



State of Wisconsin

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STEPHEN R. MILLER
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March 24, 2011

MEMORANDUM

To: Senator Darling

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

Subject: Technical Memorandum to **2011 SB 31** (LRB-0932/1) 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

March 23, 2011

TO: Joseph Kreye
Christopher T. Sundberg
Legislative Reference Bureau

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on 2011 SB 31 (LRB 0932/1) – Green Data Center Credit

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

- As drafted, the bill would not limit the credit for eligible green data centers to those constructed in Wisconsin. Green data centers built in other states would also qualify.
- The definition of “green data center” in proposed subsections 71.07(6n)(a)2., 71.28(6n)(a)2., and 71.47(6n)(a)2. is unclear because a number of the terms within the definition are themselves not defined in the bill. For example, the term “repository” is not defined. According to Webster’s Dictionary, a repository is defined as “a place, room, or container where something is deposited or stored.” It is possible to interpret the term “repository” in this bill to mean any place where data is stored, managed and disseminated, even if not used exclusively for that purpose. In addition, “data” could include information stored in paper format. Based on this, a “repository for the storage, management, and dissemination of data” could include virtually any office building. Additional terms in the definition that are not further defined include “maximum energy efficiency” and “minimum environmental impact.” The author may wish to clarify these terms.
- Proposed subsections 71.07(6n)(a)3., 71.28(6n)(a)3., and 71.47(6n)(a)3. provide that “reduced amount” means an amount that is at least 25 percent less than the maximum amount allowed under federal law. Since numerous federal laws relate to the regulation of substances such as mercury, cadmium, and lead, the bill should specify which federal law or laws apply.
- Proposed subsections 71.07(6n)(b)1.c., 71.28(6n)(b)1.c., and 71.47(6n)(b)1.c. allow credit for an electronic waste recycling program, as defined by the department. It is unclear whether “department” refers to the Department of Revenue, because the reference is in the Chapter 71 tax statutes administered by the Department of Revenue, or the Department of Commerce, because it is the Department of Commerce that certifies claimants for the credit. If the intent is for the Department of Commerce to define the term, that must be specified in Chapter 71.
- The bill would first be effective for taxable years beginning after June 30, 2011. The Department of Commerce will no longer exist after that date. The author may wish to change references to Department of Commerce to the Wisconsin Economic Development Corporation.

- The credit applies for taxable years beginning after June 30, 2011, and before July 1, 2013. Therefore, the credit will have to be listed on the 2011 tax return. However, the majority of taxpayers are calendar year filers who would not be permitted to claim the credit for 2011 even if certified for it. Having tax credits apply based on the state's fiscal year is greatly confusing to taxpayers, making the credits difficult to administer. It would be preferable if the credit applied to taxable years beginning after December 31, 2011 and before January 1, 2014.
- The bill language provides that the credit is available for taxable years beginning after June 30, 2011. This would be a problem if this bill were enacted late in the year after 2011 forms had been finalized for printing. It would be preferable to have the credit apply to taxable years beginning in 2012.

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. Darling