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November 14, 2018

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 963: Refundable Tax Credits for Kimberly-Clark

Assembly Bill 963 was introduced on February 16, 2018, and referred to the Assembly Committee on State Affairs. On February 20, 2018, that Committee recommended the bill for passage on a vote of 9 to 5. The Assembly passed the bill on February 22, 2018, on a vote of 56 to 37, and messaged the bill to the Senate. The bill was referred to the Committee on Senate Organization on March 12, 2018. On March 15, 2018, that Committee referred the bill to, and withdrew it from, the Joint Committee on Finance on a vote of 3 to 2. The bill was placed on the Senate calendar on March 20, 2018, but was referred back to the Committee on Senate Organization.

The bill, has been scheduled for a November, 14, 2018, public hearing by the Joint Committee on Finance. This memorandum provides a description of AB 963 as it passed the Assembly.

SUMMARY OF BILL

The bill would create a refundable tax credit program jointly administered by the Wisconsin Economic Development Corporation (WEDC) and the Department of Revenue (DOR) for the purpose of providing refundable paper products manufacturing tax credits (PPMCs) to a business certified by WEDC. The following provisions would be created under the bill.

Legislative Intent. The bill would declare that the Legislature finds and determines that refundable tax credits provided to a paper products manufacturer with manufacturing facilities located at 1050 Cold Spring Road in the Village of Fox Crossing and 1111 Henry Street in the City of Neenah encourage economic development in this state, reduce unemployment in this state, preserve business activities within this state, and preserve and increase needed capital in this state for the benefit and welfare of people throughout the state. The PPMC program would be determined to be in the public interest and serve a public purpose, and it would be the public policy of this state to provide the refundable credits.

WEDC Certification. WEDC could certify a business to receive PPMCs if all of the following apply: (a) the business is a paper products manufacturer with manufacturing facilities at the locations described above; and (b) the business applies for, and enters into, a contract with WEDC. At present, Kimberly-Clark Corporation could be eligible for the credit if it entered into a contract with WEDC. A PPMC certification could remain in effect for no more than 15 years.

PPMC Payroll Tax Credit. A certified claimant could claim a refundable income or franchise tax credit equal to 17% of the eligible payroll for the taxable year for full-time employees employed by the claimant. "Eligible Payroll" would mean the amount of state payroll that is attributable to wages paid by the claimant to full-time employees, but would not include the amount of wages paid to any full-time employee that exceeds $100,000. A "full-time employee" would mean an individual who is employed at either of the two specified manufacturing facilities in a job for which the annual pay is at least $30,000 and who is offered retirement, health, and other benefits that are equivalent to the retirement, health, and other benefits offered to an individual who is required to work at least 2,080 hours per year. "State payroll" would mean the amount of payroll apportioned to this state as determined under the old corporate apportionment statutes.

PPMC Capital Expenditure Tax Credit. If WEDC determines that a business certified to receive PPMCs makes a significant capital expenditure at either of the two facilities, WEDC could certify the business to receive additional refundable tax credits in an amount to be determined by WEDC, but not exceeding 15% of the business's capital expenditures. WEDC would have to, in a manner determined by WEDC, allocate the credits over a period of years. WEDC would have to adopt policies and procedures defining a "significant capital expenditure" for purposes of the capital expenditure credit.

Clawback Provisions. WEDC would be required to revoke a PPMC certification if the business does any of the following: (a) supplies false or misleading information to obtain credits; (b) leaves the state to conduct substantially the same business outside the state; (c) ceases operations in the state and does not renew operation of the business or a similar business in the state within 12 months; (d) fails to retain at least 93% of its full-time employees at the two specified facilities who were identified as being such employees in the base year, as determined by WEDC; or (e) fails to retain at least 93% of its employees employed in a full-time capacity in this state, but not at the two specified facilities, who were identified as being such employees in the base year, as determined by WEDC. In addition, WEDC could require a business to repay any PPMCs the business claims for a year in which it failed to maintain employment levels or a significant capital investment in property required by contract between WEDC and the business.

Other Provisions. Partnerships, limited liability companies (LLCs), and tax-option (S) corporations could not claim the PPMC, but the eligibility for, and the amount of, the credit would be based on their payment of amounts described above. A partnership, LLC, or S corporation would have to compute the amount of credit that each of its partners, members, or shareholders could claim and provide that information to each of them. Partners, members of LLCs, and shareholders of S corporations could claim the credit in proportion to their ownership interests.

No credit would be allowed unless the claimant's return includes a copy of the PPMC certification. DOR would have full power to administer the credits and could take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, penalties, and timely claims would apply to the new credits.

As noted, the new credits would be refundable. If the allowable amount of a credit claim exceeds the income or franchise taxes otherwise due on the claimant's income, the amount of the claim that is not used to offset those taxes would be certified by DOR to the Department of Administration for payment by check, share draft, or other draft drawn from a new GPR sum sufficient appropriation for the credit. No interest would be paid on amounts certified for refund. Insurance companies would not be eligible to claim the PPMC.

WEDC could not certify a person as eligible to receive a PPMC unless that person enters into an agreement with WEDC to require that person to repay the credit if, within five years after receiving the credit, the business ceases to conduct in this state the economic activity for which the business was certified to receive the credit and commences substantially the same economic activity outside the state. WEDC would have to determine the maximum amount of PPMCs that a certified business could claim, and notify DOR of this amount. PPMCs could be claimed for a full-time employee only if the employee is employed in a position existing on the day after publication of the bill. WEDC would have to annually verify the information submitted to it for purposes of administering the PPMC. Current law reporting requirements that apply between WEDC and DOR for all tax credits jointly administered by the two agencies would also apply to the PPMC.

Sales and Use Tax Exemption. The bill would also create a sales and use tax exemption for building materials, supplies, equipment, and landscaping and lawn maintenance services acquired solely for use in the construction or development of facilities for which capital expenditures may be claimed as a PPMC certified by WEDC. The exemption would be available to a paper products manufacturer and its contractors, subcontractors, and builders. The sales and use tax exemption would first apply to purchases made after WEDC enters into a PPMC contract with a business.

FISCAL EFFECT

The credit percentages for the payroll and capital expenditure tax credits and the sales and use tax exemption provided under the bill are identical to those of 2017 Act 58 (Foxconn).

For large economic development projects that require WEDC to verify capital expenditures and payroll before an eligible company can claim a tax credit from DOR, such as the enterprise zone tax credit program, there is generally a two-year delay between when a business performs activities eligible to earn the credit and when the business claims the credit with DOR. Assuming a similar two-year delay between when Kimberly-Clark Corporation were to perform activities eligible for the PPMC, and assuming that WEDC were to enter into a contract certifying the company as eligible to receive PPMCs for eligible activities beginning in tax year 2018, the bill would be estimated to first increase state expenditures in 2019-20.

Based on the fiscal note submitted by WEDC, 610 employees with average annual earnings of $70,000 could be retained at the two facilities specified under the bill if Kimberly-Clark Corporation were to enter into a PPMC contract with WEDC to retain those employees. WEDC estimates that the refundable PPMC payroll credits would increase GPR expenditures by $7.3

million annually over a 15-year period. Over the 15 years, GPR expenditures could total $109.5 million, assuming 610 employees and annual earnings of $70,000 over the 15-year period.

Any change in the number of employees retained by Kimberly-Clark Corporation and average earnings of those employees would affect the estimated 15-year total for refundable PPMC payroll tax credits. For example, based upon recent media reports, it is anticipated that 500 employees with average annual earnings of $70,000 may be retained at one facility (1050 Cold Spring Road) specified under the bill. Assuming that WEDC entered into a contract with Kimberly-Clark Corporation that allowed the company to cease operations at one of the facilities so long as 500 employees were retained at the other facility, it is estimated that PPMC payroll credits would increase GPR expenditures by $6.0 million annually over a 15-year period, totaling $89.3 million (assuming employment levels remain at 500 with annual earnings of $70,000 over the 15-year period).

The fiscal notes submitted by WEDC and DOR did not indicate any significant capital expenditures that might occur at either of the two facilities. However, any significant capital expenditures that might be authorized under a contract between the company and WEDC would be eligible for refundable PPMC capital expenditure credits of up to 15% of such expenditures, and certain expenditures eligible for the capital expenditure credits would also be exempt from state and local sales and use tax.

There would be no state fiscal effect if Kimberly-Clark declines to enter into a contract with WEDC under the provisions of the bill.

Prepared by: John Gentry