ECONOMIC DEVELOPMENT TAX INCENTIVE STUDY - WAGE AND SALARY CREDIT

Pursuant to North Dakota Century Code Section 54-35-26, created by 2015 Senate Bill No. 2057, a variety of economic development tax incentives are to be reviewed by a Legislative Management interim committee over the ensuing six-year period. The study is aimed at ensuring that economic development tax incentives are serving their intended purposes in a cost-effective and equitable manner. This memorandum has been provided to assist in the review of the wage and salary credit and provides an explanation of the incentive, the perceived goals of the Legislative Assembly in creating or altering the incentive, and the data and testimony that will be required to conduct an effective analysis of the incentive.

EXPLANATION OF THE WAGE AND SALARY CREDIT

Section 57-38-30.1 provides for corporate income tax credit for new industry, which is defined as "a corporate enterprise engaged in assembling, fabricating, manufacturing, mixing, or processing of any agricultural, mineral, or manufactured products or any combination thereof." The taxpayer must be a domestic corporation, which is not the result of a business reorganization or acquisition, incorporated in this state for the first time after January 1, 1969, or a foreign corporation that has received a certificate of authority to transact business in this state after January 1, 1969.

The amount of the credit is equal to 1 percent of wages and salaries paid by the corporate income taxpayer in each of the first three tax years of operation and in an amount equal to one-half of 1 percent of wages and salaries paid by the taxpayer during the fourth and fifth tax years of operation. A corporation receiving a property or income tax exemption pursuant to Chapter 40-57.1 as a new and expanding business is not eligible to receive the credit.

PERCEIVED GOALS OF THE LEGISLATIVE ASSEMBLY IN CREATING OR ALTERING THE WAGE AND SALARY CREDIT

Section 57-38-30.1, providing for a corporate income tax credit for new industry, was created through the passage of 1969 House Bill No. 464. The bill provided for a corporate income tax credit equal to 1 percent of wages and salaries paid by the corporate income taxpayer in each of the first three tax years of operation and in an amount equal to one-half of 1 percent of wages and salaries paid by the taxpayer during the fourth and fifth tax years of operation. Upon a review of the legislative history pertaining to House Bill No. 464, the perceived goal of the Legislative Assembly in creating this credit was to provide an incentive to encourage new industry to locate to this state. The estimated fiscal effect of the corporate income tax credit for new industry could not be determined during the 1969 legislative session.

Any additional changes made to the language of Section 57-38-30.1, as originally enacted, have been essentially technical in nature. These changes were effectuated by 1971 House Bill No. 1164, 1973 House Bill No. 1440, and 1995 Senate Bill No. 2191. The credit has been used relatively infrequently since its enactment. Information provided to the Political Subdivision Taxation Committee by the Tax Department on July 29, 2015, and later amended on August 12, 2015, indicates the total amount of the credit claimed in tax years 2006 through 2010 cannot be disclosed due to confidentiality restrictions as the credit was claimed on less than five returns in each tax year. The credit was not claimed on any corporate income tax returns in tax years 2011 through 2014.

DATA AND TESTIMONY REQUIRED TO CONDUCT AN EFFECTIVE ANALYSIS OF THE WAGE AND SALARY CREDIT

Data pertaining to the following items will need to be collected to effectively analyze the incentive:

1. The number of claimants;
2. The fiscal impact of the incentive;
3. Employment opportunities, business growth, or diversity in the state's economy resulting from the availability of the incentive;
4. Negative impacts created as a result of the incentive;
5. Benefits that flow to out-of-state concerns resulting from the incentive; and
6. The use of this type of incentive in other states.

Testimony will need to be solicited from the following parties to effectively analyze the incentive:

1. The Department of Commerce;
2. The Tax Department; and
3. The North Dakota Economic Development Foundation.