

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

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September 30, 2011

To Representative Strachota:

This draft creates a tax credit program under which the Wisconsin Economic Development Corporation (WEDC) certifies businesses to claim a tax credit. Structuring a tax credit program so that a taxpayer is certified to claim a tax credit by an entity that is not a unit of government is a novel issue in Wisconsin. This new structure presents a risk that a court could find that this tax program includes an impermissible delegation of the legislature's power to tax because it authorizes WEDC, which is not the state, to forego tax revenue for the state in place of the state. It is possible that the risk of a court finding that this program includes an impermissible delegation of the legislature's power could be minimized by including additional limits on WEDC's discretion or creating a larger role for the state in the process under which the tax credits are issued, or both. However, with a novel issue such as this one, it is impossible to predict how a court might treat this tax credit program in any given case.

Fern Knepp  
Legislative Attorney  
Phone: (608) 261-6927  
E-mail: [fern.knepp@legis.wisconsin.gov](mailto:fern.knepp@legis.wisconsin.gov)