Clearinghouse Rule 09-063

ORDER OF THE DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 100 relating to tax incentives for job creation, capital investment, employee training and corporate headquarters, and affecting small businesses.

****

Rule Summary

1. Statutes Interpreted.

Sections 560.70 (2m) (b) and 560.701 to 560.706 – as created by 2009 Wisconsin Act 2.

2. Statutory Authority.

Sections 227.11 (2) (a), 560.70 (2m) (b) and 560.706 (2).

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.70 (2m) (b) authorizes the Department to promulgate rules specifying circumstances where a full-time job may consist of fewer than 2,080 hours per year. Section 560.706 (2) requires the Department to promulgate rules for implementing sections 560.701 to 560.706 of the Statutes, as created by 2009 Act 2, relating to tax incentives for job creation, capital investment, employee training, and corporate headquarters.

4. Related Statute or Rule.

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin. For example, sections 560.70 to 560.7995 of the Statutes and chapters Comm 107, 112 and 118 address tax-benefit programs for community development zones, development opportunity zones, enterprise development zones, agricultural development zones, enterprise development zones, technology zones and airport development zones. The changes to chapter 560 of the Statutes that were included in 2009 Wisconsin Act 2 and the rules which are the subject of this order will consolidate five of the Department's development-zone tax-credit programs into a single, statewide program.

5. Plain Language Analysis.

The rules in this order (1) specify hourly wage ranges and health insurance benefits, and corresponding tax credits for businesses that create full-time jobs having those wages and benefits;

(2) define which capital investments are significant, and specify tax credits that may be allocated to those investments; (3) define which employee training is eligible for tax credits, and specify tax credits that may be allocated to that training; (4) define which business offices are corporate headquarters, and specify tax credits that may be allocated to those offices; (5) establish a methodology for designating economically distressed areas; (6) specify additional tax benefits for businesses in economically distressed areas and benefiting members of targeted groups; (7) establish policies, criteria and methodology for reserving a portion of available tax benefits to rural areas; (8) establish policies, criteria and methodology for reserving a portion of available tax benefits to small businesses; (9) establish policies and criteria for certifying a business that may be eligible for tax benefits equal to or greater than $3 million; (10) establish policies and criteria for allocating tax credits beyond the general limits that are otherwise specified; (11) establish a minimum time period for maintaining positions that are created, retained or trained as a result of the tax credits addressed by these rules; and (12) establish the application, certification, verification, reporting, filing and contract procedures for the tax credits addressed by these rules.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

In researching federal tax incentives, the Department and the Department of Revenue found that there are no tax credits at the federal level which are exactly like the corresponding credits in 2009 Wisconsin Act 2. The following two federal tax credits may apply to the activities under section 560.702 of the Statutes which are addressed by the rules, but these federal tax credits are structured differently than the credits in Act 2.

Job creation that is eligible for tax benefits under section 560.702 (1) of the Statutes may also qualify for the federal consolidated Work Opportunity Tax Credit – which includes tax credits for an employer that hires an individual who is: (1) a qualifying Hurricane Katrina employee, (2) a member of a qualifying family with long-term or recent receipt of Temporary Assistance to Needy Families payments, (3) a qualifying food stamp recipient, (4) a qualifying veteran, (5) a qualifying ex-felon, (6) a resident of a designated community, (7) a qualifying summer youth employee, (8) a qualifying recipient of vocational rehabilitative services, or (9) a qualifying recipient of Supplemental Security income.

Capital investments that are eligible for tax benefits under section 560.702 (2) of the Statutes may also qualify for the federal Investment Credit – which includes tax credits for any qualifying rehabilitation of older structures, solar or geothermal energy equipment, advanced coal projects, and gasification projects.

7. Comparison With Rules in Adjacent States.

Michigan

Michigan has several tax credit and tax abatement programs targeting specific business activities – development, manufacture and commercialization of advanced batteries; brownfield clean-up; manufacturers seeking defense contracts; promotion of renewable energy operations; tool and die operations; agricultural processing facilities; and forest products processing facilities. None are comparable to the new tax credit program addressed by the rules in this order.

The Michigan Economic Growth Authority Job Creation Tax Credits and Job Retention Tax Credits may be awarded for up to 20 years and up to 100 percent of an amount equal to the salaries and wages and employer-paid health care benefits multiplied by the personal income tax rate.

Minnesota

Minnesota's Job Opportunity Building Zone program offers a variety of tax exemptions and tax credits to businesses beginning operations in a designated zone, expanding in a zone, relocating to a zone from another state or relocating to a zone from another Minnesota location if employment is increased by five jobs or 20 percent, whichever is greater, within the first full year of operation in the zone. Businesses may qualify for exemptions to corporate franchise taxes, and income taxes for operators or investors, including capital gains taxes; sales taxes on goods and services used in the zone; property taxes on commercial and industrial improvements; and wind energy production taxes. The program also includes a refundable job credit that is calculated in much the same manner as Wisconsin's Enterprise Zone job credit.

Iowa

Iowa's Enterprise Zone program offers businesses a local property tax exemption of up to 100 percent of the value added to the property for up to 10 years; a refund of state sales, service or use taxes paid to contractors during construction; and an investment credit of up to 10 percent of the qualifying investment, amortized over 5 years.

Iowa's High Quality Job Creation program offers businesses various combinations of the following: a local property tax exemption of up to 100 percent of the value added to the property for up to 20 years; a refund of state sales, service or use taxes paid to contractors during construction; and an investment credit equal to a percentage of the qualifying investment, amortized over 5 years.

Illinois

The Illinois Economic Development for a Growing Economy (EDGE) program offers tax credits as high as the amount of tax receipts collected from state income taxes paid by newly-hired or retained employees as pertaining to the project. Each project must add to the export potential of Illinois, involve capital investment of at least $5 million and create at least 25 new jobs, or meet requirements set forth by the Illinois Department of Commerce and Economic Opportunity. EDGE credits are available for up to 10 years for each project. Jobs and capital investments must be maintained for the period in which the credits are claimed.

In addition to a variety of tax exemptions, the Illinois Enterprise Zone program offers an investment credit of 0.5 percent and a jobs credit of $500 per eligible employee hired to work in a zone during a taxable year. Eligible employees are individuals who are certified as economically disadvantaged or as dislocated workers.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2009 Wisconsin Act 2; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; (3) soliciting and utilizing input from the Department of Revenue and from the Wisconsin Economic Development Association; and (4) reviewing Internet-based sources of related federal, state, and private-sector information.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary document that was used to determine the effect of the rules on small business was 2009 Wisconsin Act 2. This Act consolidates five of the Department's development-zone tax-credit programs into a single, statewide program. The Act applies its private-sector requirements only to businesses for which a corresponding tax credit is desired.

10. Effect on Small Business.

The rules are not expected to impose significant costs or other adverse impacts on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for job creation, capital investment, employee training and corporate headquarters.

11. Agency Contact Person.

Todd Jensen, Wisconsin Department of Commerce, Bureau of Business Finance, 201 West Washington Avenue, Madison, WI, 53703; telephone: (608) 266-3074; E-Mail: Todd.Jensen@commerce.state.wi.us.

12. Place Where Comments Are to Be Submitted, and Deadline for Submission.

Comments on the proposed rules may be submitted by e-mail to sam.rockweiler@wi.gov, no later than September 22, 2009. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

File reference: Comm 100/rules analysis-p