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# Wisconsin Legislative Council

## INFORMATION MEMORANDUM

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### **ECONOMIC DEVELOPMENT TAX CREDIT PROGRAMS**

Although “economic development” encompasses various approaches to spur economic growth, tax incentives have been a major focus of legislative activity in this area. Several state tax credit programs offer incentives to businesses for activities such as job creation, business relocation or expansion, capital investment, and production.

Each tax credit program is structured differently. For example, some tax credits are awarded based on a claimant’s activity within a specified “zone,” whereas others apply regardless of location. For some tax credit programs, an individual or business must be certified as fulfilling specified criteria for eligibility to receive a tax credit before the Department of Revenue (DOR) will award the credit. The Wisconsin Economic Development Corporation (WEDC)<sup>1</sup> administers such certifications for many of the state’s economic development-related tax credit programs.

This information memorandum provides an overview of current economic development tax credit programs in Wisconsin. For a more detailed summary, see the Legislative Fiscal Bureau’s [informational paper on business tax credits](#).

### **BUSINESS DEVELOPMENT TAX CREDITS**

The business development tax credit program was created by the 2015-17 Biennial Budget Act.<sup>2</sup> Business development tax credits are refundable, meaning that if a credit exceeds a claimant’s tax liability, the claimant typically receives a check from the state. The statutes allow WEDC to allocate \$22 million in tax benefits under this program each year.<sup>3</sup> Any unused allocation may be carried forward.

#### **Criteria for Certification**

WEDC may certify a person to receive business development tax credits if the person: (1) operates or intends to operate a business in this state; and (2) enters into a contract with WEDC. A certification may remain in effect for no more than 10 cumulative years. [s. 238.308 (2) and (3), Stats.]

A person who has been certified may receive business development tax credits only for years in which the person increased net employment in Wisconsin, as compared to the net employment

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<sup>1</sup> For information about WEDC’s structure, governance, and role, see Legislative Council, [Wisconsin Economic Development Corporation](#), Issue Brief (March 2021).

<sup>2</sup> The program replaced two tax credit programs that expired at the end of 2015: the jobs tax credit program and the economic development tax credit program. Many provisions of the business development tax credit program mirror similar provisions from the expiring jobs tax credit program.

<sup>3</sup> However, the statutes allow WEDC to exceed this limit by up to \$10 million if certain circumstances apply, including approval by the Joint Committee on Finance (JCF). [s. 238.308 (4) (b) and (c), Stats.]

in this state in the year before the person was certified to receive tax credits, as determined by WEDC under WEDC's policies and procedures. [s. 238.308 (3), Stats.]

## Available Credits

WEDC may award the following types and amounts of tax credits to a person certified under the program:

- **Wages.** Up to 10 percent of wages paid to full-time<sup>4</sup> employees.
- **Wages paid in economically distressed areas.** An additional amount, up to five percent, of wages paid to full-time employees employed in an economically distressed area, as determined by WEDC.
- **Training costs.** Up to 50 percent of certain training costs incurred to undertake activities to enhance full-time employees' general knowledge, employability, and flexibility in the workplace; to develop skills unique to the person's workplace or equipment; or to develop skills that will increase the quality of the person's product.
- **Certain investments.** Up to three percent of a personal property investment, and up to five percent of a real property investment, in certain capital investment projects.<sup>5</sup>
- **Wages paid to employees at corporate headquarters.** The amount, determined by WEDC, equal to a percentage of the amount of wages paid to full-time employees in jobs that were created or retained as part of the location or retention of corporate headquarters in Wisconsin and that involve the performance of corporate headquarters functions.

[s. 238.308, Stats.]

## ENTERPRISE ZONE TAX CREDITS

The Enterprise Zone Program was first authorized by 2005 Wisconsin Act 361 and has expanded over time. Under current law, WEDC may designate any number of enterprise zones, subject to approval by JCF under a 14-day passive review process.<sup>6</sup> Three enterprise zones must be in areas comprising political subdivisions with populations of less than 5,000 people, and two enterprise zones must be in areas comprising political subdivisions with populations of at least 5,000 but fewer than 30,000 people. Each designation may remain in effect for no more than 12 years. [s. 239.399 (3) and (4) (a), Stats.]

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<sup>4</sup> In general, for purposes of the business development tax credit, a job is considered "full-time" if it requires an individual, as a condition of employment, to work at least 2,080 hours per year, including paid leave and holidays, and if the individual receives pay equal to at least 150 percent of the federal minimum wage and benefits by federal or state law. However, WEDC may grant exceptions to those requirements in certain situations in which annual pay exceeds 2,080 times 150 percent of the federal minimum wage and an individual 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. [s. 238.30 (2 m), Stats.]

<sup>5</sup> The capital investment must be either \$1 million or more or equal to at least \$10,000 per full-time employee employed on the project.

<sup>6</sup> Prior to the enactment of 2017 Wisconsin Act 369, the statutes limited the number of enterprise zones that could be designated but did not require legislative approval for new zones.

## Designation of an Enterprise Zone

Except with respect to the five enterprise zones subject to population restrictions, WEDC must consider all of the following criteria when determining whether to designate an area as an enterprise zone:

- Indicators of the area's economic need, which may include data regarding household income, average wages, the condition of property, housing values, population decline, job losses, infrastructure and energy support, the rate of business development, and the existing resources available to the area.
- The effect of designation on other initiatives and programs to promote economic and community development in the area, including job retention, job creation, job training, and creating high-paying jobs.

To the extent possible, WEDC must give preference to the areas with greatest economic need when making such designations.

[s. 238.399 (3) (b) and (c), Stats.]

Although they are named "zones," enterprise zones are typically designated for individual, large-scale business ventures. Examples of business enterprises that have been designated as enterprise zones include Mercury Marine in Fond du Lac, Bucyrus International, Inc., and Quad/Graphics in the Milwaukee area, and Fiserv in Brookfield.

## Available Credits

Businesses located within an enterprise zone may be certified to receive enterprise zone tax credits if they take certain actions, such as beginning or expanding operations in the zone, relocating to an enterprise zone from outside the state, retaining jobs within the zone, purchasing specified products or services from Wisconsin vendors, or making a significant capital expenditure within the zone.

Several types of refundable tax credits are available to certified businesses. These include:

- **New jobs.** A credit for a percentage, determined by WEDC but no more than seven percent, of certain wages paid to new, full-time employees hired to work within the enterprise zone.
- **Job retention.** A credit for a percentage, determined by WEDC but no more than seven percent, of wages for full-time employees within the zone who earned certain minimum wages (depending on the county or municipal classification), if the number of employees within the zone is equal to or greater than the number of people employed within the zone during the previous taxable year.
- **Training.** A credit for a percentage, determined by WEDC but no more than 100 percent, of expenses related to training full-time employees within the zone on the use of job-related new technologies, or to provide job-related training to any full-time employee whose employment represents the employee's first full-time job.
- **Significant capital expenditures.** A credit for up to 10 percent of significant capital expenditures, as determined by WEDC.
- **Purchases from Wisconsin suppliers.** A credit for up to one percent of expenditures for qualified goods or services purchased from Wisconsin suppliers.

[ss. 71.07 (3w), 71.28 (3w), and 71.47 (3w), Stats.]

## **DEVELOPMENT OPPORTUNITY ZONE TAX CREDITS**

Development opportunity zones are designated by statute. Three development opportunity zones, located in the cities of Beloit and Kenosha, are currently in effect but are set to expire in 2021. Each of those zones was authorized for an initial five years and extended by WEDC for an additional five years. [s. 238.395 (2), Stats.]

Any person who conducts or intends to conduct economic activity in a development opportunity zone is entitled to receive tax benefits relating to environmental remediation, jobs, and capital investment. A person is entitled to receive benefits if the person submits a qualified project plan in conjunction with the local governing body of the city in which the development opportunity zone is located. Project plans must include various components, including the amount the person proposes to invest, the number of full-time jobs that will be created, and other information required by WEDC or DOR. [s. 238.395, Stats.]

## **ELECTRONICS AND INFORMATION TECHNOLOGY MANUFACTURING ZONE TAX CREDITS**

2017 Wisconsin Act 58 authorized WEDC to designate a new type of zone, called an electronics and information technology zone (“EITM zone”), in which businesses may be certified to claim certain tax credits. Only one such zone may be designated.

The act required WEDC to enter into a contract with a business certified to receive those tax benefits. WEDC designated such a zone in an agreement entered into with Foxconn<sup>7</sup> on November 10, 2017.

Together with various provisions relating to state permit requirements, a state sales tax exemption, and recoupment of state funds, the act authorized two types of refundable income tax credits to be awarded for activities within the zone. First, the act authorized a tax credit equal to 17 percent of payroll attributable to wages under \$100,000 paid to each full-time employee for services performed in the EITM zone or elsewhere within this state but for the benefit of operations within the EITM zone.<sup>8</sup> This credit is subject to an aggregate limit of \$1.5 billion over the 15-year life of the EITM zone. [ss. 71.07 (3wm), 71.28 (3wm), and 238.396, Stats.]

Second, the act authorized a tax credit of up to 15 percent of the claimant’s significant capital expenditures within the zone, to be allocated over a seven-year period and subject to an aggregate limit of \$1.35 billion. The act directed WEDC to adopt policies and procedures defining “significant capital expenditures,” and to establish job creation thresholds for each year in the zone and tie those thresholds to a claimant’s eligibility to receive this credit. [ss. 71.07 (3wm), 71.28 (3wm), and 238.396, Stats.]

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<sup>7</sup> The parties named in the 2017 agreement are SIO Intl. Wisconsin, Inc., FEWI Development Corporation, and AFE, Inc. Different corporate entities have been negotiating with the state more recently. For simplicity, this section refers to all entities relating to the project as “Foxconn.”

<sup>8</sup> The act defines “full-time employee” to mean an individual who is employed 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.

Foxconn may also claim a sales tax exemption for certain purchases within the zone, including certain building materials, supplies, and equipment for the construction or development of facilities located in the EITM zone.

WEDC must revoke the general certification of a business to receive EITM zone tax credits under certain circumstances, including if the business supplies false or misleading information or leaves the EITM zone to conduct substantially the same business outside of the zone.

To date, Foxconn has not received income tax credits under the program. Questions have arisen regarding Foxconn's eligibility under the agreement, prompted by changes to named parties and project type.

[s. 238.396 (1m), (3m), and (4) (a), Stats.]

## **MANUFACTURING AND AGRICULTURE TAX CREDITS**

2013 Wisconsin Act 32, the 2013-15 Biennial Budget Act, created a nonrefundable tax credit for qualified manufacturing and agricultural production activities. Manufacturing and agricultural production tax credits effectively eliminate manufacturers' and agricultural producers' state income tax liability arising from business operations

2015 Wisconsin Act 55, the 2015-17 Biennial Budget Act, expanded the scope of eligible activities when calculating this tax credit. Eligible activities are qualified domestic production activities that are derived from property located in Wisconsin and assessed as agriculture, undeveloped, agricultural forest, productive forest land, or "other."

The amount of the credit was phased-in over a several-year period. For tax years beginning in 2016, and in subsequent years, the credit equals 7.5 percent of qualified production activities.

[ss. 71.07 (5n) and 71.28 (5n), Stats.]

## **ANGEL INVESTMENT AND EARLY STAGE SEED INVESTMENT TAX CREDIT PROGRAMS**

Wisconsin's Angel Investment and Early Stage Seed Investment tax credit programs are intended to encourage venture capital investments in new and expanding businesses throughout the state. Through the programs, venture capital investors receive tax credits for investing capital, either individually or through a fund manager, in businesses that participate in the programs. To participate, among other statutory criteria, a business must show that it has the potential for increasing jobs in this state, increasing capital investment in the state, or both.

Businesses first applying to participate in either of the programs must have fewer than 100 employees and have been in operation in Wisconsin for fewer than 10 years, among other qualifications. Angel investment tax credits equal 25 percent of an individual claimant's bona fide angel investment in a qualified new business venture. Early stage seed investment tax credits equal 25 percent of a claimant's investment paid to a fund manager that the fund manager, in turn, invests in a certified business. [s. 238.15, Stats.]

This information memorandum was prepared by Anna Henning, Senior Staff Attorney, Parker Conover, Staff Attorney, and Scott Grosz, Principal Attorney, on March 5, 2020.