Clearinghouse Rule 11-012

ORDER OF THE
DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce proposes an order to create chapter Comm 101 relating to tax credits for jobs and training, and affecting small businesses.

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Rule Summary

1. Statutes Interpreted.

Section 560.2055.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.2055 (5) (f).

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 560.2055 (5) (f) requires the Department to promulgate rules for implementing and operating section 560.2055, including rules that (1) define tier I and tier II counties and municipalities, (2) establish a schedule of the tax credits that can be claimed for costs incurred to undertake training, (3) establish conditions for revoking a certification of eligibility for tax credits and (4) establish conditions for repayment of the tax credits.

4. Related Statute or Rule.

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin, but those rules do not include the proposed definitions for tier I and tier II counties and municipalities, and do not specifically include the proposed rule text for earning refundable business tax credits by increasing net employment that either has an annual salary of $20,000 to $100,000 or is accompanied with employee training. Chapter Comm 100 defines “full-time job” in a manner similar to the proposed definition.

5. Plain Language Analysis.

The rules in this order include (1) definitions for tier I and tier II counties and municipalities; (2) the eligibility requirements for applicants; (3) the documentation that must be submitted by applicants to become certified as eligible for tax credits for jobs and training, and to receive acceptance of incurred expenses; (3) the Department’s response to the submitted documentation and (4) filing a claim with the Department of Revenue for the corresponding tax credit.

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

In researching federal tax incentives, the Department did not find any tax credits at the federal level that are exactly like the jobs tax credit in sections 71.07 (3q), 71.28 (3q), 71.47 (3q) and 560.2055 of the Statutes. The following federal tax credit may apply to some of the activities that may be addressed by the proposed rules, but this federal tax credit is structured differently than the credit in these sections of the Statutes.

Job creation that would be eligible for tax credits under the proposed rules may 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.

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.

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 tax credit for jobs and training.

Iowa

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 section 560.2055 of the Statutes, which were enacted in 2009 Wisconsin Act 28; and (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification.

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 28. This 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 jobs and training.

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 April 4, 2011. 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 101/rules analysis pH