**Legislative Fiscal Bureau**
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January 18, 2011

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: January 2011 Special Session Assembly Bill 3 and Special Session Senate Bill 3: Individual Income and Corporate Income/Franchise Tax -- Relocated Business Tax Credit

January 2011 Special Session Assembly Bill 3 and Senate Bill 3 are companion bills that would provide a tax credit for businesses that relocated from another state to Wisconsin. SS AB 3 was introduced on January 4, 2011, and referred to the Assembly Committee on Rural Economic Development and Rural Affairs. On January 13, 2011, Assembly Amendment 1 to SS AB 3 was adopted by a vote of 15 to 0, and SS AB 3, as amended, was recommended for passage by a vote of 14 to 1. SS SB 3 was introduced on January 5, 2011, and referred to the Senate Committee on Workforce Development, Small Business, and Tourism. On January 13, 2011, Senate Amendment 1 to SS SB 3 was adopted, and SS SB 3, as amended, was recommended for passage by a vote of 5 to 0.

## BACKGROUND

Generally, corporations and pass-through entity businesses, including partnerships, tax-option corporations (S corporations) and limited liability companies (LLCs) are subject to the state individual income or corporate income/franchise tax if they are conducting a trade or business in Wisconsin. There are two circumstances which give Wisconsin taxing jurisdiction (nexus) over corporations. First, corporations which are created and authorized to act in a corporate capacity (incorporated) under Wisconsin law or foreign corporations which are licensed to transact business in the state are subject to the Wisconsin corporate income/franchise tax. Second, corporations which are organized under the laws of other states or foreign nations are generally subject to the Wisconsin corporate income/franchise tax if they exercise a franchise, conduct business, or own property within the state.

Business income of pass-though entities is passed through to partners, shareholders and members and taxed under the individual income tax. All income or loss of residents is taxable in Wisconsin. Business income or loss for nonresidents is assigned to the situs (location) of the business. Therefore, if the situs of a pass-though entity business is Wisconsin, the partners, shareholders or members are subject the Wisconsin income tax.

Under provisions included in 2009 Wisconsin Act 2, corporations that are members of a combined group must file a combined income/franchise tax return. For a combined group, nexus is determined for the unitary business as a whole. Therefore, if a member of a combined group has nexus with Wisconsin and that nexus is attributable to the combined group's unitary business, all members of the combined group have nexus in Wisconsin. Pass-through entities that are members of a unitary combined group, including partnerships, LLCs, and tax-option corporations are not included in the combined report. However, the income of these entities that is derived from the group's unitary business is included in the combined unitary income of the group to the extent it is included in or distributed to a corporation that is a group member.

**SUMMARY OF BILLS**

SS AB 3 and SS SB 3 would create a relocated business tax credit, under the state individual income and corporate income and franchise taxes, for tax years beginning after December 31, 2010. The tax credit could be claimed by a business that located in Wisconsin from another state and began operations in the state, and would equal the amount of the claimant's state individual income or corporate income/franchise tax liability after applying all other allowable tax credits, deductions, and exclusions. The tax credit could be claimed for two consecutive tax years, beginning with the tax year the business began operations in Wisconsin. A person could not claim the tax credit if that person had done business in Wisconsin during any of the ten tax years preceding the tax year for which the person would otherwise be eligible for the tax credit.

Partnerships, LLCs, and tax-option corporations could not claim the credit, but the eligibility for and amount of the credit would be based on the amount of the entity's taxes. The partnership, LLC, or tax-option corporation would be required to compute the amount of credit each of its partners, members, or shareholders could claim, and provide that information to them. Partners, members of LLCs, and tax-option corporation shareholders could claim the credit in proportion to their ownership interests. The statutory provision in the bill specifies that the tax credit would be based on a pass-through entity's payment of tax amounts. However, the tax credit would eliminate any required tax payments. An amendment is needed to clarify that the tax credit would be based on the amount of the claimant's tax liability.

The Department of Revenue would administer the tax credit, and current law provisions related to timely claims, change of business and ownership, and ineligible claimants would apply. The bill also cross references a current law provision that would provide a 15 year carryforward of unused tax credit amounts. Since the credit would equal the claimant's tax liability net of all other allowable deductions, credits, and exclusions, there would not be unused credits. An amendment is necessary to eliminate the statutory cross-reference to the carryforward provision.

The bills also include a nonstatutory provision specifying that the general fund statutory reserve requirement ($65 million in 2010-11 and the 2011-13 biennium) does not apply to the action of the Legislature in enacting the bills.

**SUMMARY OF ASSEMBLY AMENDMENT 1 AND SENATE AMENDMENT 1**

AA 1 to SS AB 3 and SA 1 to SS SB 3 would delete the statutory cross-reference that would provide a 15 year carryforward for unused credit amounts. As noted, because the credit would equal the claimant's tax liability, there would be no unused credit amounts.

**FISCAL EFFECT**

As noted, the bills would create a relocated business tax credit, under the state individual income and corporate income/franchise taxes for a business that relocated operations to Wisconsin. Based on information compiled by the Department of Revenue from the tax returns of newly filing corporations, and for corporations that move in state (from the National Establishment Time Series database, compiled by Walls & Associates and Dunn and Bradstreet), the relocated business tax credit would reduce state individual income and corporate income/ franchise tax revenues by an estimated $280,000 annually in 2011-12, and thereafter.

AA 1 and SA 1 to the respective bills would not have a fiscal effect.

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