TO: REPRESENTATIVE SAMANTHA KERKMAN

FROM: Anna Henning, Senior Staff Attorney

RE: State Income Tax Credits Applicable to Foxconn

DATE: February 1, 2019

You requested a memorandum addressing the following question: "To date, has Foxconn[1] received any income tax credits from the state of Wisconsin pursuant to 2017 Wisconsin Act 58?" The short answer is no.

BACKGROUND

2017 Wisconsin Act 58 authorized the Wisconsin Economic Development Corporation (WEDC) to create an electronics and information technology manufacturing zone ("EITM zone"), in which businesses may be certified to claim certain tax credits. The act required WEDC to enter into a contract with a business certified to receive those tax benefits. WEDC designated such a zone in an agreement entered into with Foxconn on November 10, 2017.

Together with various provisions relating to state permit requirements, a state sales tax exemption, and recoupment of state funds, the act authorizes two types of refundable[2] income tax credits for which Foxconn may be eligible. First, the act authorizes a tax credit equal to 17% of **payroll** attributable to wages under $100,000 paid to each full-time employee for services performed in the EITM zone or elsewhere within this state but for the benefit of operations

[1] For simplicity, this memorandum refers to SIO Intl. Wisconsin, Inc., and AFE, Inc. ("the Wisconsin Foxconn companies") as "Foxconn."

[2] Any amount of a refundable tax credit that is not offset by a claimant's income tax liability is paid to the claimant by the state. [ss. 71.07 (3wm) (d) 1. and 71.28 (3wm) (d) 1., Stats.]

within the EITM zone.[3] This credit is subject to an aggregate limit of $1.5 billion over the 15-year life of the EITM zone. [ss. 71.07 (3wm), 71.28 (3wm), and 238.396, Stats.]

Second, the act authorizes a tax credit of up to 15% of the claimant's **significant capital expenditures** within the zone, to be allocated over a seven-year period and subject to an aggregate limit of $1.35 billion. The act directs WEDC to adopt policies and procedures defining "significant capital expenditures," and it requires WEDC to establish job creation thresholds for each year in the zone and tie those thresholds to a claimant's eligibility to receive this credit. [ss. 71.07 (3wm), 71.28 (3wm), and 238.396, Stats.]

On October 17, 2017, the WEDC Board of Directors approved an EITM zone program guideline, which defines "significant capital expenditure" to mean "a capital investment in a WEDC-designated EITM zone that is needed to achieve a specific purpose agreed to by WEDC." The program guideline further states that:

> Capital expenditures are generally defined as depreciable, tangible assets such as land, buildings, and equipment. Credit will be allowed for both capital leases or purchased property. Significant Capital Expenditures made for which Capital Investment Tax Credits are earned shall be remain [sic] titled in the name of the Claimant for the duration of the EITM zone and may be subject to additional contractual requirements as required by WEDC.

Exhibits A and B in the November 10, 2017 agreement establish job creation thresholds and tax credit disbursement schedules for both the payroll and significant capital expenditure tax credits. According to those schedules, the payroll tax credit could first be claimed after December 31, 2018, while the significant capital expenditure tax credit could first be claimed after December 31, 2019.

Exhibit A sets forth a target number of jobs to be created in each year of the agreement, as well as the minimum number of jobs that Foxconn must create to qualify for the payroll tax credit.

Exhibit B sets forth a jobs target that Foxconn must meet to receive the maximum amount of allocated tax credits for significant capital expenditures, but it does not require Foxconn to create a minimum number of jobs to receive a tax credit for significant capital expenditures. Instead, the agreement provides that:

> In the event that [Foxconn has] not employed at least the minimum [sic] full-time jobs provided in Exhibit B, Column B in [a given calendar year], the maximum capital investment tax credits [Foxconn is] eligible to claim … will be decreased by the percentage

[3] The act defines "full-time employee" to mean an individual who is employed in a job for which the annual pay is at least $30,000 and who is offered retirement, health, and other benefits that are equivalent to the retirement, health, and other benefits offered to an individual who is required to work at least 2,080 hours per year.

> amount equal to the difference between the number of actual full-time jobs employed as a percentage of the respective number in Exhibit B, Column B.

To illustrate, the agreement states that if Foxconn creates only 90% of the maximum job creation number specified in Exhibit B for a given calendar year, the amount of the significant capital investment tax credit will be decreased by 10%.

The agreement provides a schedule of reporting that requires Foxconn to submit certain documentation, including payroll information, to WEDC by April 1 after each calendar year covered by the agreement. The first such reporting deadline is April 1, 2019.

DISCUSSION

As mentioned, 2017 Wisconsin Act 58 provides two types of income tax credits for which Foxconn could be eligible. The disbursement schedules set forth under the agreement provide for initial disbursement of a payroll tax credit after December 31, 2018, if Foxconn satisfies minimum job creation thresholds, and for initial disbursement of a significant capital expenditure credit after December 31, 2019, in an amount that is proportionally reduced in the event that Foxconn does not satisfy maximum job creation targets. The agreement requires Foxconn to submit annual documentation, including applicable payroll information, annually beginning on April 1, 2019, and the process for assessing eligibility for tax credit claims would presumably occur following WEDC's receipt of that documentation.

According to a letter sent from Foxconn to WEDC CEO Mark Hogan on January 17, 2019, it appears that Foxconn did not satisfy the minimum job creation thresholds set forth in Exhibit A of the agreement during calendar year 2018. If so, Foxconn will be ineligible to claim the payroll tax credit authorized in the disbursement schedule for hiring in the 2018 calendar year.

Thus, under the agreement as executed on November 10, 2017, Foxconn would not be eligible to receive either payroll or significant capital expenditures until after December 31, 2019. At that time, Foxconn's eligibility to receive the payroll tax credit will depend on whether it satisfies minimum job creation thresholds set forth in the agreement. Under the agreement, Foxconn would be eligible to receive the significant capital expenditure credit at that time for any significant capital expenditures that meet WEDC definitions, but in an amount that could be reduced if the maximum job creation target set forth in Exhibit B is not satisfied.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

AH:jal