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TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: 2011 Assembly Bill 13: Commerce -- Beloit Development Opportunity Zone

2011 Assembly Bill 13, which would require the Department of Commerce to designate an area in the City of Beloit as a development opportunity zone, was introduced on February 2, 2011, and referred to the Assembly Committee on Jobs, Economy and Small Business. On March 29, 2011, Assembly Amendment 1 to AB 13 was adopted by a vote of 12 to 0, and AB 13, as amended, was recommended for passage by a vote of 12 to 0.

CURRENT LAW

Development opportunity zones are designated by Commerce in areas in certain municipalities that are the location of a business project. (Under current law, the Department of Commerce is responsible for designating zones, certifying and verifying tax credits, and performing other administrative functions related to the development opportunity zone program. Those functions are described in this section. However, provisions included in 2011 Assembly Bill 40 would transfer most of Commerce's economic development functions, including administration of the development opportunity zone program, to the Wisconsin Economic Development Corporation [WEDC], which was created under 2011 Wisconsin Act 7.)

Generally, any business that locates and conducts economic activity in a development opportunity zone is eligible to claim the development zones environmental remediation and jobs tax credit, and the development zone capital investment tax credit.

Development Zones Tax Credit. The development zones tax credit can be claimed under the state individual income and corporate income and franchise taxes, and the insurance premiums tax, and is based on amounts spent on environmental remediation and the number of full-time jobs created or retained.

Environmental Remediation Component. A credit against income taxes due can be claimed for 50% of the amount expended for environmental remediation in a zone. "Environmental remediation" is defined as: (1) removal or containment of environmental pollution; (2) restoration of soil or groundwater that is affected by environmental pollution in a brownfield; or (3) investigation, unless the investigation determines that remediation is required and remediation is not undertaken. The removal, containment, or restoration work, other than planning and investigating, must begin after the site where the work is being done is designated a zone, and after the claimant is certified for tax benefits. "Environmental pollution" means the contaminating or rendering unclean or impure the air, land, or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal, or plant life. "Brownfield" is defined as an industrial or commercial facility the expansion or redevelopment of which is complicated by environmental contamination.

Full-Time Jobs Component. A credit against income taxes can be claimed for up to the following amounts for job creation or retention: (1) up to $8,000 for each full-time job created in a zone and filled by a member of a targeted group; (2) up to $8,000 for each full-time job retained in an enterprise development zone if Commerce determines that the person made a significant capital investment to retain the full-time job; and (3) up to $6,000 for each full-time job created or retained filled by a Wisconsin resident who is not a member of a targeted group. At least one-third of jobs tax credits claimed must be based on jobs created and filled by targeted group members. In addition, except for businesses that only claim tax credits for environmental remediation, 25% of all tax credits must be based on creating or retaining full-time jobs.

Credits that are not entirely used to offset income or franchise taxes in the current year can be carried forward up to 15 years to offset future tax liabilities.

"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

Development Zones Capital Investment Tax Credit. The development zone capital investment tax credit can be claimed under the state individual income and corporate income and franchise taxes, and equals 3% of the following:

1. The purchase price of depreciable, tangible personal property. The property must have

been purchased after the claimant was certified as eligible for tax benefits, and the personal property has to have at least 50% of its use in the claimant's business location in the zone. If the property is mobile, the base of operations for at least 50% of its use must be in the zone.

2. The amount expended to acquire, construct, rehabilitate, remodel, or repair real property in the zone. Such expenses are eligible for the credit if the claimant began the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the place where the property is located was designated a zone, or if the completed project is placed in service after the claimant is certified for tax benefits. A credit cannot be claimed for expenses for preliminary activities such as planning, designing, securing financing, research, developing specifications, or stabilizing the property to prevent deterioration.

A claimant can also claim a tax credit for amounts expended to acquire real property, if the property was not previously owned and the claimant acquired the property after the place where the property was located was designated a zone, or if the completed project was placed in service after the claimant was certified as eligible for tax benefits.

In calculating the capital investment credit for purchases of real property, a claimant is required to reduce the amount expended to acquire the property by a percentage equal to the percentage of the area of the real property that is not used for the purposes for which the claimant is certified as eligible for tax benefits. Similarly, the amount expended for other purposes must be reduced by the amount expended on the part of the property not used for purposes for which the claimant is certified.

Credits that are not entirely used to offset income or franchise taxes in the current year can be carried forward up to 15 years to offset future tax liabilities. Claimants are required to include with their tax return: (1) Commerce verification that the claimant is eligible for tax credit; and (2) a statement from Commerce verifying the purchase price and eligibility of the investment.

To be eligible for tax credits, a business must be conducting or intend to conduct economic activity in a development opportunity zone and must, in conjunction with the local governing body of the city in which the zone is located, submit a project plan to Commerce. The project plan is required to include the following: (1) the name and address of the business for which tax benefits will be claimed; (2) the federal identification number of the business; (3) the names and addresses of other locations outside of the development opportunity zone where business activities are conducted, and a description of the business activities conducted at those locations; (4) the amount the business proposes to invest or to spend on the construction, rehabilitation, repair, or remodeling of a building located within the development opportunity zone; (5) the estimated total investment of the business in the development opportunity zone; (6) the number of full-time jobs that will be created, retained or substantially upgraded as a result of the business' economic activity in relation to the amount of tax benefits estimated for the business; (7) the business' plans to make reasonable attempts to hire employees from the targeted population; (8) a description of the commitment of the local governing body of the city in which the development zone is located to the business' project; and (9) other information required by Commerce or the Department of Revenue (DOR).

Commerce is required to notify DOR of all businesses entitled to claim tax credits, and to verify information submitted for tax credit claims. The Department is also required to revoke the entitlement of a business to claim tax benefits if the business does any of the following: (1) supplies false or misleading information to obtain the tax benefits; (2) leaves the development opportunity zone to conduct substantially the same business outside of the development opportunity zone; or (3) ceases operations in the development opportunity zone and does not renew operation of the trade or business or a similar trade or business within the development opportunity zone within 12 months. Commerce must notify DOR within 30 days of revoking entitlement for tax benefits.

The Department of Commerce is required to annually estimate the amount of forgone state tax revenue that is due to tax benefits claimed by businesses in each development opportunity zone. If the Department determines that forgone tax revenues will equal or exceed the maximum amount of tax benefits allocated to the zone, the area's designation as a zone expires 90 days after the day an which forgone revenues equal or exceed tax benefit.

Since the program began in 1994, eight development opportunity zones have been designated in six cities: Eau Claire, West Allis, Kenosha, Milwaukee, Beloit, and Janesville. Two zones have been authorized for Kenosha and Beloit. The total amount of credits that could be claimed in a zone has ranged from $3,000,000 to $7,000,000. Zones have been initially authorized to exist from a minimum of three to a maximum of nine years. Five-year extensions have been authorized for some zones. Currently, all development opportunity zones have expired except for zones in Kenosha and Janesville.

2009 Act 28 required Commerce to designate an area in the City of Kenosha, and an area in the City of Janesville as development opportunity zones that would exist for five years. The maximum amount of tax credits that can be claimed by businesses in each zone is $5.0 million. Commerce can extend each zone an additional five years, and provide an additional $5.0 million in tax credits, if it supports economic development in the city.

SUMMARY OF BILL

Assembly Bill 13 would require the Department of Commerce to designate an area in the City of Beloit as a development opportunity zone, which would begin on September 1, 2010, and exist for five years. Beloit would provide the Department with the legal description of the area. Any business that located and conducted economic activity in the zone would be eligible to claim the development zones environmental remediation and jobs tax credit, and the development zone capital investment tax credit. The maximum amount of tax credits that could be claimed by businesses in the zone would be $5.0 million. In order to claim tax credits, a business that conducted economic activity in the Beloit development opportunity zone would be required submit a project plan to Commerce, and comply with other statutory provisions governing development opportunity zones. Commerce could extend the zone an additional five years, and provide an additional $5.0 million in tax credits, if the extension supported economic development in the city.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 to AB 13 would change the designation date on which the Beloit development opportunity zone would begin from September 1, 2010, to the day after publication of the bill.

FISCAL EFFECT

Assembly Bill 13. As noted, Commerce has certified and verified tax credits for projects in eight different development opportunity zones. The bill would make the designation date of the zone retroactive to September 1, 2010. Based on Commerce experience with these zones, the fiscal effect of AB 13 would be an estimated decrease in state individual income and corporate tax revenues of $1,000,000 in 2012-13. The annual revenue decrease of $1,000,000 would continue during the life of the zone, including extensions.

Assembly Amendment 1. AA 1 would delay the designation date until the effective date of the bill, and would not impact the fiscal effect.

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