



## WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

### Tax Credit Programs Related to Economic Development

Various state tax credits are available to businesses and individuals who create jobs, make financial investments in new business ventures, or relocate or expand business operations in the state. Several key changes were made during the 2009 Legislative Session to expand or modify such tax credit programs. 2009 Wisconsin Act 2 discontinued tax credits for activity in specified zones and replaced them with economic development tax credits, which apply statewide. 2009 Wisconsin Act 28 created a new jobs tax credit for job creation and training, expanded the enterprise zones tax credit, and designated two new development opportunity zones. 2009 Wisconsin Act 265 increased the amount of angel investment tax credits that may be claimed by a given investor. 2009 Wisconsin Act 266 increased the number of enterprise zones that may be designated.

Tax credits have likewise been of interest during the Legislature's January 2011 Special Session and the 2011-12 regular session. 2011 Wisconsin Act 3 created a new tax credit program for businesses that relocate to the state. 2011 Wisconsin Act 4 increased by \$25 million the maximum amount of benefits that may be allocated under the economic development tax credit program. 2011 Wisconsin Act 26 increased the number of enterprise zones that may be designated and requires some enterprise zones to be designated in areas fulfilling specified population criteria.

#### **BACKGROUND**

Tax credits offset a tax claimant's tax liability. In contrast, tax deductions reduce tax liability. Tax credits may be refundable or nonrefundable. If the amount of a credit exceeds a claimant's tax liability, a cash refund will be issued for the amount exceeding the tax liability only if the credit is refundable.

The programs discussed below are the major state tax credit programs that directly reward job creation, job retention, business expansion, or other economic development activities. Several

smaller tax credit programs also provide credits for activities that may be directly or indirectly related to economic development goals.<sup>1</sup>

In some cases, multiple programs may offer alternative tax benefits to an individual or business for the same activity. For example, several tax credits are available for job creation. However, current law generally limits the collection of multiple credits for the same expenditures.

Each of the tax credit programs is structured differently. For example, some tax credits are awarded based on a claimant's activity within a specified "zone," while others apply regardless of location. However, for all of the programs, an individual or business typically must be certified as fulfilling specified criteria for eligibility to receive a tax credit before the Department of Revenue (DOR) will award the credit. The Wisconsin Economic Development Corporation (WEDC) is authorized to administer such certifications for all of the state's economic development-related tax credit programs.<sup>2</sup>

### **JOBS TAX CREDITS**

2009 Wisconsin Act 28 created a new jobs tax credit program. Jobs tax credits are refundable tax credits that may be awarded to a person who creates new jobs in the state. [s. 238.16, Stats.] The credits equal a percentage, as determined by WEDC but not exceeding 10%, of qualified new employee wages. [ss. 71.07 (3q), 71.28 (3q), and 71.47 (3q), Stats.] WEDC may certify a person to receive jobs tax credits if the person operates or intends to operate a business in this state and enters into a contract with WEDC. The certification of a given claimant may last for up to 10 years.

To receive the tax credit, a person who has been certified must have increased net employment in his or her business. In addition, the person must have either created jobs with wages in a specified range, improved employees' job-related skills, or provided other qualified training. To qualify, new jobs must pay annual wages of at least \$20,000 but not more than \$100,000, or at least \$30,000 but not more than \$100,000, depending upon the classification of the county or municipality as a "tier I" or "tier II" county or municipality, as determined by WEDC based on factors such as the unemployment rate and median family income in the area.

The total amount of jobs tax credits that may be awarded in a calendar year is \$5 million. In addition, a \$14.5 million limit applies to credits for taxable years beginning on or after January 1, 2010 and ending before July 1, 2013.

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<sup>1</sup> For example, tax credits are available for investments in research facilities; dairy manufacturing, meat processing, and food processing facilities; woody biomass harvesting; film production; and the purchase of stock or partnership interest in the Community Development Finance Authority. In addition, various programs provide grants and loans to support economic development.

<sup>2</sup> Such certifications had been administered by the Department of Commerce (Commerce). 2011 Wisconsin Act 7 created WEDC and authorized the Secretary of the Department of Administration (DOA) to transfer funds and positions related to economic development from Commerce to WEDC. In addition, 2011 Wisconsin Act 32, the 2011-13 Biennial Budget Act, transferred the authority for administering economic development tax credit programs to WEDC. Businesses that were certified by Commerce under ch. 560, 2009 Stats., retain their certification under Act 32.

## **RELOCATION TAX CREDITS**

2011 Wisconsin Act 3 created a nonrefundable tax credit that may be claimed by a business (excluding partnerships, limited liability companies, and tax-option corporations, for which an analogous tax deduction applies) that locates to this state from another state or country and begins doing business in this state. [ss. 71.28 (9s) and 71.47 (9s), Stats.] “Locates to this state” means moving either 51% or more of the workforce payroll of the business or at least \$200,000 of wages paid to the workforce to Wisconsin during the first taxable year to which the credit relates.

The amount of the credit is equal to the claimant’s total tax liability, after all other credits, deductions, and exclusions have been applied.

The credit may be claimed for two consecutive tax years, beginning with the tax year in which the business locates to this state and begins doing business in this state. The credit may not be claimed if the claimant has done business in this state during any of the two taxable years preceding the first taxable year in which the credit is claimed.

## **ECONOMIC DEVELOPMENT TAX CREDITS**

2009 Wisconsin Act 2 created the economic development tax credit program, which provides nonrefundable tax credits for specified types of economic development projects throughout the state. The program replaced credits awarded for economic development activity in specified zones, namely development zones, enterprise development zones, agricultural development zones, airport development zones, and technology zones. The act also transferred funding that had been allocated but not yet awarded under the discontinued zone programs to the new economic development tax credit program.

2011 Wisconsin Act 4 increased the maximum amount of tax benefits that WEDC may allocate under the economic development tax credit program by \$25 million. However, before allocating the additional \$25 million, WEDC must submit a plan for allocation of the funds to the Joint Committee on Finance for 14-day passive review.

### ***CERTIFICATION FOR ELIGIBILITY TO RECEIVE CREDITS***

WEDC may certify any person to receive economic development tax credits who it determines is conducting or intends to conduct a project that does one of the following:

- **Creates and maintains new full-time jobs** for a period of time established by WEDC, by rule.
- Involves a **significant investment of capital**, as defined by WEDC, by rule, in new equipment, machinery, real property, or depreciable personal property.
- Involves significant investments, as defined by WEDC, by rule, in the **training or reeducation of employees**, by the person for the purpose of improving the productivity or competitiveness of the business of the person.

- Will result in the **location or retention of a person's corporate headquarters in Wisconsin** or that will result in the retention of employees holding full-time jobs in Wisconsin if the person's corporate headquarters are located in Wisconsin.

[ss. 238.301 and 238.302, Stats.]

#### ***AMOUNT OF CREDIT DETERMINED BY CONTRACT***

A person certified to receive economic development tax credits shall enter into a written contract with WEDC. The contract must specify the eligible activity being conducted, whether any eligible activities will occur in an economically distressed area, whether any of the eligible activities will benefit members of a targeted group, a compliance schedule that includes a sequence of the anticipated actions to be taken or goals to be achieved, reporting requirements with which the person must comply, and if feasible, a determination of the tax benefits the person will be authorized to claim.

[s. 238.301 (3), Stats.]

The amount of a given economic development tax credit is determined by WEDC based on the contract between WEDC and the person certified as eligible to receive the credit. [ss. 71.07 (2dy) (b), 71.28 (1dy) (b), and 71.47 (1dy) (b), Stats.]

#### **ENTERPRISE ZONE TAX CREDITS**

WEDC is authorized to designate a limited number of enterprise zones. Certified businesses located within such zones may claim refundable tax credits for qualified expenses related to job creation, job retention, employee training, capital expenditures, and purchases from Wisconsin suppliers. The size and scope of the credits available under the enterprise zone program are large relative to other tax credits for similar activities. Perhaps for that reason, WEDC has typically reserved enterprise zone designations for areas in which relatively large businesses have specific plans to create or retain jobs.

#### ***DESIGNATION OF ZONES***

WEDC may designate up to 20 enterprise zones, each of which may remain in effect for no more than 12 years. Five enterprise zones are subject to population criteria. Specifically, WEDC must designate at least three enterprise zones in areas comprising political subdivisions with populations of less than 5,000 people, and two enterprise zones in areas comprising political subdivisions with populations of at least 5,000 but fewer than 30,000 people. [s. 238.399, Stats.] No geographic criteria apply to the zones.<sup>3</sup>

In general, WEDC must consider the following criteria when determining whether to designate an area as an enterprise zone:

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<sup>3</sup> Enterprise zones were initially established in 2005 Wisconsin Act 361. As partially vetoed, the Act limited the size of an enterprise zone to 50 acres. 2009 Wisconsin Act 11 repealed the 50-acre limitation.

- Indicators of the area's economic need, which may include data regarding household income, average wages, the condition of property, housing values, population decline, job losses, infrastructure and energy support, the rate of business development, and the existing resources available to the area.
- The effect of designation on other initiatives and programs to promote economic and community development in the area, including job retention, job creation, job training, and creating high-paying jobs.

In addition, WEDC is generally required to give preference, to the extent possible, to the greatest economic need.

However, WEDC must designate the five enterprise zones subject to population restrictions notwithstanding such findings of economic indicators and greatest economic need. When designating enterprise zones that fulfill the population limitations, WEDC may consider indicators of an area's economic need and the effect of such designation on other economic development activities, but is not required to do so.

[s. 238.399 (3), Stats.]

#### ***CERTIFICATION OF BUSINESSES WITHIN ENTERPRISE ZONES***

There is no statutory limit on the number of businesses within a designated enterprise zone that may be certified to receive enterprise zone tax benefits. WEDC may certify any of the following businesses for eligibility to receive enterprise zone income and franchise tax credits:

- A business that **begins operations** in an enterprise zone.
- A business that **relocates to an enterprise zone from outside the state**, if the business offers compensation and benefits to its employees working in the zone for the same type of work that are at least as favorable as those offered to its employees working outside the zone, as determined by WEDC.
- A business that **expands operations** in an enterprise zone, if either of the following sets of criteria apply:
  - The business will increase its personnel by at least 10%; enters into an agreement with WEDC to claim tax benefits only for years during which the business maintains the increased level of personnel; and offers compensation and benefits for the same type of work to its employees working in the enterprise zone that are at least as favorable as those offered to its employees working in this state but outside the zone, as determined by WEDC; **or**
  - The business makes a capital investment in property located in the enterprise zone, the value of which is equal to at least 10% of the business' gross revenues in the preceding tax year attributable to business activities in this state; the business enters into an agreement with WEDC to claim tax benefits only for years during which the business maintains the capital investment; and the business offers

compensation and benefits for the same type of work to its employees working in the zone that are at least as favorable as those offered to its employees working in this state but outside the zone, as determined by WEDC.

- A business that **retains jobs** in an enterprise zone, but only if the business makes a significant capital investment in property located in the enterprise zone and at least one of the following applies:
  - The business is an original equipment manufacturer with a significant supply chain in the state, as determined by WEDC.
  - More than 500 full-time employees are employed by the business in the enterprise zone.
- A business located in an enterprise zone if the business **purchases** specified tangible personal property, items, property, goods, or services **from Wisconsin vendors**, as determined by WEDC.
- A business certified under one of the other bases for certification that makes a **significant capital expenditure** in the enterprise zone.

[s. 238.399 (5) and (5m), Stats.]

#### ***AVAILABLE CREDITS***

Several types of refundable tax credits are available to businesses certified under one or more of the categories described above. These include:

- **New jobs.** A credit for a percentage, determined by WEDC but no more than 7%, of the average wages in excess of \$20,000 or \$30,000, depending on WEDC's classification of the county or municipality, for new employees hired to work within the enterprise zone.
- **Job retention.** A credit for a percentage, determined by WEDC but no more than 7%, of wages for full-time employees within the zone who earned more than \$20,000 or \$30,000 (depending on the county or municipal classification), if the number of employees within the zone is equal to or greater than the number of people employed within the zone during the previous taxable year.
- **Training.** A credit for a percentage, determined by WEDC but no more than 100%, of expenses related to training employees within the zone.
- **Significant capital expenditures.** A credit for up to 10% of significant capital expenditures, as determined by WEDC.
- **Purchases from Wisconsin suppliers.** A credit for up to 1% of expenditures for qualified goods or services purchased from Wisconsin suppliers.

[ss. 71.07 (3w) (b) and (bm), 71.28 (3w) (b) and (bm), and 71.47 (3w) (b) and (bm).]

A business may be certified as eligible to receive more than one type of enterprise zone credit. However, a claimant cannot claim a job retention credit for the same wages used to claim a new jobs credit, and the same expenditures cannot be claimed for both the significant capital expenditures and the credit for purchases from Wisconsin suppliers.

A business may not submit a claim for an enterprise zone credit if the expenses providing the basis for the claim have served as the basis for a claim under another tax credit program.

[ss. 71.07 (3w) (c) 3., 71.28 (3w) (c) 3., and 71.47 (3w) (c) 3., Stats.]

### **DEVELOPMENT OPPORTUNITY ZONE TAX CREDITS**

Development opportunity zones are designated by statute. Two development opportunity zones – located in the Cities of Janesville and Kenosha – are currently in effect. 2009 Wisconsin Act 28 designated those zones and specified that they will be effective for a total of five years unless extended by WEDC for an additional five years. Other development opportunity zones, designated in various cities throughout the state, have expired.

Any person that is conducting or that intends to conduct economic activity in one of the development opportunity zones currently in effect is entitled to receive specified tax benefits relating to environmental remediation, jobs, and capital investment. Specifically, a person is entitled to receive benefits if they submit a qualified project plan in conjunction with the local governing body of the city in which the development opportunity zone is located. Project plans must include various components, including the amount the person proposes to invest, the number of full-time jobs that will be created, and other information required by WEDC or DOR.

[s.238.395 (3) (a) 4. and (b), Stats.]

The following tax credits are available to persons entitled to receive tax benefits in a current development opportunity zone:

- **Job creation.** Credits for up to \$8,000 for each full-time job created during the time the area was designated as a development opportunity zone that is filled by a member of a targeted group and up to \$6,000 for each full-time job created or retained that is filled by a person not in the targeted group. “Member of a targeted group” is defined to include people in specified categories with economic disadvantages. [ss. 71.07 (2dx), 71.28 (1dx), and 71.47 (1dx), Stats.]
- **Environmental remediation.** A credit for 50% of the amount expended for environmental remediation in the zone, and a credit for 7.5% of expenditures by a corporation for the removal or containment of environmental pollution. [ss. 71.07 (2dx) (b) 1., and 71.28 (1de), Stats.]
- **Investment in property.** A credit for up to 2.5% of the purchase price of specified depreciable, tangible property, for which at least 50% of the use is for business operations within the zone. [s. 71.28 (1di), Stats.]

- **Property rental.** A credit for taxes paid on purchases, leases, and rentals of construction materials and supplies that are used to construct, rehabilitate, repair, or remodel real property and that would have been eligible for the above credit if they had been purchased. [s. 71.28 (1ds) (i), Stats.]
- **Research expenses.** A credit for 5% of qualified research expenses. [ss. 71.07 (2dr) (b) and 71.28 (4) (am) 2., Stats.]

A maximum of \$5 million in credits may be claimed in each development opportunity zone, except that WEDC may provide an additional \$5 million in tax credits if it extends the zone for an additional five years.

[s. 238.395 (2) (b) 7. and 8., Stats.]

### **EARLY STAGE BUSINESS INVESTMENT PROGRAM**

The Early State Business Investment Program provides tax credits to encourage angel investment and early stage seed investment.

#### ***ANGEL INVESTMENT TAX CREDIT***

Angel investment tax credits are nonrefundable tax credits equal to 25% of a claimant's bona fide angel investment made directly in a qualified new business venture. The credits are limited to an aggregate cap of \$47.5 million per claimant.

[s. 71.07 (5d), Stats.]

WEDC may certify a business as eligible to receive angel investment tax credits if the business satisfies all of the following criteria:

- It has its headquarters in this state.
- At least 51% of the employees employed by the business are employed in this state.
- It has the potential for increasing jobs in this state, increasing capital investment in this state, or both, and either of the following apply:
  - It is engaged in, or has committed to engage in, innovation in specified manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology; processing or assembling specified products using manufacturing methods that are enabled by applying proprietary technology; or services that are enabled by applying proprietary technology; **or**
  - It is undertaking pre-commercialization activity related to proprietary technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying proprietary technology.



- It is not primarily engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction, except construction of power production plants that derive energy from a renewable resource, as defined in s. 196.378 (1) (h), Stats.
- It has less than 100 employees.
- It has been in operation in this state for not more than 10 consecutive years.
- For taxable years beginning before January 1, 2008, it has not received more than \$1 million in investments that have qualified for tax credits under s. 71.07 (5d), Stats.
- It has not received an aggregate private equity investment in cash of more than \$10 million prior to being certified under this subsection.
- For taxable years beginning after December 31, 2007, and before January 1, 2011, it has not received more than \$4 million in investments that have qualified for tax credits under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b), and 76.638, Stats.
- For taxable years beginning after December 31, 2010, it has not received more than \$8 million in investments that have qualified for tax credits under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b), and 76.638, Stats.

[s. 238.15 (1), Stats.]

#### ***EARLY STAGE SEED INVESTMENT TAX CREDITS***

Early stage seed investment tax credits are nonrefundable tax credits equal to 25% of a claimant's investment paid to a fund manager that the fund manager invests in a business certified as eligible for angel investment tax credits, described above. The early stage seed investment tax credits must be refunded if a claimant holds the investment for less than three years.

[ss. 71.07 (5b), 72.28 (5b), and 71.47 (5b), Stats.]

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

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