Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

October 12, 2011

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: 2011 Assembly Bill 1 and Senate Bill 5: Individual Income and Corporate Income and Franchise Taxes -- Jobs Tax Credit Modifications

As originally introduced, 2011 Assembly Bill 1 and 2011 Senate Bill 5 were identical bills that would have changed the date on which the jobs tax credit becomes refundable. AB 1 was introduced on January 14, 2011, and referred to the Assembly Committee on Jobs, Economy, and Small Business. On February 8, 2011, Assembly Amendment 1 to AB 1 was adopted by a vote of 13 to 0, and AB 1 as amended, was recommended for passage by a vote of 13 to 0. AB 1 was referred to the Joint Committee on Finance. SB 5 was introduced on January 14, 2011, and referred to the Senate Committee on Public Health, Human Services and Revenue. On September 22, 2011, Senate Substitute Amendment 1 to SB 5 was recommended for passage by a vote of 5 to 0.

Instead of changing the date on which the credit would be refundable, SSA 1 to SB 5 would increase the amount of jobs credits that can be allocated each year from $5 million to $10 million. The remainder of this paper will focus on SSA 1 to SB 5. (A summary of AB 1/SB 5 and AA 1 to AB 1 is attached.)

CURRENT LAW

Under current law, a refundable tax credit can be claimed under the state individual income and corporate income and franchise taxes for 10% of the eligible wages paid to an eligible employee and/or the amount of costs incurred to undertake training activities in a tax year, as determined by the Wisconsin Economic Development Corporation (WEDC). Specifically, WEDC can award tax credits equal to the lesser of 10% of the wages paid to an employee or $10,000, if the employee earned wages in the year for which the tax credit is claimed equal to one of the following: (a) at least $20,000 in a tier I county or municipality; or (b) at least $30,000 in a tier II county or municipality. WEDC can also award tax credits in an amount determined by the Corporation for costs incurred to undertake training activities in a tier I or tier II county or municipality that: (a) improve the job-related skills of any eligible employee; (b) train any eligible employee on the use of job-related new technologies; or (c) provide job-related training to any eligible employee whose employment represents the employee's first full-time job.

In order to claim the credit, a claimant must be certified by WEDC. The Corporation may certify a claimant to receive tax credits for up to 10 years if: (a) the person is operating, or intends to operate a business in this state; and (b) the person applies and enters into a contract with WEDC. A person that is certified can only receive tax credits for each year that the following apply: (a) the person increases net employment in the business; and (b) the person pays the eligible employee the required wages for a tier I ($20,000) or tier II ($30,000) county or municipality, and/or provides the required training to an employee in a tier I or tier II county or municipality.

WEDC is required to notify the Department of Revenue (DOR) when it certifies a person to receive tax benefits, and within 30 days of revoking a certification. WEDC also determines the maximum amount of the tax credits that a certified business can claim, and notifies DOR of this amount. A claimant may be required to repay any tax credits claimed for a year in which the claimant fails to maintain employment at a level required under the contract with the Corporation. WEDC annually verifies the information submitted by the person claiming tax credits.

The maximum amount of tax credits that WEDC can allocate in a calendar year is $5 million. In addition, the total amount of credits that can be claimed for tax years beginning on or after January 1, 2010, and ending on June 30, 2013, is limited to $14.5 million. WEDC is also authorized to reallocate angel investment and early stage seed investment tax credits that are unused in any calendar year to persons eligible for the jobs tax credit, subject to 14-day passive review by the Joint Committee on Finance (JFC). These reallocated amounts are not subject to the $5 million annual and $14.5 million 2010 to 2013 limits on jobs tax credit claims. In December, 2010, approximately $4.0 million in unused angel and early stage seed investment tax credits were reallocated to be utilized as jobs tax credits under the JFC 14-day passive review process.

As noted, the jobs tax credit is refundable. If the amount of credit exceeds a claimant's tax liability, the state will issue a check to the claimant for the unused tax credit amount. However, the statutes specify that tax credits certified by WEDC for tax years beginning after December 31, 2009 and before January 1, 2012, must be paid in tax years beginning after December 31, 2011. Consequently, for tax years beginning in 2010 and 2011, the jobs tax credit is nonrefundable. The credit may only be used to offset tax due. Any unused credit for these two years may be carried forward to tax years beginning in 2012. The jobs tax credit becomes refundable for tax years beginning in 2012, and thereafter. As a result, refundable jobs tax credits can first be claimed when tax year 2012 returns are filed. Refundable jobs tax credits are paid from a GPR continuing appropriation. A total of $9 million GPR is appropriated in 2012-13.

WEDC is required to adopt rules for the implementation and operation of the jobs tax credit, including rules relating to the following:

a. The definitions of a tier I county or municipality and a tier II county or municipality. The Corporation must consider all of the following information when establishing the definitions: (1) unemployment rate; (2) percentage of families with incomes below the poverty line established under federal law; (3) median family income; (4) median per capita income; and (5) other significant or irregular indicators of economic distress, such as a natural disaster or mass layoff.

b. A schedule of additional tax benefits for which a person who is certified for tax credits, and who incurs costs related to job training may be eligible.

c. Conditions for the revocation of a certification.

d. Conditions for the repayment of tax credits.

"Business" is defined as any organization or enterprise operated for profit, including a sole proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation, LLC, or association. Any store or shop in which retail sales is the principal business is not included in the definition of "business."

"Eligible employee" means a person employed in a full-time job by an employer certified by WEDC. "Full-time job" means 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.

WEDC allocates development opportunity, enterprise zone, economic development, and jobs tax credits following the same process. An application is submitted to, or contact is made with, WEDC before the project begins. Based on a review of project proposals submitted, including a prospect data sheet, tax credits are allocated to the project. Jobs tax credits (job creation and training) can be earned over a period of up to 10 years. Credits can be claimed only after a business submits an annual project report and supporting documentation. Based on the information submitted, the credits are released by WEDC.

The table below shows jobs tax credit allocations made through September, 2011, for calendar years 2010 through 2020. The table shows that a total of $33.1 million in jobs tax credits has been allocated to businesses for calendar years 2010 through 2020. WEDC data indicates that 21 businesses have been allocated jobs credits. The table includes awards for projects that do not have a fully executed contract in place. In these cases, tax credit disbursements may be subject to change. In addition, tax credit claims will depend upon verified eligible expenditures for each year and may differ from annual allocations. The allocations also may include reallocated angel and early stage seed investment tax credits, which are not subject to the annual $5 million limit, and the $14.5 million limit for January 1, 2010, through June 30, 2013, on jobs tax credit allocations.

Aggregate Calendar Year Jobs Tax Credit Allocations

2010	$2,099,300
2011	4,869,500
2012	6,314,800
2013	4,451,200
2014	4,558,700
2015	3,497,100
2016	2,322,400
2017	1,964,000
2018	1,980,000
2019	582,000
2020	475,000
Total	$33,114,000

SUMMARY OF SSA 1 to SB 5

SSA 1 to SB 5 would increase amount of jobs tax credits that could be allocated in a calendar year from $5 million to $10 million, beginning on July 1, 2011. As noted, current law limits the amount of jobs tax credits that can be claimed for tax years beginning on or after January 1, 2010, and before June 30, 2013, to $14.5 million. Consequently, SSA 1 would have no fiscal effect during the 2011-13 biennium, but would increase GPR expenditures by $5 million annually beginning in 2013-14 and annually thereafter.

Prepared by: Ron Shanovich
Attachment

ATTACHMENT

SUMMARY OF AB 1 AND SB 5

Assembly Bill 1 and Senate Bill 5 would modify the current law jobs tax credit provision that requires credits certified for tax years beginning after December 31, 2009, and before January 1, 2012, to be paid in tax years beginning after December 31, 2011. As noted, the current law provision makes the jobs credit refundable for tax years beginning in 2012. Under the bills, jobs tax credits certified for tax years beginning after December 31, 2009, and before June 30, 2011 (rather than January 1, 2012), would be required to be paid in tax years beginning on or after July 1, 2011 (rather than after December 31, 2011). AB 1/SB 5 would make the jobs tax credit refundable for tax years beginning on or after July 1, 2011. Compared to current law, the bills would extend refundable jobs tax credits by six months, to tax years beginning between July 1, 2011, and December 31, 2011.

A Department of Revenue review of corporate income and franchise tax returns for tax year 2008 found that approximately 5% of corporate returns had a tax year that started between July 1 and December 31. Consequently, AB 1/SB 5 would have a minimal fiscal effect.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 to AB 1 would make the following changes to the bill;

a. Jobs tax credits certified for tax years beginning after December 31, 2009 and before January 1, 2011 (rather than January 1, 2012), would be paid in tax years beginning on or after January 1, 2011 (rather than after December 31, 2011). Under AA 1, the jobs tax credit would be refundable for tax years beginning on or after January 1, 2011. Compared to current law, AA 1 to AB 1 would extend refundable jobs tax credits by one year, to years beginning on or after January 1, 2011, and before January 1, 2012. Compared to the bill, AA 1 to AB 1 would extend refundable tax credits by six months, to tax years beginning on or after January 1, 2011, and before July 1, 2011.

b. The amount of jobs tax credits that could be allocated in a calendar year would be increased by $5 million, from $5 million to $10 million, beginning on July 1, 2011. AA 1 would modify statutory provisions under the Department of Commerce to make this increase in the maximum credit allocation. However, under provisions of 2011 Wisconsin Act 28 (the 2011-13 biennial budget act) the Department of Commerce and related statutory provisions were eliminated, and responsibility for administering the jobs tax credit was transferred to WEDC. AA 1 would need to be amended to modify jobs tax credit administrative provisions under WEDC.

c. The GPR appropriation for paying refundable jobs tax credits would be changed from a continuing appropriation to a sum sufficient appropriation.

AA 1 would extend the refundable jobs tax credit to claimants with tax years beginning on or after January 1, 2011, and before December 31, 2011. ASA 1 would make refundable tax credits payable one year earlier than under current law. As noted, under current law, jobs tax credits can be used to offset current tax liabilities, and unused amounts can be carried forward to offset future tax liabilities. Refundable jobs tax credits can first be paid for tax years beginning on or after January 1, 2012. Moving the date on which refundable tax credits could first be paid would have a fiscal effect, due to the difference in the method of accounting for refundable and nonrefundable tax credits. GPR expenditures for refundable jobs tax credits would increase, because refundable jobs tax credit amounts would be paid to claimants and accounted for entirely as GPR expenditures. Individual income and corporate income and franchise tax revenues would also increase, because refunded jobs tax credits would no longer be accounted for as a reduction in tax liabilities. AA 1 to AB would increase individual income and corporate income and franchise tax revenues by $3.6 million in 2011-12. The amendment would also increase GPR expenditures for refundable jobs tax credits by $5.4 million in 2011-12 and decrease GPR expenditures by $1.7 million in 2012-13.

AA 1 would increase the annual jobs tax credit allocation by $5 million, for tax years beginning on or after July 1, 2011. However, the current law provision that limits the total amount of jobs tax credits that can be claimed for tax years beginning on or after January 1, 2010, and ending on June 30, 2013, to $14.5 million, would not be changed. As a result, there would be no fiscal effect in the 2011-13 biennium. GPR expenditures would increase by $5 million, beginning with fiscal year 2013-14, and annually thereafter.