



January 31, 2020

Senator Robert Cowles
118 South – State Capitol
Madison, WI 53707

Representative Samantha Kerkman
315 North – State Capitol
Madison, WI 53707

Dear Senator Cowles and Representative Kerkman:

The Legislative Audit Bureau's (LAB) Report 19-27 recommended the Wisconsin Economic Development Corporation (WEDC) provide a status to the Joint Legislative Audit Committee by January 31, 2020 on WEDC's efforts to implement LAB's recommendation contained within the report. As a reminder to the JLAC, Foxconn did not qualify or earn tax credits in 2018. LAB's recommendations will assist to proactively prepare for any submission by Foxconn in 2019.

Attached for your convenience, please find the WEDC's letter including in LAB Report 19-27 that contains our responses to the LAB recommendation.

Since that letter was drafted, WEDC has updated its procedures and work instructions to clearly document that residents of states that are noncontiguous to Wisconsin are ineligible for credits and that the \$100,000 statutory cap will be pro-rated to match the period of employment for eligible Partial Year employees. WEDC has also revised the EITMZ instructions and definitions provided to Foxconn to ensure that the information needed to comply with the statutory and contractual requirements are clearly explained to the client.

We appreciate the opportunity to provide updates to LAB regarding our actions to address the recommendation in LAB's Report 19-27. If you have any questions, or would like any additional information, please do not hesitate to contact me.

Sincerely,

Melissa L. Hughes
Secretary and CEO

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Madison, WI 53703

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December 12, 2019

Mr. Joseph Chrisman
State Auditor
Legislative Audit Bureau
22 E. Mifflin Street, Suite 500
Madison, WI 53703

Dear Mr. Chrisman:

Thank you for the opportunity to respond to the Legislative Audit Bureau's (LAB) evaluation of the Wisconsin Economic Development Corporation's (WEDC) process for verifying information submitted by claimants SIO International Wisconsin, Inc., FEWI Development Corporation, and AFE, Inc. (collectively referred to as "Foxconn") under the Electronics and Information Technology Manufacturing Zone (EITMZ) program.

Enacted in September 2017, Wisconsin Act 58 created the EITMZ and provided statutory guidelines for WEDC's contract with Foxconn. WEDC signed a contract with Foxconn on November 10, 2017, setting forth the terms, conditions, and requirements related to Foxconn's construction of a Generation 10.5 TFT-LCD Fabrication Facility within the EITMZ. WEDC created Program Guidelines for the EITMZ program, which were approved by WEDC's Board of Directors in November 2017. WEDC also created internal procedures to address the verification process specific to the EITMZ program, which were revised in response to LAB's 18-18 report.

Act 58 requires LAB to annually evaluate WEDC's process for verifying information submitted by Foxconn until 2022. This report represents LAB's review of statutory and contractual requirements of tax credit verifications for the EITMZ program. Foxconn did not qualify or earn tax credits in 2018.

LAB's Recommendations

In its first EITMZ review (LAB's 18-18 report), LAB recommended WEDC modify its written procedures to only award EITMZ tax credits for wages of employees who perform services in Wisconsin. In response, WEDC explicitly disqualified any employee who did not perform services in Wisconsin, as part of the Department of Revenue ("DOR") payroll factor, cross-referenced in Wisconsin Act 58.

During this second review of the EITMZ program, LAB recommended WEDC only award EITMZ tax credits for wages based on the "percentage" of each individual employee's time spent performing services in Wisconsin, which would exclude such scenarios as sick and vacation time spent out of state, time spent at conferences or training out of state, or other time spent traveling out of state for business purposes.

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The Statute directs WEDC to determine how best to award tax credits for wages of employees in Wisconsin. Balancing statutory language and based on LAB's own distinction between residents of contiguous and non-contiguous states articulated in its May 2019 biennial LAB audit and this EITMZ report as practicably discerning Foxconn employee wages performed in Wisconsin from services performed outside of Wisconsin, WEDC will identify a rebuttable presumption that employees who are not Wisconsin residents or residents of a state contiguous to Wisconsin are ineligible for credits. In the most recent verification reviewed by LAB, WEDC already eliminated residents of non-contiguous states, but WEDC will update the EITMZ procedure to clearly outline this presumption in its verification standards.

Next, LAB recommends WEDC apply a different interpretation of wages for partial-year and full-year employees. WEDC currently pro-rates the actual wages used to determine the jobs tax credit incentive of a partial-year employee, based on an annualized wage analysis. This ensures high-wage employees making more than \$100,000 on an annual basis do not constitute a disproportionate percentage of the tax incentive.

LAB asks WEDC not to prorate partial-year employee wages and, instead, provide incentives based on actual wages, up to \$100,000, regardless if the employee works 12 months or 12 days. WEDC believes that this is an exceedingly narrow interpretation of the contract language and following this recommendation would result in an overpayment of tax credits.

Finally, LAB recommends WEDC not issue tax credits if the Agreed Upon Procedures (AUP) report has not been accepted by WEDC and that when capital expenditure information is collected, it includes the location of the capital expenditure. WEDC agrees with both recommendations. WEDC has not, and will not, consider issuing tax credits before making those determinations.

Thank you again for the continued discussions and recommendations that help WEDC better administer its programs.

Sincerely,



Melissa L. Hughes
Secretary and CEO

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