

Chapter Comm 112

WISCONSIN DEVELOPMENT ZONE PROGRAM

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Note: Chapter DOD 12 was renumbered chapter Comm 112 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., Register, June, 1997, No. 498.

Comm 112.01 Purpose. The purpose of this chapter is to establish a procedure for the administration of the Wisconsin development zone program.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89.

Comm 112.02 Definitions. In this chapter:

(1) "Applicant" means an eligible applicant under s. Comm 112.03.

(2) "Business incubator" means a person who operates a facility designed to encourage the growth of new businesses, if at least 2 of the following apply:

(a) Space in the facility is rented at a rate lower than the market rate in the community.

(b) Shared business services are provided in the facility.

(c) Management and technical assistance are available at the facility.

(d) Businesses using the facility may obtain financial capital through a direct relationship with at least one financial institution.

(3) "Department" means the department of commerce.

(3m) "Development zone" means the community development zone program administered under ss. 560.70 to 560.78, Stats., and the enterprise development zone program administered under s. 560.797, Stats.

(4) "Development zone program" means the program administered under this chapter.

(4m) "Full-time job" means a regular, nonseasonal, full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and benefits that are not required by federal or state law. "Full-time job" does not include initial training before an employment position begins.

(6) "Local governing body" means the governing body of one or more cities, villages, towns, or counties or the elected governing body of a federally recognized American Indian tribe or band in Wisconsin.

(8) "Person" means a natural person, estate, trust, partnership, corporation, tax-option corporation, insurance company, non-profit organization, and trade and business entity of Native Americans or tribes on reservation property or on property held in tribal trust.

(9) "Target population" means persons who are members of targeted groups for the purposes of the credit under ss. 71.07 (2dx), 71.28 (1dx) and 71.47 (1dx), Stats.

(10) "Tax benefits" means the development zones credit under ss. 71.07 (2dx), 71.28 (1dx) and 71.47 (1dx), Stats.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; r. (5) and (7), Register, January, 1996, No. 481, eff. 2-1-96; emerg. cr. (2m), (3m) and (4m), am. (5) (a) and (10), eff. 2-15-99; cr. (3m) and (4m), am. (6), (9) and (10), Register, October, 1999, No. 526, eff. 11-1-99.

Comm 112.03 Allocation of tax benefits among zones. (1) The department may reduce the amount of the tax benefits allocated to a community development zone if any of the following conditions occur:

(a) No persons are certified within 12 months beginning from the date the zone was designated.

(b) The rate of economic activity is below projections and the community cannot demonstrate that the economic activity will increase.

(c) The failure of the applicant to carry out the activities specified in the development zone plan.

(d) A determination by the department that inaccurate information was provided in the community development zone application, or under the development zone plan, which would have affected the decision to designate the area as a development zone.

(2) The department may remove a zone designation if any of the following conditions occur:

(a) No persons are certified within 12 months beginning from the date the zone was designated, and the applicant is not carrying out the activities specified in the development zone plan.

(b) No persons are certified within 24 months beginning from the date the zone was designated.

(3) Upon receiving notice from the department of a reduction in the allocation to the community development zone under sub. (1), or the removal of community development zone designation under sub. (2), an applicant may appeal to the department secretary within 60 days.

(4) Tax benefits allocated to a community development zone in 1989, 1991 or 1995 that are reduced under sub. (1) or removed under sub. (2) shall be placed into reserve by the department and reallocated to other existing community development zones in accordance with sub. (5).

(5) In determining whether a community development zone should be allocated additional tax benefits, the department shall consider the following:

(a) Whether the local governing body has complied with the terms and conditions of its development zone plan.

(b) Whether the tax benefits allocated to the community development zone have been exhausted.

(c) Whether the additional tax benefits will be utilized prior to the expiration date of the community development zone.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; renum. from DOD 12.10 (3) to (6) and am., cr. (5), Register, January, 1996, No. 481, eff. 2-1-96; emerg. am. (1) (intro.) to (b), eff. 2-25-99; am. (1) (intro.), (d), (3), (4) and (5), Register, October, 1999, No. 526, eff. 11-1-99.

Comm 112.04 Limits of tax benefits to certified persons. (1) Persons operating business incubators that are certified under s. 560.765, Stats., shall only be eligible to claim tax benefits for eligible expenses incurred by those persons. Persons operating businesses located in a business incubator that are certified under s. 560.765, Stats., shall only be eligible to receive tax benefits for eligible expenses incurred by those persons.

(2) (a) The department may reduce the maximum amount of tax benefits a certified person may receive if any of the following apply:

1. The person fails to hire the number of target group members and non-target group members as proposed by the person, and the person is unable to demonstrate that the proposed number of target group members and non-target group members will be hired while the community development zone designation under s. Comm 112.08 (1) is in effect.

2. The person fails to make environmental remediation expenditures equal to or exceeding the amount proposed by the person, and the person is unable to demonstrate that the proposed expenditures will be made while the community development zone designation under s. Comm 112.08 (1) is in effect.

3. The person does not comply with the plan for hiring members of the target population as proposed.

4. The person is found to have submitted inaccurate, false, or misleading information which would have affected the decision to certify the person as eligible for tax benefits.

(b) Upon receiving notice from the department of a reduction in tax benefits under par. (a), a person may appeal the reduction to the department secretary within 30 calendar days.

(c) Any reduction in tax benefits from a business under this subsection shall remain with the community development zone of which the business was a part, subject to s. Comm 112.03 (1).

(3) The department may, upon the request of a certified person and upon the recommendation of the local governing body, or the designee of the local governing body, increase the limit on tax benefits established for the certified person, if the department does all of the following:

(a) Complies with s. 560.768, Stats., with respect to the proposed increase.

(b) Revises the certification and provides a copy of the revised form to the department of revenue and to the person whose limit is increased under this subsection.

History: Renum. from DOD 12.12 (3) to (5) and am., Register, January, 1996, No. 481, eff. 2-1-96; am. (2) (a) 1., 2. and (c), Register, October, 1999, No. 526, eff. 11-1-99.

Comm 112.045 Eligibility for tax benefits. (1) The department shall:

(a) Allow a person to claim up to \$6,500 in tax benefits during the time that an area is designated as a development zone for creating a full-time job that is filled by a member of the target population or retaining a full-time job that is filled by a member of the target population.

(b) Allow a person to claim up to \$4,000 in tax benefits during the time that an area is designated as a development zone for creating a full-time job that is filled by a Wisconsin resident that is not a member of the target population or retaining a full-time job that is filled by an individual that is a Wisconsin resident and who is not a member of the target population.

(2) The actual amount of tax benefit specified in sub. (1) that a person may claim will be determined by the department which will base the amount of tax benefits upon the wages and benefits being made available to the new or retained jobs.

(3) The department may distribute the tax benefits that a person may claim over multiple tax years based upon the job creation phases of the project.

Note: For example, 25 % of the tax benefits may be distributed in the first year, 25% of the tax benefits may be distributed in the second year, and 50% of the tax benefits may be distributed in the third year to ensure that the job creation is attained.

(4) At least 25% of the tax benefits claimed by a person shall be based on creating or retaining full-time jobs. If the department determines that another person has created full-time jobs that pay at least 150% of the federal minimum wage because of the person's environmental remediation activities, the department may waive this requirement. The tax benefits may be eligible to the

person's environmental remediation activities or another person's job creation activities, or both, as determined by the department.

(5) At least one-third of the tax benefits claimed by a person that are based on creating or retaining jobs shall be based on creating or retaining jobs that are filled by members of the target population. The department may grant exceptions to the requirements in this subsection for any of the following reasons:

(a) If the department determines that a person has made a good-faith effort to identify and to recruit members of the target population, but has been unable to hire sufficient numbers of members of the target population to reach the one-third standard; or

(b) If it becomes necessary in order to meet contractual obligations made with certified persons prior to the effective date of these rules.

(6) Full-time jobs that are created or retained shall be maintained for a minimum of 6 months before a person is able to claim any tax benefits under this chapter.

(7) (a) An individual's pay shall equal at least 150% of the federal minimum wage, unless an exception may be made if the department determines that the person is located in a region of the state that has an average wage below the state average.

(b) The department may make an exception to this requirement if a person outlines for the department the wage progression that will enable an individual to reach the 150% level after training or probation and follows the wage progression outline. The 150% wage level must be attained within a two-year period.

History: Emerg. cr. eff. 2-25-99; cr. Register, October, 1999, No. 526, eff. 11-1-99.

Comm 112.05 Remaining tax benefits. The tax benefits allocated to a business that loses its certification for tax benefits shall remain with the community development zone of which the business was a part.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; renum. from DOD 12.13 (3) and am., Register, January, 1996, No. 481, eff. 2-1-96; am. Register, October, 1999, No. 526, eff. 11-1-99.

Comm 112.06 Tax benefit claims. (1) A person certified may file, using forms prescribed by the department of revenue, for tax benefits. Development zone tax benefit claims shall include all of the following:

(a) A copy of the certification.

(b) A copy of a statement from the department verifying the tax benefit claim under sub. (3).

(c) The state employer tax identification number.

(d) The employer's standard industrial classification code.

(2) Prior to filing for tax benefits under par. (a), a certified person shall provide documentation supporting the tax benefit claim to the department or its designee on a form prescribed by the department. The documentation shall include all of the following:

(a) The information required under ss. 71.07 (2dx), 71.28 (1dx) and 71.47 (1dx), Stats.

(b) Information regarding any other public wage and income subsidies or credits received by the certified person.

(c) A project report describing the status of the person's project including, without limitation, the number of targeted employees and non-targeted employees hired, the total amount invested and other information relating to the tax credits claimed by the person.

(f) Any other information required by the department.

(3) The department shall verify the tax benefit claim, and may request additional information from the certified person to support the claim. No person may file for tax benefits under this chapter without the written approval of the department.

(4) (a) The department shall inform a person certified of the designated local agency under ss. 71.07 (2dj) (am) 2., 71.28 (1dj) (am) 2. and 71.47 (1dj) (am) 2., Stats., responsible for certifying the eligibility of workers for the development zones jobs credit.

A person may not receive a development zones credit for a target group member unless the employee for whom the development zones credit is claimed is certified by the appropriate local agency prior to the date of employment or not more than 90 calendar days after the date of employment.

(b) The designated local agency may charge a fee not to exceed \$50 for each certification of eligibility under par. (a) for development zones credits to employers who request certification services and who have been found eligible by the designated local agency. The fee shall be based on the actual cost of providing the certification. The fee shall be collected by invoice during the completion of the certification or thereafter. The designated local agency shall charge interest on late payments. A person who fails to make payment as billed by the designated local agency shall no longer be eligible for the receipt of certification services.

(5) A person may only claim tax benefits for eligible expenses incurred after the person is certified except as provided in ss. 71.07 (2dL) (ag), 71.28 (1dL) (ag) and 71.47 (1dL) (ag), Stats.

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; renum. from DOD 12.14 and am., Register, January, 1996, No. 481, eff. 2-1-96; am. (2) (a) and (4), r. (2) (c) and (d), m. (2) (e) to be (2) (c) and am., Register, October, 1999, No. 526, eff. 11-1-99.

Comm 112.08 Zone duration, renewal, and expiration. (1) (a) The designation of an area as a community development zone shall be effective for 84 months, beginning on the day the department notifies the applicant of the designation.

(b) The applicant may apply to the department for up to 5 12-month extensions of the designation. The application shall include all of the following:

1. A description of the activities that have been undertaken by the applicant to market and support the development of the zone.

2. Documentation that the remaining unallocated tax credits will likely be utilized if an extension is granted, including clear documentation of interest on the part of business.

3. Documentation that the area continues to meet 2 of the criteria set forth in s. 560.71 (1) (e), Stats.

(c) After evaluating an application submitted under par. (b), the department may approve up to 5 12-month extensions of the zone designation.

(2) Annually the department shall estimate the amount of foregone state revenue because of tax benefits claimed by persons in each community development zone. Notwithstanding sub. (1), the designation of an area as a community development zone shall expire 90 days after the day on which the department determines that the foregone tax revenues will equal or exceed the limit for the community development zone established under s. 560.745 (1) (a), Stats. The department shall immediately notify the applicant of a change in the expiration date of the community development zone under this subsection.

(3) The department may remove a zone designation under s. Comm 112.03 (2).

History: Cr. Register, February, 1989, No. 398, eff. 3-1-89; am. (2), Register, May, 1990, No. 413, eff. 6-1-90; am. (1) (a), (b) 3., (2) and (3), Register, January, 1996, No. 481, eff. 2-1-96; emerg. am. eff. 2-25-99; am. (1) (a), (b) (intro.), (c) and (2), Register, October, 1999, No. 526, eff. 11-1-99.