Report 19-27
December 2019

Electronics and Information Technology Manufacturing Zone Program

Wisconsin Economic Development Corporation

STATE OF WISCONSIN



Legislative Audit Bureau

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Joe Chrisman
State Auditor

December 17, 2019

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, as well as whether WEDC adhered to statutory and contractual requirements when it verified the amount of program tax credits to award these recipients. This is the second of five statutorily required annual evaluations of these issues. The first such evaluation was published as report 18-18 in December 2018.

In November 2017, WEDC executed a $2.85 billion tax credit contract with three corporations that are collectively referred to as "Foxconn" to create jobs and make capital investments over the 15-year period from January 2018 through December 2032. In 2019, WEDC did not award any program tax credits because Foxconn did not create the contractually specified minimum number of jobs in 2018.

In report 18-18, we found that WEDC established written procedures that allowed it to award program tax credits for the wages paid to certain employees who do not perform services in Wisconsin. In this way, these written procedures did not comply with statutes or WEDC's contract. In completing our current evaluation, we found that WEDC's written procedures continue to allow WEDC to award program tax credits for the wages paid to employees for services not performed in Wisconsin.

We found concerns with the information Foxconn reported to WEDC in April 2019 on its job creation and capital investment efforts in 2018 and how this information was reviewed. First, WEDC did not comply with its contract when it calculated the amount of wages Foxconn paid in 2018 that were eligible for program tax credits. This would have resulted in WEDC under-awarding Foxconn program tax credits, if it had awarded any program tax credits in 2019. Second, WEDC's contract requires Foxconn to hire and pay for a certified public accountant (CPA) firm to assess this information based on procedures that WEDC approves in writing. In 2019, the CPA firm did not assess this information according to procedures that WEDC approved in writing. Third, this information did not specify whether Foxconn made its capital investments in the zone, as is statutorily and contractually required. We make recommendations for improvements.

A response from WEDC's chief executive officer follows the Appendix.

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 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," create contractually specified jobs and make contractually specified capital investments, WEDC will award them up to $2.85 billion in program tax credits over the 15-year period of the contract and will inform DOR that they may 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 2018, we released report 18-18, which was our first statutorily required evaluation of these issues. To complete our second evaluation, we interviewed WEDC staff, examined WEDC's contract with Foxconn, and analyzed the policies and written procedures WEDC established to verify information submitted by recipients of program tax credits. We analyzed information that Foxconn reported to WEDC in April 2019 about the extent to which it had created jobs and made capital investments in 2018. In addition, we reviewed information reported to WEDC by a certified public accountant (CPA) firm that assessed certain information that Foxconn reported to WEDC in April 2019. WEDC's contract required Foxconn to hire and pay for a CPA firm to assess this information.

Contractual Provisions

WEDC's contract establishes minimum numbers of jobs that Foxconn must create in order to be awarded program tax credits for creating jobs in a given year. For example, to be awarded any tax credits for creating jobs in 2018, Foxconn needed to have 260 jobs filled by eligible employees as of December 31, 2018. Foxconn may be awarded program tax credits for creating jobs in each year of the 15-year contract, but it may be awarded them for making capital investments during only the seven-year period from 2019 through 2025. 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 by April 1 on the numbers of jobs created and capital investments made in the prior year.

Foxconn is contractually required to annually report to WEDC by April 1 on the numbers of jobs created and capital investments made in the prior year. Foxconn is also contractually required to hire and pay for a nationally recognized CPA firm to perform an attestation of the job creation and capital investment information that Foxconn reports to WEDC. WEDC's contract stipulates that this CPA firm must report to WEDC on the results of this attestation within 45 days after April 1. WEDC uses Foxconn's information and the CPA firm's report to determine the amounts of program tax credits to award Foxconn. Table 1 shows the contractually specified annual amounts of program tax credits that WEDC may award to Foxconn.

If WEDC does not award all available tax credits in a given year, some or all of the unawarded tax credits may carry forward and be awarded in future years. All unawarded job creation tax credits carry forward, but Foxconn must create a minimum number of jobs in order for unawarded capital investment tax credits to carry forward.

Table 1

Amounts of Program Tax Credits WEDC May Award Foxconn[1]
(in millions)

Calendar Year	Minimum Number of Jobs[2]	Job Creation	Capital Investment	Total
2018	260	$ 9.5	–	$ 9.5
2019	520	19.1	$ 192.9	212.0
2020	1,820	47.8	192.9	240.7
2021	3,640	84.0	192.9	276.9
2022	5,200	120.3	192.9	313.2
2023	7,150	120.6	192.9	313.5
2024	7,800	120.9	192.9	313.8
2025	8,450	121.1	192.9	314.0
2026	9,100	121.5	–	121.5
2027	10,400	121.7	–	121.7
2028	10,400	122.0	–	122.0
2029	10,400	122.3	–	122.3
2030	10,400	122.7	–	122.7
2031	10,400	123.0	–	123.0
2032	10,400	123.5	–	123.5
Total		**$1,500.0**	**$1,350.0**	**$2,850.0**

[1] Tax credits not awarded in a given year may carry forward and be awarded in future years. All unawarded job creation tax credits carry forward, but Foxconn must create a minimum number of jobs in order for unawarded capital investment tax credits to carry forward.

[2] Foxconn must create a minimum number of jobs in order to be awarded job creation tax credits in a given year.

Job Creation

Statutes and WEDC's 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 contract stipulate that Foxconn is to be awarded program tax credits equal to 17.0 percent of the wages of such employees, but it cannot be awarded program tax credits for any wages exceeding $100,000.

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

Statutes and WEDC's 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, ss. 71.07 (3wm) and 71.28 (3wm), Wis. Stats., require 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. The texts of these statutory provisions are shown in the Appendix.

In report 18-18, we found that WEDC established written procedures that allowed it to award program tax credits for the wages paid to certain employees who do not perform services in Wisconsin. These procedures allowed WEDC to award program tax credits for "any employee that does not live in Wisconsin and is designated as 'remote,' 'working at home,' or 'sales,'" as long as these employees are paid in the zone. WEDC's governing board did not approve these written procedures. WEDC indicated that it intended to award Foxconn program tax credits for the wages of individuals who are directed from and paid in the zone. As a result, we recommended that WEDC modify its written procedures to require it to award program tax credits only for the wages of employees who perform services in Wisconsin and provide these modified written procedures to its governing board. On January 30, 2019, WEDC reported to the Joint Legislative Audit Committee that it had complied with our recommendations, including by modifying its written procedures.

WEDC's written procedures continue to allow WEDC to award program tax credits for the wages paid to employees for services not performed in Wisconsin.

We found that WEDC's October 2019 written procedures continue to allow WEDC to award program tax credits for the wages paid to employees for services not performed in Wisconsin. These written procedures do not reference s. 238.396 (3s) (c), Wis. Stats., which stipulates that WEDC may not certify Foxconn to claim program tax credits for services performed outside of Wisconsin. These written procedures also do not reference the zone payroll statutes defined in ss. 71.07 (3wm) and 71.28 (3wm), Wis. Stats., which require WEDC to award program tax credits for the wages paid to employees for services performed in Wisconsin. Instead, these written procedures reference provisions in statutes and administrative rules that define a corporation's state payroll for income tax purposes to include all of the wages paid to certain individuals who perform a portion of their services outside of Wisconsin. Because its written procedures do not explicitly require WEDC to award job creation tax credits only for wages paid to employees for services performed in Wisconsin, WEDC's October 2019 written procedures do not comply with statutes and WEDC's contract. WEDC indicated that it did not provide these written procedures to its governing board because its policies do not require it to do so.

WEDC should 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.

WEDC should 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. WEDC could do so by ensuring its procedures require it to award program tax credits according to s. 238.396 (3s) (c), Wis. Stats, which stipulates that WEDC may not certify Foxconn to claim program tax credits for services performed outside of Wisconsin, and ss. 71.07 (3wm) and 71.28 (3wm), Wis. Stats., which require WEDC to award program tax credits for the wages paid to employees for services performed in Wisconsin.

☑ Recommendation

We recommend the Wisconsin Economic Development Corporation:

- *comply with statutes by modifying its written procedures to explicitly require it to award job creation tax credits under the Electronics and Information Technology Manufacturing Zone program for only the wages paid to employees for services performed in Wisconsin;*

- *provide these modified written procedures to its governing board; and*

- *report to the Joint Legislative Audit Committee by January 31, 2020, on the status of its efforts to implement these recommendations.*

This recommendation differs from our recommendation in report 18-18 because it addresses WEDC's October 2019 written procedures, which differ from WEDC's 2018 written procedures.

On April 1, 2019, Foxconn reported information to WEDC on the 189 jobs it had created in 2018. After reviewing this information, WEDC determined that Foxconn had created 113 jobs for which Foxconn would have been eligible to receive program tax credits. The annual wages of the employees in these jobs averaged $72,922. WEDC appropriately excluded from its determination employees paid less than $30,000 annually. WEDC also excluded from its determination 13 employees that Foxconn had indicated were residents of non-contiguous states, such as California, Texas, and Virginia. Because Foxconn did not create a minimum of 260 jobs in

2018, as was contractually required, WEDC did not award it any program tax credits.

WEDC would have under-awarded Foxconn $60,000 in program tax credits because it did not comply with its contract when calculating the amount of wages that Foxconn paid in 2018.

We found that WEDC did not comply with its contract when it calculated the amount of wages that Foxconn paid in 2018 and that were eligible for program tax credits. The contract requires WEDC to award program tax credits based on the wages actually paid to eligible employees, including those who worked for only part of a given year. We found that WEDC did not calculate program tax credits based on all of the actual wages paid to employees who would have earned more than $100,000 if they had worked for Foxconn the entire year. For example, Foxconn paid one employee $85,000 over a two-month period of time in 2018, which was one-sixth of the year. WEDC's contract required tax credits to be awarded based on all $85,000 paid to this employee. However, WEDC calculated that it would have awarded program tax credits based on wages totaling $16,667, which is one-sixth of $100,000. As a result of such calculations, WEDC excluded a total of $353,200 in wages, which would have resulted in it under-awarding Foxconn $60,000 in program tax credits. As noted, WEDC did not award any program tax credits because Foxconn did not create a minimum of 260 jobs in 2018.

WEDC indicated that it calculates program tax credits in the same way as it does for other economic development programs it administers. It indicated that its calculations are intended to prevent it from awarding tax credits for all actual wages of employees who have annualized salaries that exceed $100,000. However, WEDC's contract requires it to award program tax credits for all actual wages, up to $100,000, of each eligible employee, regardless of the annualized salaries of these employees.

Although WEDC did not award any program tax credits for the wages of eligible employees in 2018, it may award them in future years. It will be important for WEDC to comply with its contract when it calculates the amounts of wages eligible for program tax credits in future years.

☑ Recommendation

We recommend the Wisconsin Economic Development Corporation:

- *comply with its contract when calculating the amounts of wages eligible for Electronics and Information Technology Manufacturing Zone program tax credits; and*

- *report to the Joint Legislative Audit Committee by January 31, 2020, on the status of its efforts to implement this recommendation.*

The CPA firm hired and paid for by Foxconn did not complete all procedures requested by WEDC when assessing the information that Foxconn reported to WEDC in April 2019.

We found that the CPA firm hired and paid for by Foxconn did not complete all procedures requested by WEDC when assessing the information that Foxconn reported to WEDC in April 2019. WEDC's contract requires the CPA firm to assess this information based on procedures WEDC has approved in writing. In April 2019, the CPA firm provided WEDC with a draft report, which was based on its assessment of the wages and related information pertaining to a sample of the 189 employees listed in Foxconn's report to WEDC. In May 2019, WEDC indicated that it had not approved the CPA firm's procedures in writing and requested that the CPA firm:

- verify that Foxconn employees performed services in Wisconsin;
- verify that such services were for the benefit of the zone; and
- provide WEDC the opportunity to verify that an adequate number of non-Wisconsin residents were included in the sample of employees.

WEDC indicated that the CPA firm did not subsequently provide procedures for WEDC's written approval but instead provided WEDC with the final report. As a result, WEDC did not fully accept this final report, but it did not ask the CPA firm to revise this final report because it did not award Foxconn any tax credits. WEDC indicated to us that it does not plan to award Foxconn any program tax credits if the CPA firm's final report in 2020 is incomplete.

☑ Recommendation

We recommend the Wisconsin Economic Development Corporation:

- *not award any Electronics and Information Technology Manufacturing Zone program tax credits unless the certified public accountant hired and paid for by Foxconn uses procedures that the Wisconsin Economic Development Corporation approves in writing to assess information reported by Foxconn; and*
- *report to the Joint Legislative Audit Committee by January 31, 2020, on the status of its efforts to implement this recommendation.*

Capital Investments

Statutes allow WEDC to award Foxconn program tax credits for making capital investments from 2019 through 2025 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 must not exceed 15.0 percent of Foxconn's capital investments. WEDC's contract indicates that Foxconn will make up to $10.0 billion in capital investments to complete the fabrication facility. As we noted in report 18-18, Foxconn may be awarded all $1.35 billion in program tax credits for capital investment if it makes at least $9.0 billion in capital investments.

In April 2019, Foxconn reported information to WEDC on the capital investments it had made in 2018, even though it was not yet eligible for capital investment tax credits. Based on this information, WEDC calculated that Foxconn could potentially be awarded $14.9 million in tax credits next year for these capital investments.

The information Foxconn reported to WEDC in April 2019 does not specify whether capital investments were made in the zone.

We found that the information Foxconn reported to WEDC in April 2019 does not specify whether capital investments were made in the zone. WEDC's contract indicates that WEDC is to award Foxconn tax credits for machinery and equipment installed and used in the zone, as well as for land and buildings that are in the zone and needed to complete the project.

WEDC indicated to us that the CPA firm in future years will select a sample of capital investments and determine whether they meet contractual requirements. As noted, WEDC's contract requires the CPA firm to assess information reported by Foxconn based on procedures WEDC has approved in writing. It will be important for WEDC to ensure that these procedures require the CPA firm to determine whether capital investments were made in the zone. If the CPA firm is unable to determine that Foxconn made certain capital investments in the zone, WEDC should not award Foxconn program tax credits for these capital investments.

☑ **Recommendation**

We recommend the Wisconsin Economic Development Corporation:

- *award Electronics and Information Technology Manufacturing Zone program tax credits for only capital investments made in the zone; and*

- *report to the Joint Legislative Audit Committee by January 31, 2020, on the status of its efforts to implement this recommendation.*

Future Reporting

WEDC's contract specifies that any job creation program tax credits that WEDC does not award to Foxconn in a given year will carry forward and may be awarded in future years. Because Foxconn did not create at least 260 jobs filled by eligible employees in 2018, all $9.5 million in program tax credits that Foxconn could have been awarded will carry forward.

WEDC may award Foxconn up to $221.5 million in program tax credits for creating jobs and making capital investments through 2019.

As shown in Table 2, WEDC may award Foxconn up to $221.5 million in program tax credits for creating jobs and making capital investments through 2019. Such tax credits would be awarded in 2020. To be awarded any tax credits for creating jobs, Foxconn must have 520 jobs filled by eligible employees as of December 31, 2019. To be awarded any of the $9.5 million in program tax credits that were carried forward from 2018, Foxconn must create at least 2,080 jobs filled by eligible employees as of December 31, 2019.

Table 2

Amounts of Program Tax Credits WEDC May Award Foxconn[1]
(in millions)

Calendar Year	Minimum Number of Jobs[2]	Job Creation	Carryforward for Job Creation	Capital Investment	Total
2018	260	$ 9.5	–	–	–
2019	520	19.1	$9.5[3]	$192.9	$221.5

[1] Tax credits not awarded in a given year may carry forward and be awarded in future years. All unawarded job creation tax credits carry forward, but Foxconn must create a minimum number of jobs in order for unawarded capital investment tax credits to carry forward.

[2] Foxconn must create a minimum number of jobs in order to be awarded job creation tax credits in a given year.

[3] Because Foxconn did not create at least 260 jobs filled by eligible employees in 2018, $9.5 million in program tax credits for creating jobs was carried forward and may be awarded in future years.

WEDC's contract requires Foxconn to create 520 jobs filled by eligible employees and make approximately $1.286 billion in capital investments in 2019 in order to be awarded all $192.9 million in tax credits for making capital investments. If Foxconn were to create fewer than 520 jobs filled by eligible employees, WEDC's contract indicates that Foxconn would not be awarded all $192.9 million, and the unawarded capital investment tax credits would not carry forward to future years. For example, if Foxconn were to create 390 jobs (75.0 percent of the 520 jobs) filled by eligible employees, it would be awarded no more than $144.7 million (75.0 percent of $192.9 million) for making capital investments. The remaining $48.2 million of capital investment tax credits would not carry forward to future years.

■ ■ ■ ■

Appendix ■

Appendix

Statutory Requirements for Awarding Program Tax Credits

Statutes indicate how WEDC is required to award program tax credits. Statutes refer to WEDC as "the corporation" and a tax credit recipient as a "claimant."

Section 238.396 (3s) (c), Wis. Stats., states that "The corporation may not certify a business to claim tax benefits under ss. 71.07 (3wm) (b) and 71.28 (3wm) (b) for services performed outside this state."

Sections 71.07 (3wm) (b) and 71.28 (3wm) (b), Wis. Stats., require WEDC to award program tax credits based on the "zone payroll" of a tax credit recipient. Sections 71.07 (3wm) (a) 6. and 71.28 (3wm) (a) 6., Wis. Stats., define zone payroll as "the amount of state payroll that is attributable to wages paid by the claimant to full-time employees for services that are performed in the zone or that are performed outside the zone, but within the state, and for the benefit of the operations within the zone, as determined by the Wisconsin Economic Development Corporation."

Responses ■

Wisconsin Economic Development Corporation

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.

<u>LAB's Recommendations</u>

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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Joe Chrisman
State Auditor

December 17, 2019

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

Dear Senator Cowles and Representative Kerkman:

I write to clarify several issues in the audit response signed by the chief executive officer of the Wisconsin Economic Development Corporation (WEDC).

On page 1 of the response, WEDC indicates that after our publication of report 18-18, it "explicitly disqualified any employee who did not perform services in Wisconsin" from being considered when it awards program tax credits. However, WEDC's written procedures continue to allow WEDC to award program tax credits for the wages paid to employees for services not performed in Wisconsin.

On page 2 of the response, WEDC indicates that "employees who are not Wisconsin residents or residents of a state contiguous to Wisconsin are ineligible for credits." However, statutes are silent on the residency of employees for purposes of awarding program tax credits. Statutes indicate that WEDC should award program tax credits for the wages paid to employees for services performed in Wisconsin.

On page 2 of the response, WEDC indicates that statutes direct it to "determine how best to award tax credits for wages of employees in Wisconsin." However, statutes direct WEDC to determine a tax credit recipient's "zone payroll," which statutes define to mean the wages paid to employees for services performed in Wisconsin.

On page 2 of the response, WEDC indicates that we rely on an "exceedingly narrow interpretation of the contract language" when we recommend that WEDC award program tax credits based on actual wages paid to employees. However, our recommendation is based on provisions in WEDC's contract, which requires WEDC to award program tax credits for the actual wages paid to employees who work for only part of the year, up to $100,000 for a given employee. WEDC's contract is silent on prorating the actual wages paid to these employees.

I hope you find this information helpful.

Respectfully submitted,

Joe Chrisman
State Auditor

JC/DS/ss