

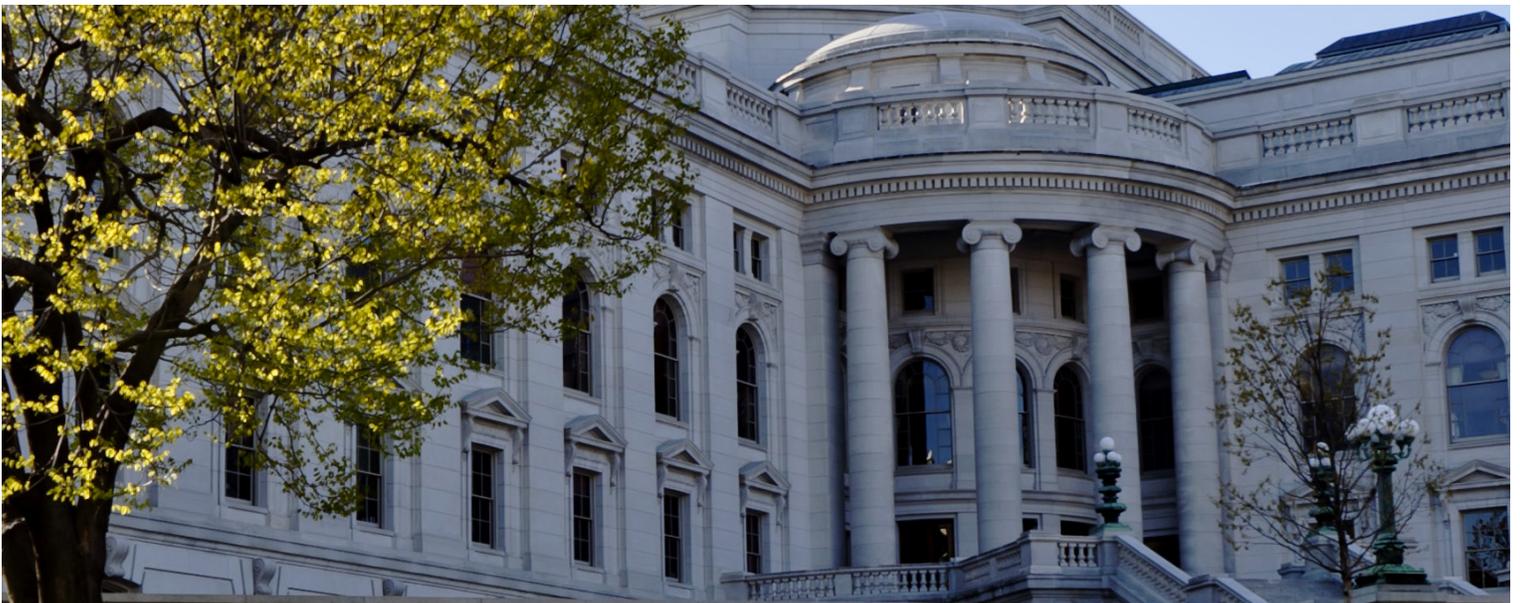


STATE OF WISCONSIN
Legislative Audit Bureau
NONPARTISAN • INDEPENDENT • ACCURATE

Report 21-21
December 2021

Electronics and Information Technology Manufacturing Zone Program

Wisconsin Economic Development Corporation



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Electronics and Information Technology Manufacturing Zone Program

Wisconsin Economic Development Corporation



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Legislative Audit Bureau

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Response

From WEDC's Chief Executive Officer



STATE OF WISCONSIN
Legislative Audit Bureau

Joe Chrisman
State Auditor

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December 14, 2021

Senator Robert Cowles and
Representative Samantha Kerkman, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Cowles and Representative Kerkman:

As required by s. 13.94 (1) (u), Wis. Stats., we evaluated the Wisconsin Economic Development Corporation's (WEDC's) process for verifying information submitted by recipients of Electronics and Information Technology Manufacturing Zone program tax credits.

In April 2021, WEDC executed an amended \$80.0 million contract with four corporations that are collectively referred to as "Foxconn" to create jobs and make capital investments over the six-year period from January 2020 through December 2025. Foxconn may be annually awarded program tax credits for creating jobs and for making capital investments from 2020 through 2024. In addition, it may be awarded performance tax credits if it creates more than 1,163 jobs filled by eligible employees in 2024 and 2025.

We found that WEDC addressed all three recommendations we made in report 20-27, including by modifying its written procedures to indicate that it will award program tax credits for only the wages paid to employees for services performed in Wisconsin and that it will award program tax credits without regard to the residency of these employees.

We found that WEDC's written procedures for calculating performance tax credits differed from provisions in the April 2021 contract. After we pointed out the differences, WEDC indicated that it planned to revise its written procedures in December 2021.

At the time of our fieldwork in early-December 2021, WEDC had not yet awarded program tax credits to Foxconn for creating jobs and making capital investments in 2020. In a subsequent report, we will evaluate whether WEDC adhered to statutory and contractual requirements when it verified the amount of these program tax credits.

We appreciate the courtesy and cooperation extended to us by WEDC. A response from WEDC's chief executive officer follows our report.

Respectfully submitted,


Joe Chrisman
State Auditor

JC/DS/ss

Electronics and Information Technology Manufacturing Zone Program

2017 Wisconsin Act 58, which was enacted in September 2017, created the Electronics and Information Technology Manufacturing Zone program. The Wisconsin Economic Development Corporation (WEDC) administers this program. Statutes allow WEDC to designate not more than one electronics and information technology manufacturing zone that shall remain in effect for no more than 15 years. Statutes stipulate that WEDC may award no more than \$2.85 billion in tax credits under the program, including \$1.5 billion for creating jobs and \$1.35 billion for making capital investments. These tax credits are refundable, meaning that if a recipient's tax credits exceed its Wisconsin income tax liability, a recipient receives a payment from the Department of Revenue (DOR).

In November 2017, WEDC executed a \$2.85 billion 15-year contract with Foxconn.

In November 2017, WEDC executed a \$2.85 billion contract with three corporations that agreed to build a facility to fabricate thin-film transistor liquid-crystal displays, which are used in electronic appliances such as televisions and computer monitors. If these three corporations, which are collectively referred to as "Foxconn," created contractually specified jobs and made contractually specified capital investments, WEDC would have awarded them up to \$2.85 billion in program tax credits over the 15-year contract period and would have informed DOR that they were eligible to claim these tax credits.

In April 2021, WEDC executed an amended and restated \$80.0 million six-year contract with Foxconn.

In April 2021, WEDC executed an amended and restated \$80.0 million contract with the original three corporations and a fourth corporation, which agreed to locate and operate a technology and manufacturing ecosystem in the existing electronics and information technology manufacturing zone. If these four corporations, which are also collectively referred to as "Foxconn," create contractually specified jobs and make contractually specified capital investments, WEDC will award them up to \$80.0 million in program tax credits over the six-year

contract period from January 2020 through December 2025 and will inform DOR that they are eligible to claim these tax credits.

Beginning in 2018, statutes require the Legislative Audit Bureau to annually evaluate for five years:

- WEDC's process for verifying information that was submitted by recipients of program tax credits and that indicates the extent to which these recipients created contractually specified jobs and made contractually specified capital investments; and
- whether WEDC adhered to statutory and contractual requirements when it verified the amount of program tax credits to award recipients as a result of their efforts to create jobs and make capital investments.

In December 2020, we released report 20-27, which was our third statutorily required evaluation of these issues. To conduct our current evaluation, we interviewed WEDC's staff, examined WEDC's April 2021 contract with Foxconn, and analyzed the April 2021 written procedures WEDC established to verify information submitted by recipients of program tax credits. At the time of our fieldwork in early-December 2021, WEDC had not yet awarded program tax credits to Foxconn for creating jobs and making capital investments in 2020. Because statutes require us to annually evaluate certain aspects of the program, in this report we evaluate WEDC's process for verifying information submitted by Foxconn. In a subsequent report, we will evaluate whether WEDC adhered to statutory and contractual requirements when it verified the amount of program tax credits it awarded to Foxconn for 2020.

Contractual Provisions

WEDC's April 2021 contract establishes new minimum numbers of jobs that Foxconn must create in order to be awarded program tax credits. For example, the original contract required Foxconn to have 1,820 jobs filled by eligible employees as of December 31, 2020, in order to be awarded any program tax credits for 2020. In contrast, the April 2021 contract requires Foxconn to have 481 jobs filled by eligible employees as of December 31, 2020, in order to be awarded any program tax credits for 2020.

Under the April 2021 contract, Foxconn may be annually awarded program tax credits for creating jobs and for making capital investments from January 2020 through December 2024. In addition, the April 2021 contract specifies that Foxconn may be awarded performance tax credits if Foxconn has created more than 1,163 jobs filled by eligible employees in 2024 and 2025. The April 2021 contract specifies that these performance tax credits would be awarded because WEDC had previously verified that Foxconn made more than \$200.0 million in capital investments in 2018 and 2019 but was awarded

no program tax credits under the original contract for these capital investments. After Foxconn creates jobs or makes capital investments in a given year, WEDC determines the amount of program tax credits, if any, to award in subsequent years.

Foxconn is contractually required to annually report to WEDC on the numbers of jobs it created and the capital investments it made in the prior year.

The April 2021 contract requires Foxconn to report to WEDC by July 1, 2021, and by April 1 in each remaining year of the contract on the numbers of jobs it created and the capital investments it made in the prior year. The April 2021 contract continues to require Foxconn to hire and pay for a nationally recognized certified public accountant (CPA) firm to perform an attestation of the job creation and capital investment information that Foxconn reported to WEDC in a given year. The April 2021 contract stipulates that this CPA firm must report to WEDC on the results of this attestation within 60 days of the deadline for Foxconn's annual report. WEDC uses Foxconn's information and the CPA firm's report to determine the amounts of program tax credits to award.

Table 1 shows the contractually specified annual amounts of program tax credits that WEDC may award under the April 2021 contract. This includes a total of \$20.3 million for creating jobs, \$40.0 million for making capital investments, and \$19.7 million in performance tax credits. If WEDC does not award all available tax credits in a given year, any unawarded tax credits for making capital investments carry forward and may be awarded in future years, but unawarded tax credits for creating jobs do not carry forward. Under the original contract, any unawarded tax credits for creating jobs and for making capital investments carried forward.

Table 1

Amounts of Program Tax Credits WEDC May Award Foxconn
Under the April 2021 Contract

Calendar Year	Minimum Number of Jobs ¹	Tax Credits (in millions)			
		Job Creation	Capital Investment ²	Performance	Total
2020	481	\$ 2.2	\$26.9	–	\$29.1
2021	747	3.5	4.8	–	8.3
2022	918	4.1	2.2	–	6.3
2023	1,042	5.0	3.7	–	8.7
2024	1,163	5.5	2.3	\$ 9.9	17.7
2025	1,163	–	–	9.9	9.9
Total		\$20.3	\$40.0	\$19.7	\$80.0

¹ Foxconn must create a minimum number of jobs in order to be awarded program tax credits for a given year.

² Any capital investment tax credits not awarded in a given year carry forward and may be awarded in future years, but Foxconn must create a minimum number of jobs in order for unawarded tax credits to carry forward.

Job Creation

Statutes and WEDC's April 2021 contract require WEDC to award Foxconn program tax credits for creating jobs filled by employees paid at least \$30,000 annually and offered retirement, health, and other benefits equivalent to such benefits offered to employees required to work at least 2,080 hours annually. Statutes and WEDC's April 2021 contract stipulate that Foxconn is to be awarded program tax credits at a rate of 17.0 percent of the wages of such employees, but it cannot be awarded program tax credits for any wages exceeding \$100,000 per employee.

Statutes and WEDC's April 2021 contract require WEDC to award program tax credits for the wages paid to employees for services performed in Wisconsin.

Statutes and WEDC's April 2021 contract require WEDC to award program tax credits for the wages paid to employees for services performed in Wisconsin. Section 238.396 (3s) (c), Wis. Stats., stipulates that WEDC may not certify Foxconn to claim program tax credits for services performed outside of Wisconsin. In addition, s. 71.28 (3wm) (b), Wis. Stats., requires WEDC to award program tax credits for a tax credit recipient's zone payroll, which is statutorily defined to be the wages paid to employees for services performed in Wisconsin.

In report 20-27, we found that WEDC's January 2020 written procedures allowed WEDC to award program tax credits for the wages paid to employees for services not performed in Wisconsin. As a result, we recommended that WEDC comply with statutes by modifying its written procedures to explicitly require it to award program tax credits for only the wages paid to employees for services performed in Wisconsin. We also recommended that WEDC modify its written procedures to require it to award program tax credits for the wages paid to all employees for services performed in Wisconsin, regardless of the residency of these employees.

WEDC's written procedures require WEDC to award program tax credits for only the wages paid to employees for services performed in Wisconsin.

During our current audit, we found that WEDC complied with each of these recommendations by modifying its written procedures to indicate that it will award program tax credits for only the wages paid to employees for services performed in Wisconsin, and that it will do so regardless of the residency of these employees. WEDC's April 2021 written procedures require Foxconn to report the wages paid to each employee for services performed outside of Wisconsin. In addition, these procedures require WEDC to exclude these wages from its calculations of the amount of program tax credits to award Foxconn. These procedures do not require eligible employees to reside in Wisconsin or a contiguous state.

Under the original contract, WEDC was required to award program tax credits for job creation based on all of the wages up to \$100,000 that Foxconn actually paid to eligible employees, including those who worked for only part of a given year. In report 20-27, we found that WEDC's written procedures indicated that it would not award program tax credits based on all of the wages up to \$100,000 that Foxconn actually paid to employees who would have earned more than \$100,000 if they had worked for Foxconn the entire year. Instead, these procedures indicated that WEDC would prorate the wages of such

employees. As a result, we recommended that WEDC comply with its contract and award program tax credits for all wages up to \$100,000 that were actually paid to eligible employees, including those who had worked for only part of a given year.

During our current audit, we found that WEDC's April 2021 written procedures complied with the April 2021 contract. Both the procedures and the April 2021 contract require WEDC to prorate the \$100,000 per employee wage limit for employees who worked for only part of the year.

Capital Investments

Statutes and WEDC's April 2021 contract allow WEDC to award Foxconn program tax credits for making capital investments.

Statutes and WEDC's April 2021 contract allow WEDC to award Foxconn program tax credits for making capital investments from 2020 through 2024 if WEDC determines that Foxconn made a significant capital investment in the zone, which is contractually defined to be Foxconn's business facilities within specified geographic boundaries in Racine County. These tax credits are calculated at a rate of 10.0 percent of eligible capital investments made by Foxconn in a given year. WEDC's April 2021 contract indicates that Foxconn will make up to \$672.1 million in capital investments to locate and operate a technology and manufacturing ecosystem in the zone. Under the April 2021 contract, Foxconn may be awarded all \$40.0 million in program tax credits for capital investment if it makes at least \$400.0 million in capital investments.

Performance

The April 2021 contract allows Foxconn to be awarded up to \$19.7 million in performance tax credits.

The April 2021 contract specifies that Foxconn may be awarded up to \$19.7 million in performance tax credits. Foxconn can be awarded up to \$9.85 million if it has created more than 1,163 jobs filled by eligible employees in 2024. For each such job filled by an eligible employee, Foxconn will be awarded \$33,848. Thus, Foxconn will be awarded all \$9.85 million if it creates 1,454 jobs filled by eligible employees in 2024. Foxconn can be awarded up to the same amount, plus any unawarded performance tax credits from 2024, if it has created more than 1,163 jobs filled by eligible employees in 2025. The April 2021 contract specifies that these performance tax credits would be awarded because WEDC had previously verified that Foxconn made more than \$200.0 million in capital investments in 2018 and 2019 but was awarded no program tax credits under the original contract for these capital investments.

WEDC's April 2021 written procedures for calculating performance tax credits differed from provisions in the April 2021 contract.

In October 2021, we found that WEDC's April 2021 written procedures for calculating performance tax credits differed from provisions in the April 2021 contract. For example, the April 2021 contract indicates that Foxconn can be awarded performance tax credits for creating up to 1,454 jobs filled by eligible employees in 2024 and in 2025, but the procedures did not specify that WEDC will limit the number of jobs for which it must award Foxconn performance tax credits. If WEDC adhered to the written procedures we reviewed in October 2021, it potentially could award Foxconn either more or fewer performance tax

credits than contractually specified, depending on factors such as the numbers of jobs filled by eligible employees and the amount of performance tax credits not awarded in 2024 and carried over to 2025. After we pointed out the differences between the April 2021 contract and the written procedures, WEDC indicated that it planned to revise its written procedures in December 2021.

WEDC should modify its written procedures to specify that it will award performance tax credits based on provisions in its April 2021 contract with Foxconn. Doing so will ensure that Foxconn is awarded the correct amounts of performance tax credits for the numbers of jobs filled by eligible employees in 2024 and 2025.

Recommendation

We recommend the Wisconsin Economic Development Corporation:

- *modify its written procedures to specify that it will award performance tax credits under the Electronics and Information Technology Manufacturing Zone program in accordance with its April 2021 contract; and*
- *report to the Joint Legislative Audit Committee by January 31, 2022, on the status of its efforts to implement this recommendation.*

Future Reporting

In July 2021, Foxconn complied with the April 2021 contract and reported on the numbers of jobs it created and the capital investments it made in 2020. In August 2021, the CPA firm complied with the April 2021 contract and reported to WEDC on its attestation of the job creation and capital investment information that Foxconn had reported to WEDC in July 2021. At the time of our fieldwork in early-December 2021, WEDC had not yet awarded program tax credits to Foxconn for creating jobs and making capital investments in 2020. In a future report, we will assess whether WEDC adhered to statutory and contractual requirements when it verified the amount of program tax credits to award Foxconn.

■ ■ ■ ■

Response



December 10, 2021

Mr. Joe 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, AFE, Inc., and FII USA, Inc., (collectively referred to as "Foxconn") under the Electronics and Information Technology Manufacturing Zone (EITMZ) tax credit program.

Enacted in September 2017, Wisconsin Act 58 created the EITMZ and provided statutory guidelines for WEDC's contract with Foxconn. WEDC entered into the first EITMZ contract on November 10, 2017. WEDC entered into an amended and restated contract with Foxconn on April 20, 2021.

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. WEDC is pleased that LAB's report reflects that WEDC addressed the recommendations in LAB's prior reports.

Pursuant to your recommendation, WEDC will report on the update to procedures for verifying 2024 and 2025 credits to the Joint Legislative Audit Committee on January 31, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read 'Melissa L. Hughes', with a long horizontal flourish extending to the right.

Melissa L. Hughes
Secretary and CEO

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