Legislative Fiscal Bureau

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April 7, 2010

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 853: Job Creation Tax Benefit

Assembly Bill 853, which would create a job creation tax benefit, was introduced on March 16, 2010, and referred to the Assembly Committee on Jobs, the Economy, and Small Business. On March 17, 2010, the bill was recommended for passage by a vote of 12 to 1, and referred to the Joint Committee on Finance.

CURRENT LAW

Jobs Credit. Under current law, a refundable jobs tax credit is provided, under the state individual income and corporate income and franchise taxes, for tax years beginning after December 31, 2009. In order to claim the credit, a claimant must be certified by the Department of Commerce. Commerce may certify a claimant to receive tax credits for up to 10 years if: (a) the person is operating, or intends to operate a business in this state; and (b) the person applies and enters into a contract with Commerce.

A person that is certified can claim the jobs tax credit if, in each year for which the person claims the tax credit, the person increases net employment in the person's business and one of the following applies:

a. In a tier I county or municipality, an eligible employee, for whom the person claims a tax credit, will earn at least $20,000 but not more than $100,000 in wages, in the year for which the credit was claimed.

b. In a tier II county or municipality, an eligible employee, for whom the person claims a tax credit, will earn at least $30,000 but not more than $100,000 in wages, in the year for which the credit was claimed.

c. In a tier I or tier II county or municipality, the person improves the job-related skills of any eligible employee, trains any eligible employee on the use of job-related new technologies, or provides job-related training to any eligible employee whose employment with the person represents the employee's first full-time job.

The jobs tax credit equals up to 10% of the wages paid to an eligible employee and/or the amount of costs incurred to undertake training activities in a tax year, as determined by Commerce. Specifically, Commerce can award jobs credits of up to 10% of wages of at least $20,000 but not more than $100,000 in a tier I county or municipality, and up to 10% of wages of at least $30,000 but not more than $100,000 in a tier II county or municipality, paid by the person to each eligible employee. Commerce can also award tax credits, in an amount determined by rule, for costs incurred by the person to undertake training activities. The credit is refundable, and, as a result, if the allowable amount of the credit claimed exceeds the tax otherwise due, the amount of the claim not used to offset the tax due is certified by the Department of Revenue (DOR) to the Department of Administration for payment by check, share draft, or other draft.

The maximum amount of tax credits that Commerce can allocate in a calendar year is $5 million. However, the total amount of credits that can be claimed for tax years beginning on or after January 1, 2010, and ending on June 30, 2013, is limited to $14,500,000. In addition, tax credits certified by Commerce for tax years beginning after December 31, 2009 and before January 1, 2012, must be paid in tax years beginning after December 31, 2011.

Partnerships, limited liability companies (LLCs), and tax-option corporations cannot claim the credit, but the eligibility for, and the amount of, the credit is based on their payment of amounts eligible for the credit. A partnership, LLC, or tax-option corporation is required to compute the amount of credit that each of its partners, members, or shareholders can claim, and provide that information to each of them. Partners, members of LLCs, and shareholders of tax-option corporations can claim the credit in proportion to their ownership interests.

A claimant is required to include a copy of the Commerce certification for tax credits along with the claimant's tax return submitted to DOR. Current law provisions related to change of ownership and timely filing of claims apply to the jobs tax credit. DOR has full power to take administrative action, conduct any procedure, and to proceed as authorized under the state income and franchise tax laws.

Commerce is required to notify DOR when it certifies a person to receive tax benefits, and within 30 days of revoking a certification. Commerce also determines the maximum amount of the tax credits that a certified business can claim and notifies DOR of this amount. A claimant can be required to repay any tax credits claimed for a year in which the claimant fails to maintain employment at a level required under the contract with Commerce. Commerce must annually verify the information submitted by the person claiming tax credits.

Commerce is required to promulgate administrative rules for the implementation and operation of the jobs tax credit, including rules relating to the following:

a. The definitions of a tier I county or municipality and a tier II county or municipality. The Department may consider all of the following information when establishing the definitions: (1) unemployment rate; (2) percentage of families with incomes below the poverty line established under federal law; (3) median family income; (4) median per capita income; and (5) other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff.

b. A schedule of additional tax benefits for which a person who is certified for tax credits, and who incurred costs related to job training may be eligible.

c. Conditions for the revocation of a certification.

d. Conditions for the repayment of tax credits.

Commerce is in the process of promulgating these rules.

"Business" means any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, LLC, or association, but does not include a store or shop in which retail sales are the principal business. "Eligible employee" is defined as a person employed in a full-time job by a person certified by Commerce

"Full-time job" means a regular, non-seasonal 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.

Income Tax Withholding. Employers are required to withhold state income taxes from their employees' wages, and remit the withheld taxes to the Department of Revenue. The amount of taxes withheld for an employee depends on the individual's wages and family size. Employees with lower wages and larger families will have less taxes withheld than higher-paid individuals with smaller families. For example, a married employee with two children and $25,000 in annual wages would have $20.80 withheld each week, which is 4.3% of the individual's weekly wages. In contrast, a single individual earning $75,000 per year would have $89.02 withheld each week, which is 6.2% of the person's weekly wages.

These examples are taken from withholding guidelines issued by DOR; however, an employee could choose to have more or less taxes withheld. Withholding may be waived entirely if the employee prepays his or her tax or if the employee certifies to the employer that the employee had no income tax liability in the prior year and anticipates that no liability will be incurred for the current year.

In general, withheld income taxes must be remitted to DOR at least quarterly, but more frequent payments may be required for businesses with larger payrolls. Most employers pay on a monthly basis, but most of the withholding tax revenues are paid by larger employers that file bi-weekly.

SUMMARY OF BILL

AB 853 provides that, for tax years beginning after December 31, 2009, an employer who was certified to receive tax benefits could retain a specified amount of withholding taxes rather than submit that amount to the Department of Revenue. An employer could retain withholding taxes in an amount equal to the amount of the employer's quarterly payroll for employees with full-time jobs in the tax year in which the person claims the tax benefits, minus the amount of the employer's quarterly payroll for employees with full-time jobs in 2009. The person would be required to report this amount to DOR, in the manner prescribed by DOR, and, DOR would treat all amounts retained as tax benefits as if the amounts had been withheld. An employer could only receive the tax benefits if the increase in the employer's payroll was attributable to hiring eligible employees. If an eligible employee did not work for the person who was certified for tax benefits for at least 30 days during the tax year for which the person received the tax benefits, the employer would be required to repay the amount of the tax benefits received for that employee in the manner prescribed by rule by the Department of Commerce.

A person could not offset tax benefits against withholding taxes and claim the jobs tax credit for amounts related to the same employees. The maximum total amount of tax benefits that could be claimed by all taxpayers would be $2,000,000.

"Eligible employee" would mean an individual employed in a full-time job by a person certified for tax benefits by Commerce, if all of the following apply:

a. The individual began employment with the certified person after February 3, 2010, and before January 1, 2011.

b. The individual certified to Commerce, in the manner prescribed by Commerce, that the individual had not been employed for more than 40 hours during the 60-day period ending on the date that the individual began his or her employment with the certified person.

c. The individual was not employed by the certified person to replace another employee of the person, unless the other employee separated from his or her employment with the person voluntarily or unless person terminated the other employee for cause.

d. The individual was not an ineligible related individual under the federal work opportunity tax credit.

"Full-time job" would mean a regular, nonseasonal full-time position, in this state, 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. "Full-time job" would not include initial training before an employment position begins.

Commerce would be authorized to certify a person to receive tax benefits if all of the following applied: (a) the person was operating or intended to operate a business in Wisconsin; (b) the person's business employed no more than 10 employees during the tax year for which the person claimed tax benefits; and (c) the person applied to Commerce.

"Business" would mean any organization or enterprise operated for profit, including a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, limited liability company, or association.

Commerce would be required to notify DOR when Commerce certified a person to receive tax benefits, and within 30 days of revoking a certification. Commerce would be required to annually verify the information submitted to Commerce by the person claiming a tax benefit, and to promulgate administrative rules for the implementation of the tax benefit certification process.

Commerce would be authorized to promulgate emergency administrative rules related to the tax benefit certification process that would remain in effect until the earlier of July 10, 2010, or the date on which permanent rules were effective. Commerce would not be required to provide a finding of emergency. If the Secretary of Administration required Commerce to prepare an economic impact report for the administrative rules, Commerce could submit the proposed rules to the Legislature for review before Commerce completed the economic impact study and received approval from the Department of Administration.

[As drafted, it appears that the bill could provide a tax benefit equal to 100% of the increase in an employer's payroll for full-time employees in the current year over the employer's payroll for full-time employees in 2009, as long as the increase is attributable to hiring eligible employees between February 3, 2010, and December 31, 2010. However, the Legislative Reference Bureau attorney who drafted the bill indicates that the intent is for the tax benefits to be equal to the amount of individual income taxes withheld by the employer on behalf of eligible employees hired between February 3, 2010, and December 31, 2010, and that the tax benefits would be available only if there was a net increase in the employer's payroll over 2009 that is attributable to hiring the eligible employees. Assembly Amendment 1, which was offered on April 1, 2010, would modify the bill to accomplish this intent.]

FISCAL EFFECT

AB 853 would allow persons to retain withholding taxes equal to the quarterly increase in payroll for full-time jobs for eligible employees over the person's quarterly base period wages. Data used to develop the estimated fiscal effect of the proposed withholding tax benefits includes: (a) annual withholding per wage earner from a DOR analysis of 2008 state individual income tax returns; (b) average private industry annual wages from the federal Quarterly Census of Employment and Wages for Wisconsin for 2008; and (c) net job changes, by firm size, from the October 2009, Small Business Profile for Wisconsin, from the federal Small Business

Administration. Based on this information, it is estimated that AB 853 would reduce state withholding (individual income) taxes by $2,000,000 in 2010-11.

AB 853 would require Commerce to certify businesses as eligible for tax benefits, revoke certifications, verify information submitted by businesses claiming tax benefits, and to promulgate administrative rules for implementation and operation of this program. The bill does not provide Commerce with additional funding and positions for these administrative responsibilities. However, Commerce indicates that it would require 2.0 two-year project positions and funding of $146,800 GPR each year to administer the tax benefit certification process.

On January 27, 2010, this office issued a memorandum regarding the status of the state's general fund. At that time, the gross balance of the general fund, as of June 30, 2011, was estimated at $55.7 million, or $9.3 million below the $65.0 million balance required under s. 20.003(4) of the state statutes. As a result, an amendment would be needed to include a notwithstanding clause relative to s. 20.003(4).

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