotes investment in affordable housing, which helps provide shelter to poor individuals. For this reason, one could argue that the LIHTC is a community oriented incentive. However, the LIHTC also incorporates spatially oriented indirect tax incentives within its incentive structure. Specifically, the LIHTC contains two place-based incentives: a bonus credit for projects located in "Qualified Census Tracts" (QCTs) and a bonus credit for projects located in "Difficult Development Areas" (DDAs). These incentives are specifically "intended to provide additional incentives for the rehabilitation or replacement of substandard rental housing in low-income areas." Michael Hollar & Kurt Usowski, *Low-Income Housing Tax Credit Qualified Census Tracts*, 9 CITYSCAPE 153, 154 (2007); DEP'T OF HOUSING & URB. DEV., STATUTORILY MANDATED DESIGNATION OF DIFFICULT DEVELOPMENT AREAS AND QUALIFIED CENSUS TRACTS FOR SECTION 42 OF THE INTERNAL REVENUE CODE OF 1986, at 13 (2002), https://www.huduser.gov/portal/Datasets/QCT/2002NOTICE.pdf [hereinafter HUD NOTICE]. Both QCT and DDA tax incentives may harm poor communities. Some studies have concluded that the provisions may help draw more low-income residents into poor areas, thereby further contributing to concentrated poverty. *See* Layser, *Segregation*, *supra* note 1, at __. Moreover, clustering affordable housing projects in very poor areas creates a barrier to poor people's ability to move to higher opportunity areas, potentially undermining other anti-poverty strategies like Housing Choice tenant vouchers. Because the law is designed without any effort to reduce these risks of harm to low-income communities, the LIHTC cannot be described as a community oriented incentives despite its benefits. Furthermore, if the tax incentives promote the clustering of affordable housing in specific, very high-poverty areas, then they may also help reduce the number of projects located in other areas that are better candidates for gentrification. In this way, the LIHTC may subtly support gentrification efforts elsewhere in the city.

III. THE PRO-GENTRIFICATION ORIGINS OF PLACE-BASED INVESTMENT TAX INCENTIVES

The central problem presented by place-based investment tax incentives is a contradiction between rhetoric and reality. On the one hand, place-based investment tax incentives are presented by lawmakers—and regarded by watchdog groups—as a possible solution to problems faced by poor communities. On the other hand, the spatially oriented investment tax incentives that dominate the current legal landscape are limited, both in theory and practice, in their ability to benefit poor communities.

Moreover, a second contradiction compounds the first. Federal place-based investment tax incentives first appeared as common place-based strategies during a period when the broader trend in federal anti-poverty and affordable housing policies began to shift toward people-based strategies, such as rental vouchers used to aid poor tenants.[129] Today, people-based initiatives continue to dominate nontax policies used to address concentrated poverty, while tax laws overwhelmingly adopt the place-based approach.

Thus, not only do place-based investment tax incentives fail to benefit poor communities, as their proponents claim, but the place-based initiatives supported by tax law also appear to deviate from broader trends of anti-poverty and affordable housing policy. This Part presents a theory to explain this current legal landscape and the apparent deviation between the tax-based approach and broader trends in housing and community development policies. Namely, this Part argues that both strands of policy can be traced to state efforts to support gentrification of poor areas.

It is worth noting that gentrification has rarely been a stated goal of any government policy, let alone place-based investment tax incentives. Most

---

[129] As explained in Part III.B., place-based investment tax incentives first appeared on the state level in the 1980s, shortly after the nontax inner city "urban renewal" initiatives of the 1950 and 1960s fell out of favor. Urban renewal policies, which bulldozed neighborhoods and displaced whole communities, were widely regarded as failed policies. Davidson, *supra* note 88, at 3. Outside of the tax context, those early failures lead to a shift away from place-based policies and toward people-based initiatives, such as rental vouchers, to aid poor tenants. Peter Edelman, *Our History With Concentrated Poverty*, *in* INVESTING IN WHAT WORKS FOR AMERICA'S COMMUNITIES: ESSAYS ON PEOPLE, PLACE & PURPOSE (N.O. Andrews & D.J. Erickson eds., 2012). For example, Housing Choice Vouchers provide subsidies to low-income tenants that ostensibly provide low-income renters with greater housing choice. *Id.* Critics of mobility approaches emphasize risks and potential harms related to displacement of individuals from their home communities. *Id.*

legal scholarship regards gentrification as an unintended, regrettable consequence of place-based policies, not the hidden motivator.[130] Nevertheless, the rise of place-based investment tax incentives can be explained as a natural outgrowth of state policies in support of private industry efforts to profit through gentrification.

As this Part will show, powerful market forces and place entrepreneurs have helped shape the law in this area. As a result, the overwhelming majority of current place-based investment tax incentives are best understood as tax-based subsidies to enable private parties to profit from gentrification.[131] To elaborate on this theory, this section traces the development of place-based investment tax incentives over time in order to provide a positive law account for this category of tax laws. Specifically, this section posits that most place-based investment tax incentives have their origins in state-led gentrification policies.

A. From Urban Decline to Gentrification

1. Urban Decline

Before one can appreciate the state's role in promoting gentrification—and the link between gentrification policy and tax law—one must first understand how neighborhoods become candidates for gentrification in the first place. Before gentrification comes urban decline. And urban decline is inextricably linked to concentrated poverty.

The process of urban decline has been documented by social scientists as occurring in several phases, beginning with new construction of residential homes and an initial cycle of use.[132] In his highly influential photo documentary *How the Other Half Lives*, Jacob Riis described the origins of New York immigrant slums as "the decorous homes of the old Knickerbockers, the

---

[130] *See, generally*, Groves, *supra* note 98 (approaching gentrification as a reflection of flaws within the New Markets Tax Credit program); Davidson, *supra* note 88 (characterizing the risk of displacement as a limitation of place-based strategies).

[131] Gentrification can be defined as "the production of space for progressively more affluent users." Slater, *supra* note 98, at 744.

[132] Neil Smith, *Toward a Theory of Gentrification A Back to the City Movement by Capital, not People*, 45 J. AM. PLANNING ASSOC. 538, 543 (1979).

proud aristocracy of Manhattan in the early days."[133] Riis observed, "Nothing would probably have shocked their original owners more than the idea of their harboring a promiscuous crowd."[134] Riis went on to describe the transition of those houses, which were once inhabited by the wealthy, into poor immigrant tenements.[135]

That transition process, which was neither unique to New York, nor time-bound to any one period, has been described as follows. For as long as inhabitants of new homes have the motivation and capacity to make repairs and improvements, property holds its value.[136] But when repairs are not made, home values depreciate over time.[137] When this happens, neighborhoods tend to convert into rental housing, kicking off a second phase of decline.[138] In New York, the fancy Knickerbocker homes eventually "fell into the hands of real estate agents and boarding-house keepers" who converted the properties into rental properties.[139]

Landlords, who derive value almost entirely from rent, have less incentive than owners to carry out repairs.[140] Over time, under-maintenance in

---

133 JACOB RIIS, HOW THE OTHER HALF LIVES (1890), https://www.gutenberg.org/files/45502/45502-h/45502-h.htm (last visited Nov 21, 2018).

134 *Id.*

135 But not all new construction is created for the wealthy. In many cases, new construction is driven by industry expansion and the need to house workers. In mid-nineteenth century Chicago, the "flood of canal workers and land speculators transformed Chicago from the town of 'four and a half houses, a fort and a Potawatomi town' . . . to the fastest-growing city in the world." The History of the Chicago River, WTTW CHICAGO (2017), https://interactive.wttw.com/chicago-river-tour/history-chicago-river (last visited Jan 17, 2019).

136 Smith, *supra* note 132, at 543.

137 *Id.*

138 *Id.* at 543–44. When neighborhoods did not naturally give way to rental properties, racist real estate practices hastened the process. *Id*. at 544. Real estate agents in the 1950s and 1960s actively sought out declining neighborhoods as targets for a practice called blockbusting. *Id*.

139 RIIS, *supra* note 133.

140 Smith, *supra* note 132, at 544 (explaining that, unlike owner-occupiers who receive value "as both consumers and investors," landlords derive value almost entirely from rent and has less incentive to carry out repairs).

landlord-owned neighborhoods gives way to "more active disinvestment as capital depreciates further and the landlord's stake diminishes."[141] At this stage, landlords often subdivide structures in order to rent spaces to more tenants. [142] At the same time, landlords increasingly refuse to make repairs, paying only the necessary costs.[143]

During this phase, in particular, "the poor [become] the opportunity of their wealthier neighbors," given their desperate need for housing and lack of negotiation power.[144] By the late nineteenth century, the large rooms of the Knickerbocker homes had been "partitioned into several smaller ones, without regard to light or ventilation."[145] And New York was not the only city experiencing urban decline; neighborhoods across America faced similar fates. By the 1950s in Chicago,

> Almost all the buildings dated to the previous century. Many of them were cheap frame constructions slapped up after the Great Fire of 1871 . . . . [N]early half of the 2,325 homes were without a bath or shower, many had no private toilet, and all but a few relied on coal stoves for heat . . . . Flimsy partitions carved up the apartments into multiple units . . . . Despite the conditions, rents had jumped by 70 percent. Landlords overcharged for their firetraps."[146]

Only when they can no longer collect enough rent to cover the costs of utilities and taxes, will landlords abandon their properties.[147] In this final phase of decline, "buildings are abandoned not because they are unusable, but because

[141] *Id.* at 544.

[142] *Id.* at 545. *See also* AUSTEN, *supra* note 135, at 7.

[143] AUSTEN, *supra* note 135, at 7; DESMOND, *supra* note 41, at 74–76.

[144] RIIS, *supra* note 133; DESMOND, *supra* note 41, at 75.

[145] RIIS, *supra* note 133.

[146] AUSTEN, *supra* note 135, at 3.

[147] Smith, *supra* note 132, at 545; AUSTEN, *supra* note 135, at 7 (noting the high-rents charged for slum housing in 1950s Chicago).

they cannot be used *profitably*."[148] At this point, the stage is set for an infamous type of market reversal: gentrification.

2. Gentrification and Urban Renewal

By the 1930s, cities throughout the country had begun to enter the late stages of urban decline. In such neighborhoods, "developers can purchase [property] cheaply, can pay the builders' costs and profit for rehabilitation, can pay interest on mortgage and construction loans, and can then sell the end product for a sale price that leaves a satisfactory return to the developer."[149] But despite their profit potential, inner-city investments were risky, and private market investors were often unwilling to invest without state assistance to serve as insurance.[150] For this reason, private real estate agencies began pressing for state assistance that would enable private entrepreneurs "to acquire and rebuild deteriorated sections of the city."[151]

Gentrification can be initiated by any number of actors in the land and housing market, but empirical evidence suggests that the process is usually initiated by some form of collective social action, and the state "initiated most if not all of the early schemes."[152] Around the country, pro-growth coalitions formed among mayors, business people and bankers, and by 1948, 25 states had adopted laws to enable urban redevelopment. [153] In 1949, the federal government established its own urban redevelopment program to fund slum clearance,[154] and five years later Congress enacted the Housing Act of 1954.

---

[148] Smith, *supra* note 132, at 545.

[149] *Id.*

[150] Jason Hackworth & Neil Smith, *The changing state of gentrification*, 92 J. ECON. SOC. GEOGRAPHY 464, 469 (2001).

[151] Alexander von Hoffman, *The Lost History of Urban Renewal*, 1 *in* THE AFFORDABLE HOUSING READER 14, 15 (J. Rosie Tighe & Elizabeth J. Mueller eds., 2013).

[152] Smith, *supra* note 132, at 545.

[153] Hoffman, *supra* note 151, at 15.

[154] *Id.* at 17. U.S. Housing Act of 1949. The slum-clearance program effectively linked public housing to urban redevelopment by requiring that development sites be "'predominantly residential' either before or after redevelopment." *Id.* ("[t]he clear implication was that clearance projects would involve re-housing slum dwellers either on the site or elsewhere and that only public housing could provide shelter for low-income households"). Many "pro-development city officials and civic leaders continued to support slum clearance," even when there was no replacement public housing. *Id.* at 25. Some of

[155] Under the Act, cities were entitled to federal funds for nonresidential development that decreased housing problems, but only after the city established a local urban renewal authority. [156]

The new local urban renewal authorities were often "manipulated by the powerful vested interests in the community resulting in urban renewal becoming a source of windfall profits for private developers and landowners."[157] Moreover, "almost every large city developed a corporate-based planning body concerned with urban development,"[158] and those organizations "dominated the origins of local renewal policy making, financed central-business-district planning out of their private funds, and provided personnel for more public bodies charged with overseeing the local renewal programs."[159]

In this way, some scholars argue that the Housing Act of 1954 ushered in the first examples of systematic, state assisted gentrification in America.[160] The federal government provided direct grants, and state governments aggressively assisted their corporate-led local urban renewal authorities in gentrification by "assembling properties at fair market value and returning them to developers at the lower assessed price."[161] In other words,

---

the most public urban renewal projects involved demolition of residential buildings and displacement of their residents, and the concept of urban renewal quickly became associated with clearance projects. Clearance projects began to fall out of favor in the 1960s, as the public grew frustrated by "the disruption of city dwellers, destruction of private property, and the seemingly interminable length of time it took to complete renewal projects." *Id.* at 26.

[155] Norma Nager, *Continuities of Urban Policy on the Poor: From Urban Renewal to Reinvestment*, *in* BACK TO THE CITY 239, 242 (1980).

[156] *Id.*

[157] *Id.*

[158] *Id.* at 244.

[159] Roger Friedland, *Corporate Power and Urban Growth: The Case of Urban Renewal*, 10 POL. & SOC. 203, 208 (1980).

[160] *See, e.g.*, Nager, *supra* note 155, at 242.

[161] Smith, *supra* note 132, at 546. The Supreme Court aided in this approach, holding in *Berman v. Parker* that taking property for the purpose of slum clearance was a public use, thereby arguably giving local governments "cart blanche to take private property and convey it to private entities as a public use under the guise of urban renewal." Berman v.

governments bore the costs of the last stages of decline so that developers could reap profits.[162]

The impact of state-assisted gentrification was "highly class specific" and "[c]onditions generally worsened for the urban working class as a result of such intervention."[163] Though the precise meaning of gentrification has been debated by scholars, the term has been defined as "'the production of space for progressively more affluent users.'"[164] In other words, gentrification connotes the transformation of a space for the benefit of more affluent users, with an emphasis on "a process of *class transformation*."[165] But gentrification also connotes racial transformation, so much so that the impact of gentrification on the poor was known at the time as "negro removal."[166]

In the 1960s, urban housing conditions became a flash point in the civil rights movement. The Watts Riot, which took place in August of 1965, was the "largest and costliest urban rebellion of the Civil Rights era." [167] The riot was located in a "deeply impoverished African American neighborhood in South Central Los Angeles."[168] Social movements like these ultimately forced the creation of the Department of Housing and Urban Development (HUD).[169]

Parker, 348, U.S. 26 (1954); Gerald S. Dickinson, *Inclusionary Takings*, 62 VILL. L. REV. 135, 145–46 (2017).

[162] Smith, *supra* note 132, at 546.

[163] Hackworth & Smith, *supra* note 150, at 466.

[164] Slater, *supra* note 98, at 744 (citing Jason Hackworth, *Post-Recession Gentrification in New York City*, 37 URB. AFF. REV. 815 (2002)).

[165] *Id.* at 744.

[166] Donald C. Jr. Bryant & Henry W. Jr. McGee, *Gentrification and the Law: Combatting Urban Displacement*, 25 WASH. U. J. URB. & CONTEMP. L. 43, n.9 (1983).

[167] DIGITAL LIBRARY OF GEORGIA, WATTS RIOTS, http://crdl.usg.edu/events/watts_riots/ (last visited Jan. 17, 2019).

[168] *Id.*

[169] Hackworth & Smith, *supra* note 150, at 469. *See* Pub. L. No. 90-448, 82 Stat. 413 (1968) (codified at 42 U.S.C. § 1441). That same year, Congress enacted the Fair Housing Act in order to prohibit, among other things, discrimination in the sale or rental of housing owned, operated, or directly or indirectly subsidized by the federal government. See Pub. L. No. 90-284, tit. VIII § 802 (1968). The Fair Housing Act was an important step toward reducing discrimination in American housing, and in the 1970s the word "segregation" began to "disappear[] from the American vocabulary." DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID (1993). Yet, sociologists Douglas Massey and Nancy

In the early years after the development of HUD, "[r]emoving public housing—long seen as anathema to gentrification—was . . . made practically impossible."[170]

The federal government terminated the direct urban renewal program entirely in 1974, replacing it with a block grant program that "left decisions of whether and how to pursue urban improvements to the discretion of local governments."[171] Such programs marked a definitive move away from direct federal assistance in gentrification efforts toward public-private partnerships, and a shift of control from the federal government to state authorities. This shift was further advanced by the policies of President Ronald Reagan, who took office in 1981.

The Reagan Administration was overwhelmingly characterized by federalist and private market ideologies.[172] Reagan worked to dismantle federal regulation.[173] This assault on the regulatory state "took the form of funding reductions for welfare and affordable housing, but more subtly it also encouraged non-Keynesian modes of *local* governance."[174]

In this political environment, the first place-based investment tax incentives were born: enterprise zones. As the next section will demonstrate, enterprise zone laws emerged as indirect pro-gentrification state law policies during a period when the federal government's willingness and capacity to provide direct financial assistance for gentrification was limited. The pro-gentrification origins of enterprise zone laws help explain the dominance of

---

Denton observed that segregation persisted after the Act, and "the only urban areas where significant desegregation occurred during the 1970s were those where the black population was so small that integration could take place without threatening white preferences for limited contact with blacks." *Id*.

[170] *Id.* The Housing and Urban Development Act of 1968, called for the development of 26 million new housing units over the next decade, of which six million were to serve low- or moderate-income families. HARRISON G. WEHNER, JR., SECTIONS 235 AND 236: AN ECONOMIC EVALUATION OF HUD'S PRINCIPAL HOUSING SUBSIDY PROGRAMS 10 (1973).

[171] Hoffman, *supra* note 151, at 26,

[172] Bennett Harrison, *The Politics and Economics of the Urban Enterprise Zone Proposal: a Critique*, 6 INT. J. URB. REG. RES. 422, 422 (1982).

[173] Hackworth & Smith, *supra* note 150, at 469.

[174] *Id*. Keynesian governance is characterized by government intervention, whereas non-Keynesian governance is characterized by minimal government intervention.

spatially oriented investment tax incentives that do not include any safeguards for poor communities.

B. From Gentrification Policy to Tax Law

The traditional narrative about the origin of enterprise zone laws goes like this: The enterprise zone concept originated in Great Britain, proposed by Professor Peter Hall during a speech in 1977,[175] as a solution to "abandoned and unpopulated industrial areas."[176] Hall imagined the zones as "freeports" where businesses and entrepreneurs "would be exempted from taxes and government regulations, and would be provided with only minimal social service provisions."[177] The "unbridled free enterprise" approach to economic development was attractive to British conservatives,[178] and the proposals became a reality there in 1980.[179] At that time, the Thatcher government designated eleven small areas as Enterprise Zones in distressed urban centers.[180]

Meanwhile in the U.S., economist Stuart Butler of the conservative Heritage Foundation began to introduce enterprise zones to Americans as a "radical new approach to inner city revitalization" beginning in 1979.[181] Unlike the British version of enterprise zones, which were "not seen as tools to revive distressed neighborhoods," but rather to help create "metropolitan industrial parks,"[182] Butler's version of enterprise zones focused on tax and regulatory

[175] Robert A. Williams, *State and Local Development Incentives for Successful Enterprise Zone Initiatives*, 14 RUTGERS L. REV. 41, 44 (1982); Scott A. Tschirgi, *Aiming the Tax Code at Distressed Areas: An Examination and Analysis of Current Enterprise Zone Proposals*, 43 FLA. L. REV. 991, 993–94 (1991); Aprill, *supra* note 22, at 1354 n.68.

[176] Aprill, *supra* note 22, at 1354.

[177] Williams, *supra* note 175, at 45; Harrison, *supra* note 172, at 422–23.

[178] *Id*.

[179] *Id.*

[180] *Id.* at 54–55.

[181] *Id.* at 50; Jeffrey M. Euston, *Clinton's Empowerment Zones: Hope for the Cities or a Failing Enterprise*, 3 KAN. J.L. & PUB. POL'Y 140, 141 (1993).

[182] Euston, *supra* note 181, at 141.

incentives to stimulate new jobs, especially in the small business sector, as a solution to urban poverty.[183]

Republican Congressman Jack Kemp introduced the first enterprise zone bill to Congress in 1980, kicking off several years of debate.[184] Reagan supported the proposal, stressing that tax incentives "do not require bureaucracy."[185] The proposed law would have designated certain spatially-bound areas as eligible for a variety of economic and regulatory benefits, including tax credits and exemptions, intended to attract new investment to distressed areas.[186] The proposal prompted immediate criticism from academic observers.[187]

Prominent geographer Doreen Massey seized on a key critique of the proposed incentives, predicting that "the main impact of the zones will be spatially redistributive—that they will lead to a shifting around of jobs, but not to the creation of new ones."[188] Even if new jobs were created within the boundaries of the zone, Massey argued, they would not necessarily lead to a net increase in jobs in the region, since new companies in the zone may lead to closures or labor reductions at firms outside the zone.[189] To the extent that new jobs might be created within the zones, others worried that "the zones could become havens for the revival of old-fashioned sweat shops."[190]

---

183 Williams, *supra* note 175, at 52.

184 *Id.* at 54–55.

185 Charles M. Haar, *The Joint Venture Approach to Urban Renewal: From Model Cities to Enterprise Zones*, *in* PUBLIC-PRIVATE PARTNERSHIP 63, 73 (Harvey Brooks, Lance Liebman, & Corinne S. Schelling eds., 1984).

186 *See* Lewis D. Solomon & Janet Stern Solomon, *Enterprise Zones, Tax Incentives and the Revitalization of Inner Cities: A Study of Supply Side Policy-Making*, 1981 DETROIT C.L. REV. 797, 804–07 (1981).

187 Williams, *supra* note 175, at n.28.

188 Doreen Massey, *Enterprise Zones: A Political Issue*, 6 INT. J. URB. REG. RES. 429, 430–32 (1982).

189 *Id.* at 431.

190 Harrison, *supra* note 172, at 425; William W. Goldsmith, *Enterprise Zones: If They Work, We're In Trouble*, 6 INT. J. URB. REG. RES. 435, 440 (1982) (explaining that zone-driven investment would depend "on a labour source with low skills, willing to work for low wages").

Kemp's bill and several other early proposals, including a high-profile bill introduced by President Ronald Reagan in 1982, never became legislation.[191] Barriers to adoption on the federal level included a lack of empirical support for the strategy, opposition from some national businesses, and a suspicion that enterprise zones represented a "'zero-sum game[]', in which governments entice business investments and jobs away from each other, with no net gain to the national economy."[192]

Nevertheless, the idea took hold at the state and local level as early as 1981, and by the early 1990s, 38 states and the District of Columbia had adopted their own enterprise zone legislation.[193] According to this traditional narrative, the rapid growth of enterprise zone programs among the states was fueled by both ideological and practical dimensions.[194] The bipartisan political attractiveness of enterprise zones likely stems from the fact that the "idea promises to achieve real improvements in purchasing power of individuals without providing direct government aid" and it "satisfies the political need to appear to be responding to problems for which there is no consensus on a solution and in a context where few resources exist."[195]

Accurate or not, this traditional narrative fails to account for another important tension of the period: private industry continued to seek profit through gentrification, but existing federal legal frameworks constrained states' abilities to provide them with direct financial assistance despite the otherwise pro-business, pro-federalism political climate.[196] Despite significant efforts to weaken HUD through funding cuts, during the 1980s the agency retained the power to enforce anti-gentrification laws that had been introduced in the early 1970s in response to the Civil Rights movement.[197]

---

[191] Euston, *supra* note 181, at 143.

[192] Elizabeth M. Gunn, *The Growth of Enterprise Zones: A Policy Transformation*, 21 POL'Y STUD. J. 432, 433 (1993).

[193] *Id.* at 432.

[194] *See id.* at 432–33.

[195] *Id.* at 435.

[196] Hackworth & Smith, *supra* note 150, at 469.

[197] *Id. See supra* notes 167–170 and accompanying text.

For example, under HUD oversight, cities were required to address affordable housing issues if a gentrification plan was unveiled in connection with any federal assistance.[198] Specifically, the federal government could not assist with any project without a "relocation assistance advisory program for displaced persons."[199] Similarly, no federal grants—including community development block grants—were available unless the state submitted a "housing assistance plan."[200] And, in 1988, Congress enacted the most restrictive rule of all: a requirement that, in the event that residents are displaced as a result of a state-assisted redevelopment plan, the relevant government agency must provide a one-for-one replacement of housing units lost through the plan.[201]

These laws constrained states' abilities to provide the direct assistance for gentrification that were common in prior decades.[202] For example, in at least one documented case, a coalition of state and private actors abandoned a redevelopment plan because the cost of replacing destroyed units would be too high.[203] States that wished to continue supporting corporate gentrification efforts, without triggering housing assistance obligations or unit-replacement requirements, were forced to seek out indirect means of assistance.[204]

---

[198] *Id.* at 469.

[199] Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. No. 91-646, 84 Stat. 1894 (1971) (the "Uniform Relocation Act").

[200] *See* Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (1974).

[201] Housing and Community Development Act of 1987, § 509, Pub. L. No. 100-242, 101 Stat. 1815 (1988) (codified at 42 U.S.C. § 5304(d)) (providing that "in the event of . . . displacement . . . governmental agencies or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low and moderate income dwelling units demolished or converted to a use other than for housing for low and moderate income persons.").

[202] *See* notes 160–162 and accompanying text.

[203] *See* Jason Hackworth, *State Devolution, Urban Regimes, and the Production of Geographic Scale: The Case of New Brunswick, New Jersey*, 21 URB. GEOGRAPHY 450, 453–54 (2000).

[204] Hackworth & Smith, *supra* note 150, at 469–70.

Please send any comments to mlayser@illinois.edu

A commonly chosen method was to assist and nudge private market gentrification efforts through favorable land-use laws.[205] Place entrepreneurs, such as developers, sought a favorable legal environment to enable them to profit on location and make their investment decisions based on the likelihood of financial returns.[206] And the enterprise zone laws that emerged during this period were simply the tax-based equivalent to these land use laws. Like many urban land-use laws, enterprise zones provide favorable regulatory conditions for businesses. But they also provide an additional benefit in the form of tax-based subsidies to businesses located within zone boundaries.[207]

Given the laws' pro-gentrification origin, one would expect enterprise zone laws to feature spatially oriented investment tax incentives. If the primary objective of the tax laws was to assist developers in their efforts to profit in poor areas during a period when other sources of state assistance was limited, then there was no need to incorporate features to safeguard poor communities. Viewed in this light, the trends described in Part II begin to make sense, and the rhetoric that suggests that place-based investment tax incentives help poor communities begins to sound hollow.

The legislative history of enterprise zone laws offers further support for the theory that these laws were introduced to advance pro-gentrification business interests without regard to poor communities. A review of statements of legislative findings that were codified with the enterprise zone laws of 21 states revealed that only one state—New York—included a reference to poverty among the findings used to justify the tax laws.[208] In contrast, the statements contained 44 references to economic conditions, 40 references to businesses, and 21 references to development.[209]

---

[205] *See* Hackworth, *supra* note 203, at 451.

[206] *See id*.

[207] Stanley S. Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures*, 83 HARV. LAW REV. 705, 706, 711 (1969); Haar, supra note 185, at 65.

[208] N.Y. GEN. MUN. LAW § 956 (statement of legislative findings and declaration). This analysis included the statements of legislative findings or purpose of enterprise zone laws in the following states: Alabama, California, Colorado, Connecticut, Washington, D.C., Georgia, Hawaii, Illinois, Louisiana, Maryland, Michigan, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas.

[209] Data on file with author.

In addition, when the language used in these statements was coded as business[210] or spatially[211] oriented versus people[212] oriented, only about a quarter of all phrases were people-oriented. It would be unwise to place too much weight on this high-level content analysis given the small sample size, which was limited to codified statements of legislative findings and did not include other sources of legislative history. Nevertheless, these observations provide some evidence that legislators were more concerned with business interests and economic conditions than with the welfare of poor residents—let alone poor residents who live in enterprise zones.

Moreover, the pro-gentrification origins of place-based investment tax incentives also help explain incentives included within the low-income housing tax credit (LIHTC). The LIHTC incorporates two place-based investment tax incentives in the form of additional tax credits for affordable housing projects located in a "qualified census tract" (QCT) or "difficult development area" (DDA).[213] Both the QCT and DDA provisions were introduced in 1989, shortly after the one-for-one unit replacement rule was introduced.[214] This suggests that one purpose of these provisions, which increase the size of tax subsidies available in designated low-income areas, may have been to make compliance with the one-for-one unit replacement rule—which would otherwise make gentrification particularly costly in these areas—more affordable. Thus, the spatially oriented indirect tax incentives

[210] Words coded as business oriented were: private, economic, business, industrial, development, stimulate, growth, expansion, sector, attract, expanding, commercial, activity, commerce, entities, capital, economy, facilities, firms, business-friendly, underdevelopment, and assistance (of businesses).

[211] Words coded as spatially oriented were: areas, local, district, urban, abandoned, deterioration, blighted, rehabilitate, rural, adjacent, center, counties, dilapidated, geographic, geography, locate, property, structures, boundary, buildings, land, metropolitan, regions, and relocation.

[212] Words coded as community oriented included: opportunities, job, assistance (of people), community, communities, employment, welfare, health, neighborhood, people, safety, citizens, residents, unemployment, services, human, impoverished, organizations, training, aid, crime, homeownership, labor, poverty, social, underemployment, unemployed, and workers.

[213] I.R.C. § 42.

[214] Hollar & Usowski, *supra* note 128, at 154.

included in the LIHTC can also be understood as arising from pro-gentrification sentiments.

In sum, place-based investment tax incentives were first introduced when federal law constrained the ability of state governments to initiate or directly subsidize gentrification. These state tax incentives "focused on prodding the private market rather than directly orchestrating gentrification" and "encouraged this relatively *laissez-faire* role" of government.[215] With the exception of the QCT and DDA provisions included with the LIHTC, these early place-based investment tax incentives were overwhelmingly comprised of spatially oriented direct tax incentives.[216] They provided tax breaks directly to businesses that located or expanded in enterprise zones, but they did not provide the deep subsidies needed to finance most new projects.[217]

That would change in the 1990s and 2000s. As the next section shows, deeper and more effective tax subsidies were enacted once legal constraints on government-assisted gentrification were relaxed. As the next section explains, these spatially oriented indirect tax incentives have allowed the state to encourage gentrification much more directly by subsidizing new construction.

C. *The Resurgence of Federal Intervention in Gentrification and the Rise of Federal Place-Based Investment Tax Incentives*

Spatially oriented indirect tax incentives, which are capable of providing significant tax subsidies to enable new construction and expensive startup businesses, emerged in the 1990s, when the Clinton Administration and Congress subtly removed the last remaining HUD-imposed restrictions on state-led gentrification.[218] They did so via a series of important and related

---

[215] Hackworth & Smith, *supra* note 150, at 466.

[216] Note that both the QCT and DDA are indirect tax subsidies, as described in Part II.A.

[217] The state-level enterprise zone laws of the 1980s and early 1990s included direct place-based investment tax incentives. Though these laws provided tax-based subsidies directly to businesses located in enterprise zones, some early critics of the model observed that the non-tax features of enterprise zone laws would be the dominant incentives, because "tax breaks simply are not very helpful until a company has grown large (and successful) enough to have any profits to tax!" Harrison, *supra* note 172, at 425. If the goal is to promote new business start-ups, such critics observed, the incentives would need to include subsidies for start-up capital. *Id*.

[218] Hackworth & Smith, *supra* note 150, at 469–70.

moves: the "reinvention" of HUD in the early 1990s,[219] the introduction of the HOPE VI program in 1992,[220] the repeal of the one-for-one unit replacement rule with respect to public housing demolitions in 1995,[221] and the introduction of "voucherization" plans in 1996.[222] With these legal changes, gentrification became "mutually constituted with a nascent regime under a devolved, privatized, and 'reinvented' policy framework."[223] In this pro-gentrification legal environment, the first federal place-based investment tax incentives were introduced.[224]

The decade began with a pivotal transformation of HUD that proponents called a "reinvention."[225] The reinvention, which was compelled by "a near universal vilification of public housing,"[226] included a significant consolidation of HUD programs, an end to new public housing construction, increased reliance on housing vouchers, and a renewed commitment to "building, preserving, and improving *places*."[227] A centerpiece of this new vision was the HOPE VI program, which featured the demolition of

[219] *See generally* Jenifer J. Curhan, *The HUD Reinvention: A Critical Analysis*, 5 B.U. L. REV. 239 (1995).

[220] Elvin K. Wyly & Daniel J. Hammel, *Islands of Decay in Seas of Renewal: Housing Policy and the Resurgence of Gentrification*, 10 HOUS. POL'Y DEBATE 711, 722 (1999).

[221] Pub. L. No. 104-19, § 1002, 109 Stat. 194 (July 27, 1995) (Rescissions Act of 1995) ("Notwithstanding any other provision of law, replacement housing units for public housing units demolished may be built on the original public housing site or in the same neighborhood if the number of such replacement units is significantly fewer than the number of units demolished.").

[222] W. David Koeninger, *A Room Of One's Own and Five Hundred Pounds Becomes a Piece of Paper and Get a Job: Evaluating Changes in Public Housing Policy from a Feminist Perspective Symposium: Directions in National Housing Policy*, 16 ST. LOUIS U. PUB. L. REV. 445, 463 (1996); Curhan, *supra* note 219, at 240.

[223] Wyly & Hammel, *supra* note 220, at 763.

[224] A variation of the enterprise zone concept was finally passed at the federal level under the Clinton administration in 1993. Clinton's enterprise zone laws were rebranded as Empowerment Zones and Enterprise Communities. Euston, *supra* note 181, at 146.

[225] Curhan, *supra* note 219, at 239.

[226] Wyly & Hammel, *supra* note 220, at 723.

[227] Henry G. Cisneros, *Legacy for a Reinvented HUD: Charting a New Course in Changing and Demanding Times*, 1 CITYSCAPE 145, 149 (1995).

"unredeemable public housing projects," which were to be replaced with mixed-income housing.[228]

When introduced in 1992, the HOPE VI program provided for grants to renovate troubled developments, but by the time the program was fully funded in 1998,[229] the focus of the program had become "the demolition of public housing rather than its renovation."[230] The one-for-one unit replacement requirement had been formally repealed by the Rescission Act of 1995, which authorized the demolition of public housing even if "the number of such replacement units is significantly fewer than the number of units demolished."[231]

In addition, Congress had formally authorized "voucherization," whereby tenants affected by demolition could be offered rental vouchers in lieu of brick-and-mortar housing, further clearing the way for gentrification plans.[232] This expansion of tenant vouchers is often described in the literature as part of a policy shift toward people-based initiatives for fighting poverty.[233] Such people-based approaches are typically cast as the opposite of the place-based approach adopted by place-based investment tax incentives.[234]

In reality, the shift toward tenant vouchers merely reinforced a legal environment in which public housing could once again be demolished and replaced with properties that would benefit a higher-income demographic.[235] As explained above, the inability to demolish public housing had placed a significant restriction on private parties' ability to seek profits through gentrification.[236] Not only did the policies of the 1990s remove this restriction,

---

228 *Id.* at 225.

229 Thomas C . Kost, *Hope after Hope VI - Reaffirming Racial Integration as a Primary Goal in Housing Policy Prescriptions Notes and Comments*, 106 NW. U. L. REV. 1379, 1389 (2012).

230 Koeninger, *supra* note 222, at 446.

231 Pub. L. No. 104-19, § 1002, 109 Stat. 194 (July 27, 1995) (Rescissions Act of 1995).

232 Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996); Koeninger, *supra* note 222, at 451, 453–54.

233 *See supra* note 129 and accompanying text.

234 Davidson, *supra* note 88, at 2.

235 Koeninger, *supra* note 222, at 475.

236 *See supra* notes 198–204 and accompanying text.

but they actively promoted gentrification by requiring developers to convert housing units previously occupied by the poor into spaces to be used by wealthier tenants.[237] The place-based investment tax incentives introduced during this period must be understood in the context of this broader policy reversal that revived state-assisted gentrification while further retracting from direct financial assistance.[238]

To be sure, the goal of these policies was not to harm poor communities, and not everyone who supported them was apathetic to their impact on the poor. Rather, many observers hoped that mixed-income communities would benefit the poor. Several prevailing theories supported economic integration—facilitated through mobility programs (e.g., housing vouchers), on the one hand, and mixed income housing on the other—as a solution to urban poverty.[239]

Some theories relied on the assumption that higher-income residents would use their more powerful social positions in ways that would benefit their poor neighbors. For example, the social control theory argued that the presence of higher-income residents would "lead to higher levels of accountability to norms and rules" because higher-income residents were "more likely to take action to maintain social control in the community, benefiting residents of all income levels."[240] Another theory focused on political economy, predicting that higher-income residents would exert political and economic pressure that would result in "higher-quality goods and services available to a cross-section of residents in the community."[241]

Other theories assumed that higher income residents would socialize with their poor neighbors for the benefit of the poor. For example, the social networks theory predicted that the presence of higher-income residents would "facilitate the re-establishment of effective social networks and social capital

---

[237] *See supra* note 164 and accompanying text.

[238] Kathe Newman & Philip Ashton, *Neoliberal Urban Policy and New Paths of Neighborhood Change in the American Inner City*, 36 ENV'T & PLAN. 1151, 1153 (2004).

[239] Mark L. Joseph, *Is mixed-income development an antidote to urban poverty?*, 17 HOUS. POL'Y DEBATE 209, 212–13 (2006).

[240] *Id.* at 214.

[241] *Id.* at 215.

for low-income residents."[242] Similarly, the role model theory predicted that the presence of higher-income residents would "lead other families to adapt to more socially acceptable and constructive behavior," helping to counter "the hotly debated notion of a 'culture of poverty.'"[243]

Though the empirical evidence for all these theories has since proven weak, they were influential throughout the 1990s.[244] And by the early 2000s, some experts began defending income mixing approaches—which had already led to the displacement of many poor residents—by overtly defending gentrification itself as an anti-poverty strategy.[245] Richard Florida published a popular book that presented gentrification, fueled by the so-called "creative class," to the public as a pro-social solution to urban decline,[246] and some legal scholars began to defend gentrification as providing economic, political, and social benefits to the poor.[247] In short, the overwhelming trend in both policy and theory during this period was consistent with promoting gentrification, whether or not it was labeled as such.

This pro-gentrification legal environment cleared the way for federal place-based investment tax incentives. In 1993, funding for the HOPE VI program peaked at $570 million.[248] That same year, Congress passed a federal version of enterprise zone laws known as Empowerment Zones and Enterprise Communities.[249] Then, in 2000, Congress introduced the New Markets Tax

---

[242] *Id.* at 213.

[243] *Id.* at 214.

[244] Kost, *supra* note 229, at 1391–93.

[245] Slater, *supra* note 98, at 740–743.

[246] *See generally* RICHARD FLORIDA, THE RISE OF THE CREATIVE CLASS: AND HOW IT'S TRANSFORMING WORK, LEISURE, COMMUNITY, AND EVERYDAY LIFE (2002).

[247] J. Peter Byrne, *Two Cheers for Gentrification Urban Poverty & Gentrification: An Exchange*, 46 HOW. L.J. 405, 406 (2002).

[248] Kost, *supra* note 229, at 1390.

[249] Dina Schlossberg, *The Empowerment Zones/Enterprise Communities: New Cure for Distressed Urban Communities or the Same Old Band-Aid*, 2 HYBRID J.L. & SOC. CHANGE 33, 33 (1994).

Credit (NMTC), which subsidizes the financing of projects located in poor neighborhoods.[250]

Unlike the tax incentives associated with enterprise zones, the NMTC is an indirect tax subsidy that provides tax breaks to investors who provide capital to businesses in tax-favored zones.[251] In this way, the NMTC can help subsidize the capital investments needed for large projects and new construction, hastening the progress of gentrification. In addition, the QCT and DDA provisions of the LIHTC were further amended in 2002 to include poverty criteria that expanded the number of tracts eligible for these spatially oriented indirect tax incentives.[252]

Thus, several indirect spatially oriented investment tax incentives were introduced or expanded at a time when support for gentrification policies was particularly high.[253] Once again, it makes sense, given this context, that these laws lacked features to safeguard poor communities. The historical context of place-based investment tax incentives supports the theory that these tax laws exist to assist private parties in gentrification efforts—not the residents of poor communities.

In sum, this Part showed that place-based investment tax incentives were first introduced by states as a means to provide indirect support of gentrification during a period when their ability to provide direct assistance was limited by federal law. Federal laws restricting gentrification were subsequently relaxed, replaced by several federal laws that actively promoted gentrification—including new spatially oriented indirect tax incentives.

Even the newest example of spatially oriented indirect tax incentives—Opportunity Zones—is best understood as having pro-gentrification origins. At the time when the tax law was introduced, the Trump Administration's primary focus was on creating a favorable, pro-growth business

---

[250] *See* Pub. L. No. 106-554, 14 Stat. 2763 (2000) (Community Renewal Tax Relief Act of 2000).

[251] I.R.C. § 45D. The tax credit was designed to attract large, cash-rich investors—and, especially, financial institutions.

[252] *See generally* HUD NOTICE, *supra* note 128.

[253] *See* Hollar & Usowski, *supra* note 128, at 154 (describing the introduction of QCTs and DDAs in the 1980s).

environment.[254] Given this political context, even some members of the development community were skeptical of the program's objectives. One Maryland-based architect was quoted by a trade news outlet saying,

> '[My] concern [is] that this strategy will result in gentrification on steroids . . . The guidelines and regulations thus far show little concern for the effects of new development on the existing blighted community. Focus should be on raising the quality of life for the existing population of the blighted area through new development and also through the improvement of consumer goods, and services where government falls short. Addressing social impact needs to be in the guidelines.'[255]

This critique of Opportunity Zones is understandable, given the law's spatially oriented form. But the form itself was to be expected. Notwithstanding claims that the mission of Opportunity Zones is to help poor communities,[256] the context and design of the new law reflect the same pro-gentrification origins that underlie the vast majority of place-based investment tax incentives.

In conclusion, most current place-based investment tax incentives have pro-gentrification origins, suggesting that their failure to safeguard poor communities or benefit poor residents is not a flaw, but is rather a feature of these laws. This theory helps explain why spatially oriented investment tax incentives dominate the current landscape despite the lack of empirical

[254] Dylan Matthews, *How the Republican Tax Law Hurts the Poor and Helps the Rich, in One Chart*, VOX, Feb. 26, 2018, https://www.vox.com/policy-and-politics/2018/2/26/17044440/gop-tax-cut-tax-reform-law-chart-regressive-rich-poor-graph; Adam Michel, *Analysis of the 2017 Tax Cuts and Jobs Act*, HERITAGE FOUNDATION, Dec. 19, 2017, https://www.heritage.org/taxes/report/analysis-the-2017-tax-cuts-and-jobs-act.

[255] Joseph Pimentol, *From Gentrification to Lack of Guidance, Investors Express Concerns with Opportunity Zone Program*, BISNOW Nov. 7, 2018, https://www.bisnow.com/national/news/commercial-real-estate/from-gentrification-to-lack-of-guidance-investors-express-concerns-with-opportunity-zone-regulations-94706.

[256] Noah Buhayar, *For Goldman, a New Tax Break Makes Helping the Poor More Lucrative*, BLOOMBERG, August 29, 2018, https://www.bloomberg.com/news/articles/2018-08-29/goldman-sachs-leads-race-for-tax-break-helping-poor-communities.

evidence that they benefit poor communities. The next Part argues that spatially oriented investment tax incentives should be abandoned.

IV. SPATIALLY ORIENTED INVESTMENT TAX INCENTIVES ARE BAD POLICY

Parts II and III of this Article have argued that place-based investment tax incentives have developed in response to a pro-gentrification business and political environment. This section argues that most spatially oriented investment tax incentives should be abandoned. The analysis set forth here is fundamentally rooted in tax expenditure theory, which describes special provisions of the income tax system that are economically equivalent to direct expenditures.[257]

Under tax expenditure theory, the primary objective of tax incentives like place-based investment tax incentives is to advance non-tax policy.[258] A traditional tax policy response to tax expenditures is to disfavor all tax expenditures on the basis that social and economic policies should not be advanced through tax law.[259] But more recent scholarship has taken a more nuanced view, concluding that there is no reason why tax law should be off limits for advancing legitimate social and economic policy goals, assuming they are otherwise consistent with good policy.[260]

When evaluating whether a tax expenditure represents good policy, one may question whether the underlying non-tax policy goal should be advanced—whether through tax law, or through any other legal framework.[261] Or, one can accept the underlying policy goal as legitimate but critique the tax law

[257] *See* Surrey, *supra* note 207, at 715.

[258] *Id*. at 711.

[259] *Id*. at 734.

[260] *See, e.g.*, David M. Schizer, *Limiting Tax Expenditures*, 68 TAX L. REV. 275 (2014) (proposing limits, but not repeal, of existing tax expenditures in order to maximize programmatic benefits while minimizing waste); Linda Sugin, *Tax Expenditures, Reform, and Distributive Justice*, 3 COLUM. J. TAX L. 1 (2011) (arguing that decisions about when to limit or repeal tax expenditures should take into effect their distributive impact).

[261] *See* Surrey, *supra* note 207, at 713 (distinguishing the question of whether a tax instrument should be used from the question of whether the underlying nontax poly objective should be advanced).

under broader tax policy principles.[262] This section argues that spatially oriented investment tax incentives are problematic under both prongs of analysis. First, it argues that the underlying pro-gentrification policy objective is neither an appropriate nor necessary policy goal, regardless of the chosen legal tool. Second, it argues that even if gentrification was a legitimate policy goal, spatially oriented place-based investment tax incentives are inconsistent with the tax policy goals of efficiency, equity and simplicity.

A. Gentrification is Neither a Legitimate nor Necessary Policy Goal

If the underlying pro-gentrification policy objective of spatially oriented investment tax incentives is illegitimate, then these types of tax laws should be abandoned. To this end, it is telling that pro-gentrification objectives have rarely been cited by those who support spatially oriented investment tax incentives, and few people defend the tax laws on the basis that gentrification itself is an important social goal.

Perhaps due to the term's decidedly negative connotations, proponents on both ends of the political spectrum have preferred alternate descriptions like renewal and revitalization.[263] As discussed in Part I.B., politicians and industry lobbies that have supported place-based investment tax incentives stress that the laws increase investments in distressed areas, presenting that fact as if the benefit to poor communities is self-evident. Meanwhile, affordable housing and anti-poverty advocates support expansion of the tax programs,[264] choosing to focus on the possibility that some poor people will benefit. They sound alarms when they perceive misuse of the tax incentives, but they generally regard harms associated with gentrification as an unintended consequence of the tax laws and otherwise take their pro-social mission at face value.[265]

Academic observers have long decried the harms of gentrification. Despite rhetoric in favor of income mixing, the term gentrification "was coined with critical intent to describe the disturbing effects of the middle classes arriving in working-class neighbourhoods and was researched in that critical spirit for

---

[262] *Id.*

[263] Slater, *supra* note 98, at 738; Jordan, *supra* note 60.

[264] *See supra* Part I.B.

[265] *See, e.g.*, *supra* note 8 and accompanying text. *See* Part I.B.

many years."[266] The precise definition of gentrification has been debated, but most include some notion of forced displacement to the detriment of poor communities.[267]

In addition, some recent research has demonstrated that gentrification is not only harmful to the communities that experience displacement, but also tends to increase inequality in *other* low-income neighborhoods.[268] Specifically, "[a]s lower-income households move to neighbouring lower income households, we may observe an increase in income segregation at the aggregate level. At the local level, the corresponding segregation may be especially harmful to low-income households."[269] This new research suggests that the harms associated with gentrification may be even larger than previously thought.[270]

HUD has also acknowledged the harms of gentrification, stating:

> What we are hearing on the ground is a widespread need for policies and tools to help areas manage the change, to harness the potential up side of renewed attraction to and investments in low-income and urban neighborhoods while minimizing the possible down sides, such displacement, increased housing cost burdens, and the potential for long-term resegregation.[271]

In sum, proponents rarely cite gentrification as their motivation, gentrification is known to be harmful, and HUD has acknowledged the need to protect communities facing gentrification as a result of reinvestment. Meanwhile, the dichotomy between "*either* unlivable disinvestment and decay *or* reinvestment and displacement is actually a *false choice* for low-income communities."[272] As explained in Part V below, there are several ways to

[266] Slater, *supra* note 98, at 752.

[267] *See supra* note 98 and accompanying text.

[268] Christafore & Leguizamon, *supra* note 104, at 13.

[269] *Id.* at 13.

[270] *Id.* at 14.

[271] Katherine M. O'Regan, *Commentary: A Federal Perspective on Gentrification*, 18 CITYSCAPE 151, 151 (2016).

[272] Slater, *supra* note 98, at 753.

increase the likelihood that poor communities will benefit from place-based investment tax incentives.

For these reasons, this Article takes the position that gentrification is neither a legitimate nor necessary policy objective for place-based investment tax incentives. Since spatially oriented investment tax incentives are fundamentally motivated by pro-gentrification objectives, a case could be made for their abandonment on this basis alone. But even if gentrification were a legitimate policy goal, the next section argues that most place-based investment tax incentives should still be abandoned as bad tax policy.

B. Spatially Oriented Investment Tax Incentives are Bad Tax Policy

Tax policy has traditionally been analyzed along three axis: efficiency, equality and simplicity. Spatially oriented investment tax incentives offend all three principles. Thus, even if one were to reject this Article's contention that spatially oriented investment tax incentives promote an illegitimate objective, these incentives should still be disfavored as inconsistent with tax policy goals.

1. Inefficiencies

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. It is important to note that all tax incentives are designed to change taxpayers' behavior, but not all tax-motivated behavioral changes are inefficient.[273] Tax incentives can be efficiency-enhancing if they counteract inefficiencies due to market failure.[274] Here, the primary market failure is the under-production of investments in poor communities that would produce positive externalities.[275]

If systematic disinvestment in poor communities is a cause of concentrated poverty,[276] then it stands to reason that reinvestment could provide a range of benefits associated with poverty reduction. For example, such benefits may include improved health outcomes, reduced violence, or improved schools. Because these benefits would extend to entire communities—and not merely

[273] Lily L. Batchelder, Fred T. Jr Goldberg & Peter R. Orzag, *Efficiency and Tax Incentives: The Case for Refundable Tax Credits*, 59 STAN. L. REV. 23, 28 (2006).

[274] *Id.*

[275] *See id.* at 44.

[276] *See* note 122 and accompanying text.

to the investors—they constitute positive externalities. The potential social welfare gains of such investments are high, but companies' motivation to make the investments is likely to be lower than optimal since they will only capture a small portion of the benefit. Therefore, place-based investment tax incentives may be justified as efficiency enhancing if they increase the number of positive externality-producing investments.

However, when analyzing efficiency, one must weigh positive externalities against negative externalities.[277] To the extent that place-based investment tax incentives produce the aforementioned benefits but also cause gentrification, the negative externalities associated with displacement and other gentrification-related harms may at least partially offset the benefits. Even without measuring the harms and the benefits, one can reason that a law that produces the same benefits with fewer harms will be the more efficient option. In this regard, the community oriented investment tax incentives proposed in Part V below provide a more efficient alternative.

Moreover, the tax laws are wasteful to the extent that they subsidize gentrifying investments that would take place absent the tax subsidies.[278] Recent decades have seen a significant shift in capital from the suburban investment back to urban investments.[279] According to some studies of large U.S. cities, "approximately 20% of low-income neighborhoods have experienced gentrification since 2000, compared with only 9% between 1990 and 2000."[280] While place-based investment tax incentives have undoubtedly subsidized some gentrifying investments, it seems likely that other, nontax forces have contributed to the near doubling of the rate of gentrification. Even if gentrification is a legitimate policy goal, there is no strong justification for continuing to subsidize activity that appears to be happening anyway.[281] To do so is simply bad tax policy.[282]

---

[277] David M. Schizer, *Energy Subsidies: Worthy Goals, Competing Priorities, and Flawed Institutional Design*, 70 TAX L. REV. 243, 267 (2016).

[278] *See* Surrey, *supra* note 207, at 719–20; Schizer, *supra* note 260, at 297.

[279] Sonya A. Grier & Vanessa G. Perry, *Dog Parks and Coffee Shops: Faux Diversity and Consumption in Gentrifying Neighborhoods*, 37 J. PUB. POL'Y & MARKETING 23, 23 (2018).

[280] *Id.*

[281] *See* Surrey, *supra* note 207, at 719–20.

[282] *Id.*

2. Inequities

Spatially oriented investment tax incentives are also inequitable, providing significant tax breaks to wealthy parties—undermining progressivity within the tax system—with little assurance that the tax expenditures also benefit the poor. Though this critique leads to a single conclusion, the analysis itself has two parts. The first focuses on progressivity within the tax system, and the second considers the broader distributive impact of the tax expenditures.

Nearly all place-based investment tax incentives, including those proposed in Part V, have the potential to undermine vertical equity within the tax system. Vertical equity is the principle that tax burdens should be commensurate to taxpayers' ability to pay.[283] One way that the income tax system promotes vertical equity is through progressive tax rates.[284] Progressive tax rates increase as the taxpayer's income increases, so that "a taxpayer with ten times the total income of another would pay something more than ten times as much tax."[285] Place-based investment tax incentives reduce the effective tax rate of wealthy taxpayers, making the tax system less progressive than it would be without the tax preferences.[286]

However, a distributive analysis of tax expenditures must also consider who ultimately benefits from the tax preference.[287] There is some evidence that the incidence of spatially oriented indirect tax incentives at least partially falls on financial investors, syndicators, and other third parties.[288] For example, one report found that monetization of the LIHTC may consume up to 10-27% of the equity invested in affordable housing projects.[289]

---

[283] Bradford, *supra* note 24, at 151–53.

[284] *But see generally* Blum and Kalven, *supra* note 26 (arguing that progressivity (beyond what results from a standard deduction or personal exemption) is not necessarily required for vertical equity).

[285] *Id.* at 419.

[286] *See* Surrey, *supra* note 207, at 720–23; Tracy A. Kaye, *Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit*, 38 VILL. L. REV. 871, 912–13 (1993).

[287] Sugin, *supra* note 260, at 7.

[288] The benefit of place-based investment tax incentives may fall on parties other than the taxpayer who claims the tax benefit. *Id*. at 19–21.

[289] *See* Desai, *supra* note 113, at 192. Though it is unclear how much value is captured by NMTC investors, an accounting publications reported that investors paid between $0.68

These studies provide further evidence that wealthy parties benefit from these tax laws, and not just through tax savings. Syndicators, accountants, lawyers, and others capture part of the value from spatially oriented indirect tax incentives through fees for services. Thus, not only do spatially oriented indirect tax incentives undermine progressivity in the tax system, but they also enable wealthy third-parties to capture value before it reaches poor communities.

Since direct tax incentives do not require monetization,[290] fewer nontaxpayer third parties are in a position to capture the benefits. The most likely candidates would be employees (if wages increase as a result of the tax laws) or property owners (if property values increase). At least one study of enterprise zone laws concluded that the laws have no effect on payroll per worker or the number of workers hired by enterprise zone establishments.[291] This result indicated that the incidence of the tax benefits inured to the taxpayer claimants, which ultimately substituted capital for labor.[292] Other studies suggest that commercial property owners and landlords capture a significant portion of the tax benefits.[293] Thus, the benefit of spatially oriented direct tax incentives also appears to fall on parties who are likely to be wealthier than low-income residents.

Despite this, place-based investment tax incentives may still be desirable if the tax incentives increase the production of affordable housing and community development activities that benefit the poor, thereby helping to reduce spatial inequality. For example, even if developers, syndicators, and third party consultants captured the bulk of the LIHTC, this may be an acceptable outcome if neighborhoods are improved for the benefit of low-income people. This is particularly true given the political and cultural biases against direct

---

and $0.74 per dollar of tax credits, suggesting that they capture at least some value from the tax subsidy. Eickhoff and Carter, *supra* note 112, at 17.

[290] *See supra* Part II.B.

[291] Devon Lynch & Jeffrey S. Zax, *Incidence and Substitution in Enterprise Zone Programs: The Case of Colorado*, 39 PUB. FIN. REV. 226, 240 (2011).

[292] *Id.* at 244.

[293] *See* Hanson, *supra* note 97, at 730. One early study of British enterprise zones estimated that landlords captured as much as 60 percent of tax benefit value in the form of increased rents. *See* Billings, supra note 97, at 87.

provision of public housing, which makes it less likely that other policies would fill a gap created if the tax incentives were eliminated.

Though there is some ambivalence in the literature about the extent to which many community development initiatives are tax-motivated, there is anecdotal evidence to suggest that the rate of investments would slow absent place-based investment tax incentives. For example, I spoke to several high-level employees of community development entities (CDEs) who predicted that no deals would take place if the NMTC or LIHTC were repealed.[294] In this vein, one contact speculated that banks, which overwhelmingly dominate the investor pool for such deals, would no longer contribute to CDEs.

Because banks are required under the Community Reinvestment Act (CRA) to invest in low-income communities,[295] one may predict that they would continue to invest in CDEs without the subsidy; however, at least one in-house attorney at a CDE predicted that banks would seek out a more lending-based approach to meeting their CRA requirements.[296] Unfortunately, debt coverage is a key limiting factor for CDEs, which need to attract equity capital in order to avoid becoming over-leveraged. The NMTC helps fill that gap by encouraging banks to make equity investments in CDEs—so if banks ceased to provide equity capital to CDEs absent a tax credit, then one would expect far less CDE-driven community development activity. Therefore, spatially oriented place-based investment tax incentives probably do help increase investments in poor areas.

However, even if spatially oriented investment tax incentives successfully increase the number or size of investments that take place, the benefit to the poor may nevertheless be limited if those investments are designed to aid in gentrification. As explained in Part II.B., spatially oriented investment tax incentives are not designed to encourage investments that will benefit poor communities. Even the LIHTC may be less effective at benefiting poor tenants than one might expect; one study estimated that tenants capture less

[294] *See, e.g.*, Godschalk Interview, *supra* note 119; Lawrence Interview, *supra* note 119.

[295] 12 U.S.C. § 2906; COHNREZNICK, THE COMMUNITY REINVESTMENT ACT AND ITS EFFECT ON HOUSING TAX CREDIT PRICING 3 (2013), http://ahic.org/images/downloads/Research_and_Education/the_community_reinvestment_act_and_its_effect_on_housing_tax.pdf.

[296] Godschalk Interview, *supra* note 119.

than half of the tax credits' benefit in the form of rental savings, and such savings are highest in the early years. [297]

In sum, spatially oriented investment tax incentives introduce inequities to the system by providing economic benefit to wealthy parties without corresponding benefits to poor communities. It is important to note, here, that all place-based investment tax incentives must deliver some potential value to wealthy parties. Without this, the tax law would not create an incentive. However, one should be skeptical of laws that seem to provide windfalls to companies or create profit-opportunities for place entrepreneurs, while simultaneously failing to benefit—or, worse, actively harming—poor communities.

3. Complexity

A third tax policy criteria that can be used to evaluate place-based investment tax incentive is the goal of simplicity. Unlike efficiency and equity, this analyses needs less explanation. By now, it is probably clear to most readers that place-based investment tax incentives do not increase simplicity within the tax system. Rather, they introduce interpretive complexity through tax credits and deductions with complicated compliance rules.[298] Some introduce practical complexity by necessitating monetization to extract value from tax credits.[299] Most introduce administrative complexity by requiring coordination across federal, state and local agencies.[300] In short, there is nothing simple about place-based investment tax incentives.

It is worth noting, however, that much of the complexity of the current tax code exists because laws are introduced to promote efficiency and equity. Though place-based investment tax incentives will never be simple, they may nevertheless be desirable if they are designed to advance efficiency and equity objectives. Unfortunately, this section has demonstrated that spatially oriented investment tax incentives are neither efficient nor equitable. As such,

---

[297] Gregory S. Burge, *Do Tenants Capture the Benefits from the Low-Income Housing Tax Credit Program?*, 39 REAL ESTATE ECON. 71, 72 (2011).

[298] *See* John A. Miller, *Indeterminacy, Complexity, and Fairness: Justifying Rule Simplification in the Law of Taxation*, 68 WASH. L. REV. 1, 12 (1993).

[299] Layser, *supra* note 73, at 507 (explaining that eliminating the need for tax equity monetization transactions would further the tax policy goal of simplicity).

[300] David A. Weisbach & Jacob Nussim, *The Integration of Tax and Spending Programs*, 113 YALE L.J. 955, 993 (2003).

the complexity they add to the tax system provides one more reason to abandon this approach.

Given the harms of gentrification, it is time to rethink place-based investment tax incentives. The spatially oriented investment tax incentives that currently dominate the field are wasteful at best, and harmful at worst. They are designed to promote objectives that few people set forth as legitimate, and they violate core tax policy principles of efficiency, equity and simplicity. For these reasons, spatially oriented investment tax incentives should be abandoned. The next Part argues that lawmakers should instead introduce community oriented alternatives that hold greater promise as anti-poverty tools.

V. REINVENTING PLACE-BASED INVESTMENT TAX INCENTIVES

A. Community Oriented Investment Tax Incentives as an Alternative to Pro-Gentrification Tax Incentives

This Article has argued that spatially oriented investment tax incentives should be abandoned, but it would be a mistake to eliminate these tax laws without evaluating possible replacements. Systematic disinvestment continues to be a problem in many poor communities and, with reform, place-based investment tax incentives may still be a politically viable solution. This Part argues that lawmakers should begin to introduce community oriented investment tax incentives.

Community oriented investment tax incentives are rare under current law, and very little data exists to evaluate their impact. As a result, few, if any, empirical studies have specifically tested the impact of community oriented investment tax incentives. One study of enterprise zone laws in Texas, which incorporate community oriented direct tax incentives, found that the laws increased resident employment in high-poverty areas by 1-2 percent per year;[301] however, it would be premature to draw strong conclusions from an isolated study. More research is needed in this area.[302]

Nevertheless, the theoretical case for community oriented investment tax incentives is strong enough to justify further exploration into the use of place-based investment tax incentives to benefit poor communities. Community

---

[301] *See* Matthew Freedman, *Targeted Business Incentives and Local Labor Markets*, 48 J. HUM. RESOURCES 311, 329 (2013).

[302] Layser, *Mapping*, *supra* note 2, at __.

oriented investment tax incentives are superior to spatially oriented incentives with respect to their non-tax policy justification, their tax-policy justification, and their predicted practical impact.

First, the design of community oriented investment tax incentives is more consistent with the rhetoric used by proponents of place-based investment tax incentives, who already tout the purported benefits to poor communities.[303] For example, Senator Tim Scott has claimed the Opportunity Zones program could make life better for millions of Americans, saying "'I look at it from a common-sense perspective and I ask myself, 'Is there a way for me to positively impact the lives of 50 million Americans by providing an incentive to unlock investment for those areas?'"[304]

Critics express concern that the laws may be abused,[305] but abuse is not the problem; spatially oriented investment tax incentives, used as intended, will not advance the goals cited by Senator Scott because they are not designed to do so. In contrast, community oriented investment tax incentives *are* designed for this purpose. Specifically, the goal of community oriented investment tax incentives is to improve neighborhood conditions in poor communities *for the benefit of poor communities*. This goal is consistent with nontax policy goals already cited in connection with these tax laws.

Second, community oriented tax incentives represent better tax policy than current laws. They stand to be more efficient than spatially oriented investment tax incentives. Investments that improve neighborhood conditions—from housing conditions to crime rates to school quality to health services—may help counter the deleterious effects of living in poor places.

In contrast, as explained below, community oriented investment tax incentives can be designed to narrowly target positive-externality producing investments, while also including features to reduce harms associated with gentrification. Therefore, community oriented investment tax incentives are likely to be more efficient than spatially oriented investment tax incentives, which are designed to promote gentrification and its associated negative externalities.

---

303 *See supra* Part I.B.

304 Ben White, *One GOP Senator's Plan to Save Rural America*, POLITICO, Nov. 28, 2018, https://politi.co/2r6I5f2.

305 *Id.*

They also stand to be more equitable. Though wealthy parties would continue to derive value from community oriented investment tax incentives,[306] the laws would be designed specifically to benefit residents of poor areas.[307] As a result, the potential welfare gains to poor communities associated with reduced spatial inequality may be sufficient to conclude that the distributive effect of these tax laws would be more efficient and equitable than current laws.

Finally, community oriented tax incentives may more effectively balance problems associated with Tiebout sorting than current spatially oriented investment tax incentives. As one legal scholar explained, "any effort to create new economic and social conditions will inevitably change the individuals who live in the targeted communities, and those individuals will not have any entitlement to remain. That, however, is less a critique of place-based policymaking than a recognition of a certain shortsightedness in implementation."[308]

In other words, it may not be possible—or even desirable—to prevent Tiebout sorting from taking place; however, lawmakers *can* recognize gentrification as a possible effect of place-based investment tax incentives and take steps to mitigate the harms. Community oriented investment tax incentives include features designed to do just that. In theory, then, community oriented investment tax incentives have a better chance of lifting up poor communities than current laws.

In sum, community oriented investment tax incentives are a theoretically promising alternative to the spatially oriented investment tax incentives that

---

[306] The incentives would still be claimed by wealthy taxpayers, thereby reducing progressivity in the tax system. Businesses that claim direct incentives probably will not pass the entire value along to employees, and wealthy third-parties will probably continue to capture some value.

[307] This theory borrows some themes from interest convergence theory. One legal scholar articulated a theory of equitable economic development as follows: "Here, we could imagine that the corresponding interests of the regional interest holders are as follows: upper-class residents want to maintain their status quo; middle-class residents want to alleviate regional poverty by stemming the expansion of suburban poverty which was significantly implied the middle class; and low- and working-class residents want equitable development." Patience A. Crowder, *Interest Convergence as Transaction Challenging Authority: A Symposium Honoring Derrick Bell*, 75 U. PITT. L. REV. 693, 707 (2013).

[308] Davidson, *supra* note 88, at 9.

dominate current law. The rest of this Article will explain the possibilities and challenges presented by community oriented investment tax incentives, beginning with an analysis of imperfect models that exist under current law.

B. Models of Community Oriented Investment Tax Incentives Under Current Law

An important question presented by place-based investment tax incentives is whether neighborhoods can be improved without spurring harmful gentrification. As discussed in Part II.B, many neighborhood improvements encourage Tiebout sorting, which can lead to displacement of residents. Since wealthier residents bring greater purchasing power, the place entrepreneurs who respond to place-based investment tax incentives are unlikely to resist trends toward gentrification.[309] Absent safeguards for poor communities, gentrification seems all but inevitable, assuming the tax incentives are otherwise effective.[310]

The spatially oriented investment tax incentives that are dominant under current law lack such safeguards by definition. That such tax laws fail to account for predictable harms to poor communities is not surprising. Rather, such design characteristics flow directly from the context and forces that gave rise to the laws.[311] What *is* surprising is that there are some—albeit rare—examples of place-based investment tax incentives that do includes features to ensure that poor communities will benefit. These alternatives to the spatially oriented investment tax incentives described above are *community oriented* investment tax incentives, and they provide an imperfect model for how to reform the entire category of place-based investment tax incentives.

Community oriented investment tax incentives include safeguards for poor communities within their design. Like their spatially oriented counterparts, community oriented tax incentives can be designed in either direct or indirect forms. Their spatial component, however, is unique in that they target the people—the communities—that exist in a particular place. Where spatially oriented investment tax incentives treat places as separable from the people who live there, community oriented laws are designed to take residents into account.

---

[309] *See supra* Part II.B.2.

[310] *See supra* Part II.B.1.

[311] *See supra* Part III.

As a practical matter, community oriented tax incentives are very uncommon in both direct and indirect forms. Some state enterprise zone laws include community oriented direct incentives, but such incentives are rarely the sole incentive available. The Indiana enterprise zone law restricts tax benefits to businesses that hire employees who live in enterprise zones.[312] However, it is much more common for state enterprise zone laws to include hiring local residents as one of several ways to earn a tax benefit.[313]

For example, Connecticut provides tax credits to enterprise zone businesses that expand businesses or create new jobs.[314] Expansion or renovation projects entitle businesses to a tax credit equal to 25% of their state corporate tax liability, but the tax credit doubles to 50% if at least 30% of new full-time jobs are filled by zone residents *or* are eligible for state job training benefits.[315] Similarly, new businesses in the zone are eligible for a 100% credit if they satisfy several criteria, including hiring at least 375 employees, 40% of whom are either zone residents *or* qualify for job training benefits under state law.[316]

Florida provides tax benefits to enterprise zone business that hire employees who live in the enterprise zone *or* participate in social welfare programs.[317] Texas law includes similar hiring incentives to enterprise zone businesses,[318] and it includes tax benefits for businesses located *outside* of enterprise zone boundaries that create new jobs as long as 35% are filled by enterprise zone residents, veterans, or economically disadvantaged persons.[319] These laws include community oriented direct incentives to hire zone residents, but taxpayers may alternatively qualify for benefits by hiring qualifying non-zone

[312] IND. CODE § 6-3-3-10 (2019).

[313] *See infra* notes 314314–319 and accompanying text.

[314] CONN. GEN. STAT. ANN. § 12-217(e) (West 2019).

[315] *Id.*

[316] *Id.*

[317] FLA. STAT. ANN. § 212.096 (West 2019).

[318] Texas businesses located within enterprise zones are only eligible for benefits if 25% of their newly created positions are held by those same groups. Tex. Gov't Code Ann. § 2303.402 (West 2019).

[319] *Id.*

residents. The alternate paths to earning the tax benefits dilute the community oriented tax incentives.

Imperfect models of community oriented indirect tax incentives also exist. The most common examples are state tax credits to individuals or corporations that contribute to entities that serve low-income communities;[320] however, like the community oriented direct tax incentives described above, these tax incentives tend to be mixed with other types of tax incentives that may dilute their impact. One example of this variety of community oriented indirect tax incentive was introduced in Pennsylvania in 1976, and as of 2013 twelve states had enacted similar tax laws.[321] These laws are commonly known as neighborhood assistance tax credits.[322]

Under the Pennsylvania law, businesses can earn a tax credit by contributing to a private company that makes a "qualified investment to rehabilitate, expand or improve buildings or land located within portions of impoverished areas which have been designated as enterprise zones," provided that the proposed project is approved by the state.[323] Since the law does not include any additional requirements to ensure that enterprise zone residents benefit from the law, this incentive is a spatially oriented indirect tax incentive similar to the federal NMTC and LIHTC. And since it is tied to the state enterprise zone law, the law essentially functions as a backstop to the enterprise zone laws.

However, the law also creates community oriented indirect tax incentives. In addition to the activities described above, a business may be eligible for the tax credit if it contributes to certain neighborhood organizations.[324] Donations to a neighborhood organization will earn the tax credit as long as the organization provides "neighborhood assistance, comprehensive service

---

[320] Note that in some cases, these incentives are structured as tax credits to encourage charitable donations. In this sense, the incentives are not "investment" tax incentives; however, the goal of the incentives is to increase funding of entities that will invest in low-income communities.

[321] 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/.

[322] *Id.*

[323] 72 PA. STAT. ANN. § 8904-A(a) (West 2019).

[324] *Id.*

projects, affordable housing, domestic violence or veterans' housing assistance, job training or education for individuals, community services or crime prevention in an impoverished area."[325] Impoverished areas, which do not need to be located in enterprise zones, are defined as any area "certified as such by the Department of Community and Economic Development" and approved by the governor.[326] Certification is based on federal census data and "current indices of social and economic conditions."[327]

Another variation is the Delaware Neighborhood Assistance Tax Credit. Unlike the Pennsylvania law, the Delaware tax credit is available to individuals in addition to businesses, and it cannot be earned through contributions to private companies.[328] Rather, the law provides for tax credits to businesses and individuals who donate to approved nonprofits.[329] To be approved, nonprofits must document that they "provide neighborhood assistance in an impoverished area, *or* provide neighborhood assistance for low- and moderate-income families."[330] The Delaware tax code defines "impoverished area" as "any clearly-defined, economically-distressed urban or rural area . . . that is certified as such by the Delaware State Housing Authority."[331] Certification must be based on federal census data and "current indices of social and economic conditions."[332]

Neighborhood assistance, on the other hand, is defined to include "financial assistance, labor, material and technical advice to aid in the physical, economic and community improvement of any part or all of an impoverished area or to assist low and moderate income families through the provision of

---

325 *Id.*

326 PA. STAT. § 8902-A.

327 *Id.*

328 DEL. CODE ANN. tit. 30, § 2004 (West 2019).

329 *Id.*

330 Neighborhood Assistance Act, STATE OF DELAWARE, http://www.destatehousing.com/OtherPrograms/ot_naa.php (last visited Jan. 18, 2019) (emphasis added).

331 DEL. CODE § 2002(7).

332 *Id.*

community services, crime prevention, economic development, education, housing, and job training."[333] Importantly, Delaware law does not limit neighborhood assistance to services rendered to residents of impoverished communities.

Rather, job training will qualify as long as it is rendered to low- or moderate-income persons, regardless of whether they live in an impoverished area. Rehabilitation or new construction of affordable housing will also qualify as long as it will aid low- or moderate- income persons, regardless of whether they reside in an impoverished area. To be sure, tax-based subsidies to organizations that render such services to the poor is socially valuable—but they are not place-based. As such, the Delaware law once again mixes the community oriented incentives with other types of incentive.

In sum, it is difficult to find examples of pure, community oriented investment tax incentives under current law. Though some examples of both direct and indirect community oriented investment tax incentives exist under state law, most incorporate other features—such as non place-based components, or spatially oriented placed-based tax incentives—that may dilute the incentives. One consequences of this mixing of incentives is that it makes it difficult to isolate the impact of the community oriented tax incentives for the purpose of study.

Nevertheless, as explained above, the approach has theoretical advantages over spatially oriented investment tax incentives. For this reason, community oriented investment tax incentives should be viewed as promising until empirical data shows otherwise. Before empirical data can be gathered, however, pure examples of community oriented investment tax incentives must exist for testing. To this end, the next section explains how community oriented investment tax incentives might be designed and introduced via pilot programs that would provide more information about their impact.

C. Designing New Community Oriented Investment Tax Incentives

The primary goal of any community oriented investment tax incentive should be to improve neighborhood conditions in poor communities for the benefit of the people who live there. As such, it is helpful here to take a step back and consider the characteristics that have contributed to the failure of spatially oriented investment tax incentives to benefit residents of poor communities. First, as explained in Parts II and III, spatially oriented investment tax

[333] DEL. CODE § 2002(10).

incentives are designed to advance the interests of businesses and place entrepreneurs, not local residents. In fact, pro-gentrification developers have strongly influenced the development of place-based investment tax incentives through their lobbying efforts and participation in pro-growth coalitions.[334] Since the interests of communities and place entrepreneurs often conflict,[335] it is understandable that spatially oriented investment tax incentives have not been designed to benefit residents of poor communities.

A second and related characteristic of spatially oriented investment tax incentives is that they are designed to create profit centers and enable gentrification, not to improve conditions for people who live in high-poverty areas.[336] Indeed, the goal of place entrepreneurs is to profit on place.[337] One consequences of this focus on creating profit centers is that geographic boundaries take on elevated importance in the context of spatially oriented investment tax incentives. To earn the tax preference, businesses or property must be located within geographic boundaries. But businesses are not required to interact with area residents. In this way, the law treats space within the geographic boundary as distinct from the community that lives there. This disconnect makes it less likely that the tax incentive will benefit poor residents.

A third characteristic is that the objectives of spatially oriented investment tax incentives have often been opaque, or even ambiguous. Keeping the objectives vague has undoubtedly helped to maintain bipartisan support for the laws. Pro-business advocates can point to their growth potential, while anti-poverty advocates can embrace their potential to benefit poor communities. But the lack of a clear objective has also made it difficult to evaluate their success. While some laws require regular impact reports, many do not. Meanwhile, the research questions asked by social scientists may have little relationship to the purpose of the laws. For example, evidence that the laws fail to decrease poverty rates is most relevant if the laws are, in fact, intended to reduce poverty—and this Article has argued that they are not.

---

[334] *See supra* Part III.

[335] *See supra* Part II.B.2.

[336] *See supra* Part II.A.

[337] *See supra* Part II.B.2.

With these characteristics of spatially oriented investment tax incentives in mind, this section presents a road map for designing community oriented investment tax incentives that include more community oriented features. Rather than propose a specific prototype, this section argues that three principles should guide the design of every community oriented investment tax incentive: confer power to community stakeholders; link place to community; and incorporate a system for monitoring outcomes. This section will elaborate on each of these principles.

1. Confer Power to Community Stakeholders

Spatially oriented investment tax incentives aim to create business opportunities for place entrepreneurs that propose projects based on profit potential. Community members are systematically disempowered in this context. Any benefit to the community is incidental, and communities may even be harmed as a result of gentrification. In contrast, community oriented investment tax incentives must confer power to community members.

The purpose of community oriented investment tax incentives is to benefit community members, who represent additional stakeholders. 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. One way to empower community stakeholders is through citizen participation.[338]

The importance of citizen participation in urban initiatives has been known since the early years of urban renewal.[339] Citizen participation is "the active, voluntary involvement of individuals and groups to change problematic conditions in poor communities, and influence the policies and programs that affect the quality of their lives or the lives of other residents."[340] A key element

[338] Sherry R. Arnstein, *A Ladder Of Citizen Participation*, 35 J. AM. INST. OF PLANNERS. 216, 216 (1969).

[339] *See* Dan Soen, *Citizen and Community Participation in Urban Renewal and Rehabilitation—Comments on Theory and Practice*, 16 COMMUNITY DEV. J. 105, 105 (1981).

[340] Mary Ohmer & Elizabeth Beck, *Citizen Participation in Neighborhood Organizations in Poor Communities and Its Relationship to Neighborhood and Organizational Collective Efficacy Special Issue with Coping with Poverty*, 33 J. SOC. & SOC. WELFARE 179, 180 (2006).

of citizen participation is empowerment,[341] and a related prerequisite is residents' belief that they have the capacity to make a difference.[342]

Unfortunately, efforts to engage community members has often failed to empower poor community stakeholders. Policymakers have actively "privilege[d] the knowledge and capacity of planners and architects to design spaces that serve the best interests of citizens."[343] Top-down approaches like these "inject the goal of establishing vibrant community into professional priorities but forego potential contributions from the beneficiaries of these designs."[344] When the narrative of a place is told by place entrepreneurs, and not by the community, they can "coopt and commodify established residents' cultural symbols and practices," ultimately contributing to their displacement.[345]

Effective citizen participation, however, is bottom-up, where citizens have "a voice in shaping the public spaces that they use." [346] For example, a study of how Chicago residents "pro-actively correct defects in existing spatial arrangements" observed that "residents have played crucial roles (sometimes with planners and other officials or professionals, sometimes without them) in recognizing problematic space, developing solutions, and eventually implementing reconfiguration."[347]

Through voluntary participation, the citizens helped alter their environment in at least two ways. First, they constructed environments that were even "more conducive to community building and social organizing."[348] Second,

---

[341] Arnstein, *supra* note 338, at 216.

[342] Ohmer and Beck, *supra* note 340, at 180.

[343] Archon Fung, *Beyond and Below the New Urbanism: Citizen Participation and Responsive Spatial Reconstruction Jane Jacobs & the New Urban Ecology Symposium: Essay*, 28 B.C. ENVTL. AFF. L. REV. 615, 616 (2000).

[344] *Id.*

[345] Willow S Lung-Amam & Casey Dawkins, *The Power of Participatory Story Mapping: Advancing Equitable Development in Disadvantaged Neighbourhoods*, __ COMMUNITY DEV. J. (2019), https://doi.org/10.1093/cdj/bsy064.

[346] Fung, *supra* note 343, at 616.

[347] *Id.*

[348] *Id.*

the citizen participants worked to "recognize and respond to defects in their circumstances" and sought to address "only those situations that are most urgent and problematic."[349] As such, "[t]his approach economizes the limited resources available in most urban neighborhoods by concentrating efforts on the most serious local concerns."[350]

Although the citizen participation observed in Chicago was initiated by community residents, this type of bottom-up citizen participation and its effects "can be deliberately harnessed and reinforced through the appropriate political institutions"[351]—including through law. Here, the design of community oriented investment tax incentives should be driven by community participation, which would ideally inform both the law and administration of the tax incentive program.

One way that policymakers could engage community members is via conversations with members of block associations.[352] But another promising method of soliciting community voices would be through a method called "mental mapping."[353] Mental mapping has been described as "'speaking landscapes' of words, images, colors, and one's personal experiences with geography as an attempt to diminish the power differential between researcher and the researched."[354] A related technique is "story mapping," which emphasizes the role of storytelling in mental mapping in order to help residents "think beyond the boundaries of traditionally defined neighbourhoods and consider their shared everyday place meanings and experiences that are often overlooked by both community members and community development practitioners."[355]

Mental mapping allows participants to "express emotional, ideological, and physical interactions with geography" and it has been used to understand

---

[349] *Id.* at 617.

[350] *Id.*

[351] *Id.*

[352] Ohmer and Beck, *supra* note 340, 183, 196.

[353] Robert E Gutsche, *News Place-Making: Applying 'Mental Mapping' to Explore the Journalistic Interpretive Community*, 13 VISUAL COMM. 487, 488 (2014) (describing the methodology).

[354] *Id.*

[355] Lung-Amam & Dawkins, *supra* note 345, at 3. The authors note that scholars "have long recognized the value of stories within planning and community development processes." *Id.*

residents' "perceptions of city spaces and causes for social conditions" in their neighborhoods.[356] Though the value of mental mapping and participatory storytelling have long been known to researchers, the modern technique uses digital data and user-friendly mapping platforms to create and curate maps.[357] The goal is to combine modern mapping capabilities with a participatory process in order to understand places and engage residents in community development.[358]

For example, mental mapping workshops have been used recently by journalists in Illinois to learn about issues affecting communities throughout the state.[359] The workshop not only yielded information about common perceptions of their region, but also points of contention.[360] In addition, a new study by a team of urban planning researchers has provided promising empirical support for the method.[361] The researchers used story mapping to understand the needs of an immigrant community facing the possibility of displacement due to a new metro rail line.[362] The technique yielded a variety of revealing insights about the community.[363]

For example, "local laundromats . . . were popular among participants who lacked facilities within their apartments," serving as both functional and social spaces.[364] The researchers were confident that the story mapping process had been an empowering experience for residents, and that it had yielded "critical insights" for researchers and community organizations "into how residents

---

356 *Id.*

357 *Id.* at 5.

358 *Id.*

359 Logan Jaffe, *Understand "Variety." Listen to Young People. Pay Attention to Changing Community Reputations*, PROPUBLICA, June 15, 2018, https://www.propublica.org/article/propublica-illinois-free-street-theater-workshops-rock-island-toulon.

360 *Id.*

361 *See generally* Lung-Amam & Dawkins, *supra* note 345 (performing a case study of story mapping in Langley Park, Maryland and concluding that the method may help empower traditionally marginalized groups and encourage more complex narratives within community development planning).

362 *Id.* at 2.

363 *Id.* at 16.

364 *Id.*

see, experience and make meaning of their neighborhood."[365] Though the researchers declined to predict whether mental mapping would have an impact on policymaking, this Article proposes that similar methods be used to inform lawmaking in the context of place-based investment tax incentives.[366]

As a practical matter, mental mapping methods could be used by policymakers to gather information from community members in targeted areas. While citizen participation would ideally inform all aspects of the tax incentive design, there are at least two points when citizen participation would be especially important. First, citizen participation is needed to inform the overall objectives of the tax incentive program. Are the most urgent community problems related to hiring needs, the built environment, or something else? In some cases, it may be possible to design narrow tax incentives to address specific problems faced by communities, a technique that may help overcome implementation challenges.[367]

For example, if the largest problem facing a community is resident unemployment, then community oriented direct tax incentives to hire area residents may be appropriate. Or, community members may identify specific types of businesses that could benefit their communities—such as affordable child care centers[368] or chain grocery stores.[369] Again, community oriented investment tax incentives could be designed to specifically target the types of firms that sell goods and services residents expect to benefit their community.

[365] *Id*. at 17.

[366] Lung-Amam & Dawkins, *supra* note 345, at 17.

[367] *See infra* Part V.D. Mental mapping may also help inform so-called "neighborhood acupuncture" techniques, which are "community interventions that activate existing storytelling networks using light-touch and low-cost methods." Lung-Amam & Dawkins, *supra* note 345, at 5.

[368] Allison De Marco & Lynne Vernon-Feagans, *Child Care Subsidy Use and Child Care Quality in Low-Wealth, Rural Communities*, 36 J. FAM. ECON. ISSUES 383, 383 (2015) (describing the importance of child care facilities in poor neighborhoods and the role of federal subsidies).

[369] *See* Chanjin Chung & Samuel L. Myers, *Do the Poor Pay More for Food? An Analysis of Grocery Store Availability and Food Price Disparities*, 33 J. CONSUMER AFF. 276, 293 (1999) (finding that the cost of grocery store food is higher in poor neighborhoods because they have fewer chain grocery stores).

Second, even if the overall objectives of the tax incentive are defined broadly, community participation should be used to inform the administration of the tax law. The tax law can be written broadly to encompass a variety of project types; however, eligibility for the tax preference should be determined on a per project basis. Current law provides a partial model for this approach.

Most current incentives are designed broadly. Until recently, all federal indirect place-based investment tax incentives required taxpayers to seek approval for tax-credit eligible projects.[370] For example, CDEs must apply to the CDFI Fund for NMTC allocations based on proposed investments.[371] Similarly, affordable housing developers must apply to local housing authorities for LIHTC allocations based on proposed housing projects.[372] In these cases, agency representatives review project applications and determine which projects are eligible for the tax credits.

This allocation process serves a dual purpose of limiting the tax credits (only a fixed amount of tax credits are available for allocation each year)[373] and ensuring some program oversight (since the CDFI Fund and local housing authorities are presumed to have substantive expertise).[374] Community oriented investment tax incentives should adopt the same approach but incorporate citizen participation in the administration process. For example, the criteria for project eligibility and ranking should be developed in consultation with community representatives and informed by data gathered directly from community members.

Once the primary objective of the tax incentive and administrative criteria have been established, the next step is to design a place-based investment tax incentive that is consistent with these choices. The next section explains how these objectives should inform how the tax laws link place to community.

---

[370] The new Opportunity Zones program abandons the per-project approach, merely requiring that investments meet the statutory criteria that establish their location within an Opportunity Zone.

[371] I.R.C. § 45D.

[372] I.R.C. § 42.

[373] Schizer, *supra* note 260, at 298–99.

[374] *See* Weisbach & Nussim, *supra* note 300, at 994 (presuming that agencies possess substantive expertise in their area).

2. Link Place to Community

Where spatially oriented investment tax incentives tend to approach poor places as separate from the communities that live there, community oriented investment tax incentives should seek to maintain the link between community and place. Spatially oriented investment tax incentives encourage firms to locate within a targeted area, but community oriented investment tax incentives should encourage firms to *engage with the communities* within a targeted area. The mechanism by which the law encourages firms to engage with the communities—or links place to community—should be informed by the specific objective to be advanced.

By definition, all community oriented investment tax incentives must contain features that specifically benefit residents of a targeted area. But the specific objectives of the law should be tailored to the targeted community and informed by citizen participation, and they may reflect either of the following two broad goals. The first goal is to benefit individual members of the community, such as through incentives to hire. The second goal is to improve neighborhood conditions for the benefit of the community, such as through incentives to improve the built environment or to attract specific types of businesses.

The type of objective should inform how it links place to community. In some cases, for example, it may make sense to make tax preferences available to firms are located *outside* the targeted area.[375] This may be especially true in the context of incentives to benefit individual members of the community through labor investment. For example, recall that under the Texas enterprise zone laws, businesses throughout the area were eligible for tax breaks if they hired employees who resided in the zone.[376]

At least one study concluded that zone resident employment rates increased even though firms were not required to locate in the zone to claim tax credits.[377] The Texas law effectively links community members to place by requiring residence in the targeted place (in this case, an enterprise zone). In

[375] Margery Austin Turner, *A Place-Conscious Approach Can Strengthen Integrated Strategies in Poor Neighborhoods,* BROOKINGS (Aug. 2015) 7, https://www.brookings.edu/wp-content/uploads/2016/06/Download-the-paper-4.pdf.

[376] *See supra* note 318 and accompanying text.

[377] *See supra* note 301 and accompanying text.

that regard, the law is spatially-targeted and place-based. At the same time, delinking the *firm's* location to the targeted place has several advantages.

First, it would eliminate locational distortions associated with firms relocating within zone boundaries, thereby avoiding harms to other parts of the municipality.[378] Second, it would expand the pool of potential employers for zone residents by creating incentives for businesses throughout the region to hire them, rather than limiting opportunities to hyper-local businesses. This would increase the likelihood of unemployed residents matching with employers who can use their skills.

Third, it would also conform more closely to the realities of modern economies, in which employees often travel throughout the region for job opportunities.[379] In the more traditional approach, in which employers locate in the zone, the mobile job force is just as likely to spur gentrification as wealthier, higher-skilled outsiders travel into the zone seeking new job opportunities. This effect is reversed—and the risk of gentrification is less—when employers outside the zone employ zone residents.

Despite its potential advantages, this approach is the exact opposite of that taken by the spatially oriented indirect tax incentives that exist under current law. Both spatially oriented direct and indirect investment tax incentives typically require that firms are physically located within, and doing business in, the target area.[380] The lack of any necessary nexus to local communities

---

[378] Aprill, *supra* note 22, at 1348.

[379] Turner, *supra* note 375, at 7.

[380] For example, as described in Part II.B.1 above, the NMTC is earned when a taxpayer makes a "qualified equity investment" in a CDE, which must use substantially all of the cash to make "qualified low-income community investments." I.R.C. § 45D(a), (b). Contrary to the name, however, qualified low-income community investments need not benefit low income communities. Instead, qualifying investments include capital investments or loans made to businesses that are physically located within, and doing business in, the target area. I.R.C. § 45D(d)(1) (qualified low-income investment includes capital or equity investment in, or loan to, any qualified active low-income community business), I.R.C. § 45D(e) (defining active low-income community business as a business in which "(i) at least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business within any low-income community,(ii) a substantial portion of the use of the tangible property of such entity (whether owned or leased) is within any low-income community, (iii) a substantial portion of the services performed for such entity by its employees are performed in any low-income community, (iv) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles . . . other than collectibles that are held primarily for sale to

Please send any comments to mlayser@illinois.edu

beyond mere physical proximity leaves to chance whether such investments will benefit the communities. In contrast, the Texas approach eliminates physical proximity but creates a strong link between place and community.

On the other hand, to the extent that the tax incentive aims to benefit the entire community, it may be necessary for a firm (or its project) to be located within the targeted area to link community and place effectively. This is especially true if residents' proximity to the business or project is predictive of whether they will benefit from the investment. To maintain this link, the tax law should place more emphasis on regulating the activities performed by local firms than on the mere location of those firms. For example, tax benefits may be limited to the types of investments that may be reasonably expected to benefit poor residents, such as low-cost childcare centers, community centers, or charter schools. Ideally, taxpayers would be required to certify that their activities directly benefit local residents and, as explained in the next section, should be subject to monitoring.

Thus, the mechanism by which the law targets place and community may vary depending on the specific objective of the incentive, but in every case there should be a conscious effort to link place to community. The next section addresses the question of how tax laws can be designed to advance the specific objectives needed to benefit a local community by effectively conferring power to community stakeholders.

3. Incorporate a System for Monitoring Outcomes

Where the objective of spatially oriented investment tax incentives is vague, the goals of community oriented investment tax incentives should be clear and subject to monitoring. The success of community oriented investment tax incentives should be monitored and regularly evaluated based on their impact on community residents. Just as citizen participation can inform the objectives, citizen participation is also essential for monitoring outcomes. The metrics for evaluating the impact of the law should be clearly defined, and an assessment schedule should be set.

Most current place-based investment tax incentives do not require regular impact assessments, and most of what we know about their impact on communities is the result of studies that test factors like property values,

---

customers in the ordinary course of such business, and (v) less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property").

employment rates, area poverty rate, or the amount of capital investments. These factors may or may not relate to intended outcomes. In the case of community oriented investment tax incentives, lawmakers should specify in advance which types of outcomes are relevant to evaluating the success of the law. Possible metrics need not be limited to those typically studied, but may be expanded to include factors like crime rates, health outcomes, or other factors identified through citizen participation. However, the metrics should be closely tied to the objective and responsive to real community need.

If, after a specified period, positive outcomes are not observed, then the tax law should be reevaluated, again with consultation with citizen participants. Since community oriented investment tax incentives introduce many of the same potential inefficiencies and complexities as their spatially oriented counterparts, their justification depends on their ability to impact communities positively. To the extent they fail to do so, they should be reformed or abandoned in favor of other policy tools.

In sum, a community oriented investment tax incentives should be designed with citizen participation, should link place to communities as needed to advance specific objectives, and should incorporate a mechanisms for monitoring outcomes. 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. The next section considers the main challenges to implementation and proposes that cities and states consider pilot programs prior to adopting community oriented investment tax incentives as a widespread approach to combat concentrated poverty.

D. Challenges to Implementation

Like many policies, the primary barrier to shifting toward community oriented investment tax incentives is likely to be political. Spatially oriented investment tax incentives have historically enjoyed more bipartisan support than many social policies, largely because powerful industry lobbies derive significant benefits from the tax laws. Anti-poverty advocates, seeing few politically viable alternatives, have supported the programs while stepping into a watchdog role, hoping to curb abuses and increase the chances that poor communities will also benefit from the laws.

The profit potential for private industry is likely to be smaller under community oriented tax incentives than under current law, a fact that threatens to erode support for the laws. Anti-poverty advocates are likely to support the changes, but they represent a less politically powerful lobby than private industry. Meanwhile, the federal government recently doubled-down on the spatially oriented approach through its introduction of Opportunity Zones.

Nevertheless, community oriented investment tax incentives may be viable in politically progressive states and cities, which can and should consider introducing pilot programs to test the approach at the state and local level. If successful, the approach may well become politically viable at the federal level as the composition of leadership changes. Moreover, governments may experiment with community oriented investment tax incentives without immediately repealing current laws, which can be phased out at later dates once the impact of community oriented alternatives are better understood.

Finally, it is worth noting that while community oriented tax incentives represent better tax policy than their spatially oriented counterparts, one may still critique the approach as weaker than direct public spending. In a recent study of the rhetoric and realities of charitable giving, one scholar argued that the deduction for charitable giving reflects more private control than government assistance.[381] One critique was that it represents a weak financial commitment from the government because "it contains no unconditional commitment to public support."[382]

Place-based investment tax incentives are subject to this same criticism. Though the incentives have proven capable of attracting investment, they are nevertheless dependent on the profit-driven decisions of private market actors. One consequence of this dependence is that investors often fail to make investments during periods when the need may be greatest.[383] Tax incentives fundamentally depend upon taxpayers expecting to have tax liabilities, which may not be true during periods of recession.[384] During the Great Recession, for example, financing for affordable housing projects came to a halt when would-be tax equity investors predicted that they would have

---

[381] *See generally* Linda Sugin, *Rhetoric and Reality in the Tax Law of Charity Symposium: We Are What We Tax*, 84 FORDHAM L. REV. 2607 (2016).

[382] *Id*. at 2615.

[383] COHNREZNICK, *supra* note 295, at 6.

[384] Layser, *supra* note 73, 480–81.

insufficient tax liability to absorb the tax credits.[385] Thus, though the tax-based approach has some political advantages over direct government grants, it falls far short of a commitment from the government to subsidize investments for the benefit of poor communities.

Nevertheless, in the politically-fraught context of affordable housing and community development, even an imperfect commitment from the government may be better than no commitment at all. In addition to demonstrating the pro-gentrification origins of current law, the history of place-based investment tax incentives reveals a reality in which policies that assist poor neighborhoods are most viable when they are perceived as limiting government involvement. Though the place-based investment tax incentives that exist under current law are deeply flawed, the broader tax-based approach may still hold promise.

CONCLUSION

Concentrated poverty presents a serious challenge to equality in America. At the most basic level, spatial inequality is a problem faced by lawmakers, who often point to place-based investment tax incentives as tools to promote investment in poor areas. Place-based investment tax incentives have traditionally enjoyed significant bipartisan support, yet the empirical evidence is often disappointing to anti-poverty advocates. This Article has argued that what many anti-poverty advocates regard as a flaw of place-based investment tax incentives—a lack of safeguards to protect poor communities—is an intended feature of most current place-based investment tax incentives.

The development of place-based investment tax incentives and their designs can be explained as a predictable result of the pro-gentrification business and political environment that produced them. Viewed through this lens, it becomes much easier to reconcile (but harder to justify) the continued use of place-based investment tax incentives despite a lack of empirical evidence that they benefit poor communities. If place-based investment tax incentives are used at all, then they should be used for anti-poverty goals.

[385] JOINT CTR. HOUS. STUDIES OF HARVARD UNIV., THE DISRUPTION OF THE LOW-INCOME HOUSING TAX CREDIT PROGRAM: CAUSES, CONSEQUENCES, RESPONSES, AND PROPOSED CORRECTIVES 4 (2009), http://www.jchs.harvard.edu/sites/default/files/disruption_of_the_lihtc_program_2009_0.pdf; U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-10-334, NEW MARKETS TAX CREDIT: THE CREDIT HELPS FUND A VARIETY OF PROJECTS IN LOW- INCOME COMMUNITIES, BUT COULD BE SIMPLIFIED 1 (2010).

Please send any comments to mlayser@illinois.edu

Anti-poverty goals may be advanced more effectively through community oriented investment tax incentives, which are rare under current law. Unlike most current incentives, community oriented investment tax incentives would confer power to community stakeholders, link place to community, and incorporate a system for monitoring outcomes. To this end, this Article has provided a roadmap for designing community oriented investment tax incentives that employs mental mapping techniques to inform the tax incentive designs. State and local governments should introduce pilot programs of community oriented investment tax incentives that would enable researchers to study their impact and evaluate their potential as large-scale anti-poverty programs.

Please send any comments to mlayser@illinois.edu