

09-063

**ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce creates chapter Comm 100 relating to tax incentives for job creation, capital investment, employee training and corporate headquarters, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Sections 560.70 (2m) (b) and 560.701 to 560.706 – as created by 2009 Wisconsin Act 2.

2. Statutory Authority.

Sections 227.11 (2) (a), 560.70 (2m) (b) and 560.706 (2).

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 560.70 (2m) (b) authorizes the Department to promulgate rules specifying circumstances where a full-time job may consist of fewer than 2,080 hours per year. Section 560.706 (2) requires the Department to promulgate rules for implementing sections 560.701 to 560.706 of the Statutes, as created by 2009 Act 2, relating to tax incentives for job creation, capital investment, employee training, and corporate headquarters.

4. Related Statute or Rule.

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin. For example, sections 560.70 to 560.7995 of the Statutes and chapters Comm 107, 112 and 118 address tax-benefit programs for community development zones, development opportunity zones, enterprise development zones, agricultural development zones, enterprise development zones, technology zones and airport development zones. The changes to chapter 560 of the Statutes that were included in 2009 Wisconsin Act 2 and the rules which are the subject of this order will consolidate five of the Department's development-zone tax-credit programs into a single, statewide program.

5. Plain Language Analysis.

The rules in this order (1) specify hourly wage ranges and health insurance benefits, and corresponding tax credits for businesses that create full-time jobs having those wages and benefits;

(2) define which capital investments are significant, and specify tax credits that may be allocated to those investments; (3) define which employee training is eligible for tax credits, and specify tax credits that may be allocated to that training; (4) define which business offices are corporate headquarters, and specify tax credits that may be allocated to those offices; (5) establish a methodology for designating economically distressed areas; (6) specify additional tax benefits for businesses in economically distressed areas and benefiting members of targeted groups; (7) establish policies, criteria and methodology for reserving a portion of available tax benefits to rural areas; (8) establish policies, criteria and methodology for reserving a portion of available tax benefits to small businesses; (9) establish policies and criteria for certifying a business that may be eligible for tax benefits equal to or greater than \$3 million; (10) establish policies and criteria for allocating tax credits beyond the general limits that are otherwise specified; (11) establish a minimum time period for maintaining positions that are created, retained or trained as a result of the tax credits addressed by these rules; and (12) establish the application, certification, verification, reporting, filing and contract procedures for the tax credits addressed by these rules.

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

In researching federal tax incentives, the Department and the Department of Revenue found that there are no tax credits at the federal level which are exactly like the corresponding credits in 2009 Wisconsin Act 2. The following two federal tax credits may apply to the activities under section 560.702 of the Statutes which are addressed by the rules, but these federal tax credits are structured differently than the credits in Act 2.

Job creation that is eligible for tax benefits under section 560.702 (1) of the Statutes may also 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.

Capital investments that are eligible for tax benefits under section 560.702 (2) of the Statutes may also qualify for the federal Investment Credit – which includes tax credits for any qualifying rehabilitation of older structures, solar or geothermal energy equipment, advanced coal projects, and gasification projects.

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. None are comparable to the new tax credit program addressed by the rules in this order.

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 Enterprise Zone job credit.

Iowa

Iowa's Enterprise Zone program offers businesses a local property tax exemption of up to 100 percent of the value added to the property for up to 10 years; a refund of state sales, service or use taxes paid to contractors during construction; and an investment credit of up to 10 percent of the qualifying investment, amortized over 5 years.

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 2009 Wisconsin Act 2; (2) incorporating applicable best practices the Department has developed in administering similar programs for economic development, business development, and tax-credit verification; (3) soliciting and utilizing

input from the Department of Revenue and from the Wisconsin Economic Development Association; and (4) reviewing Internet-based sources of related federal, state, and private-sector information.

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 2. This Act consolidates five of the Department's development-zone tax-credit programs into a single, statewide program. The 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 job creation, capital investment, employee training and corporate headquarters.

11. Agency Contact Person.

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SECTION 1. Chapter Comm 100 is created to read:

Chapter Comm 100

ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM

Comm 100.10 Purpose, scope and authority. (1) The purpose and scope of this chapter is to establish all of the criteria specified in s. 560.706 (2), Stats., relating to tax incentives for job creation, capital investment, employee training and corporate headquarters.

(2) This chapter is promulgated under the authority of s. 560.706 (2), Stats.

Note: This chapter is intended to provide the Department's statewide process by which businesses can obtain tax credits in exchange for creating jobs, or for retaining jobs that would otherwise be lost. Because of the limited economic-development resources that are available, the main role of the Department in this process is to target these tax credits to where they will have the most impact, while also ensuring that rural areas do not lose access to the credits.

Note: The Department also has rules that address tax credits for some specific businesses, such as chapter Comm 130, which addresses tax credits for fuel and

electricity used in manufacturing; chapter Comm 132, which addresses tax credits for investments in dairy manufacturing facilities; and chapter Comm 133, which addresses tax credits for film productions.

Comm 100.15 Definitions. In this chapter:

(1) “Certified business” means a business or natural person certified by the department under this chapter.

(2) “Contract” includes a written agreement that establishes responsibilities which a certified business will fulfill with regard to the department’s terms and conditions in allocating a tax credit.

(3) “Department” means the department of commerce.

(4) (a) “Full-time job” has the meaning given in s. 560.70 (2m) (a), Stats, except as provided in par. (b).

Note: Under section 560.70 (2m) (a) of the Statutes “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.”

(b) “Full-time job” includes a regular, non-seasonal full-time position in which an individual, as a condition of employment, is required to work at least 1,950 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 which are not required by federal or state law.

(5) “Person” includes natural persons, fiduciaries, and corporations, unless the context requires otherwise.

(6) “Significant investments in the training or re-education of employees” means investments in eligible training, as established in s. Comm 100.30.

(7) “Tax credit” means a tax credit allocated by the department under this chapter.

Comm 100.20 Hourly wages, and health insurance benefits. Per-employee tax credits under this chapter shall be based on Table 100.20 and compliance with any of the following:

(1) The employer covers at least 50% of the health insurance benefit premium costs for the employees.

(2) At least 50% of the full-time employees utilize the health insurance benefits provided by the employer.

(3) Other employee health insurance benefits are provided that are acceptable to the department.

Table 100.20

Tier	Wage Range	Tax Credit
1	Full-time jobs paying from 150% to less than 200% of the federal minimum wage	Up to \$3,000 per job
2	Full-time jobs paying from 200% to less than 250% of the federal minimum wage	Up to \$5,000 per job
3	Full-time jobs paying 250% or more of the federal minimum wage	Up to \$7,000 per job

Comm 100.25 Eligible capital investments. (1) (a) In this section, “significant investment of capital” means a capital investment in a project, beyond a certified business’s normal capital expenditures, that complies with either par. (b) or (c) and is needed to achieve a specific purpose acceptable to the department. These specific purposes include diversifying product lines, and modernizing and enhancing the efficiency of production processes.

(b) The amount of the investment is at least \$10,000 for each full-time employee working at the certified business’s project location, or \$1,000,000, whichever is less.

(c) The investment will retain existing full-time jobs that may be lost without the investment.

(2) 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. This includes directly-related consulting services, other fees and permits, and equipment installation costs. It does not include working capital for items such as employment costs, moving costs, intellectual property, unrelated fees and permits.

(3) At least 50% of the use of the equipment, machinery, real property or depreciable tangible personal property shall be for the certified business’s operations in Wisconsin.

(4) (a) The equipment, machinery, real property, or depreciable tangible personal property may not be previously owned.

(b) In this section, “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.

(c) In this section, “related person” includes a brother, sister, parent, grandparent, child, grandchild, niece, nephew, uncle, aunt, first cousin, spouse or in-laws; a corporation or any entity that owns more than 50% of the certified business; or any corporation which is part of the same commonly controlled group of corporations.

(d) In this section, “commonly controlled group” has the meaning given in s. 71.255 (1) (c) 1., Stats.

Note: Under section 71.255 (1) (c) 1. of the Statutes, “commonly controlled group” means “A parent corporation and any one or more corporations or chains of corporations that are connected to the parent corporation by direct or indirect ownership by the parent corporation, if the parent corporation owns stock representing more than 50 percent of the voting power of at least one of the connected corporations or if the parent corporation or any of the connected corporations owns stock that cumulatively represents more than 50 percent of the voting power of each of the connected corporations.”

(5) A certified business may qualify for the tax credit under this section for an amount expended to construct, rehabilitate, remodel or repair real property if the business began the physical work of construction, rehabilitation, remodeling or repair, or any demolition or destruction in preparation for the physical work, after the date specified by the department under s. Comm 100.70 (2) (b). Physical work does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications or stabilizing property to prevent deterioration.

(6) Businesses whose primary activity includes such things as retail, commercial development, recreation, entertainment or direct health care in nature are not eligible to earn tax credits through capital investment.

(7) Businesses certified for tax credits under the definition in sub. (1) (a) may be allocated tax credits of up to 3% of their eligible capital investment for equipment, and up to 5% of their capital investment for real property.

(8) Businesses certified for tax credits under the definition in sub. (1) (b) may be allocated tax credits based on the retention of existing full-time jobs according to Table 100.20.

Comm 100.30 Training or re-education of employees. (1) Except as otherwise provided in this section, “eligible training” includes instruction that will enhance an employee’s general knowledge, employability and flexibility in the workplace; develop skills unique to an individual company’s workplace or equipment; or develop skills that will increase the quality of the company’s product.

(2) **INELIGIBLE TRAINING.** Training that addresses any of the following is ineligible for tax credits:

(a) Orientation.

- (b) Administration and compensation systems.
- (c) Credit or degree courses.
- (d) Diversity.
- (e) Consulting services, including strategic planning.
- (f) Sales training.
- (g) Personal development, such as for General Educational Development testing.
- (i) Human resources practices.
- (j) Non-job-related training.
- (k) Stand-alone basic or remedial training.
- (L) Non-skill-related assessments.
- (m) State or federally-mandated programs.
- (n) General safety procedures.
- (o) English as a second language.
- (p) Basic skills.
- (q) On-the-job-training that involves the manufacture of product for sale.

(3) GENERAL. (a) Tax credits may be allocated for eligible training that is provided to existing and new employees in full-time jobs.

(b) The type of training shall be pre-approved by the department. Certified businesses shall obtain written notification of the department's allocation of tax credits prior to contracting for the training.

(c) Training shall be related to a specific project. Routine training shall be ineligible.

(d) Training may be on- or off-site, but shall be performed by a provider that is approved or otherwise authorized by the department.

(4) TAX CREDIT SCHEDULE. Tax credits under this section will be allocated at a rate of up to 50% of the eligible training costs. Eligible training costs may include trainee wages, trainer costs and trainer materials.

Comm 100.35 Location or retention of corporate headquarters. (1) (a) In this section, “corporate headquarters” means the office of a business engaged in a multistate or multinational business. “Multistate or multinational” business means a business with major operations in two or more states or nations. “Corporate headquarters” is the location where staff members or employees are physically employed and where the majority of the company’s financial, personnel, legal, planning or other headquarters functions or services are handled on a divisional, regional, national or global basis. Company functions or services may include accounts receivable and payable, accounting, data processing, distribution management, employee benefit plan, financial and securities accounting, information technology, insurance, legal, merchandising, payroll, personnel, purchasing or procurement, reporting and compliance, tax, treasury or other headquarters-related services.

(b) In this section, “major operations” means a physical facility in which a corporation’s employees are engaged in the basic business of the corporation, such as manufacturing a product, or providing a service. Out-of-state sales offices and customer service centers are not “major operations.”

(2) Tax credits under this section will be allocated on the basis of corporate headquarters positions created or retained by a project, or retained in response to substantial potential for loss, according to Table 100.35.

Table 100.35

Tier	Wage Range	Tax Credit
1	Full-time jobs paying from 150% to less than 200% of the federal minimum wage	Up to \$4,000 per job
2	Full-time jobs paying from 200% to less than 250% of the federal minimum wage	Up to \$6,000 per job
3	Full-time jobs paying from 250% to less than 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

Comm 100.40 Methodology for designating economically distressed areas. In designating economically distressed areas, the department shall consider the most current data available for the area and state using the following indicators and sources, or other sources acceptable to the department:

(1) Unemployment rate – from the department of workforce development.

(2) Percentage of families with incomes below the poverty line established under 42 USC 9902 (2) – from the U.S. census bureau.

(3) Median family income – median household income from the U.S. census bureau.

(4) Median per capita income – from the department of workforce development.

(5) Average annual wage – from the department of workforce development.

(6) Manufacturing assessment values, by county – from the department of revenue.

(7) Other significant or irregular indicators of economic distress, such as a natural disaster, or plant closings and layoffs – from the department of workforce development.

Comm 100.45 Additional tax credits for businesses in economically distressed areas and benefiting members of targeted groups. (1) Tax-credit allocations to certified businesses with projects in areas designated by the department as economically distressed may be increased by up to 50% above the maximum amount of tax credits that can otherwise be earned under this chapter.

(2) (a) Certified businesses conducting at least one eligible activity that benefits, creates, retains or significantly upgrades full-time jobs for, or that trains or re-educates members of a targeted group, may qualify for up to \$500 in additional tax credits for each member of a targeted group who is certified as described in s. 560.70 (4m), Stats.

(b) In this section, “member of a targeted group” has the meaning given in s. 560.70 (4m), Stats.

Note: Section 560.70 (4m) of the Statutes reads as follows: “ ‘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 s. 49.145 (2) and (3) for a Wisconsin Works employment position, a person who is employed in a trial job, as defined in s. 49.141 (1) (n), or in a real work, real pay project position under s. 49.147 (3m), a person who is eligible for child care assistance under s. 49.155, 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 in 29 USC 2801 (9), or a food stamp recipient, if the person has been certified in the manner under 26 USC 51 (d) (13) (A) by a designated local agency, as defined in 26 USC 51 (d) (12).”

Comm 100.50 Policies, criteria and methodology for reserving a portion of the tax credits for rural areas. (1) The department shall reserve \$5,000,000 in tax credits for projects taking place in rural areas. This reservation shall expire on June 30, 2014.

(2) In considering whether to reserve tax credits to eligible applicants in a rural area, the department shall consider the relative employment impact of the project on the area.

(3) In this section and s. Comm 100.70 (1) (b) 8., “rural area” means 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.

Comm 100.55 Policies, criteria and methodology for reserving a portion of the tax credits for small businesses. (1) The department shall reserve \$5,000,000 in tax credits for projects involving small businesses. This reservation shall expire on June 30, 2014.

(2) In considering whether to reserve tax credits to eligible small businesses, the department shall consider the relative employment impact of the project.

(3) In this section, “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 in s. 71.255 (1) (c) 1., Stats.

Note: See the informational Note under section Comm 100.25 (4) (d) for a reprint of section 71.255 (1) (c) 1. of the Statutes.

Comm 100.60 Policies and criteria for certifying a business that may be eligible for tax credits equal to or greater than \$3 million. Certified businesses may be awarded tax-credit allocations equal to or greater than \$3 million only if approved by the department secretary or designee.

Comm 100.65 Policies and criteria for extraordinary opportunities or potential losses. Where an extraordinary opportunity for job creation or job retention exists, the department secretary may approve allocating tax credits beyond the limits established in this chapter. The factors considered in determining whether to approve an allocation under this section include the following:

(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 a community is at stake.

(4) The project’s potential for substantially impacting a community or this state.

Comm 100.70 Procedures for implementing ss. 560.701 to 560.706, Stats. (1) APPLICATION. (a) A person who intends to conduct at least one eligible activity described under s. 560.702, Stats., may apply for certification and allocation of tax credits, on a valid form prescribed by the department.

Note: The application form that is currently valid can be obtained from the Department at P.O. Box 7970, Madison, WI, 53707.

(b) Upon receipt of an application, the department shall consider one or more of the following factors in determining whether to certify the 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 this state.
5. The extent to which the project will retain or increase employment in this state.
6. The extent to which the project will contribute to the economic growth of this state and the well-being of the residents of this state.
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 geographic diversity of available tax credits throughout this state.
10. The financial soundness of the business.
11. The ability of the business to utilize state tax credits.
12. Any previous financial assistance that the business received from the department.

(2) CERTIFICATION. (a) The department shall notify each applicant of whether it has been certified for tax credits.

(b) A certified business may qualify for tax credits only for eligible activities that occur after an eligibility date established by the department.

(3) DESIGNATED AGENCY FOR TARGETED GROUPS. (a) The department shall inform a certified business of the designated agency under s. 560.70 (4m), Stats., that is responsible for certifying workers who are members of targeted groups.

(b) 1. The designated agency may charge a fee not to exceed \$50 for each certification of eligibility under par. (a) for tax credits, to employers who request certification services and who have been found eligible by the designated agency. The fee shall be based on the actual cost of providing the certification. The fee shall be collected by invoice during the completion of the certification or thereafter. The designated agency may charge interest on late payments. A certified business that fails to make payment as billed by the designated agency may be ineligible for the receipt of further certification services.

2. The department may not verify any tax credits under sub. (5) until after any outstanding fees under this paragraph have been paid.

(4) CONTRACT. The certified business shall enter into a contract with the department for the tax credits under this chapter, prior to their verification by the department.

Note: See chapter Comm 149 for additional requirements relating to (1) contracts between the Department and recipients of economic-development grants, loans or tax credits; and (2) penalties for submitting false or misleading information, or for failing to comply with the terms of a contract.

(5) FILING WITH THE DEPARTMENT OF REVENUE. (a) A certified business may file with the department of revenue for tax credits under this chapter using forms acceptable to that department.

(b) Prior to filing for tax credits under par. (a), a certified business shall complete and file with the department an annual project report supporting the tax credits that are to be claimed, on a valid form prescribed by the department. The annual project report shall include all of the following:

1. The status of the certified business's project, which may include the number of full-time jobs created, retained or significantly upgraded; the number of employees in full-time jobs who are trained, and documentation of eligible training expenses; the total amount invested, and documentation of eligible investments; and 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 under sub. (4).

Note: The annual project-report form that is currently valid can be obtained from the Department at P.O. Box 7970, Madison, WI, 53707.

(c) The department shall verify the tax credits that are to be claimed, and may request additional information from the certified business to support them. No person may file with the department of revenue for tax credits under this chapter without the written verification of the department.

(6) PERIOD OF TIME JOBS MUST BE MAINTAINED. (a) Positions that are created, retained or trained as a result of the tax credits claimed under this chapter shall be maintained for at least five years after the certification date.

(b) Any failure to comply with par. (a) shall be subject to penalties prescribed in the contract under sub. (4).

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

File reference: Comm 100/rules 2009LRac