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Business Tax Credits

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Business Tax Credits

This paper presents information regarding the nonrefundable and refundable tax credits available to be earned by businesses in tax year 2023. Tax credits are one of many policy tools states use to encourage economic development and other pro-social behaviors.

A tax credit is an amount that is subtracted from the gross income tax liability of the taxpayer in a given year. Business tax credits are generally available to businesses to reduce state income and franchise tax liability, and some credits are available to insurers to reduce insurance premiums and gross investment tax liability (insurance company taxes). In general, a tax credit differs from a deduction in that the credit is subtracted from the tax itself, resulting in a dollar-for-dollar reduction in the gross tax liability. In contrast, a deduction is subtracted from income, resulting in a reduction in the amount of income subject to tax (and its value is proportional to the marginal tax rate paid by the taxpayer).

Some tax credits are refundable. When a refundable tax credit exceeds gross tax liability, the taxpayer receives a payment for the difference between the credit amount and the tax liability. For the nonrefundable credits, unused amounts generally can be carried forward and claimed in future years. In some cases, unused credits can be sold or otherwise transferred to other taxpayers.

Attachments I and II provide information for business tax credit utilization that are described in this paper, as well as credits that are no longer available. Nonrefundable credits that have sunset may have unused amounts carried forward from prior years that can be used to offset future tax liability. Totals are not included for the number of taxpayers claiming credits because multiple credits may be claimed by a taxpayer.

Attachment I provides a list of credits that were claimed and used as offsets against the individual income tax, the corporate income/franchise tax, and insurance company taxes in tax year 2019. Attachment I shows the number of claimants, the amount of credits used, and the average amount of each credit per claimant in tax year 2019 (the most recent year for which data is available). As shown in Attachment I, $632.2 million in business tax credits were used to offset state tax liability in tax year 2019.

Unlike nonrefundable credits, refundable credits paid during the state fiscal year are recorded as expenditures in the state's annual fiscal report. Attachment II provides expenditure data for each refundable credit in 2021-22, as reported by the Department of Revenue (DOR).

Administration

Wisconsin offers a number of business tax credits that can be claimed under the corporate income/franchise tax and the individual income tax in tax year 2023. These credits are detailed below. One credit, the angel investment credit, is only available under the individual income tax. The employee college savings account contribution credit may not be claimed by individuals or sole proprietors, but can be claimed by partners of a partnership, members of a limited liability company (LLC), or shareholders of a tax-option (S) corporation.

The following three credits available in 2023 can also be claimed under the insurance premiums tax and gross investment income tax paid by insurance companies: (a) early stage seed; (b)

Wisconsin Insurance Security Fund (WISF) assessment; and (c) low-income housing. Two credits, the manufacturing and agriculture credit (MAC) and the electronics and information technology manufacturing (EITM) zone credit, are not available to insurance companies that pay the franchise tax.

Claiming a Tax Credit. In general, businesses may be eligible to claim a business tax credit when preparing and filing the required individual and corporate income/franchise tax forms with DOR, or insurance tax forms with the Office of the Commissioner of Insurance. If a nonrefundable credit exceeds tax liability, any amounts claimed that cannot be used to offset tax liability are identified so that the taxpayer can carry the unused amount forward for use in a future tax year. In general, unused tax credits may be carried forward for up to 15 years. Thus, credits may be used in tax years long after they are earned (even in cases where the tax credit was sunset many years ago).

As noted, taxpayers claim a refundable credit to reduce taxes otherwise due and/or to receive a check for the amount of the credit in excess of the claimant's tax liability in that year. Alternatively, a business may choose to apply any excess refundable tax credit as a payment towards its tax liability in the next year.

Partnerships, LLCs, and S corporations generally cannot claim business tax credits, but eligibility for, and the amount of, the credits are based on the entity's payment of eligible expenses. A partnership, LLC, or S corporation is required to compute the amount of the credit that each of its partners, members, or shareholders can claim and provide that information to them. Partners, members of LLCs, and shareholders of S corporations can generally claim the credit in proportion to their ownership interest.

Provisions of 2021 Act 58 allow pass-through entities to elect to claim the jobs, enterprise zone, and business development tax credits at the entity level for taxable years beginning after December 31, 2021, if the credit results from a contract entered into with WEDC prior to December 22, 2017. The change allows C corporations and S corporations to qualify for a certain federal exclusion for credit claims associated with a contract executed with WEDC prior to December 22, 2017, (but not afterwards). However, pass-through entities that elect to file at the entity level may not claim these credits.

For the early stage seed investment credits, partners, members of LLCs, and shareholders of S corporations can either claim the credit in proportion to their ownership interest or as specially allocated in their organizational documents. Partnerships and LLCs can compute the angel investment credits in the same manner as the early stage seed credit. Shareholders of S corporations are not eligible to claim the angel investment credit.

For the supplement to the federal historic rehabilitation tax credit, partnerships and LLCs can compute and allocate the credit among their partners or members in proportion to their ownership interest or as provided in a written agreement among the partners or members that is entered into no later than the last day of the entity's taxable year; however, for shareholders of S corporations, the credit may only be allocated in proportion to each shareholder's ownership interest.

Wisconsin Economic Development Corporation (WEDC). Some business tax credits are jointly administered by DOR and WEDC. WEDC is responsible for certifying and verifying eligible claimants under the following tax credit programs: (a) business development; (b) enterprise zones; (c) EITM zone; (d) supplement to the federal historic rehabilitation; and (e) early stage seed and angel business investment. By statute, many of these credits have maximum amounts that can be claimed or allocated in a single year or in the aggregate.

WEDC may certify an applicant if the

applicant is conducting or intends to conduct at least one eligible activity. However, specific requirements apply for each program. For example, for the EITM zone tax credit program, WEDC may not certify a person to receive tax benefits unless the contract requires the person to repay any tax benefit if, within five years after being certified to receive them, the person ceases to conduct the relevant economic activity in this state and commences substantially the same economic activity outside the state. For the early stage seed and angel investment tax credits, WEDC may certify an applicant as a qualified new business venture only if several conditions are met, such as its headquarters and at least 51% of its workforce are located in Wisconsin.

In general, when awarding a tax benefit to an applicant, WEDC must require the applicant to sign a contract which sets out a compliance schedule of anticipated actions and reporting requirements. For the early stage seed and angel investment tax credits, WEDC certifies and enters into contracts with qualified new business ventures and fund managers, but does not enter into a contract with the investors that claim the tax credits under those programs.

When reporting information pursuant to a contract with WEDC, each recipient (or the director or principal officer of the recipient) of a tax credit is required to submit a signed statement to WEDC attesting to the accuracy and truthfulness of the information provided. WEDC must independently verify, from a sample of tax credits, the accuracy of the information required to be reported.

Claimants are required to include, with their tax returns, a copy of the certification for tax benefits and verification of expenses from WEDC.

In general, WEDC must revoke a certification for tax benefits if the business submits false or misleading information. Further, specific requirements regarding revocation apply for certain tax credit programs. For example, for the EITM zone and enterprise zone tax credit programs, WEDC must revoke certification if the business leaves the zone to conduct substantially the same business outside the zone or ceases operations in the zone and does not renew operation of the business or similar business in the zone within 12 months.

WEDC may require repayment clauses in its contracts with applicants or when revoking an applicant's certification. WEDC may require applicants to repay tax benefits for failing to maintain contracted levels of employment or capital expenditures under the business development, EITM zone, and enterprise zone tax credit programs.

WEDC is required to provide the following information to DOR by the last day of the first month of each calendar quarter for each of the credits that the two agencies jointly administer, including any credits transferred to another claimant:

a. Certification of a person for credits;

b. Amount of the credits certified;

c. Revocation of a credit certification;

d. Verification that a certified person has completed the activities required in order to claim a credit;

e. Amount of credit that may be claimed as a result of the verification;

f. A list of the businesses and individuals that will be eligible to claim the credit following the verification, including owners of pass-through entities;

g. The taxable years of such businesses and individuals; and

h. Any other information that DOR and WEDC determine necessary to accurately track certification and usage of the credits.

Each person WEDC certifies for tax credits must provide all of the information necessary for WEDC to comply with its reporting requirements to DOR.

For all tax credits administered by WEDC, DOR must track the amount of credits that have been claimed or used to offset tax liability and the amount of all available unused credits. DOR is prohibited from paying interest on claims for any WEDC-certified refundable tax credits.

DOR may make an assessment to recover all or a part of any tax credit claimed by the taxpayer that was revoked by WEDC within one year of receiving notice of the revocation from WEDC. For EITM zone credits, WEDC may recover revoked credits from a pass-through entity or its individual owners.

For additional information on WEDC, and its programs, please see the Legislative Fiscal Bureau's informational paper entitled, "Wisconsin Economic Development Corporation."

Wisconsin Housing and Economic Development Authority (WHEDA). WHEDA and DOR jointly administer the low-income housing tax credit. WHEDA may certify a person to claim the credit by: (a) issuing an allocation certificate declaring that a qualified development is eligible for a state tax credit; and (b) specifying the amount of the credit that the owners of the qualified development may claim.

Department of Agriculture, Trade and Consumer Protection (DATCP). Eligibility for the farmland preservation tax credit is determined by both DATCP and the county land conservation committees. In general, DATCP certifies eligible farmland acreage, and county land conservation staff certify landowner compliance with state soil and water conservation standards, which is required to claim the credit.

Sunset Credits. A number of previously available tax credits have been sunset by the Legislature. For nonrefundable credits that have sunset, the credit typically cannot be earned after the sunset date, but unused amounts may continue to be carried forward from a previous tax year. Further, in some cases, both nonrefundable and refundable credits may be claimed under a contract with WEDC (or another state agency) for an agreed schedule of activities.

For example, provisions of 2015 Act 55 sunset the nonrefundable economic development credit and the refundable jobs credit after December 31, 2015, and consolidated the two credits under the business development tax credit, which took effect beginning in tax year 2016. For both credits sunset under Act 55, if WEDC allocated tax benefits to the claimant before December 31, 2015, or in a letter of intent to enter into a contract before that date, the claimant may compute and claim the credits for as long as the contract specifies. WEDC entered into economic development tax credit contracts authorizing credits to be earned by businesses through tax year 2019 and jobs tax credit contracts through tax year 2023 prior to the sunset date.

Sunset credits may eventually be repealed and removed from the statutes once taxpayers are no longer able to claim them on amended returns. For example, 2021 Act 127 repealed a number of tax credits that could no longer be claimed (such as the airport development zones and relocated business credits).

Policy Goals and Limitations

Business tax credit programs in Wisconsin are generally intended to incent firms to invest in ways that support economic growth, spur equitable growth, and engage in certain prosocial activities. The goal is to stimulate local economic activity: (a) directly through the targeted firm's increased spending on wages and capital improvements; (b) indirectly via business-to-business purchases from local supply chains; and (c) by inducing economic growth via the firm's employees spending their wages at local businesses.

Business tax credit programs are not intended to reward activity that firms would have already undertaken in the absence of the program. Any such windfall for the credit award recipient reduces the cost effectiveness of the program, depriving the state from spending those funds to undertake other economic development activities (such as worker training or development loans). For this reason, targeted tax credit programs are administered by state agencies that determine credit awards and review the performance of awardees.

Labor Demand. Business tax credits can address job shortages in local economies via subsidies, stimulating the demand for labor. The theory being that a decrease in the cost of employing workers will incent employers to create and retain more positions than they otherwise would have. For example, targeted tax credits for job creation are available under the business development tax credit.

Note that these business tax credits are distinct from individual income tax credit programs intended to stimulate the supply of labor. These types of programs are discussed in other Legislative Fiscal Bureau Informational Papers, such as "Earned Income Tax Credit." The business tax credits discussed in this paper are not designed to address worker shortages.

Tax incentives for labor demand are often temporary in scope, such as a limited-term agreement to provide tax credits in exchange for creating jobs in conjunction with building a factory in a certain geographic location. The goal being that the short-term award can produce long-term growth in the local economy. However, the effect of temporary incentives on business decisions, such as maintaining a certain number of jobs, may dissipate after the credits are no longer available. For instance, a firm may first earn credits and then terminate employees a few years after a tax credit agreement expires.

A limitation of these credits is that employers are more likely to receive a windfall from retaining workers they already employ compared to hiring for new positions they need to create in exchange for credits. For this reason, job retention credits to local firms are generally disfavored compared to credits for job creation associated with expansion or relocation of facilities in the state.

Location Incentive. Many business tax credit programs are intended to influence a firm's decision to locate its operations in the state to increase employment and investment. Credit incentives focusing on relocation are available for activities likely to endure for longer time periods, such as capital expenditures for building a factory or relocating a company's headquarters.

Many factors may influence a firm's decision to locate its operations and investment in this state, including: access to talent; availability of a suitable site; infrastructure; distance to market; and natural resources. For example, a service company may need to locate nearby its clients, or a water bottling company may need access to fresh water. Some investment decisions are more likely to be influenced by cost. For these projects, tax credits can tip the scale in favor of choosing Wisconsin by effectively lowering the business' effective tax rate, or by narrowing the tax base for certain industries and/or activities.

Proponents of tax credit programs often justify the cost of location incentives for economic development because firms may not internalize the beneficial spillover effects that may result from their investment decisions. Certain industries exhibit agglomeration effects such that the concentration of related activities confer additional productivity advantages to the local economy (such as a larger pool of skilled workers, specialized supply chains, and sharing of ideas). Examples include specialized workers clustering in the film industry in Hollywood and knowledge workers in technology-intensive firms locating in Silicon Valley. Proponents argue that targeting incentives to these industries enhances the cost effectiveness of the programs due to the enhanced overall growth in the state and local economy.

Location incentives are not intended to disadvantage competing local firms that do not receive incentives. For example, some firms may be in direct competition with each other such that the subsidized employment and output of one firm may effectively reduce the employment and output of another local firm. Further, although increasing wages in the local economy is generally a key goal of development programs, attracting a specific (usually a large) firm via a tax credit program may increase the wage and price level faced by local firms in the area, even if not in direct competition with existing firms in the marketplace. For this reason, tax credit programs generally target productive growth- and/or export-oriented firms that compete in a larger national or international market, rather than targeting firms that may compete with local firms for sales. This way the wage and price increases reflect increased productivity, rather than scarcity from a new firm competing for workers.

Equity. A key goal in economic development programs is to encourage job creation and investment in distressed and disadvantaged regions whose residents have relatively lower incomes and are less likely to draw business investment. Job creation and wage gains are relatively more valuable for these labor markets compared to other areas of the state. Thus, the costs of discretionary business tax credit programs are often justified on the basis of creating a more equitable distribution of job creation and investment.

For example, the enterprise zone and business development zone tax credits provide for heightened incentives in certain geographic areas exhibiting high unemployment and low income. Both programs also offer credits for worker training.

Overcoming Barriers to Growth. In addition to providing an incentive to locate and invest in Wisconsin, some business tax credit programs are designed to encourage economic development by assisting businesses to overcome barriers to market entry or growth. For example, the early stage business investment (angel and early stage seed) credits increase the return on investing in Wisconsin companies that may lack access to the capital necessary to expand. Investors are thus more likely to review these companies, thereby increasing the opportunities for Wisconsin start-up companies to expand.

Positive Externalities. Other business tax credits are offered to incent prosocial behaviors which exhibit social returns in excess of the private returns to business investment. Absent the credit incentive, businesses are less likely to engage in these behaviors due to the lack of a profit motivation for doing so.

For example, the research tax credit is made available for increasing certain qualified expenditures because research and development investments are likely to fall short of the overall economic and social benefits to society. This is so because a firm is less likely to invest in a project if it knows that it cannot appropriate the potential revenues from that investment. Investment in research and development, and knowledge in general, are not fully appropriable, because once produced, at least part of the research can be obtained at no cost. Once invented, an idea can be imitated by others, although patent protection and delays in the dissemination of new ideas enable the innovator to appropriate a share of revenues from the new idea. If some portion of revenues from the investment is appropriable, the firm will invest only to the level where revenues are sufficient to make the investment profitable. In this case, the firm's investment is based on its private rate of return, which is lower than the social rate of return. This is especially likely for basic research not having a specific commercial objective.

In addition to research credits, other business tax credits are available in Wisconsin for such pro-social activities as: (a) the low-income housing credit for developing housing for families with lower incomes; (b) the farmland preservation credit for restricting land to agricultural uses and implementing environmentally sensitive agricultural practices; and (c) the supplement to the federal historic rehabilitation credit for preserving and rehabilitating historic structures.

Limitations. There are several limitations in using tax credits for economic development. First and foremost, most nonrefundable credits are ineffective as a subsidy if the award recipient has no profit. For example, nonprofit organizations, unprofitable startup companies, and bankrupt businesses will not have any tax liability to reduce. Thus, nonrefundable tax credit programs will have limited direct application to marginally profitable companies or new companies with low initial revenues. Further, during recessions (when businesses are more likely to experience a loss), the subsidy becomes less valuable exactly when job losses and decreased investment become harmful for the local economy. For this reason, some credits (such as the supplement to the historic rehabilitation credit) are transferable so that the awardee may sell the tax benefit.

Second, the value of state tax credits may be eroded by federal tax policy. For example, state tax credits may be considered taxable income for purposes of federal income tax. As another example, state tax credits effectively reduce the value of the federal deduction for state and local taxes. Thus, the full value of the state credit is not realized due to an increase in federal taxes owed.

Finally, tax credit programs are more difficult to forecast for budgeting purposes than other programs (such as grants) because the cost and timing of tax credit claims are uncertain. Thus, credit programs may have outsized or unpredicted effects on state budgets.

Nonrefundable Tax Credits

As previously noted, unused nonrefundable credits that exceed the taxpayer's liability can generally be carried forward for use in future tax years. For each of the credits described in this section, except for the WISF assessment credit, unused credit amounts can be carried forward and used in the following 15 taxable years. Unused amounts of the WISF assessment credit cannot be carried forward.

Manufacturing and Agriculture Credit. The MAC equals 7.5% of the claimant's eligible qualified production activities income derived from Wisconsin property that is assessed as manufacturing or agricultural.

The MAC is designed to provide tax relief in proportion to the amount of the claimant's manufacturing and agricultural property that is located in Wisconsin. For example, if half of the property a claimant owns or uses in manufacturing activities is located in Wisconsin, then the MAC would be equal to 7.5% of half of the claimant's eligible qualified production activities income. The MAC is discussed in more detail in the Legislature Fiscal Bureau's informational paper, entitled "Manufacturing and Agriculture Tax Credit."

Nonrefundable Research Credit. The state provides research credits to businesses equal to a percentage of the increase in a business's qualified research expenses, as defined under the Internal Revenue Code (IRC), for research conducted in Wisconsin. For most businesses, the credit equals 5.75% of the amount by which the claimant's qualified research expenses for the taxable year exceed

50% of the average qualified research expenses for the three taxable years immediately preceding the tax year in which the claimant claims the credit. If the taxpayer had no qualified research expenses in any of the three preceding tax years, the credit is equal to 2.875% of the claimant's qualified research expenses for that tax year.

For businesses that engage in certain types of research activities, the same calculation of the credit applies, but the credit percentages are equal to 11.5% (rather than 5.75%) and 5.75% (rather than 2.875%). The higher percentages apply to the following types of qualified research expenses incurred in Wisconsin:

a. Designing internal combustion engines (including substitute products such as fuel cell, electric, and hybrid drives) for vehicles, including expenses related to designing vehicles that are powered by such engines, and improving production processes for such engines and vehicles; and

b. Designing and manufacturing energy efficient lighting systems, building automation and control systems, or automotive batteries for use in hybrid-electric vehicles that reduce the demand for natural gas or electricity, or improve the efficiency of its use.

The credit applies only to qualified research expenses paid or incurred by the taxpayer in carrying on a trade or business of the taxpayer that are research and development costs in an experimental or laboratory sense. In general, qualifying expenses are non-capital, and thus, do not include spending for buildings and equipment. Qualified research expenses are the sum of: (a) in-house expenditures for wages and supplies used in research, plus certain amounts paid or incurred to another person for the right to use computers; and (b) 65% of the amount paid by the taxpayer for qualified research conducted on behalf of the taxpayer. Qualified research is undertaken for the purpose of discovering information that is technological in nature, the application of which is intended to be useful in the development of a new or improved business component of the taxpayer. In addition, substantially all of the activities of the research must be elements of a process of experimentation relating to a new or improved function, performance, reliability, or quality.

Only expenses for eligible research activities conducted in Wisconsin qualify for the credit. Members of combined groups must compute their own research credits separately. However, a member can share unused credits with other members of the same combined group to offset other members' tax liabilities.

Pursuant to 2021 Act 58, up to 15% of the amount of new research credit computed may be claimed as a refundable credit for tax years beginning after December 31, 2020. The remaining portion of the credit is nonrefundable. Any unused amount of the nonrefundable portion of the credit can be carried forward for up to 15 years. In tax years 2018, 2019, and 2020, the refundable portion was 10%. Prior to tax year 2018, the entire amount of the credit was nonrefundable.

Early Stage Business Investment Credits. The early stage business investment program includes the angel investment tax credit and the early stage seed investment tax credit. The angel investment tax credit equals 25% of the claimant's bona fide angel investment made directly in a qualified new business venture (QNBV) certified by WEDC. The early stage seed investment tax credit is equal to 25% of the claimant's investment paid in the tax year to a certified fund manager that the fund manager invests in a QNBV certified by WEDC. WEDC can verify investments as eligible to claim up to $30 million of angel and early stage seed credits per calendar year.

The aggregate amount of investment in any one QNBV that may qualify for angel investment or early stage seed investment tax credits is $12.0 million. Investments in a QNBV must be maintained in the business by an angel investor, angel investment network, or certified fund manager for at least three years.

WEDC is required to certify QNBVs and fund managers and to perform other administrative functions related to the allocation and transfer of credits, revocation of certifications, verification of investments and credits, and processing and compiling reports. Businesses and fund managers must apply to WEDC to be certified.

Qualified New Business Venture. A business may be certified as a QNBV by WEDC only if it meets all of the following conditions:

a. It has its headquarters in Wisconsin.

b. At least 51% of its employees are employed in the state (except in the case of a merger or acquisition, as described below).

c. It has the potential for increasing jobs and/or capital investment in Wisconsin and the business is engaged in, or has committed to engage in, innovation in any of the following: (1) manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology; (2) processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative technology products, or other products that are produced using manufacturing methods that are enabled by applying differentiating technology; or (3) services that are enabled by applying differentiating technology.

d. It is undertaking pre-commercialization activity related to differentiating technology that includes conducting research, developing a new product or business process, or developing a service that is principally reliant on applying differentiating technology.

e. The business is not primarily engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction (except construction of power production plants that derive energy from a renewable resource).

f. It has fewer than 100 employees at the time of initial certification.

g. The business has not been operating in Wisconsin for more than 10 consecutive years at the time of initial certification.

h. It has not received aggregate private equity investments of more than $10.0 million before initial certification.

i. It has not received more than $12.0 million in investments that have qualified for tax credits under the program.

In addition, in determining whether to certify a business, WEDC will consider at least the following factors: (a) whether the business is in one of Wisconsin's targeted industries, as determined by WEDC; (b) high growth potential of the business; (c) management team experience; (d) financial need; (e) percentage of funds that will be spent in Wisconsin; and (f) barriers to entry. Each QNBV must be recertified in each taxable year in which it desires certification. Each business certified by WEDC as a QNBV must provide a statement in its private placement memorandum or equivalent documents indicating that WEDC does not endorse the quality of management of the business and is not liable for damages or losses to an investor.

A QNBV must agree that it will not relocate outside the state during the three years after it receives an investment eligible to receive early stage business investment credits. If the QNBV has received investments eligible for tax credits, it must agree to pay WEDC a penalty if the business relocates more than 51% of its employees, total payroll, or its headquarters, as determined by WEDC, outside the state within the three-year period. The penalty is equal to: (a) 100% of the credits claimed if the relocation occurs less than 12 months after the eligible investment; (b) 80% of the credits claimed if the relocation occurs between 12 and 24 months after the eligible investment; or (c) 60% of the credits claimed if the relocation occurs 24 months or more after the eligible investment. However, if WEDC determines that the QNBV's total payroll and number of employees in Wisconsin have not diminished, the business is not considered to have relocated outside the state and the penalty does not apply. The penalty for relocating outside the state does not apply to a QNBV that was certified by WEDC before April 20, 2012, and that, in reliance of that certification, executed a note or bond that is convertible to an equity interest for which an angel investment credit was claimed.

In the case of a merger with another company that would effectively locate less than 51% of employees in Wisconsin, provisions of 2021 Act 224 specify that WEDC may certify a QNBV and/or allow the QNBV to retain its certification so long as WEDC determines that the merger was not for the purpose of relocating operations or employment outside the state and the business: (a) retains its headquarters in the state; (b) increases employment in the state after the merger; and (c) satisfies the 51% in-state employment requirement within 12 months of the merger.

Certified Fund Manager. In order to be eligible for investments that qualify for early stage seed investment tax credits, the fund manager must be certified by WEDC. In determining whether to certify an investment fund manager, WEDC is required to consider: (a) the applicant's experience in managing venture capital funds; (b) the past performance of funds managed by the applicant; (c) the expected level of investment in the fund to be managed by the applicant; and (d) other relevant factors determined by WEDC. WEDC also evaluates the following factors when determining whether to certify an investment fund manager: (1) the applicant's experience in investing in high growth, early stage businesses; (2) the past performance of businesses assisted by the applicant; (3) the portion of the investment fund's capital the fund manager expects to invest in QNBVs; (4) geographic distribution of the funds; (5) focus on targeted industries or target group members, as determined by WEDC; (6) ability to access follow-on funding; (7) services provided; (8) commitment to Wisconsin; and (9) administrative and management fees. WEDC requires certified fund managers to provide a statement in their private placement memorandums or equivalent documents indicating that WEDC does not endorse the quality of management of the fund and WEDC is not liable for damages or losses to the investor.

WEDC may revoke or withhold certification of a business or fund manager if the business or fund manager: (a) supplies false or misleading information to obtain the certification; (b) fails to continue to meet the required conditions or qualifications for obtaining the certification; (c) has violated, or is under investigation for violating, state, federal, or local laws or regulations related to the conduct of the activities of the business or fund; (d) has had an officer or director arrested or convicted of a crime substantially related to the activities of the business or fund; (e) is not using investment funds for a legitimate business purpose; or (f) is in default of WEDC or other state obligations.

Angel investors, angel investor networks, and venture capital funds must follow a verification process in order to receive tax credits based on eligible investments. For each investment in a QNBV, the angel investor, angel investment network, or certified fund manager is required to provide WEDC with a copy of its investor agreement and proof of investment. The investment must be clearly identifiable as being a cash investment and must be in the form of common stock, preferred stock, a partnership, membership, or equivalent ownership interest approved by WEDC. The QNBV must provide an attestation to the investment. Tax credit request forms and required documentation must be provided no later than 90 days following the end of the year in which the investment was made.

Cash exchanged for debt is not eligible for credits, unless the debt is later converted into an ownership interest, and only the original cash investment is eligible for credits. Tax-deferred or tax-advantaged accounts [such as individual retirement accounts or 401(k) accounts] are not eligible investment vehicles for tax credits. Investments made by certified fund managers with principal offices based outside Wisconsin must be made side-by-side with equity investors based in Wisconsin with a minimum participation of Wisconsin investors, as determined by WEDC. The investor cannot control, or be a spouse, grandparent, parent, sibling, child, stepchild, or grandchild of someone who controls, more than 20% of the ownership interest in a QNBV at the time an investment is made. Public funds, including investments made by the State Fund of Funds and the Federal State Small Business Credit Initiative programs, cannot be used as the basis for claiming credits.

Based on a review of submitted materials, WEDC issues a verification form to the angel investor, angel investment network, or certified fund manager stating the amount of credits that may be claimed. Investors must submit a copy of the certification for tax benefits and the verification form, including the amount of tax benefits that may be claimed and the date and amount of the investment, with the investor's tax return.

WEDC can revoke verification of tax credits if the investment in the QNBV is not maintained for a minimum of three years. However, the three-year requirement does not apply in cases where: (a) WEDC determines that the investment becomes worthless prior to the end of the three-year period; or (b) the angel, angel investment network, or certified fund manager has held an investment for at least 12 months and there is a bona fide liquidity event, as determined by WEDC, prior to the end of the holding period.

A person who makes an investment in a certified fund and who is eligible to claim an early stage seed investment tax credit may sell or otherwise transfer the credit, no more than once in a 12-month period, to another person to offset that person's tax liability. A certified fund manager is required to notify both WEDC and DOR of the transfer and submit to WEDC: (a) a transfer form, as provided by WEDC, attesting to the transfer of the credit; (b) a copy of the transfer documents that show the transfer of credits from the seller to the buyer; and (c) any other documents required by WEDC to verify the credit sale or transfer. The fund manager must pay WEDC a fee of up to 5% of the amount of tax credit that is sold or transferred under state law. Under WEDC's policies and procedures: (a) credit transfers of up to $200,000 are subject to a 5% fee; and (b) transfers in excess of $200,000 are subject to a fee equal to the greater of $10,000 or 1% of the credit transferred.

Supplement to the Federal Historic Rehabilitation Credit. Federal law provides a 20% tax credit for qualified rehabilitation expenditures (as defined under the IRC) for certified historic structures. A "certified historic structure" is a building that is listed in the National Register of Historic Places or that is determined to be historic and will be listed in the National Register.

A state credit of 20% is a supplement to, and must be claimed at the same time as, the federal credit. Qualified rehabilitation expenditures are eligible for the credit if the rehabilitated structure is located in Wisconsin and the cost of the qualified rehabilitation expenditure is at least $50,000. The Wisconsin adjusted basis of the building must be reduced by the amount of the credit awarded. If a person that claims the state credit is required to repay any amount of the federal credit for the same qualified rehabilitation expenditures on which the state credit was claimed, that person must repay a proportionate amount of the state credit.

The state credit of 20% along with the federal credit of 20% yields a total credit for qualified rehabilitation expenditures of 40%.

The Tax Cuts and Jobs Act of 2017 (TCJA) provides that the federal tax credit must be claimed ratably over a five-year period (4% per year) for expenditures paid or incurred after December 31, 2017, instead of claiming the entire credit in the year the structure was placed in service. The state credit must be claimed at the same time that the federal credit is claimed, and thus must also be claimed ratably over a five-year period.

Beginning in tax year 2014, no person may claim the state credit without being certified by WEDC. WEDC may certify a claimant if it determines that the claimant is conducting an eligible activity. Beginning with certifications on or after July 1, 2018, the amount of historic rehabilitation credits that WEDC can certify a person to receive is no more than $3.5 million for all rehabilitation projects undertaken on the same parcel.

WEDC generally certifies persons to receive credits for a three-year period commencing on the initial date of certification and requires actual qualified rehabilitation expenditures be concluded within that three-year period. A project eligible for the credits may be approved for six years if the rehabilitation is substantial or occurring in phases. However, WEDC may extend the certification period at its discretion.

WEDC is prohibited from certifying nonprofit entities that are not defined under section 501(c)(3) of the IRC as eligible to claim the credit unless WEDC submits a request to certify the entity to the Joint Committee on Finance under a 14-day passive review process. For example, on June 28, 2022, the Committee received a request from WEDC for approval of its certification of the Beta Building Association of Madison, Inc., a title holding organization organized under IRC 501 (c)(2), to receive tax credits for renovations to the Beta Theta Pi fraternity chapter house in the City of Madison. As of this writing, the Committee has not yet considered the request.

Any person, including nonprofit entities, may sell or transfer the credit to any other Wisconsin taxpayer if the transferor notifies DOR in writing and submits a copy of the transferring documents. The Department must certify ownership of the credit with each transfer.

In order to claim the credit, a claimant must include with the return a copy of the certification by WEDC. The claimant must provide WEDC with evidence that the rehabilitation was recommended by the state historic preservation officer for approval by the U.S. Secretary of the Interior prior to beginning the physical work of construction, or destruction in preparation of construction, and that the rehabilitation was approved by the state historic preservation officer. The proposed preservation or rehabilitation plan must comply with procedures, standards, and forms required by the State Historical Society. Costs incurred to acquire the certified historic structure are not eligible for the credits. The claimant must include evidence that the taxpayer had obtained written certification from the state historic officer regarding the historical significance of the property and the proposed preservation or rehabilitation plan and expenditures.

As noted, WEDC may certify persons to claim the credit, but is not required to do so. WEDC placed a moratorium on certifying persons for the credit for historic structures, and for qualified rehabilitated buildings, if the application was received after June 23, 2014. WEDC instituted the moratorium because utilization of the credit had been significantly greater than anticipated and, as a result, the revenue reduction to the state was substantially higher than had been expected. WEDC lifted the moratorium for certified historic structures on July 14, 2014.

Qualified Rehabilitated Buildings. Previously, federal law also provided for a 10% credit for qualified rehabilitation expenditures for qualified rehabilitated buildings, which were defined as buildings that were constructed prior to 1936, but not including certified historic structures or non-residential property converted into housing if the property had previously been used for housing.

WEDC did not lift the moratorium on certifying persons for credits for qualified rehabilitated buildings after June 23, 2014. Further, the TCJA repealed the credit for qualified rehabilitation expenditures paid or incurred after December 31, 2017, for qualified rehabilitation buildings. This effectively sunset the supplemental state credit for non-certified pre-1936 buildings.

WEDC awarded the last credit for qualified rehabilitated buildings on June 27, 2016, as required under 2015 Act 55 for a project in the City of Green Bay. All credits for that project were verified as of December 31, 2019. No further credits remain to be earned under the program.

Community Rehabilitation Program Credit. The community rehabilitation program tax credit equals 5% of the amount the claimant pays in a tax year to a community rehabilitation program to perform work for the claimant's business, pursuant to a contract. The maximum tax credit that can be claimed is $25,000 for each community rehabilitation program with which the claimant enters into a contract. In order to claim a credit, the claimant is required to submit with the return a form that verifies that the claimant has entered into a contract with a community rehabilitation program and that the program has received payment for work provided by the program.

"Community rehabilitation program" is defined as a nonprofit entity, county, municipality, or federal agency that directly provides, or facilitates the provision of, vocational rehabilitation services to individuals who have disabilities to maximize the employment opportunities, including career advancement, of such individuals.

Wisconsin Insurance Security Fund Assessment Credit. WISF is a non-profit legal entity designed to protect Wisconsin policyholders in the event of an insolvency of a member insurance company. Subject to specified limits, WISF will continue to pay benefits under certain policies on behalf of insolvent insurers.

WISF is funded via assessments of insurers licensed to do business in Wisconsin. Generally, the aggregate amount of assessments imposed on an individual insurer may not exceed 2% of the insurer's assessable premiums on the types of policies and contracts covered by the insurer.

If the premium rates on an insurer's class of business are fixed and the insurer is unable to recoup assessments paid to WISF by increasing premiums on the class of business, the insurer may offset 20% of the amount of the Wisconsin portion of the assessments against its state tax liabilities in each of the five calendar years following the year in which the assessment was paid. If an insurer ceases doing business in Wisconsin and has remaining credits in future years for the paid assessments, it may use all of the remaining credits in the year it ceases doing business in the state. Unused credits may not be carried forward to later years.

Fees are also assessed to cover the administrative expenses of WISF. However, no credit is provided for administrative expenses unless the domiciliary state allows insurers to take credit for such expenses.

For further information about taxation of insurance companies and WISF, see the Legislative Fiscal Bureau's informational paper entitled

"Taxation of Insurance Companies."

Employee College Savings Account Contribution Credit. Beginning in tax year 2018, a nonrefundable credit is available for employers equal to 25% of the amount an employer pays into an employee's college savings account.

The maximum amount of employer contribution that is eligible for the credit is equal to 25% of the maximum amount an individual employee may deduct for state income tax purposes. For example, in tax year 2023, an employee's maximum deduction for each beneficiary was $3,860, or $1,930 if a divorced parent or married filing separate. Therefore, the maximum employer contribution eligible for the credit in tax year 2023 was $965 per beneficiary ($3,860 x 25%) and $483 per beneficiary for an employee who is divorced or files separately ($1,930 x 25%). As a result, the maximum credit for the employer's contributions was $241 ($965 x 25%) and $121 ($483 x 25%), respectively.

Low-Income Housing Tax Credit (LIHTC). WHEDA is responsible for administration of the federal LIHTC on behalf of the state. The LIHTC encourages the development of multifamily properties with below-market rents for low-income households by providing tax credits, which typically are sold to investors in exchange for up-front financing. Properties receiving the credit must reserve a portion of units for low-income residents. Monthly rent for these units, including utilities, is intended to be no more than 30% of income for tenants.

2017 Act 176 created a nonrefundable state housing tax credit intended to supplement a part of the federal credit for taxable years beginning after December 31, 2017. Under the program, WHEDA may award up to $7 million in tax credits annually (claimable for six years, for a total of $42 million). Credits are awarded through a competitive application process and are limited to $1.4 million per application. WHEDA also must give preference to developments located in cities, towns, or villages with populations fewer than 150,000. Property owners are eligible for the state LIHTC as long as: (a) the project meets low-income requirements of the federal LIHTC; (b) the development receives financing with tax-exempt bonding; (c) WHEDA determines the credit is necessary for the financial feasibility of the proposed construction; and (d) the development is compliant with federal nondiscrimination provisions. Property owners are required to maintain compliance with low-income and non-discrimination requirements for at least 15 years, although WHEDA has instituted a 30-year compliance period consistent with the federal LIHTC, and are subject to recapture provisions for noncompliance.

For further information about the federal and state LIHTC, see the Legislative Fiscal Bureau's informational paper entitled "Wisconsin Housing and Economic Development Authority."

Refundable Tax Credits

As discussed previously, a refundable tax credit is used first to offset gross tax liability in the current tax year and any excess amount of credit may be paid as a check to the claimant. For each of the credits described in this section, a business may also choose to apply some or all of the amount in excess of the claimant's tax liability in that year as an estimated payment towards the following year's tax liability.

Electronics and Information Technology Manufacturing Zone Credit. The EITM zone tax credit is intended to attract major business operations to Wisconsin. WEDC can certify businesses as eligible to claim a payroll tax credit over 15 years for up to an aggregate amount of $1.50 billion and a capital expenditure credit over seven years for up to an aggregate amount of $1.35

billion. In order for WEDC to certify a business as eligible to claim the credits, WEDC must contract with a business that begins operations in the EITM zone.

Zone Designation. WEDC cannot designate more than one EITM zone, and the zone cannot include any area outside this state. A zone designation can remain in effect for no more than 15 years.

In determining whether to designate an area as a zone, WEDC must consider: (a) 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; and (b) 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 greatest economic need.

Certification. In order for WEDC to certify a business as eligible to claim the EITM zone credits, WEDC must contract with a business that begins operations in an EITM zone. WEDC cannot certify a business as eligible to claim the payroll credits for services performed outside the state.

EITM Zone Contract. On November 10, 2017, WEDC entered into a contract to certify three Wisconsin corporations that are affiliated with Hon Hai Precision Industry Co., Ltd (Foxconn) as eligible to receive EITM zone credits (SIO International Wisconsin, Inc., FEWI Development Corporation, and AFE, Inc. [the Foxconn entities]). WEDC designated the EITM zone in the Village of Mount Pleasant in Racine County. The Foxconn entities did not earn credits under the original contract.

Later, WEDC and the Foxconn entities executed an amended contract dated April 20, 2021, restating the contract in its entirety such that the original agreement has no force and effect. Under the terms of the amended contract, WEDC certified an additional affiliated entity, FII USA, Inc., as eligible for EITM zone credits.

As shown in Table 1, the total EITM zone tax credits that can be earned under the amended contract is $80.0 million, consisting of $20.3 million of payroll credits and $59.7 million of capital expenditure credits (including $40.0 million for capital expenditures in 2020 through 2024 and $19.7 million in "performance" credits to account for prior capital expenditures if certain job targets are met in 2024 and 2025). In order to earn any credits in a year, the Foxconn entities must employ at least the minimum number of cumulative full-time jobs (80% of the target full-time employment) specified in Table 1 at an average annual wage of

Table 1: Disbursement Schedule for EITM Zone Credits under WEDC Contract

Year	Min. Cumulative Full-time Jobs Needed to Qualify	Target Cumulative Full-Time Employees	Maximum Payroll Credits	Maximum Capital Investment Credits	Maximum Performance Credits	Total Credits
2020	481	601	$2,200,000	$26,860,000	$0	$29,060,000
2021	747	934	3,500,000	4,825,000	0	8,325,000
2022	918	1,146	4,100,000	2,232,000	0	6,332,000
2023	1,042	1,303	5,000,000	3,743,000	0	8,743,000
2024	1,163	1,454	5,500,000	2,340,000	9,850,000	17,690,000
2025	1,163	1,454	0	0	9,850,000	9,850,000
			$20,300,000	$40,000,000	$19,700,000	$80,000,000

at least $53,875.

EITM Zone Payroll Credits. The EITM zone tax credit program provides a refundable payroll tax credit based upon 17% of the EITM zone payroll of full-time employees employed by the claimant. "Zone payroll" means the amount of state payroll that is attributable to wages paid to full-time employees for services that are performed in the zone or that are performed outside the zone, but within the state, and for the benefit of the operations within the zone.

"Zone payroll" does not include the amount of wages paid to any full-time employees that exceeds $100,000. A "full-time employee" means 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 offered to an individual who is required to work at least 2,080 hours per year.

Under the amended contract, an aggregate total of $20.3 million in payroll tax credits may be earned based on 17% of the zone payroll each year from 2020 through 2024. In calculating the average wage, wages exceeding $400,000 are not included. Table 1 shows the maximum amount of payroll credit available to be earned in a given year.

EITM Zone Capital Expenditure Credit. If WEDC determines that a certified business makes a significant capital expenditure in the EITM zone, it can certify the business to receive additional tax benefits in an amount to be determined by WEDC, but not exceeding 15% of the business's capital expenditures in the EITM zone in the taxable year. WEDC must, in a manner it determines, allocate the tax benefits a business is certified to receive over a period of seven years.

Under WEDC's amended contract with the Foxconn entities, an aggregate total of up to $40.0 million may be earned from 2020 through 2024, based on 10% of the amount of significant capital expenditures made during the year. "Significant capital expenditures" include machinery and equipment, land costs, land improvements, infrastructure improvements, furniture and fixtures, construction and improvement costs. Investments solely related to residential, restaurant, or retail property, or construction of such property, are not considered to be eligible capital expenditures.

In order to earn the maximum amount of EITM zone capital expenditure tax credits under the amended contract, the Foxconn entities must employ the target number of full-time jobs shown in Table 1 at the end of each year. If the Foxconn entities do not employ the target number of full-time jobs, the maximum available capital expenditure credit is proportionately reduced by the amount short of the jobs target.

Subject to meeting the minimum hiring targets and other terms of the amended contract, any unearned credits allocated for a year may be carried forward to be earned and verified in future years. Likewise, excess credits generated above the limit in a previous year may be carried forward to be verified in a future year to offset a shortfall of capital expenditures, or hiring full-time employees eligible for earning payroll credits, in that year.

Under the amended contract, the Foxconn entities, and their affiliate, may be eligible to earn up to a total of $19.7 million in additional performance credits based on their significant capital expenditures. In its staff review, WEDC indicated that, in 2018 and 2019 the Foxconn entities incurred $272 million in significant capital expenditures. However, no capital expenditures credits were earned under the terms of the original contract. Under the amended contract, if the Foxconn entities meet certain jobs targets, WEDC will verify the Foxconn entities to claim $33,848 in capital expenditure credits for each full-time employee employed by the Foxconn entities in 2024 that exceeds 1,163, up to a maximum of 1,454. That is, a maximum capital expenditure credit amount of

$9.85 million ($33,848 for each employee, up to a total of 291 employees). Likewise, the Foxconn entities may earn an additional $9.85 million in capital expenditure credits in 2025 based on a similar process and to claim credits unearned in 2024.

Verification. WEDC must annually verify, from a sample, the information submitted to it regarding the EITM zone tax credits. Further, under the amended contract with WEDC, the Foxconn entities are required to engage a certified public accountant to perform attestation of the annual reports submitted to WEDC. Specifically, the accountant reviews a sample of the significant capital expenditures and zone payroll claimed in the reports.

For tax year 2019, WEDC evaluated the Foxconn entities' annual performance reports and determined that they were not eligible for any EITM zone credits based upon activities conducted during 2018 or 2019. WEDC indicated by way of letter dated October 12, 2020, that the Foxconn entities had failed to carry out the project as defined under the EITM zone contract (a Generation 10.5 TFT-LCD fabrication facility) and also failed to employ the minimum required number of full-time jobs for the period (520).

Subsequently, the parties executed the amended contract, under which WEDC verified that the Foxconn entities were eligible to claim $28.8 million in EITM zone credits based on its activities in 2020 ($2.2 million payroll credit and $26.6 million capital expenditures). In 2022, WEDC verified an additional $8.6 million in credits based on the Foxconn Entities' activities in 2021 ($3.5 million payroll credit and $5.1 capital investment credit).

Enterprise Zone Credit. The enterprise zone program provides refundable tax credits that can be claimed for eligible expenses for increased employment, retaining employees, employee training, capital investment, and purchases from Wisconsin vendors. WEDC is responsible for designating enterprise zones, certifying taxpayers, allocating and verifying tax credits, and performing other general administrative functions related to the enterprise zone program.

Enterprise Zone Jobs Tax Credit. The enterprise zones jobs tax credit is provided to businesses that are certified by WEDC. The credit is calculated as follows:

a. Determine the lesser of: (1) the number of full-time employees that are employed in an enterprise zone whose annual wages exceed certain thresholds in the tax year, minus the number of full-time employees that were employed in the enterprise zone in the base year whose annual wages exceeded those thresholds; or (2) the number of full-time employees in the state whose annual wages exceed those thresholds in the tax year, minus the number of full-time employees in the state in the base year whose annual wages exceeded those thresholds.

In a Tier I (economically distressed) county or municipality, the wage threshold is the amount determined by multiplying 2,080 by 150% of the federal minimum wage ($22,620). In a Tier II county or municipality, the wage threshold is $30,000. The "base year" is the year prior to the year in which the enterprise zone was created.

b. Determine the claimant's average zone payroll (excluding wage amounts that are over $100,000) by dividing total wages for full-time employees in the zone whose annual wages exceed the applicable threshold, and who the claimant employed in an enterprise zone for the tax year, by the number of employees whose annual wages exceed those thresholds, and who the claimant employed in the enterprise zone in the tax year.

c. Subtract the applicable wage threshold from the amount determined under "b."

d. Multiply the amount determined under "c" by the number determined under "a."

e. Multiply the amount determined under "d" by a percentage determined by WEDC, not to exceed 7%.

In general, "full-time employee" means an individual who is employed in a regular, non-seasonal job and who is required to work at least 2,080 hours per year, including paid leave and holidays. An individual is also considered to be a full-time employee if the individual is: (a) employed in a job for which the annual pay is more than the amount determined by multiplying 2,080 by 150% of the federal minimum wage ($22,620); and (b) offered retirement, health, and other benefits that are equivalent to those benefits offered an individual who is required to work at least 2,080 hours per week.

"State payroll" means the amount of payroll apportioned to this state under the income/franchise tax apportionment rules for multi-state businesses that were in effect prior to the implementation of single sales apportionment in 2008. "Zone payroll" is defined as the amount of state payroll paid to full-time employees for services performed in the enterprise zone. "Zone payroll" does not include the amount of compensation paid to any individual that exceeds $100,000.

Economically distressed (Tier I) and non-distressed (Tier II) counties and municipalities are designated as such by WEDC. In making the designations, WEDC considers the most current area and state data available for the following indicators: (a) the unemployment rate, median per capita income, average annual wage, and other significant or irregular indicators of economic distress (such as natural disasters, plant closings, or layoffs), as reported by the Department of Workforce Development; (b) the percentage of families below the federal poverty line and the median family and household income, as reported by the U.S. Census Bureau; and (c) manufacturing assessment values by county, as reported by DOR.

For 2022-23, WEDC has designated 24 counties and the City of Milwaukee as Tier I. The remaining 48 counties are considered Tier II. Attachment III provides a map showing areas that have been designated as Tier I, which requires a business to meet the lower wage threshold for calculating the credit in 2022-23.

Job Retention Tax Credit. An additional tax credit can be claimed for an amount equal to the percentage, up to 7%, as determined by WEDC, of the claimant's zone payroll (excluding wage amounts that are over $100,000) paid in the tax year to full-time employees who were employed in the enterprise zone in the tax year and whose annual wages were greater than the applicable wage threshold described above, not including the wages paid to employees that are used to claim the enterprise zone jobs credit. The total number of employees has to be equal to, or greater than, the number of employees in the base year. Credit claims are limited to five consecutive years.

Retention of Financial Services Technology Business. A credit may be claimed for the percentage, as determined by WEDC, of the claimant's zone payroll paid in the 12 months prior to the certification date to the claimant's full-time employees in the enterprise zone whose annual wages are greater than the amount determined by multiplying 2,080 by 150% of the federal minimum wage ($22,620) in a Tier I county or municipality or greater than $30,000 in a Tier II county or municipality. The amount that the claimant can claim for a taxable year cannot exceed $2 million. A claimant can claim the credit for no more than five consecutive taxable years.

For this credit, WEDC may certify no more than one financial services technology business as eligible to receive this credit. This credit was authorized under 2017 Act 58 and was intended to assist Fiserv, Inc. As of December 1, 2022, WEDC has not entered into an enterprise zone tax credit contract with Fiserv, Inc.

Training Component. A supplemental credit may be claimed for up to 100% of the amount paid in the tax year to upgrade or improve the job-related skills of any of the claimant's full-time employees, to train any of the claimant's full-time employees on the job-related use of new technologies, or to provide job-related training to any full-time employee whose employment with the claimant represents the employee's first full-time job. The training must be provided to employees who work in the enterprise zone. Eligible training costs include: (a) cost of the trainer; (b) cost of the training materials; (c) wages of the trainee while in a classroom setting; and (d) either the cost of the trainer or wages of the trainee in an on-the-job or job shadowing setting. Eligible training costs do not include travel expenses, food, and lodging.

Significant Capital Expenditures. A tax credit is provided equal to an amount determined by WEDC, but not exceeding 10% of the claimant's significant capital expenditures in the enterprise zone. A significant capital expenditure is a capital investment in excess of $10 million in a WEDC-designated enterprise zone beyond a certified business's normal capital expenditures that is needed to achieve a specific purpose agreed upon by WEDC.

Purchases from Wisconsin Suppliers. A tax credit may be claimed for up to 1% of the amount the claimant paid in the tax year to purchase goods or services from Wisconsin vendors, as determined by WEDC. A claimant cannot claim the credit for expenditures also used to claim the enterprise zone significant capital expenditures credit.

Enterprise Zone Designation and Certification. There is no specific limit on the number of enterprise zones which WEDC may designate. However, each designation is subject to approval by the Joint Committee on Finance under a 14-day passive review process. WEDC is required to notify the Joint Committee on Finance, in writing, of its intent to designate a new enterprise zone. The notice must describe the new zone and the purpose for which WEDC proposes to designate the new zone. As of December 7, 2022, there were 21 active zones.

In determining whether to designate an area as an enterprise zone, WEDC is required to consider: (a) specified indicators of the area's economic need, such as data regarding household income, average wages, and job losses; and (b) the effect of designation on other initiatives and programs to promote economic and community development in the area, including job creation/retention, job training, and creating high-paying jobs. WEDC also considers: (1) whether the project might not occur without the allocation of tax credits; (2) the extent to which the project will increase employment in the state; (3) the extent to which the project will increase economic growth in the state; (4) the extent to which the project will increase the geographic diversity of the available tax credits throughout the state; (5) the financial soundness of the business; and (6) any previous financial assistance the business has received from the former Department of Commerce (Commerce) or WEDC. A zone designation cannot last more than 12 years.

WEDC is required to designate as enterprise zones at least three areas comprised of political subdivisions with populations of fewer than 5,000. This includes zones for Brakebush Brothers, Inc. in the Village of Westfield (active) and Saputo Cheese USA in the Village of Almena (closed). As of September 30, 2022, there is no such third zone. WEDC is also required to designate zones in two areas comprised of political subdivisions with populations between 5,000 and 30,000. This includes zones for Hewlett Packard Enterprise Company in the City of Chippewa Falls (active) and Weather Shield Mfg., Inc. in the City of Medford (closed).

In practice, enterprise zone credits have been awarded on the basis of specific projects to individual businesses, rather than awarding credits to businesses located in a specific geographic area.

Eligible businesses that conduct operations in an enterprise zone and that are certified by WEDC can claim the refundable enterprise zone tax credits. The business must enter into a contract with WEDC, which includes penalties for non-compliance, prior to WEDC certification or verification. WEDC may certify for tax benefits any of the following:

a. A business that begins operations in an enterprise zone.

b. A business that relocates to an enterprise zone from outside the state, if the business offers compensation and benefits to its employees working in the zone for the same type of work that are at least as favorable as those offered outside the zone.

c. A business that expands its operations in an enterprise zone, increases its personnel by at least 10%, and enters into an agreement with WEDC to claim tax benefits only for years during which the business maintains the increased level of personnel. The business must offer compensation and benefits for the same type of work to its employees working in the enterprise zone that are at least as favorable as those offered to its employees working in Wisconsin, but outside the zone.

d. A business that expands its operations in an enterprise zone, and makes a significant capital investment in property located in the enterprise zone, if: (1) the business enters into an agreement with WEDC to claim tax benefits only for years during which the business maintains the capital investment; and (2) the business offers compensation and benefits for the same type of work to its employees working in the zone that are at least as favorable as those offered to employees working in Wisconsin, but outside the zone.

e. A business that retains jobs in an enterprise zone, but only if the business makes a significant capital investment in property located in the zone, and at least one of the following applies: (1) the business was a manufacturer with a significant supply chain in Wisconsin; or (2) more than 500 full-time employees were employed by the business in the enterprise zone.

f. A business that is located in an enterprise zone and purchases items or services from Wisconsin vendors.

g. No more than one financial services technology business that, after completing a competitive corporate relocation process, retains its corporate headquarters in this state and retains at least 93% of its full-time employees in this state who were identified as being full-time employees of the business in the base year, as determined by WEDC.

Certain businesses are ineligible to be certified to receive the enterprise zones credit unless extraordinary circumstances, as determined by WEDC, exist. This includes: (a) payday loan and title loan companies; (b) telemarketing other than inbound call centers; (c) pawn shops; (d) media outlets; (e) retail; (f) farms; (g) primary care medical facilities; (h) financial institutions; and (i) the hospitality industry.

As shown in Attachment IV, contracts have ranged from $70.5 million over a 12-year period for Milwaukee Electric Tool Corporation to $3.0 million over a four-year period for Saputo Cheese USA. The Joint Committee on Finance most recently approved the creation of a new enterprise zone by letter dated February 15, 2021, for the award of credits in the amount of $8.0 million to Hewlett Packard Enterprise Company for job retention activities to be conducted through 2024. As of December 7, 2022, WEDC or Commerce has entered into contracts to award up to $884.8 million in enterprise zone tax credits from 2009 through 2029.

Closing and Terminating Zones. Attachment IV includes 12 zones that, according to WEDC, have closed. For example, zones for Uline, Inc. ($18.6 million) and InSinkErator ($15.5 million) closed after their durations were completed. Further, the earning period has closed for three zones, but they remain open to allow for a reporting period and other administrative reviews.

Other zones were terminated prior to the completion of their duration. Zones designated for Bucyrus International, Inc., W. Solar Group, Inc., Kestrel Aircraft Company, Inc., and Direct Supply, Inc., closed for performance reasons. Bucyrus International, Inc. failed to create and retain the jobs required by its contract, and thus WEDC revoked $5,086,950 (55%) of the tax credits the company received under the contract. Kestrel Aircraft Company, Inc. failed to provide its contractually obligated performance reporting requirements. On August 8, 2018, WEDC revoked $717,500 (75%) of the tax credits Kestrel received under the contract. W. Solar Group, Inc. did not meet the contractual requirement of locating its business in Wisconsin. On June 21, 2017, WEDC revoked $320,000 (100%) of the tax credits W. Solar received under the contract. WEDC collected the tax credit amounts revoked from Bucyrus International, Inc., and referred Kestrel Aircraft Company, Inc. and W. Solar Group, Inc. to DOR to pursue the recoupment of any ineligible tax benefits the companies may have claimed and to cancel any future credit claims. The zone for Direct Supply, Inc. was revoked September, 2021, before any credits had been earned. Due to complications related to the COVID-19 pandemic, Direct Supply, Inc. requested the zone to be terminated.

Verifying and Claiming Credits. Pursuant to the terms of the contract, a business may receive a verification letter from WEDC upon completion of the Wisconsin investment in order to claim the credits from DOR. Prior to filing for tax credits, claimants must file with WEDC an annual project report that includes: (a) the status of the certified business project, which may include the number of jobs created; (b) the number of employees in full-time jobs who are trained (if applicable) and documentation of eligible training costs; (c) the total amount of capital investments, including documentation; and (d) other supporting information relating to tax credits to be claimed by the certified business.

Businesses may not claim enterprise zone tax credits to the extent the basis for the credit is the basis for another tax credit claimed by the business.

As shown in Attachment IV, as of December 7, 2022, WEDC has verified $458.3 million (68.5%) of the total $669.3 million awarded in the currently open zones as eligible to be claimed as tax credits from DOR based upon the performance of the certified businesses amount. For the closed zones, WEDC verified $136.8 million (63.5%) of the total $215.5 million awarded. Overall, WEDC has verified $595.1 million of the $884.8 million in credits awarded (67.3%) under the enterprise zone tax credit program.

Refundable Research Credit. Up to 15% of the research credit may be claimed as a refundable tax credit for taxable years beginning after December 31, 2020. The calculation and computation of the research tax credit is described on page 7 of this paper.

Business Development Credit. The refundable business development tax credit can be claimed for eligible expenses for increased employment, retaining employees, employee training, capital investment, and corporate headquarters location or retention in Wisconsin. WEDC is responsible for certifying businesses as eligible to receive credits, verifying eligible activities to claim credits from DOR, and performing other general administrative activities related to the business development tax credit program.

Job Creation and Job Retention Credits. Certified businesses can earn a credit for up to 10% of the amount of wages paid to an eligible employee (full-time job) in a tax year. If the employee is employed in a full-time job at the claimant's business in an "economically distressed area," as determined by WEDC, an additional credit may be awarded for up to 5% of such wages. WEDC uses the same definition for an "economically distressed area" as described under the enterprise zone tax credit program and is shown in Attachment IV.

"Full-time job" is defined the same as under the enterprise zone tax credit program. Initial training before an employment position begins is excluded from the definition of a full-time job.

In general, WEDC certifies a business for credits based on the number of jobs projected to be created over a three-year period. Certified businesses can earn the credits over three years based on the increase in wages in each year compared to the prior year at the project locations for which the award is made, subject to annual verification. Businesses that receive credits based on job creation must maintain those jobs for a period of five years from the date on which the business was certified as eligible to earn job creation tax credits. Credits cannot be earned for wages over $100,000 per year.

According to WEDC, it generally does not award credits for jobs retained. However, in cases where WEDC does award credits for jobs retained, the credits are calculated based on the certified business's "baseline" wages, and the credits can be earned on an equal basis over a three-year period. A certified business's baseline equals the number of its full-time employees during the 12-month period immediately preceding the certification date. Projects certified for job retention credits have a baseline based on statewide employment, as well as project-specific employment.

Job Training Credit. A business may be certified to receive tax credits for up to 50% of eligible training costs, as determined by WEDC, to undertake activities to enhance an employee's general knowledge, employability, and flexibility in the workplace; develop skills unique to the person's workplace or equipment; or develop skills that will increase the quality of the business's product. Eligible training costs are: (a) the cost of the trainer; (b) the cost of the training materials; or (c) the wages of the trainee while in a classroom setting, on-the-job, or job shadowing. Travel expenses, food, and lodging are not eligible training costs.

Training activities must be related to the certified project and not for activities that allow an employee to function within the day-to-day operations of the business or for general business growth. Activities that are ineligible for credits include orientation or training on a business process management system. For job training credits verified by WEDC and awarded to a certified business, the full-time job must be maintained for a period of five years following the business's certification date.

Capital Investment Credit. WEDC can certify businesses to earn a credit for up to 3% of the business's personal property investment and for up to 5% of a new real property investment that is made in a capital investment project of $1 million or more. For projects involving a capital investment of less than $1 million, the investment must be equal to at least $10,000 per eligible employee employed in the project for the business to be eligible to receive a capital investment credit.

Corporate Headquarters Credit. A certified business can earn an amount, as determined by WEDC, equal to a percentage of the amount of wages that the business paid to an employee in an eligible position in the taxable year. The eligible position must be created or retained in connection with the business's location or retention of its corporate headquarters in Wisconsin, and the job duties associated with the eligible position involve the performance of corporate headquarters functions.

Under WEDC's policies and procedures, a certified business can earn corporate headquarters credits for up to 10% of the annual wages of eligible positions created or retained in connection with a corporate headquarters location/retention in Wisconsin. Credits cannot be earned for wages over $100,000 per year. In general, for jobs created in connection with the credit, a business is certified by WEDC to earn the credit over a three-year period based on projected full-time job creation over that three-year period. The credit is earned based on the year-over-year increase in wages at the project location, subject to annual verification. Once the credits are verified by WEDC and awarded to the business, the jobs must be maintained for a period of five years from the business's certification date. Job retention credits are calculated based on the "baseline" wages (calculated the same as described under the business development job creation and job retention credits) and are earned on an equal basis over three years.

General Provisions. In order to be certified to receive any of the business development tax credits, a person must operate or intend to operate a business in this state and enter into a contract with WEDC. Certifications can remain in effect for up to 10 years. A certified business is eligible to receive tax benefits if, in each year the business claims the credit, it increases net employment in Wisconsin above the level during the year before the person was certified, as determined by WEDC under its policies and procedures. There is no limit on the number of businesses that may be certified as eligible to receive business development tax credits.

When businesses apply to be certified under the program, WEDC evaluates applications based on certain factors, including: (a) whether the project would occur without the allocation of credits; (b) the extent to which the project will increase employment, contribute to economic growth, and increase geographic diversity of available business development tax credits in Wisconsin; (c) the financial soundness of the business; and (d) any previous financial assistance the applicant received from Commerce or WEDC. The applicant must offer all eligible full-time positions that are filled as part of the eligible project compensation that includes health insurance benefits where the employer must cover at least 50% of the employee's health care costs, or other equivalent health insurance benefits that are acceptable to WEDC.

Certain businesses are ineligible to be certified to receive the business development credit. If a business is considered an "ineligible business" for purposes of the enterprise zone credit, that business is also considered ineligible for purposes of the business development credit.

In general, WEDC limits the total amount of credits that a certified business may receive for an eligible project by calculating the greater of the maximum amount the business would receive under either the job creation or capital investment portion of the credit. A business may be awarded credits in excess of this limit if the project meets any of the following criteria: (a) it is located in an economically distressed area; (b) it locates or retains a corporate headquarters in Wisconsin; (c) a business relocates to Wisconsin; (d) 50% of eligible employee wages are greater than 400% of the federal minimum wage ($29 per hour); (e) WEDC determines that the industry jobs multiplier is greater than 2.0; or (f) WEDC's Awards Administration Committee of the Board of Directors approves any other criteria.

State law permits WEDC to allocate up to $22 million in business development tax credits annually. Any unused allocation can be carried forward to future tax years. WEDC may request the Joint Committee on Finance for an increase of up to $10 million annually for the amount of business development credits that may be allocated. Based upon previous allocations and contract awards in calendar year 2022 through December 7, it is estimated that WEDC would carry over an unused balance of $24.7 million into 2023 (assuming no awards are made in the remainder of this year). WEDC could allocate up to $46.7 million in the 13 months beginning December of 2022 through December of 2023.

Farmland Preservation Credit. Individual and corporate owners of farmland participating in DATCP's farmland preservation program receive refundable tax credits of $5 to $10 per acre of farmland. The farmland preservation program provides tax credits in exchange for restriction of land to agricultural uses and implementation of environmentally sensitive agricultural practices, with credit amounts varying based on the level of program participation. An older version of the farmland preservation tax credit provided credits on the basis of a claimant's property taxes and income, and was discontinued to new participants in 2009. For more information on the farmland preservation tax credit, see the Legislative Fiscal Bureau's informational paper entitled, "Farmland Preservation Program and Tax Credits."

LAB Program Evaluation

Current law requires the Legislative Audit Bureau (LAB) to biennially conduct a financial audit of WEDC and a program evaluation of its economic development programs. In Report 21-7, LAB indicated that the full number of jobs created or retained from 2011-12 through 2019-20 cannot be fully determined due to data collection and verification deficiencies in the administration of tax credit programs in prior years. In more recent years, WEDC has collected more detailed information about the creation and retention of jobs. However, this information is not collected after the contract period ends. Further, information is not collected from recipients of other tax credits (such as capital expenditure credits) on the creation of other positions that may not have been filled if not for the award of tax credits. Thus, it is not possible to review direct evidence of the long-term effects individual tax credit awards have on job creation.

Of a sample of 112 tax credit awards that ended from 2011-12 through 2019-20 for which job verification data is available, LAB found that the recipients of job creation credits created 2,494 jobs (26%) instead of the contractual maximum of 9,648 jobs that had been contracted to be created. For 100 tax credit awards for job retention during this time period, LAB found that the recipients retained 9,194 (52%) of the 17,596 jobs planned to be retained.

When WEDC determined that a recipient did not create or retain all the contractually required jobs, WEDC reduced the amount of credits available under the award. Generally, when a contractual requirement is not met, WEDC may enforce the provision and reduce an award, terminate some awards, and, alternatively, modify contract provisions to provide additional time for performance.

Based on 40 tax credit awards identified in Report 21-7 which reached a contractually specified completion date and resulted in recipients claiming a tax credit for creating jobs, credit claimants created an estimated 2,460 jobs at an average cost per job created of $3,791. Credit claimants retained 1,816 jobs at an average cost of $1,673 per job retained.

ATTACHMENT I

Business Tax Credits Used in Tax Year 2019

	Number of Claimants	Total Credits Used	Average Credit Used Per Claimant
Credits Available in Tax Year 2023			
Angel Investment	470	$6,122,975	$13,028
Business Development	235	7,773,680	33,079
Community Rehabilitation	113	1,083,548	9,589
Early Stage Seed Investment	265	3,435,737	12,965
Employee Savings Account	--	--	N.A.
Enterprise Zones	336	75,509,313	224,730
Farmland Preservation 2010 and Beyond	10,760	16,426,979	1,527
Insurance Security Fund Assessment	71	253,796	3,575
Low-Income Housing	--	--	N.A.
Manufacturing & Agriculture - Agriculture	4,616	14,760,141	3,198
Manufacturing & Agriculture - Manufacturing	6,670	339,294,428	50,869
Pre-2010 Farmland Preservation	718	452,352	630
Refundable Research Credit	2,108	12,098,411	5,739
Research Expense (incl. Energy Eff. and Engine research)	3,816	74,823,516	19,608
Shared Research	797	18,852,858	23,655
Supplement to the Federal Historic Preservation	72	47,704,062	662,556
Credits That Are No Longer Available			
Dairy and Livestock	1,892	3,830,421	2,025
Economic Development	61	3,392,286	55,611
Manufacturing Investment	106	1,707,052	16,104
Research Facility (incl. Energy Eff. and Engine research)	--	1,605,221	N.A.
Other Credits*	N.A.	2,349,937	N.A.
Total Credits Used in Tax Year 2019**		$632,195,362	

- To protect taxpayer confidentiality, some data (denoted with "--") has been suppressed.

* Includes the following credits used: (a) biodiesel fuel production; (b) development opportunity zones; (c) electronic medical records; (d) film production services; (e) health insurance risk-sharing plan assessments; (f) internet equipment; (g) manufacturer's sales tax; and (h) jobs. Separate lines have been suppressed into one line in order to protect taxpayer confidentiality.

** Totals are not shown for the number of claimants or average claim per claimant because a taxpayer may claim multiple credits. Totals shown include suppressed amounts of credit used.

Source: Department of Revenue Aggregate Statistics and the Office of the Commissioner of Insurance

ATTACHMENT II

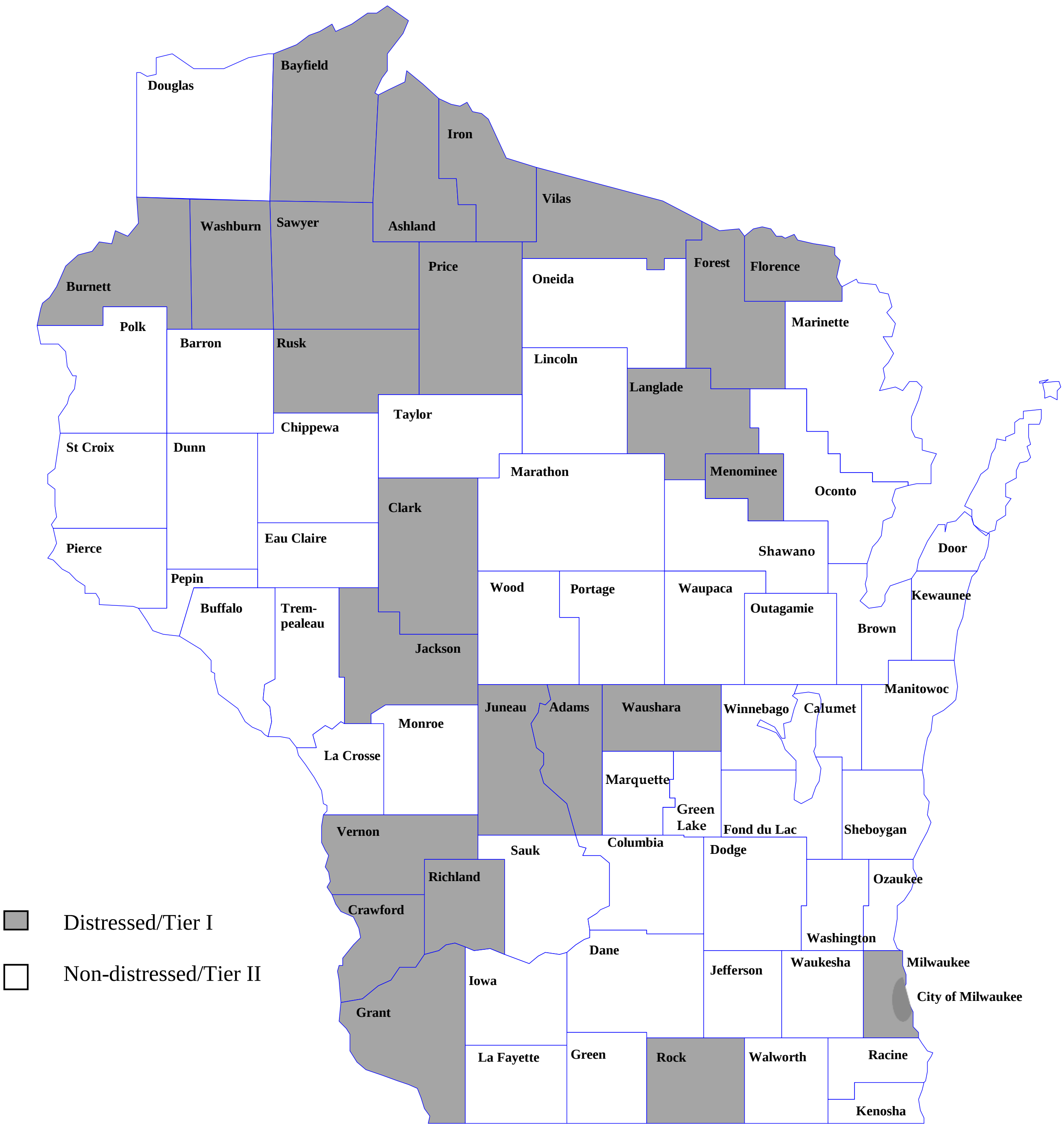
2021-22 Expenditures for Refundable Business Tax Credits

Credits Available in Tax Year 2023	
Enterprise Zone Jobs Credit	$77,550,378
Farmland Preservation Credit, 2010 and Beyond	16,441,680
Business Development Credit	5,395,662
Refundable Research Credit	13,112,849
Electronic and Information Technology Manufacturing Zone Credit	0
Credits that are No Longer Available	
Jobs Tax Credit	2,118,932
Total 2021-22 Refundable Credits	$114,619,501

Source: Department of Revenue

ATTACHMENT III

Distressed/Tier I and Non-Distressed/Tier II Counties and Municipalities under Certain Tax Credit Programs (2022-23)



Source: Wisconsin Economic Development Corporation, September 2022

ATTACHMENT IV

Enterprise Zone Awards Contracted by WEDC
(Millions)

Certified Business	Contracted Amount of Credits	Year Awarded	Years Over Which Credits Have Been Allocated	Credits Verified (Thru 12/7/22)
Open Zones				
Milwaukee Electric Tool Corporation	$70.5	2016	2016-2027	$31.7
Mercury Marine*	65.0	2010	2010-2021	65.0
Kohl's Corporation	62.5	2012	2011-2021	42.7
Green Bay Packaging Inc. - Mill Division	60.0	2018	2018-2029	55.5
Komatsu Mining Corp.	59.5	2018	2017-2028	38.7
Oshkosh Corporation*	55.0	2010	2009-2020	55.0
Fincantieri Marine Group LLC*	42.0	2011	2010-2021	42.0
Kimberly-Clark Corporation	28.0	2018	2019-2023	15.4
Exact Sciences Corporation	27.5	2015	2014-2025	10.7
Kwik Trip, Inc	26.0	2017	2017-2022	21.3
Molson Coors Beverage Company	25.0	2020	2020-2027	7.2
Haribo of America Manufacturing LLC	22.5	2017	2017-2028	8.6
U.S. Venture, Inc.	20.0	2017	2017-2023	5.1
Generac Power Systems Inc	19.0	2017	2017-2024	10.5
DRS Power & Control Technologies, Inc.	18.5	2018	2018-2025	9.8
Amazon.com Services, Inc.	17.8	2014	2014-2024	9.0
Northstar Medical Technologies, LLC	14.0	2011	2011-2022	10.1
Johnsonville Sausage, LLC	11.5	2017	2017-2023	10.6
ATI Ladish LLC	10.5	2018	2018-2027	6.2
Hewlett Packard Enterprise Company	8.0	2021	2020-2024	1.6
Brakebush Brothers, Inc.	6.5	2017	2017-2022	1.6
Subtotal Open Zones	$669.3			$458.3
Closed Zones				
Quad Graphics, Inc.	$55.9	2010	2010-2019	$55.7
W. Solar Group, Inc.	28.0	2010	2010-2021	0.3**
Direct Supply, Inc.	22.5	2016	2017-2023	0.0**
Bucyrus International, Inc.	20.0	2010	2010-2019	9.2**
Uline, Inc.	18.6	2010	2010-2018	18.4
Kestrel Aircraft Company, Inc.	18.0	2012	2012-2019	0.7**
InSinkErator	15.5	2012	2014-2018	15.5
Plexus Corp.	15.0	2011	2012-2019	15.0
Weather Shield Mfg., Inc.	8.0	2013	2013-2019	8.0
Trane US Inc.	5.5	2014	2013-2018	5.5
Dollar General Corporation	5.5	2016	2016-2020	5.5
Saputo Cheese USA	3.0	2017	2016-2019	3.0
Subtotal Closed Zones	$215.5			$136.8
Grand Total	$884.8			$595.1

* The time period for earning credits under the contract is complete, but the zone remains temporarily open for further administrative reviews and reporting.

** WEDC terminated four zones designated for Bucyrus International, Inc., W. Solar Group, Inc., Kestrel Aircraft Company, Inc., and Direct Supply, Inc. prior to the end of the contract term for various performance reasons. Certain amounts shown as verified were later revoked.

Source: Wisconsin Economic Development Corporation