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## LEGAL UPDATE

Legal Services Division



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### TAX EXPENDITURE COMMITTEE MEETING — DECEMBER 12, 2019

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

**Co-chairperson:** Senator Jake Chapman

**Co-chairperson:** Representative Lee Hein

**Overview.** In 2010, the Legislative Tax Expenditure Committee was established pursuant to Iowa Code sections 2.45 (5) and 2.48. The committee is required to conduct regular reviews of all tax credit, withholding credit, and revenue division programs. The committee may review any tax expenditure at any time but is required to review specific tax expenditures during specified years. In 2019, the committee is required to review tax credits for investments in qualifying business, the wind energy production tax credit, the renewable energy tax credit, the ethanol promotion tax credit, the E-85 gasoline promotion tax credit, the biodiesel blended fuel tax credit and the historic preservation tax credit.

**Investments in Qualifying Business Tax Credit.** Mr. Tony Girardi, Public Service Manager 2, Research and Policy Division, Iowa Department of Revenue (IDR), presented a report on tax credits for investments in qualifying business, colloquially referred to as the “angel investor” tax credits. The angel investor tax credit is equal to 25 percent of an investor’s equity investment in a qualifying business. The credits are limited to a total aggregate amount of \$2 million per fiscal year. The maximum amount of the tax credit that may be issued per calendar year to a natural person and the person’s spouse or dependent shall not exceed \$100,000 combined. The maximum amount of tax credits that may be issued per calendar year for investments in any one qualifying business shall not exceed \$500,000. In order to be a qualifying business, a business must meet all of the following criteria: the business must be located in Iowa, be in operation for six years or less, participate in an entrepreneurial assistance program, and shall not have a net worth exceeding \$10 million. A total of \$9.9 million of angel investor tax credits were awarded between the years 2011 and 2018.

**Wind Energy Production and Renewable Energy Tax Credits.** Mr. John Good, Fiscal and Policy Analyst, Research and Policy Division, IDR, provided background information and statistical analysis of the wind energy production and renewable energy tax credits. The wind energy production tax credit is available for 10 years to wind generation energy production facilities and is equal to \$0.01 per kilowatt-hour of electricity sold or generated for on-site consumption. The renewable energy tax credit is available for 10 years to wind, biogas, biomass, methane, solar, refuse conversion, and cogeneration facilities and is equal to \$0.015 per kilowatt-hour of electricity, \$4.50 per million British thermal units of heat for commercial purpose or of methane gas or other gas used to generate electricity, or \$1.44 per one thousand standard cubic feet of hydrogen fuel. The wind energy production tax credit applies to facilities placed in service by July 1, 2012, and the renewable energy tax credit applies to facilities placed in service by July 1, 2018. A total of 363 megawatts of the renewable energy tax credit are reserved for wind energy projects and 63 megawatts are reserved for other renewable energy projects. Additionally, 10 megawatts of the maximum amount of energy production capacity equivalent of all other facilities

found eligible for the renewable energy tax credit are reserved for solar energy conversion facilities. During FY 2018, \$1.5 million of wind energy production tax credits were awarded with an average award of \$376,000. During FY 2018, \$4.5 million of renewable energy tax credits were awarded with an average award of \$62,000. Mr. Good stated that 40.7 percent of the recipients of the wind energy production tax credit were nonresidents and 19.9 percent of the renewable energy tax credit recipients were nonresidents.

**Biofuel Retailers' Tax Credit.** Ms. Mandy Jia, Senior Fiscal and Policy Analyst, Research and Policy Division, IDR, presented a report on the ethanol promotion tax credit, E-85 gasoline promotion tax credit, E-15 plus gasoline promotion tax credit, and the biodiesel blended fuel tax credits. The report also included information on similar tax credits offered in other states. The ethanol promotion tax credit amount ranges from \$0.04 to \$0.08 per gallon of pure ethanol sold through December 31, 2020, depending on how close a retailer's biofuel distribution percentage is to the credit's biofuel threshold percentage. For both percentages, Ms. Jia explained the formulas and provided data. A retailer that varies from the threshold percentage by 4 percentage points or more is not eligible for the ethanol promotion tax credit. There were approximately 266 ethanol promotion tax credit claims in FY 2017 totaling \$700,000 in the aggregate. The E-85 gasoline promotion tax credit is equal to \$0.16 per gallon of E-85 (ethanol blends of E-70 to E-85). The E-85 gasoline promotion tax credit claims are increasing. There were approximately 304 E-85 promotion tax credit claims made during FY 2017 totaling \$2.5 million. The E-15 plus gasoline promotion tax credit is equal to \$0.03 per gallon of E-15 gasoline sold between September 16 through May 30, and \$0.10 per gallon on E-15 gasoline sold between June 1 through September 15, to account for special blending requirements of the federal Environmental Protection Agency. Beginning July 1, 2019, the federal Environmental Protection Agency lifted restrictions on E-15 gasoline sales during the summer. There were approximately 160 E-15 plus gasoline promotion tax credits claims during FY 2017 totaling \$2.0 million. Ms. Jia also provided data on the number of stations reporting E-85 and E-15 sales by county, and the number of registered flex fuel vehicles compared to end-of-year target goals. The biodiesel blended fuel tax credit is equal to \$0.035 per gallon of fuel rated from B5 to B10 (5-10 percent ethanol), and \$0.055 per gallon of fuel rated B11 or higher sold through December 31, 2024. There were approximately 457 biofuel blended tax credits claims made during FY 2017 totaling \$19.2 million.

**Historic Preservation Tax Credit.** Mr. Zhong Jin, Senior Fiscal and Policy Analyst, Research and Policy Division, IDR, stated that the tax credit equals 25 percent of qualified rehabilitation expenditures for the preservation of historic properties located in Iowa. Mr. Jin also provided information on similar programs in other states. The tax credit was first introduced in 2001 and since inception the state has awarded \$402.44 million in tax credits to 894 projects. The annual historic tax preservation tax credit cap has increased from \$2.4 million to \$45 million since 2001. Polk County has been awarded \$123.73 million in tax credits since 2001 or about a 30.7 percent share of all tax credits awarded. The tax credit is fully refundable and transferable. Approximately 30.9 percent of the tax credits claims are against the franchise tax, 39.9 percent against the income corporate tax, 21.5 percent against the individual income tax, and 7.7 percent against the insurance premium tax.

**Committee Discussion.** Senator Bolckcom discussed the need for more information about the taxpayers receiving these tax credits. Representative Hein stated tax credits may be evaluated by a subcommittee during the upcoming legislative session. Senator Chapman stated the need to evaluate proposals modifying tax credits during the legislative session.

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