Legislative Fiscal Bureau
One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: http://legis.wisconsin.gov/lfb

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Repeal Obsolete Tax Credits and Appropriations
(General Fund Taxes -- Income and Franchise Taxes)

CURRENT LAW

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. 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.

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 for certain credits (most business credits) can be carried forward and claimed in future years. In some cases, unused credits can be sold or otherwise transferred to other taxpayers. Nonrefundable credits available to individuals typically cannot be carried forward for use in future years.

The tax credits described below were previously available to be used under the individual income tax, corporate income/franchise tax, and/or insurance premiums tax. These credits have been sunset under prior acts of the Legislature and can no longer be claimed to offset tax. However, the credits remain enumerated in the statutes. In general, a taxpayer can amend a tax return from a prior year to timely claim a credit within four years of the unextended due date for that taxable year.

Refundable Tax Credits. Under the individual income tax and the corporate income/franchise tax, the refundable farmland tax relief credit was sunset after tax year 2009.

Claims for farmland tax relief credits were paid from: (a) a sum sufficient GPR appropriation prior to the 2000 budget; (b) a sum sufficient SEG appropriation using lottery fund revenues prior to tax year 2009, but not during 1999-00; and (c) an all monies received PR appropriation from tribal gaming revenues. The last date a taxpayer could amend their return to timely claim the credit was April 15, 2015. Base funding of $0 is provided for each of these appropriations.

The earned income tax credit (EITC) has not been sunset and is available under current law. However, the statutes enumerate prior iterations of the credit that were available to individuals through tax years 1993, 1994, 1995, and 2010. The last date an individual could amend their return to timely file any of the previously authorized EITC claims was March 15, 2016.

Nonrefundable Tax Credits for Individuals. The statutes provide a nonrefundable personal exemptions credit for natural persons under the individual tax for tax years 1986 through 1999. The personal exemptions credit was sunset and replaced with personal exemptions beginning in tax year 2000. No personal exemption credit could be claimed after tax year 1999. The last date an individual could amend their return to timely claim the credit was March 15, 2005.

State law also provided a nonrefundable community development finance authority credit under the individual income tax, which was sunset after tax year 2013. Unused credits for individuals could not be carried forward and claimed after that year. The last date an individual could amend their return to timely claim the credit was March 15, 2019.

Nonrefundable Tax Credits for Businesses. Under the corporate income/franchise tax, the nonrefundable relocated business credit was sunset after tax year 2013, except that a claimant who was first eligible to claim a credit in tax year 2013 could claim the credit in tax year 2014. Unused relocated business credits could not be carried forward for use in future tax years. The last date a taxpayer could amend their return to timely claim the credit was April 15, 2020.

The airport development zones credit was available to eligible businesses that were certified by the former Department of Commerce (Commerce) as eligible to receive the credit prior to March 6, 2009. The airport development zones credit was consolidated under the economic development tax credit under 2009 Act 2. However, Commerce did not certify any businesses as eligible to receive the airport development zones credit prior to March 6, 2009.

Insurance companies subject to the insurance premiums tax were eligible to claim the credit for certified capital investment companies (CAPCOs) certified by Commerce for ten years, beginning with the year of the certified capital investment. All credit certifications were completed by Commerce in 1999. Credits claimed but not used to offset the premiums tax could be sold to another insurer or could be carried forward indefinitely for use in future tax years. However, the credit has not been used to offset the premiums tax since tax year 2012.

DISCUSSION POINTS

1. Tax credits are generally sunset, rather than repealed, to allow eligible claimants to claim the credit when timely filing a return or an amended return. For refundable credits, the appropriations

must be retained after the sunset date to pay credits claimed on amended returns. A return can be amended within four years after the unextended due date to which the claim relates. For example, the majority of individuals, and most corporate filers, have a tax year that coincides with a calendar year. If a claimant claimed the refundable farmland tax relief credit in tax year 2009 (the last year to claim the credit), the unextended due date for that return would be the 15^{th} day of the fourth month following the close of the tax year (April 15, 2010) for an individual and the 15^{th} day of the fifth month following the close of the tax year for a corporate filer (May 15, 2010). These taxpayers may file an amended return to claim the credit for up to four years beyond the unextended due date of the tax year. As a result, an eligible claimant whose tax year coincides with a calendar year could file an amended return to claim the farmland tax relief credit until April 15, 2014 for an individual filer (May 15, 2014 for a corporate filer).

2. However, many corporations, and some individuals, have a tax year that does not align with a calendar year. For example, a corporate filer that claimed the relocated business credit in tax year 2014 (the last year to claim the credit) that had a tax year beginning on December 1, 2014, could timely file their return by April 15, 2016, and could file an amended return to claim the credit through April 15, 2020.

3. With the exception of the credit for CAPCOs, each of the credits identified above no longer allow amended returns to claim the credit and could be repealed without any impact on taxpayers that file an income tax or franchise tax return [Alternative 1].

4. The credit for CAPCOs authorizes the indefinite carryforward of unused credits under the insurance premiums tax. As noted, the credit has not been claimed since tax year 2012. According to records maintained by the Office of the Commissioner of Insurance (OCI), three companies have unused credits totaling $142,000. However, these companies have not claimed a credit against the premiums tax since processing year 2008-09. The Committee could consider whether the statutes should be maintained indefinitely, or whether the credit should be repealed effective January 1, 2023 [Alternative 2]. The delayed repeal date would allow an additional year and a half for these companies to either: (a) claim the credit against premiums taxes when filing a return for tax year 2021; (b) file an amended return to claim and use the credit against taxes paid in a previous year; or (c) sell the credit to another insurance company that could use the credit to offset its premiums taxes.

5. According to the Legislative Reference Bureau, if the Committee chose to repeal the tax credit statutes and appropriations identified above, the number of printed pages of the statutes would be reduced by approximately 14 pages.

ALTERNATIVES

1. Repeal the GPR, SEG, and PR appropriations and associated statutory language related to the farmland tax relief credit. Repeal the nonrefundable tax credit statutes associated with the airport development zones credit, personal exemptions for natural persons credit, and relocated business credit. Repeal the nonrefundable community development finance credit statutes under the individual income tax. Repeal the EITC statutes that were sunset after tax years 1993, 1994, 1995, and 2010.

2. Adopt Alternative 1. In addition, repeal the nonrefundable tax credit statutes associated with the credit for certified capital investment companies on January 1, 2023.

3. Take no action.

Prepared by: Sean Moran