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M E M O R A N D U M

February 8, 2007

TO: Jessica Karls, Staff Attorney
Wisconsin Legislative Council

FROM: Michael Oakleaf

SUBJECT: Tax Issues Related to Government-Ordered Business Closures During a Pandemic

Thank you for your request for information on tax issues surrounding the possibility of a business continuing to pay its workers during a pandemic in the event of a temporary business closure ordered by a public health agency. We outline below some options for the consideration of the Special Committee on Disaster Preparedness Planning.

Under current law, a business that continued to pay its employees in the event of a temporary closure resulting from a pandemic would be able to deduct the payroll and benefit expenditures in the same way they would deduct normal payroll and benefit expenditures. This would reduce their taxable income and thus reduce their taxes in an amount equal to the deduction times the taxpayer's marginal tax rate. In the event the payment of these wages and benefits during a period when the business was unable to generate revenue resulted in a loss (negative income), in addition to having no taxable income in the current year the business would generally be able to carry the loss forward to future tax years and thus reduce their net tax liability in those years.

A tax credit would provide an additional tax benefit beyond what is already provided for in current law. Unlike a deduction, the benefit of which is derived at the marginal tax rate of the taxpayer, a tax credit directly reduces the net tax liability of the taxpayer in an amount equal to the credit. The credit could be structured to equal the full amount of payroll and benefit expenditures for the period of the closure, or it could be set to equal a percentage of these expenditures to reflect that the taxpayer will also get a deduction from income for the expenditures.

Credits can be refundable or non-refundable. A refundable credit results in a refund to the taxpayer in the event that the credit reduces net tax liability in the tax year to a negative amount, whereas with a non-refundable credit the taxpayer would carry forward to future years the amount beyond that which net tax liability reaches zero.

Ideally, any law creating the tax credit should contain a methodology for verification of the expenses for which the credit is being claimed. If it is the intention to target a tax credit to small and/or medium sized businesses, a definition of what constitutes a small or medium sized business should also be included in the law as well as a methodology for verifying the size of the business claiming the credit.

Please let us know if you require any further information.

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cc: Rebecca Boldt