



# Amy Loudenbeck

REPRESENTING WISCONSIN'S 31<sup>ST</sup> ASSEMBLY DISTRICT

## Assembly Committee on Jobs, Economy, and Mining

### Public Hearing on Assembly Bill 580

January 22, 2014

Good Morning, Chairwoman Williams, Representatives. Please allow me to extend my most sincere appreciation for your consideration of Assembly Bill 580 relating to authorizing the transfer of certain tax credits earned in connection with economic development in this state.

Senator Gudex has already provided excellent testimony on the importance of economic development tax credits (ETCs) and the need to expand the utility of existing non-refundable tax credits.

The idea of tax credit transferability is not new. Many states already allow for the transfer of tax credits. Some even allow for the discounted resale of tax credits for cash.

Over the course of the past several months, I have had the privilege of working with the Wisconsin Economic Development Corporation (WEDC), the Wisconsin Department of Revenue (DOR), the Wisconsin Economic Development Association, and other stakeholders to craft a limited ETC transferability bill that is unique to Wisconsin.

Simply put, Assembly Bill 580 would give WEDC the authority to approve the limited re-assignment or transfer of an earned ETC between entities involved in a WEDC approved economic development project. By leveraging an earned ETC within the limitations of the existing vendor/supplier network of the project, certain types of projects will be able to take advantage of the missing value/benefit that is unavailable under current law.

Under the bill, up to \$15 million of existing economic development tax credits may be re-assigned over a three year period using a mechanism of pre-approvals and notifications that would be conducted by WEDC and DOR. The elements of the bill that relate to application, approval, reporting, and revocation have been drafted with the assistance of WEDC and DOR to ensure that the integrity and intent of the existing ETC program is maintained and that sufficient recovery measures are in place.

Assembly Bill 580 bill does not allow for the exchange of tax credits for cash. The bill does not create a refundable tax credit. It does not provide an additional ETC allocation, and ETC eligibility requirements under current law are not changed under the bill.

Thank you for your kind attention and I would be happy to answer any questions.



State Senator  
**Rick Gudex**

District 18

January 22, 2014

To: The Assembly Committee on Jobs, Economy and Mining  
From: Sen. Rick Gudex  
Re: **Assembly Bill 580**

Tax credits are Wisconsin's main tool for economic development. Over the past several years, we have tried to expand and strengthen the credits we offer to give job-creating businesses the best possible chance for success in our state.

But some companies, particularly new companies, have a problem: not enough tax liability. I know, that's a strange thing to say. How can a lack of tax liability be a problem?

One of the reasons we try to make our tax environment more friendly is to make Wisconsin a destination for businesses and entrepreneurs. Tax credits are better for those companies, established companies, looking for a new home or which have already been creating jobs and income in Wisconsin.

But for an entrepreneur looking to start something new, they may not have that effect. Startups are likely to go several years without profits, and without guarantees. So even when we create tax credits with 15-year carry forwards, we're not creating an incentive for the new companies that we all want to support.

That is where the portability idea comes in. Award the tax credits, but allow companies with no tax liability to use those credits in some other way.

This bill does just that. Under the bill, a company that is eligible for a tax credit can exchange that credit for some other consideration that adds value to that company.

They will not be able to sell the credit for cash: only for some other consideration like leasing or rental costs. So while this bill doesn't provide immediate equity and cash flow, it does reduce the company's overhead, freeing up capital they may have had to spend otherwise, or even making something possible that would not have been before.

Other aspects of this bill were put in to keep it as simple as possible. The credits can't be split up: they can only be transferred in their entirety, and only one time, up front. WEDC must approve all such transfers at the time that they approve the original credit. WEDC will be able to approve up to \$15 million of these transfers over 3 years, with the possibility of another \$15 million over the following three years if it works.

The sale of tax credits can be a powerful tool for businesses that Wisconsin needs to explore. Between this bill and the recently enacted historic tax credit legislation, we have an opportunity to find out a great deal about how powerful this legislation can be.

This is a simple, but important and bipartisan bill, which should have little if any fiscal impact. I urge your support.



*Scott Walker*  
Governor

*Richard G. Chandler*  
Secretary of Revenue

January 22, 2014

**DOR Testimony on Assembly Bill 580  
Committee on Jobs, Economy and Mining**

Chair Williams and members of the Assembly Committee on Jobs, Economy, and Mining, thank you for the opportunity to provide comment on Assembly Bill 580.

Assembly Bill 580 enables an applicant who is applying to the Wisconsin Economic Development Corporation (WEDC) to receive economic development tax credits to indicate in their initial application that they desire to transfer those credits to another person. If WEDC certifies the eligibility for the transfer of the credits, the applicant must transfer the amount of the credits in accordance with the terms of the application.

WEDC may only approve applications if the applicant meets one of the following criteria:

- The applicant is headquartered in Wisconsin and employs at least 51 percent of its employees in Wisconsin.
- The applicant intends to relocate its headquarters to Wisconsin and employ at least 51 percent of its employees in Wisconsin.
- The applicant intends to expand its operations in Wisconsin, increasing their number of full-time employees in Wisconsin by at least 10 percent of the person's full-time employees.
- The applicant intends to expand its operations in Wisconsin, and the applicant will make a significant capital investment in property in Wisconsin as a result of that expansion.

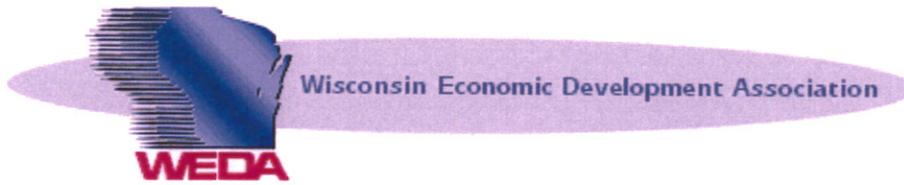
When an applicant is certified for the transfer of tax credits, WEDC would notify DOR of all relevant information concerning the transfer. This allows DOR to have a record of the transfer of these tax credits, and the amount of credits that a person to whom tax credits were transferred may claim. A 15-year carryforward would apply to unused tax benefits from the date that the notice of eligibility to transfer the credits was provided.

It is important to note that in the case of a transfer, the amount of consideration received by the applicant is subject to federal and state income tax as a capital gain from the sale of an asset. Likewise, the person to whom tax credits are transferred will owe federal and state income tax on the capital gain that results when the transferee uses the full amount of the credit to offset tax liability over the lesser amount of tax basis obtained from purchasing the credit.

If WEDC would revoke an applicant's certification for economic development tax credits, then WEDC would notify DOR of this revocation. DOR would then be authorized to assess and collect the value of the tax credits from the original applicant. In the case of revocation, the person to whom any tax credits were transferred would not be able to claim unused tax credits.

The bill authorizes WEDC to approve the transfer of up to \$15 million in economic development tax credits within a three-year period. WEDC would be able to request extending this authority for an additional \$15 million, and for a three-year period if WEDC determines doing so would promote significant economic development, and such request is approved under a passive Joint Committee on Finance review process.

Thank you again for the opportunity to discuss AB 580.



TO: Members, Assembly Committee on Jobs, Economy, and Mining  
FROM: Kristen Fish, Wisconsin Economic Development Association  
DATE: January 22, 2013  
RE: **Support for Assembly 580, authorizing the transfer of certain tax credits earned in connection with economic development in this state.**

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The Wisconsin Economic Development Association (WEDA) is a statewide association consisting of over 450 economic development practitioners. WEDA supports state policies that strengthen our economy and create jobs. WEDA supports Assembly Bill 580, as this is the type of catalytic and innovative policy that has the opportunity to generate increased economic development activities throughout Wisconsin. We appreciate the early endorsement of this bill by Rep. Loudenbeck and Senator Gudex, as well as the strong bipartisan support shown through the list of cosponsors.

On a daily basis, in urban and rural corridors alike, WEDA members are reconciling project needs with antiquated economic development tools. While certainly well intentioned, the vast majority of the tools in Wisconsin's economic development toolbox are simply insufficient or not helpful at advancing investment and employment opportunities. Income tax credits are a prime example. Even though past legislative fixes have been implemented, practical and structural challenges still exist.

Under current law, economic development tax credits can only be used if the original tax credit recipient has a corresponding state income tax liability. If an original tax credit recipient has no income tax liability, the credits essentially have no value. It's not uncommon for a business's first three to five years to be very lean with regards to profitability. The firm's income tax obligations will be equally lean; thus diminishing the value of any credit awarded.

Other tax credit utilization issues persist with certain business structures (e.g. S-Corps, LLCs or LLPs) and types (namely those engaged in warehouse and distribution, where the income generation nexus of the business is often linked to another location). In these instances, tax credits provide very limited, if any, benefits to the original recipients.

Allowing the transfer of credits, within a contractually controlled environment, and with oversight from the Wisconsin Economic Development Corporation (WEDC), will enhance the usefulness of Wisconsin's income tax credit incentives. For example, in exchange for a firm's approved tax credit award, a landlord could provide the original credit recipient with reduced rental rates; finance tenant improvements; cover relocation costs; or assist with underwriting a tenant's talent and training needs; etc.

By enabling this type of exchange mechanism, WEDA members and their partners will have a value-added economic development tool that can help spur additional investment and employment opportunities throughout Wisconsin. Your favorable consideration of Assembly Bill 580 is greatly appreciated. Thank you.