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Joint Committee on Finance

Paper #323

Business Tax Credit Notification Requirements (General Fund Taxes -- Income and Franchise Taxes)

[LFB 2015-17 Budget Summary: Page 176, #9 and Page 179, #10]

CURRENT LAW

The Wisconsin Economic Development Corporation (WEDC) administers and certifies persons eligible for the following seven tax credits: (a) enterprise zones; (b) jobs; (c) economic development; (d) early stage seed investment; (e) angel business investment; (f) development opportunity zones; and (g) supplement to the federal historic rehabilitation credit. WEDC is required to provide the Department of Revenue (DOR) with certain notifications, generally, when a person is certified to receive tax credits or when that certification is revoked. The timing for when WEDC must notify the Department varies depending on the type of credit. Specifically, the notification requirements are the following:

a. *Enterprise zones credit.* WEDC must notify DOR when the Corporation certifies a business to receive the credit. Within 30 days after a certification is revoked, WEDC must notify DOR of the revocation.

b. *Jobs tax credit.* WEDC must notify DOR when the Corporation certifies a business to receive the credit and must notify DOR within 30 days of revoking a person's certification for credits. Additionally, WEDC must determine the maximum amount of tax credits that a certified business can claim and notify DOR of this amount.

c. *Economic development credit.* WEDC must provide DOR with a notice of eligibility to receive tax credits that reports the amount of credits for which the person is eligible. The Corporation must notify DOR of a revocation of the credits, including the value of the tax credits for which the person is liable.

d. *Early stage seed investment credit.* WEDC must notify DOR of every certification

of an investment fund manager that is eligible to invest in a qualified new business venture (QNBV) that is certified by WEDC. The Corporation must also notify DOR of the date on which any certification is revoked or expires.

e. *Angel business investment credit.* WEDC must notify DOR of every business certified as a QNBV. The Corporation must also notify DOR of the date on which any certification is revoked or expires.

f. *Development opportunity zones credit.* WEDC must notify DOR of all persons entitled to claim the credit and must notify the Department within 30 days after revoking the entitlement of a person to claim the credit.

g. *Supplement to the federal historic rehabilitation credit.* WEDC must notify DOR, no later than January 15 of each year, of the amount of credits certified and the name, address, and tax identification number of each person certified to claim the credit. WEDC must notify DOR of any revoked certification no more than two months after the revocation date.

Current law does not require WEDC to notify DOR when the Corporation verifies that the eligible work or other activity has been completed and the claimant can file with the Department to claim the credit.

GOVERNOR

Maintain the current law notification requirements. In addition, create additional reporting requirements for the state supplement to the federal historic rehabilitation tax credit, and create new reporting requirements for the proposed business development tax credit. The additional requirements are:

a. *Supplement to the federal historic rehabilitation credit.* In addition to the current law reporting requirements, WEDC would have to report, at least once each calendar quarter, any claimant whose activity created fewer full-time jobs than projected. WEDC would also have to report the name, address, and tax identification number of the claimant, and the number of full-time jobs projected and created to DOR.

b. *Business development credit.* Under the proposed business development credit, the Forward Wisconsin Development Corporation (FWDA) would be required to notify DOR, on at least a quarterly basis, when FWDA certifies a person to receive credits. FWDA would also have to notify DOR within 30 days of revoking a certification for the credit. [Under separate provisions of the bill, WEDC would be merged into the proposed entity FWDA beginning January 1, 2016, or on the day following publication of the bill, whichever is later.]

The bill would not require WEDC to notify DOR when the Corporation verifies that the eligible work or other activity has been completed and the claimant can file with the Department to claim either of the credits.

DISCUSSION POINTS

1. Under current law and under the bill, all tax credits that require WEDC certification include a reporting requirement to DOR when a person enters into a contract with the Corporation and is certified to receive credits. As shown above, the credits have different requirements for when the certification notification must be sent to the Department. Some of the credits specify a period of time within which WEDC must notify DOR of a certification, while a majority of the credits require the Corporation to notify the Department without specifying a deadline. If WEDC revokes a person's certification, the Corporation is required to notify DOR of the revocation. However, depending on the type of credit, the notification might be within 30 days, within two months, or within an unspecified period of time. While current law requires the reporting of certifications and revocations, no requirement exists for notifying DOR when WEDC verifies that work or other activity has been completed and the certified person may claim a credit from the Department. Current law generally prohibits DOR from disclosing confidential taxpayer information to WEDC that would allow the Corporation to track when credits are claimed or used.

2. Under current practice, the amount of credits that have been verified to be claimed, but that have not yet been claimed by a claimant, is unknown. Once a claimant is certified for a credit, the claimant must first perform the eligible work or activity, provide evidence to WEDC to verify that the eligible work or activity has been completed, and then file with DOR to claim the credit. Therefore, several years may lapse between the time when a claimant is first certified to receive a credit and when the credit is actually claimed. Because this information is not being tracked, it is difficult to estimate how the credits will affect state revenues or expenditures in specific fiscal years. Better tracking of these tax credits would improve the state's ability to estimate annual revenues and expenditures.

3. The tax credit programs listed above are a significant factor in the state budget. Over the past three state fiscal years, WEDC has entered into contracts that awarded more than \$350 million in tax benefits.

4. According to WEDC, the Corporation has been working with DOR to improve the method, content, and frequency of their exchange of information. WEDC notes that inconsistencies between program requirements have been complicating factors. DOR has also noted that the Department works with WEDC to share information; however, it is at varying intervals of time.

5. DOR indicates that a more uniform reporting process for notification of credit certifications, verifications, and revocations would be helpful for the purposes of the Department's auditing activities. The Department indicates that receiving verifications on a regular basis would help DOR to match verified amounts with amounts claimed by a taxpayer and ensure that a taxpayer claimed the proper amount of credits. Additionally, DOR notes that it could be beneficial to have a uniform reporting requirement for all the credits so that WEDC and the Department would no longer have to follow different requirements for each credit.

6. In addition to receiving notification of claimants' verifications to facilitate the tracking of business tax credits, DOR indicates that receiving a list of each of the final claimants verified as eligible to claim the credit would help the Department ensure that only persons eligible for the credit

could claim the credit. If a sole proprietor or C corporation were to claim the credit, the claimant for the credit would be a single entity. C corporations may have a taxable year that could start at the beginning of any month during a calendar year, and DOR indicates that it would be helpful to track the credits if WEDC collected information and notified the Department of the claimant's taxable year.

7. Pass-through entities (limited liability companies, partnerships, and S corporations) distribute credit amounts to members, partners, or shareholders in proportion to their ownership stake in the entity. According to DOR, if WEDC provided the Department with a list of the claimants, including the members, partners, or shareholders eligible to claim the credit, this information would enable DOR to track the amount of business tax credits that have been verified but have yet to be claimed or used for each eligible claimant.

8. The Committee could choose to delete the current notification requirements (as well as the notification requirements proposed under the bill) and, instead, create one statute that would require WEDC to notify DOR in a uniform manner of all certifications, verifications, revocations, or transfers of credits. The Committee could elect to require this notification to be on a regular basis, such as within 30 days following the end of a month, calendar quarter, or some other period of time following the period of time in which the certification, verification, revocation, or transfer occurred.

9. Under a separate provision of the bill, WEDC would be merged with the Wisconsin Housing and Economic Development Authority into the proposed FWDA beginning January 1, 2016, or the day following publication of the budget bill, whichever is later. Under the bill, WEDC's administrative responsibilities for current tax credit programs would be transferred to FWDA. If the Committee chose to modify the current law tax credit reporting requirements, the Committee may want to apply these provisions to FWDA.

ALTERNATIVES

1. Make the following modifications effective, January 1, 2016:

Delete the current and proposed reporting requirements for the tax credits identified above.

Instead, require WEDC/FWDA to provide the following information to DOR regarding each tax credit that is jointly administered by the two agencies: (a) certification of a person for tax benefits; (b) amount of tax benefits certified; (c) revocation of a certification for tax benefits; (d) amount of tax benefits revoked; (e) verification that a certified person has completed the activities required in order for the person to claim a credit; (f) amount of credit that may be claimed as a result of the verification; (g) a list of the businesses and individuals that will be eligible to claim the credit following the verification, including owners of pass-through entities; (h) the taxable years of such businesses and individuals; (i) amount of tax credits that have been claimed but must be repaid; and (j) any other information DOR and WEDC/FWDA determine is necessary to accurately track certification and usage of the tax credits. Require that this information be provided for transferred credits as well as for credits that have not been transferred.

Require businesses that WEDC/FWDA certifies to receive tax credits to provide any information necessary for WEDC/FWDA to comply with the above requirements.

Require DOR to track the amount of credits jointly administered with WEDC/FWDA that have been claimed and used to offset tax liability, and the amount of any available unused credits.

Specify that WEDC/FWDA must provide the above information to DOR:

a. By the last day of each month for certifications, revocations, verifications, transfers, or determinations by WEDC that a credit must be repaid, that occurred in the previous month; or

b. By the last day of the first month following the close of each calendar quarter for certifications, revocations, verifications, transfers, or determinations by WEDC that a credit must be repaid, that occurred in that calendar quarter.

2. Maintain current law.

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