State of Wisconsin
2013 - 2014 LEGISLATURE

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2013 SENATE BILL 449

December 16, 2013 – Introduced by Senators GUDEX, PETROWSKI, LASSA, MOULTON, T. CULLEN and OLSEN, cosponsored by Representatives LOUDENBECK, KRUG, CZAJA, JACQUE, KAHL, KLEEFISCH, KOLSTE, BERNIER, SARGENT, MURPHY, WRIGHT, JORGENSEN, KUGLITSCH, BIES, RINGHAND, BORN, KESTELL, MASON and PETRYK. Referred to Committee on Economic Development and Local Government.

AN ACT ***to create*** 238.3045 of the statutes; **relating to:** authorizing the transfer of certain tax credits earned in connection with economic development in this state.

Analysis by the Legislative Reference Bureau

Under current law, the Wisconsin Economic Development Corporation (corporation) may certify a person to claim tax credits against the person's income or franchise tax liability or against the person's liability for fees imposed on insurers, if the corporation determines that the person is conducting or will conduct certain eligible business activities that will result in economic development in Wisconsin (economic development tax credits). A person may qualify for additional economic development tax credits if the eligible activity conducted by the person will benefit a particular group or economically distressed area that the state has targeted for economic development.

This bill creates a program under which the corporation may approve the transfer of economic development tax credits to another Wisconsin taxpayer other than the person to whom the corporation initially awards the tax credits. Under the bill, the corporation may approve the transfer of economic development tax credits if the person to whom the tax credits are initially awarded meets at least one of the following conditions in addition to being authorized by the corporation to claim the tax credits:

1. The person is headquartered in, and employs at least 51 percent of its employees in, Wisconsin.

2. The person intends to relocate its headquarters to, and employ at least 51 percent of its employees in, Wisconsin.

3. The person intends to expand its operations in Wisconsin, and that expansion will increase the number of full–time employees employed by the person in Wisconsin by a number that equals at least 10 percent of the person's full–time employees.

4. The person intends to expand its operations in Wisconsin, and the person will make a significant capital investment in property in Wisconsin as a result of that expansion.

If the corporation approves a person to transfer economic development tax credits, that person must transfer those tax credits to another person previously identified to the corporation if the tax credits are transferred in exchange for some valuable consideration, other than money, in connection with the eligible business activity for which the tax credits were awarded. The person to whom the tax credits are transferred may carry forward any unused amount of those tax credits for up to 15 years until fully claimed.

Under the bill, if the corporation revokes a person's certification for economic development tax credits and that person has already transferred the tax credits, that person is liable for the full amount of the tax credits, and the person to whom the credits were transferred may not claim any unused credits.

Under the bill, the corporation may authorize the transfer of up to $15,000,000 in economic development tax credits over three years. However, if after reaching that three–year limit, the corporation determines that an extension of the program will support significant economic development in Wisconsin, the corporation may continue the program for up to an additional three years and authorize the transfer of up to an additional $15,000,000 in economic development tax credits. However, any such extension of the program is subject to passive review by the Joint Committee on Finance.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 238.3045 of the statutes is created to read:

238.3045 Transferability of tax benefits. (1) APPLICATION AND CORPORATION APPROVAL. (a) An applicant for certification for tax benefits under s. 238.301 may submit with its application under s. 238.301 (1) an application to the corporation on a form prescribed by the corporation to transfer those tax benefits to another person under this section. The application shall include the name, address, and tax identification number of the person to whom the applicant intends to transfer the tax benefits and any other information the corporation requires. The corporation shall notify the applicant of the corporation's determination concerning the transfer of tax benefits when the corporation notifies the applicant of the corporation's certification determination under s. 238.301.

(b) The corporation may approve the transfer of tax benefits under this section if the corporation certifies the applicant under par. (a) for tax benefits under s. 238.301 and finds that the applicant meets at least one of the following conditions:

1. Is headquartered and employs at least 51 percent of its employees in this state.

2. Intends to relocate its headquarters to this state and employ at least 51 percent of its employees in this state.

3. Intends to expand its operations in this state, and that expansion will result in an increase in the number of full–time employees employed by the applicant in this state in an amount equal to at least 10 percent of the applicant's full–time workforce in this state at the time of application.

4. Intends to expand its operations in this state, and that expansion will result in the applicant making a significant capital investment in property located in this state, as determined by the corporation.

(c) 1. Subject to subd. 2., a person that receives an approval under par. (b) shall transfer tax benefits in accordance with the terms of the application under par. (a) after the corporation authorizes the person to claim tax benefits under s. 238.303 (2) and provides the notice of eligibility under s. 238.303 (3). The notice of eligibility shall contain all relevant information concerning a transfer of tax benefits under this section. The person to whom tax benefits are transferred may carry forward, beginning on the date of the notice of eligibility, any unused amount of the value of those tax benefits as provided under the appropriate provision in ch. 71 or in s. 76.636.

2. Tax benefits may be transferred under this paragraph only in exchange for some consideration, other than money, in connection with the eligible activity for which the tax benefits were initially awarded.

(2) REVOCATION. (a) If the corporation revokes a person's certification for tax benefits under s. 238.305, and, at the time of revocation, that person has transferred those tax benefits under this section, that person shall be liable for the full value of the tax benefits, and the person to whom the tax benefits were transferred may not claim any tax benefits that were not claimed prior to revocation.

(b) The corporation shall notify the department of revenue of a revocation of tax benefits subject to par. (a), including the value of the tax benefits for which the person is liable.

(c) The department of revenue has full power to administer tax benefits transferred under this section and may take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes imposed under ch. 71. The income and franchise tax provisions in ch. 71 relating to assessments, refunds, appeals, collection, interest, and penalties apply to tax benefits transferred under this section.

(3) ANNUAL REPORT. Annually, the corporation shall submit a report to the joint committee on finance that provides a detailed assessment of the progress to date of the program under this section.

(4) PROGRAM LIMITS AND TERMINATION. (a) Except as provided in par. (b), the corporation may not authorize the transfer of tax benefits under this section that total more than $15,000,000, and the corporation may not authorize the transfer of tax benefits after 36 months after the effective date of this paragraph .... [LRB inserts date].

(b) Upon expiration of the 36–month period under par. (a), the corporation may continue to authorize the transfer of tax benefits under this section for up to an additional 36 months, and the corporation may authorize the transfer of up to an additional $15,000,000 in tax benefits, if the corporation determines that a continuation of the program under this section will promote significant economic development in this state. Before the corporation authorizes the transfer of tax benefits under this paragraph, the chief executive officer of the corporation shall notify the joint committee on finance in writing that the corporation intends to continue authorizing the transfer of tax benefits under this section. That notice shall state the reasons supporting the corporation's determination that the transfer of additional tax benefits will promote significant economic development in this state. If, within 14 working days after the date of that notice, the cochairpersons of the committee do not notify the corporation that the committee has scheduled a meeting to review the corporation's proposed continuation of the program, the corporation may proceed to authorize the transfer of additional tax benefits under this section. If, within 14 working days after the date of that notice, the cochairpersons of the committee notify the corporation that the committee has scheduled a meeting to review the proposed continuation of the program, the corporation may proceed to authorize the transfer of additional tax benefits only upon approval of the committee.

SECTION 2. Initial applicability.

(1) This act first applies to taxable years beginning on January 1, 2014.

(END)