



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

January 24, 2011

MEMORANDUM

To: Senator Hopper

From: Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2011 SB 5** (LRB-1058/1) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

January 21, 2011

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on 2011 SB 5 (LRB 1058/1) – Jobs Tax Credit Refunds

The Department has the following technical concerns with the above-referenced bill:

- It is confusing for taxpayers to have a provision begin in the middle of a calendar year. The change that makes the credit refundable will need to be included in tax year 2011 forms and instructions, while only a very small percentage of taxpayers (those with a taxable year that begins on or after July 1, 2011) will be able to get a refund. It would be preferable to allow refunds for taxable years beginning after December 31, 2010. To accomplish this, sections 71.07(3q)(d)2., 71.28(3q)(d)2., and 71.47(3q)(d)2. could be amended to read as follows:

If the allowable amount of the claim under par. (b) exceeds the tax otherwise due under s. 71.23, the amount of the claim not used to offset the tax due shall be certified by the department of revenue to the department of administration for payment by check, share draft, or other draft drawn from the appropriation account under s. 20.835 (2) (bb), except that the amounts certified under this subdivision for taxable years beginning after December 31, 2009, and before January 1, ~~2012~~ 2011, shall be paid in with returns filed for taxable years beginning after December 31 on or after January 1, 2011.

This will accomplish the intent of the legislation by getting refunds to taxpayers earlier than under current law, and will treat all taxpayers the same for tax year 2011.

- When the Jobs Tax Credit was created in 2009 Act 28, an annual appropriation was created with an effective date of January 1, 2012 (section 9443 of 2009 Act 28). The effective date of the appropriation would need to be changed to match the effective date of the refundable provisions of the credit under the bill. In addition, an appropriation would need to be made to allow funds to be available for payment of the refunds.
- Under current law, most refundable tax credits have a corresponding sum sufficient Chapter 20 appropriation. Funding levels are set in the budget process or by statutory annual limits (as is the case with the Jobs Tax Credit). However, unlike annual appropriations where the amount in the schedule may not be exceeded, claims for credits with sum sufficient appropriations are paid even if the allowable claims exceed the amount in the Chapter 20 schedule. Taxpayers may file their taxes over a ten month period that often spans two different fiscal years, and the Department of Revenue has no control over when during the available filing period a taxpayer chooses to file a return (and hence which state fiscal year it falls in). It is therefore possible that claims for these credits may exceed the appropriation amount in a given fiscal year, even if the annual limits on credit certification are maintained. It would therefore be preferable if the appropriation under s. 20.835(2)(bb) were made a

sum sufficient appropriation, rather than an annual appropriation. This would provide similar treatment for the Jobs Tax Credit as with other refundable credits.

If you have any questions regarding this technical memorandum, please contact Michael Oakleaf at 261-5173 or via email at Michael.oakleaf@revenue.wi.gov.

cc: Sen. Hopper