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January 18, 2011

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: January 2011 Special Session Assembly Bill 4 and Senate Bill 4: Individual Income and Corporate Income/Franchise Tax -- Economic Development Tax Credit

January 2011 Special Session Assembly Bill 4 and Senate Bill 4 are companion bills that would increase the maximum total credit limit for economic development tax credits. SS AB 4 was introduced on January 4, 2011, and referred to the Assembly Committee on Jobs, Economy and Small Business. On January 13, 2011, SS AB 4 was recommended for passage by a vote of 9 to 6. SS SB 4 was introduced on January 5, 2011, and referred to the Senate Committee on Workforce Development, Small Business, and Tourism. On January 13, 2011, SS SB 4 was recommended for passage by a vote of 5 to 0.

BACKGROUND

Provisions included in 2009 Act 2 discontinued the development zones, enterprise development zones, agricultural development zones, airport development zones, and technology zones programs and created the Business Development in Wisconsin Tax Incentives program, which provides economic development tax credits to eligible persons for conducting specified types of economic development projects in the state. The total amount of tax benefits provided under the Business Development in Wisconsin Tax Incentives program is limited to the total amount of tax benefits that were authorized, but not allocated, to persons under the previous programs on March 6, 2009. On that date, a total of $103.2 million in unallocated authorized zone tax credits remained. As of January, 2011, $73.1 million in authorized economic development tax credits have not been allocated to eligible projects. A person that conducts a job creation, capital investment, employee training, or corporate headquarters location or retention project is eligible to be certified by the Department of Commerce to claim tax credits under the state individual income or corporate income/franchise tax. The tax credits are described in detail in the attachment.

SUMMARY OF BILLS

Special Session Assembly Bill 4 and Senate Bill 4 would increase the maximum total amount of economic development tax credits that could be claimed by $25.0 million. As a result, as of January, 2011, the total amount of economic development tax credits that could be claimed would be $98.1 million ($73.1 million currently available plus $25.0 million provided under the bills).

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.

FISCAL EFFECT

As noted, the bills would increase the maximum total credit limit for economic development tax credits by $25.0 million. Based on the experience to date in allocating credits to eligible businesses, and in businesses claiming the credits, the additional $25 million in credits would not be allocated or claimed in 2010-11. In addition, it is not likely the additional $25 million allocation would be claimed during the 2011-13 biennium.

Prepared by: Ron Shanovich
Attachment

ATTACHMENT

This attachment provides a detailed description of the economic development tax credit. As noted, economic development tax credits can be claimed for job creation, capital investment, employee training, and corporate headquarter's retention or location projects.

Job Creation Project. Economic development tax credits can be claimed for full-time jobs created and maintained, in addition to any existing full-time jobs provided. A tax credit is provided for each new employee, depending upon the new employee's wages, and compliance with any of three requirements related to health insurance: (1) at least 50% of the health insurance benefit premium costs for the employees must be covered by the employer; (2) at least 50% of the full-time employees must utilize the health insurance provided by the employer; or (3) other employee health insurance benefits are provided that are acceptable to the Department of Commerce. The per-employee tax credits provided are based on Table 1.

Tax credits are released by Commerce on an annual basis, in direct proportion to the number of jobs created.

TABLE 1

Per-Employee Tax Credits

Tier	Job Wage Range	Tax Credit
1	Full-time jobs paying from 150% to 200% of the federal minimum wage ($7.25/hr).	Up to $3,000 per job created.
2	Full-time jobs paying from 200% to 250% of the federal minimum wage.	Up to $5,000 per job created.
3	Full-time jobs paying 250% or more of the federal minimum wage.	Up to $7,000 per job created.

Capital Investment Project. Economic development tax credits are provided for projects that involve significant investment in new equipment, machinery, real property, or depreciable personal property. The credit for capital investments is available for capital investments in a project, beyond a certified business's normal capital expenditures, that are needed to achieve a specific purpose acceptable to Commerce, including diversifying product lines, and modernizing and enhancing the efficiency of production processes. In addition, the investment must: (1) be the lesser of $10,000 for each full-time employee working at the certified business project location, or $1 million; or (2) retain existing full-time jobs that may be lost without investment.

Businesses may be allocated economic development tax credits equal to: (1) up to 3% of their eligible capital investment in equipment, and up to 5% of their capital investment for real property; and (2) per-employee tax credits shown in Table 1 based on the retention of existing full-time jobs. Businesses whose primary activity includes retail, commercial development, recreation, entertainment, or direct health care are not eligible to earn capital investment tax credits. The Department of Commerce releases tax credits on an annual basis, as eligible capital investment expenditures are made.

Eligible capital investments include the purchase or lease price of depreciable tangible personal property, and the amount that is expended to acquire, construct, rehabilitate, remodel, or repair real property, including directly-related consulting services, other fees, and permits. Working capital for items such as employment costs, moving costs, intellectual property, unrelated fees and permits are not eligible capital investments. The equipment, machinery, real property, or depreciable tangible personal property may not be previously owned, and 50% of the use of such property must be for the certified business' operations in Wisconsin.

Certified businesses may qualify for a tax credit for capital investment projects for amounts expended to construct, rehabilitate, remodel or repair real property if the business began the physical work of such activities, or any demolition or destruction in preparation for the physical work after the tax credit eligibility date established by Commerce. Physical work does not include preliminary activities such as planning, designing, securing financing, researching, development specifications, or stabilizing property to prevent deterioration.

"Previously owned" means equipment, machinery, real property, or depreciable tangible personal property that the certified business, or a related person, owned during the two years prior to submitting an application for the tax credits. "Related" person includes a brother, sister, parent, grandparent, child, grandchild, niece, nephew, uncle, aunt, spouse, or in-laws; a corporation or any entity that owns more than 50% of the certified business; or any corporation which is a part of a commonly controlled group of corporations (as defined for the purposes of combined reporting).

Employee Training Project. Economic development credits are provided for projects that involve significant investments in the training or re-education of employees for the purpose of improving the productivity or competitiveness of the business. Economic development tax credits of up to 50% of eligible training costs are allocated for eligible training that is provided to existing and new employees in full-time jobs. The training must be related to a specific project, and routine training is ineligible for credits. Commerce releases tax credits annually, as eligible training costs are incurred.

"Eligible training" includes instruction that will: (1) enhance an employee's general knowledge, employability, or flexibility in the workplace; (2) develop skills unique to an individual company's workplace or equipment; or (3) develop skills that will increase the quality of the company's product. Eligible training costs include trainee wages, trainer costs, and trainer materials. Training may be on- or off-site, but must be performed by a provider that is approved or otherwise authorized by Commerce.

Training that addresses any of the following is ineligible for tax credits: (1) orientation; (2) administration and compensation systems; (3) credit or degree courses; (4) diversity; (5) consulting services, including strategic planning; (6) sales training; (7) personal development, such as general educational testing; (8) human resources practices; (9) non-job-related training; (10) stand-alone basic or remedial training; (11) non-skill-related assessments; (12) state or federally mandated programs; (13) general safety procedures; (14) English as a second language; and (15) basic skills.

Corporate Headquarters Location or Retention Project. Economic development tax credits can be allocated for projects that will result in the location or retention of a corporate headquarters in Wisconsin, or that will result in the retention of employees holding full-time jobs in Wisconsin, if the corporate headquarters are located in Wisconsin. Tax credits are allocated for corporate headquarters positions that are created or retained by a project, or that are retained in response to substantial potential for loss, based on the wages of new or retained employees. The per-employee tax credit amount allocated by Commerce is determined using Table 2.

TABLE 2

Corporate Headquarters -- Per-Employee Tax Credits

Tier	Job Wage Range	Tax Credit
1	Full-time jobs paying from 150% to 200% of the federal minimum wage.	Up to $4,000 per job.
2	Full-time jobs paying from 200% to 250% of the federal minimum wage.	Up to $6,000 per job.
3	Full-time jobs paying from 250% to 500% of the federal minimum wage.	Up to $8,000 per job.
4	Full-time jobs paying 500% or more of the federal minimum wage	Up to $10,000 per job.

Positions that are created, retained, or trained and for which economic development tax credits are claimed must be maintained for at least five years. Unused economic development tax credits can be carried forward up to 15 years to offset future tax liabilities.

Commerce is required to reserve $5 million in economic development tax credits for projects in rural areas, and $5 million in economic development tax credits for projects involving small businesses, through June 30, 2014. In allocating credits to projects in rural areas and to small businesses, Commerce is required to consider the relative employment impact of the project on the area. "Rural area" is defined as a city, village, or town with a population of 6,000 or less in a county having a population density of less than 150 persons per square mile. "Small businesses" means businesses with fewer than 100 employees, including employees of any subsidiary or corporation that is part of the same commonly controlled group of corporations, as defined for combined reporting.

The Secretary of Commerce or a designee is authorized to award total economic development tax credit allocations of greater than $3 million. In cases where an extraordinary opportunity for job creation or retention exists, the Secretary may approve allocating tax credits in excess of any of the economic development tax limits established by administrative rules or in the statutes. Factors that must be considered in determining whether to approve a tax credit allocation in excess of the limits include: (1) the scale or urgency of the project; (2) the nature or quality of the jobs addressed by the project; (3) the degree of existing or potential distress addressed by the project, such as whether the overall well-being of the community is at stake; or (4) the project's potential for substantially impacting a community or the state.

Additional tax credits can be awarded to a project if the Department determines that: (1) the person conducts at least one eligible activity in an area designated by Commerce as economically distressed; (2) the person conducts at least one eligible activity that benefits, creates, retains, or significantly upgrades full-time jobs or, that trains, or that re-educates, members of a targeted group. Tax credit allocations to businesses in economically distressed areas may be increased by up to 50% above the maximum amount of tax credits that otherwise could be claimed, and businesses may qualify for up to $500 in additional tax credits for each member of a targeted group that is the basis of an economic development tax credit.

In designating economically distressed areas, Commerce is required to consider the most current data available for the area using the following indicators and sources, (or other acceptable sources): (1) unemployment rate from the Department of Workforce Development (DWD); (2) percentage of families with incomes below the poverty line as determined by the U.S. Census Bureau; (3) median family income as measured by median household income from the U.S. Census Bureau; (4) median per capita income from DWD; (5) average annual wage from DWD; (6) manufacturing assessment values by county from DOR; and (7) other significant or irregular indicators of economic distress, such as natural disaster, or plant closings and layoffs from DWD.

In order to claim an economic development tax credit, a person must apply to Commerce for certification for and allocation of credits. Commerce is required to consider one or more of the following factors in determining whether to certify a business and allocate tax credits: (1) whether the project will serve a public purpose; (2) whether the project might not occur without the allocation of tax credits; (3) the extent to which the project will be financed with funds not provided by this state; (4) whether the project will displace workers in the state; (5) the extent to which the project will contribute to state economic growth and the well-being of the residents of the state; (6) the extent to which the project will retain or increase employment in Wisconsin; (7)

whether the project will be located in an economically distressed area; (8) whether the project will be located in a rural area; (9) the extent to which the project will increase the geographical diversity of available tax credits throughout the state; (10) the financial soundness of the business; (11) the ability of the business to utilize the tax credits; and (12) any previous financial assistance that the business received from Commerce.

After conducting an investigation and determining that the person is conducting or intends to conduct at least one eligible activity, Commerce may certify a person as eligible for tax benefits. Commerce is required to provide a copy of the certification to the person and the Department of Revenue. A certified business can qualify for tax credits only for eligible activities that occur after an eligibility date is established by Commerce.

A business that is certified is required to enter into a contract with Commerce that includes a description of eligible activities conducted, information indicating whether an activity will occur in a distressed area, or benefit members of a targeted group, a compliance schedule with anticipated actions and a sequence of goals to be achieved, reporting requirements, penalty provisions for failure to maintain positions for which tax credits are claimed, and, if feasible, a determination of the tax benefits that will be claimed if the terms of the contract are fulfilled. A person that is certified by Commerce may file with DOR for tax credits.

A certified business must first file annually with Commerce a project report that includes:

1. The status of the project, including: (a) the number of full-time jobs created, retained, or significantly upgraded; (b) the number of employees in full-time jobs who are trained, and documentation of eligible training expenses; (c) the total amount invested, and documentation of eligible investments; and (d) other supporting information relating to the tax credits to be claimed by the certified business.

2. Documentation of whether the certified business met the minimum benchmarks and outcomes identified in the contract with Commerce.

Commerce is required to verify the tax credits that will be claimed, and may request additional information from the certified business to support the tax credit claims. Only tax credits that are verified by Commerce can be claimed by the business. Typically, economic development tax credits are claimed over a period of one to three years.

Commerce is required to revoke the certification of a taxpayer for: (1) supplying false or misleading information to obtain certification; (2) supplying false or misleading information to obtain tax benefits; (3) leaving the state to conduct substantially the same business outside the state; and (4) ceasing operations in the state and not renewing operation of the business, or a similar business, within 12 months.

If a claimant’s certification is revoked, or if a claimant becomes ineligible for tax benefits, the claimant cannot claim credits: (1) for the tax year that includes the day on which the certification was revoked; (2) the tax year that includes the day on which the claimant became ineligible for tax benefits; (3) or succeeding tax years. The claimant cannot carry over unused credits from previous years to offset income or franchise taxes imposed for: (1) the tax year that includes the day on which certification was revoked; (2) the tax year that includes the day on which the claimant becomes ineligible for tax benefits; or (3) succeeding tax years.

"Full-time job" is defined as a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays, and for which the individual receives pay that is equal to at least 150% of the federal minimum wage and benefits that are not required by federal or state law. "Full-time job" does not include initial training before an employment position begins. However, The Department can, by rule, specify circumstances under which the Department can grant exceptions to the requirement that a full-time job means a job in which an individual, as a condition of employment, is required to work at least 2,080 hours per year. Under no circumstances can a full-time job mean a job in which an individual, as a condition of employment, was required to work less than 37.5 hours per week.

"Member of a targeted group" means a person who resides in an area designated by the federal government as an economic revitalization area, a person who is employed in an unsubsidized job but meets the eligibility requirements under state law for a Wisconsin Works (W-2) employment position, a person who is employed in a trial job under W-2, a person who is eligible for child care assistance, a person who is a vocational rehabilitation referral, an economically disadvantaged youth, an economically disadvantaged veteran, a supplemental security income recipient, a general assistance recipient, an economically disadvantaged ex-convict, a dislocated worker, as defined under federal law, or a food stamp recipient, if the person has been certified by a designated local agency under federal law