Corporate Tax and Subsidy Disclosure

Policy Options for Wisconsin

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Corporate Tax and Subsidy Disclosure: Policy Options for Wisconsin

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Center on Wisconsin Strategy

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The Center on Wisconsin Strategy

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Executive Summary

In the past year, Wisconsin's corporate tax system has come under scrutiny. A summer 2006 Legislative Audit Bureau (LAB) report highlighted the fact that the state has dozens of subsidies for corporations, but does little to track the effect of these subsidies on the state's business climate. Six months later, the non-profit Institute for Wisconsin's Future reported that many of Wisconsin's largest and most well-known corporations pay no taxes. Both reports led to a public demand for more transparency and accountability.

In this report, we respond to this call for accountability and fairness by recommending that Wisconsin adopt stronger corporate tax and subsidy disclosure requirements, including mandating disclosure both of tax information beyond bottom-line tax liability and of state subsidies received. Such measures would provide the public and policymakers with clear and measurable information about the state's corporate tax climate—information that is critical when crafting tax reforms to ensure a more equitable distribution of the tax burden across individuals and firms. A fairer tax system is also good for Wisconsin's business climate: It allows companies that shoulder their full tax burden under existing tax laws to be more competitive with those that take advantage of tax loopholes, and also closes these loopholes, resulting in more dollars flowing to state programs like workforce training, education, infrastructure and other public resources that are highly valued by firms.

After reviewing other states' current and proposed tax disclosure plans, and consulting with experts in this field, we propose a tax disclosure policy that would:

- Affect all publicly-traded corporations ("C" corporations) and their subsidiaries doing business in the state.
- Require disclosure of the corporation's bottom-line state tax liability, along with any tax credits, exemptions, operating losses or deductions that might affect taxable income.
- Require disclosure of the share of nationwide income earned by the corporation that is taxable in the state, along with the share of employees based in Wisconsin.
- Require disclosure of subsidiary relationships that might affect taxable income, including:
  - profits reported by any other entity/entitites with which the corporation might have combined its profits for tax reporting purposes; and
  - if the corporation is a subsidiary, a disclosure of the overall profit reported to the SEC by the parent corporation.
- Require disclosure of economic development deals made with the state, including:
  - the terms and conditions of any development assistance package provided to the corporation in the form of tax credits, exemptions, grants, loans, etc. (such terms and conditions generally include promises made to the state regarding job creation, including average wages, benefits, and temporary vs. permanent jobs); and
  - an accounting of the actual number of jobs created as a result of the development package, including average wages and benefits, during the tax year.

These and other elements of corporate tax and subsidy disclosure reform (based in great part on a recent Model State Corporate Income Tax Disclosure Act published by the Center on Budget and Policy Priorities, www.cbpp.org), as well as a detailed discussion of the inadequacies of Wisconsin's current disclosure laws, are laid out in our full report, available at www.cows.org.

1 Introduction

On December 6, 2006, the Institute for Wisconsin's Future (IWF) went on a three-city tour to present corporate tax data gathered in the previous 14 months from the Department of Revenue. These data showed that a majority of corporations in Wisconsin paid no corporate income tax in 2003 or 2004. The presentation was covered by news media throughout the state, giving rise to a public outcry against corporations that are seen as not paying their "fair share" of Wisconsin taxes. At the same time, the findings were sharply disputed by a number of corporations and by the Wisconsin Manufacturers and Commerce (WMC), a trade association. Among other things, WMC claimed that the data were outdated, and that IWF may have identified some corporations as not paying taxes when those companies actually had paid taxes via unnamed and un-investigated subsidiaries.

About six months before the IWF presentations, the Legislative Audit Bureau (LAB) generated headlines with its own study on the relationship between corporations and the state, this one focused on state subsidies and tax breaks to corporations. The LAB found that while Wisconsin spent $152.8 million on economic development programs in 2003-05, there has been little organized effort to track these expenditures and measure program results. As a result, dollars are flowing from the state to private companies with relatively little oversight or accountability.

The IWF study, the WMC response, and the LAB report all point to a clear policy need in Wisconsin: the need for more accessible, transparent, and thorough state corporate tax and subsidy disclosure. If corporations were responsible for disclosing information about their state income taxes to the public, policy groups like IWF would not have to spend many months and thousands of dollars to obtain that information. At the same time, if corporate disclosure included information beyond the simple dollar amount of taxes paid to the state, there would be more clarity about how much various corporations and their subsidiaries actually pay, and what relationship this number has to the amount of business they actually do in the state. Finally, if corporate tax disclosure were extended to include subsidy disclosure, the public and policymakers would have a far clearer idea of how the state spends its economic development dollars, and how effective these programs are in actually spurring business and creating jobs.

In this report, we summarize what comprehensive disclosure could look like, and offer insight into why such information is important for stronger public policy. Such a policy would be good for the public, policymakers, and Wisconsin businesses interested in making sure the state's tax system creates a level and fair playing field.

As one of only five states in the nation requiring some form of corporate tax disclosure—and the only state allowing the public to find out how much specific corporations pay in income taxes each year—Wisconsin is already slightly ahead of the curve on this issue. But Wisconsin could go further to ensure the law is more effective in shedding light on corporate taxation in the state. At the same time, we could join with the many other states that have passed legislation demanding better disclosure of corporate tax subsidies and other tax breaks from the state, so that we can make our economic development system more transparent and accountable to all Wisconsin residents.

2 What is Corporate Tax and Subsidy Disclosure?

The term "corporate tax disclosure" generally refers to the public disclosure by a corporation of the amount of corporate income tax it paid to the federal or state government in a given year. However, in this report we move beyond tax disclosure to focus on tax and subsidy disclosure, including tax-related information beyond bottom-line figures, as well as subsidy and job creation data that might shed light on the efficacy of corporate tax breaks and other economic development incentives.

Requiring corporations to disclose portions of their tax returns is a hot topic among tax reform advocates, but—at the federal level at least—the practice is hardly new. The federal Securities and Exchange Commission (SEC) requires publicly-traded corporations to file annual reports disclosing detailed financial data, including profits, federal tax liability and, in some cases, tax breaks claimed by corporations. All tax-exempt organizations must file a detailed financial form (Form 990) with the IRS each year detailing both taxable and non-taxable activities; the organizations must make the most recent three years of these forms publicly available.

However, none of these reports include general corporate income tax paid at the state level. Currently only five states—Wisconsin, Massachusetts, Arkansas, North Carolina, and West Virginia—require corporations to publicly disclose state tax liability or other state-specific financial information. And these states ask for much more limited information than the SEC collects at the federal level.

Wisconsin allows members of the public to obtain records from the state Department of Revenue showing the "net income tax reported as paid or payable" for any corporation doing business in the state. This law has been in place since 1923 and is generally considered the most progressive corporate tax disclosure law in the country because it requires companies to disclose their names along with their tax liability. However, it is still very limited, as we discuss in Section 4.

Since 1993, Massachusetts has required corporations to report information on profits, taxes paid, and tax credits received. However, the law does not require the state to attach the corporation's name or address to any publicly disclosed tax information, making it of limited value for policymakers interested in examining records for individual companies or industries, or in finding any kind of pattern in the data. Furthermore, as with the Wisconsin law, disclosure includes only bottom-line tax numbers and no information about profits, percent of business or employees located in the state, state subsidies received, or other valuable financial information.

The remaining three states with tax disclosure laws are Arkansas, West Virginia and North Carolina. Both Arkansas and West Virginia adopted statutes in 1991 requiring disclosure of the dollar amount of specific state tax credits taken by corporate and individual taxpayers. In Arkansas this information can be requested by interested parties; in West Virginia the Tax Commissioner publishes an annual report with the information listed by individual or corporation name. In North Carolina, the Department of Revenue is required to publish names of taxpayers who claim certain development credits and the amount of those credits.

Groups in other states are actively working to pass corporate tax disclosure laws that go beyond those that exist in the five states mentioned above. For example, the Oregon Education Association, Oregon's largest teachers' union, recently headed a citizens' legislative initiative to establish a corporate tax disclosure law in that state. The proposed law was much more ambitious than its Wisconsin counterpart, calling for certain corporations to report the amount of taxable Oregon and U.S. profits; the extent of corporate sales, property, and payroll tied to Oregon; and total annual Oregon tax liability. Unfortunately, for a host of political reasons, this initiative never made the ballot. Advocacy groups and policymakers in several other states have recommended similarly comprehensive disclosure laws, so far without success.

While Wisconsin is somewhat at the forefront of corporate tax disclosure, it lags behind many other states when it comes to corporate subsidy disclosure—that is, the mandatory disclosure by corporations of tax credits, exemptions, grants, and other subsidies received as economic development incentives from the state. Many tax and government accountability experts have noted that states need these data to realistically assess the fiscal and economic impacts of these subsidies For example, corporations often receive state tax benefits in return for promises to create jobs, train workers and meet other state development goals; however, most states have no mechanism to track whether these tax benefits actually lead to the promised results. To assess whether corporations are upholding their end of the bargain, 12 states (not including Wisconsin) have passed bills requiring corporations and public officials to divulge such information as the number and value of corporate tax incentives provided by the state, the jobs created and retained as a result of the incentives, and the wages and benefits paid by those jobs. Some states go further and require corporations to return subsidy money if they have not met their economic development promises.

Though both types of disclosure are important, neither simple state tax disclosure nor subsidy and job creation disclosure is enough on its own. For states interested in providing corporate tax transparency that will allow policymakers and the public to create good, fair, equitable tax policy, the best way forward is corporate tax and subsidy disclosure that includes both pieces: detailed and comprehensive disclosure of tax liability, and specific information about state tax breaks and economic impacts.

3 Broad Benefits of Tax and Subsidy Disclosure

Corporate tax and subsidy disclosure provides tangible benefits to the public. Perhaps most important, it provides the public and policymakers with clear and measurable information about the corporate tax climate—information that is necessary when crafting state tax reform measures. In particular, disclosure casts light on the fiscal impacts, both to corporations and to the regions and states in which they are located, of tax breaks, loopholes, income division rules and other tax-related items. This information is invaluable in informing efforts to raise revenues for key public infrastructure items such as workforce development, healthcare, and education. It can also help states move toward a more equitable distribution of the tax burden across individuals and corporate entities, and develop new tax credit and subsidy programs based on sound and detailed information.

Consider the WMC's response to IWF's recent corporate tax presentations. The WMC argued, among other things, that IWF's information was faulty because "IWF fails to recognize that large companies often have subsidiary corporations through which the entire company's corporate income taxes are paid." The WMC is correct that large companies sometimes create independent subsidiaries to channel the profits of the parent company and avoid taxes. The fact that policymakers and the public do not have a complete picture of how these legally separate companies are actually grouped together makes it difficult to design a system that taxes business conducted in the state. One way to remedy this problem would be for corporations to report, as part of a comprehensive tax disclosure policy, the annual profits and tax liability of any entity or entities with which the corporation has combined its profits for tax reporting purposes. This disclosure, discussed in Section 5, would make clear which corporations pay taxes on their Wisconsin profits, and which of them move profits into their out-of-state subsidiaries for tax purposes. Understanding this tax loophole might ultimately lead the state to adopt a "combined reporting" rule requiring each multi-state corporation to add together the profits of all of its subsidiaries, regardless of their location, into one report for tax purposes.

The benefits of disclosure to policymakers have already been seen at the federal level. Most tax experts credit a report by the Citizens for Tax Justice (CTJ), in which the organization used SEC and annual shareholder reports to show that some of the nation's most profitable companies were paying little or no federal tax, with inspiring the Reagan Administration's 1986 Tax Reform Act. Responding to the public outcry generated by the report, Congress wrote the act to eliminate a series of costly corporate tax breaks and loopholes, and simultaneously strengthened the federal Alternative Minimum Tax. This is a perfect example of public disclosure leading to significant policy reform.

In short, disclosure improves the democratic accountability of the tax system. It generates a more inclusive, informed and energetic public debate on tax issues. At a time when confidence in government is especially low, it also allows policymakers to respond to heightened public demands for transparency and government accountability. Disclosure laws can restore public faith in democratic institutions and point the way to necessary reforms.

The Benefits of Disclosure 1: Measuring the Impact of Corporate Tax Loopholes

One benefit of corporate tax disclosure is that it can shed light on tax loopholes that allow very profitable corporations to escape state taxes. Two particularly problematic loopholes have recently been identified at the state level, both of which might be addressed through good disclosure policy. The first is the "Toys R Us-style loophole," in which multi-state corporations shift taxable income from high tax states to subsidiaries in states with low or zero corporate income tax. For years, until the practice was highlighted in a state Supreme Court case, South Carolina-based Toys R Us made royalty payments to Delaware-based Geoffrey Inc. for the use of Toys R Us trademarks and logos. Unlike South Carolina, Delaware does not tax companies whose only income comes from "intangible assets," such as trademarks. Thus Toys R Us was essentially moving income from taxing states like South Carolina to a non-taxing state, and deducting these royalty payments from its taxable income in the taxing states. One way to expose this loophole is to require corporate disclosure of interest and royalty payments to subsidiaries.

Multi-state corporations also sometimes take advantage of lax state "nexus rules," which set the bar for how much of a "physical presence" a company must have in a state in order to be responsible for state taxes for in-state sales. One way to expose this loophole is to require out-of-state companies that believe they do not owe any taxes in a particular state to file a disclosure form explaining why they should not have to file tax returns on in-state sales.

The Benefits of Disclosure 2: Measuring the Impact of Corporate Tax Incentives

States often provide corporations with tax incentives to promote economic development, usually in the form of new jobs promised by the corporation if it locates or expands operations in the state. However, only 12 states (not including Wisconsin) require companies to produce annual reports disclosing tax credits or other subsidies received from the state, and to detail job creation or other economic benefits produced because of the subsidies. Illinois and Minnesota are leading examples of this type of disclosure. Both require comprehensive and systematic reporting on project outcomes involving corporate tax incentives. The 2003 Illinois Corporate Accountability Act, for example, requires recipients to report on their progress in achieving state investment and employment goals, including wages and health benefits. Illinois state agencies also issue annual reports disclosing the number of tax subsidies issued as well as the number of organizations and corporations failing to meet their obligations. These reports are available online with the Illinois Department of Commerce and Economic Opportunity.

Minnesota has a similar statute, though there the onus is on the state rather than on corporations to provide disclosure. In Minnesota, all state agencies and local governments (in towns with populations over 2,500) that provide financial assistance to businesses and other organizations must file annual reports with the Department of Employment and Economic Development. These reports include the recipient's name and the number and value of all subsidies. This information is then consolidated in a comprehensive statewide report, which compares data over the most recent four years and comments on the state's progress in achieving its economic development goals. The Minnesota Department of Employment and Economic Development makes this information available online.

Why Disclosure is Good for Business

Along with providing tax transparency to policymakers and the public, comprehensive tax disclosure that leads to a fairer tax structure will also improve Wisconsin's business environment. Many businesses are attracted to states with transparent tax systems, because the policies they inspire tend to result in a more equitable tax burden across corporations. An equitable tax system creates a level playing field for business, thereby improving competition and economic efficiency. As a recent CALPIRG report pointed out, when firms are able to take advantage of corporate tax loopholes and questionable accounting practices, other firms not using these tactics are put at a competitive disadvantage. "Noncompliance with tax laws diverts resources toward firms and industries with greater opportunities for noncompliance, rather than the firms and industries that are most efficient or innovative." At the moment, it is nearly impossible for a business looking for opportunities in Wisconsin to know whether it will be competing with businesses that enjoy unfair tax advantages. Better disclosure would give new entrants this information, and—more important—help to close the loopholes leading to these tax advantages.

At the same time, as policymakers reform the tax system to ensure equitable distribution of the tax burden across individuals and firms, they will end up with more revenue that they can then channel to training, education, infrastructure and other public resources that are highly valued by firms. Increasing these services is a critical way to bring more business into the state.

Finally, corporate tax disclosure can lead to greater trust in corporations by the public. Disclosure inevitably reveals that many corporations in a state do, in fact, pay their fair share of taxes. It can also reveal that the reduction of a particular company's liability from one year to the next is the result of legitimate profit losses or deductions rather than an elaborate tax avoidance strategy. Thus, disclosure does not automatically represent an "anti-business" policy—in fact, one of its functions is to highlight good corporate citizenship and lend strength to tax systems that equitably distribute the tax burden, rather than laying it most heavily on companies without special tax deals.

Despite the positive benefits of disclosure, some members of the business community claim it is harmful to state business interests. They argue that disclosure requires companies to reveal proprietary information, which their competitors can use against them. Some companies also put forward the general argument that disclosure laws poison the business climate of a state, making it less attractive to boards and executives making business location decisions.

These claims are easily disputed. First, the information demanded by state regulators is not deeply proprietary and thus cannot reasonably be used by out-of-state companies to undermine their in-state competitors. This information may already be available in a variety of reports, including the annual shareholder reports of publicly-traded firms. The SEC requires publicly traded companies to report federal tax liability, and few claim that this undermines competitiveness. Because this is an often-raised concern for the business community, however, the Center on Budget and Policy Priorities's model tax disclosure bill (discussed in Section 5) includes a provision allowing corporations a lag time of two years between the tax data disclosed and the actual date of disclosure.

Second, as we have noted, tax rates and laws are not the only factor in firm location decisions. In fact, corporations are often even more concerned with the quality of local skills, infrastructure, supplier networks, utilities, and access to finance in a particular location. What most studies show is that the very services that make a state "good for business"—schools, worker training programs, roads and other infrastructure—are the very same services that are paid for by state income taxes, including the corporate income tax.

4 Inadequacies of Wisconsin's Current Disclosure Laws

The benefits of a corporate disclosure system that includes tax and subsidy information are clear. The question becomes: How effective is Wisconsin's system, and how can it be improved to maximize those benefits?

As discussed earlier, Wisconsin is currently the only state that requires non-anonymous disclosure of corporate income tax payments, meaning that it is the only state where the public can find out what a particular corporation paid in net state corporate taxes in a given year. However, Wisconsin's disclosure law is inadequate in two basic respects. First, Wisconsin's statute does not provide policymakers and concerned citizens with sufficient information to motivate and inform tax reform. The statute only requires the disclosure of "bottom-line liability"—that is, "net income tax as paid or payable." Without additional information, such as the percent of business done in the state, number of employees in the state, tax credits and other subsidies received, and jobs created as a result, this information is very limited in its ability to inform those trying to assess the costs and benefits of tax policies and structures.

Second, Wisconsin's statute erects onerous and expensive barriers to public access to corporate tax information. Under the statute, Wisconsin citizens pay what appears to be a modest $4 fee to learn the tax liability of any single company operating in the state. The fee is much less modest, however, for any serious researcher who requires information for multiple firms, or for multiple subsidiaries of the same firm. For example, the Institute for Wisconsin's Future's recent company-by-company study cost that non-profit organization thousands of dollars. Because the searches had to happen on a company-by-company basis, the study also took IWF 14 months to complete.

Another onerous element of Wisconsin's law is that anyone making a request for tax information must include the exact name and address of the company as used on its tax forms—often difficult information to obtain, especially for large corporations with multiple subsidiaries—and must give a reason for requesting the information. This reason is passed along to the corporation.

A final restriction is a corresponding state statute prohibiting those who obtain tax information through this system from sharing it with anyone else, with two exceptions: The information can be published in a newspaper, or it can be disclosed in a "public address." This stipulation recently spurred IWF's research director to hold three public forums, in Madison, Milwaukee, and Spring Green, to reveal the findings of his company-by-company research on corporate income tax payments. The IWF reported a number of important findings, including the fact that thirty specific corporations with more than $100 million in gross sales paid no Wisconsin taxes in 2003. Without scheduling these public meetings, however, IWF would not have been able to discuss its findings with anyone. This is a bizarre feature of the Wisconsin statute, and one that severely restricts the public and policy groups from making actual use of the limited information that is obtainable through the disclosure statute.

Because of these shortcomings, the Wisconsin statute really only makes information available to individuals and groups with considerable time, money, and commitment, plus the ability to disseminate findings in a newspaper or a public address. Moreover, the bottom-line net tax information gives little clue as to why some corporations failed to pay taxes in a given year—whether it was due to a general decline in profits, use of state tax credits, use of a tax loophole, or some other factor. A corporation's reason for not paying any tax in a given year may be perfectly understandable and legal; the problem is that under Wisconsin's current system, no such explanation is required.

Unlike many other states, Wisconsin also lacks any clear measure of state subsidies or tax breaks given to companies for economic development purposes, and any measure of the actual job creation resulting from these expenditures. A recent report by the Legislative Audit Bureau reveals Wisconsin's poor performance relative to other states in this regard. The LAB found that Wisconsin has 26 boards, councils, and task forces responsible for overseeing the state's myriad economic development programs, and that these entities have no systematic way to evaluate the programs or even communicate with one another about who is covering which program. As the report states,

> [A]gency efforts to measure and report results have been limited, responsibility for administering economic development programs is fragmented, and no single entity is responsible for ensuring that the programs are working toward common policy goals.

The LAB goes on to suggest, just as we have in this report, that "[a]ccountability could be enhanced by improving coordination, reducing the number of programs with similar purposes, consolidating agency reporting requirements, and disclosing project costs and benefits to the public." The report refers specifically to the subsidy disclosure laws in Illinois and Minnesota as good examples, where corporations receiving the subsidies are responsible for reporting on the cost and benefits of the subsidies on an annual basis.

And so, although Wisconsin does have the distinction of having the only non-anonymous tax disclosure law in the country, this law does not go far enough to provide the benefits discussed in Section 3. Specifically, Wisconsin's law:

- Contains only bottom-line tax information.
- Does not provide any clue to a company's actual presence in Wisconsin, whether through profits, sales, or employees located in the state.
- Requires company-by-company disclosure requests rather than providing information for a company and all its subsidiaries on one form.
- Contains no information about state tax credits or subsidies received by the corporation, nor any information on economic benefits promised in exchange for these subsidies (e.g. jobs, wages, and worker benefits).
- Impedes access to, and communication about, corporate tax information by requiring the public to initiate disclosure requests, and allowing communication only through newspapers and public meetings.

5 Improving Wisconsin's Tax and Subsidy Disclosure Laws

Given the benefits of corporate tax and subsidy disclosure, and the inadequacy of Wisconsin's current disclosure law, the state should adopt a new and more comprehensive law requiring disclosure of financial and tax information, including tax credits or other subsidies. These disclosure reports must include sufficient information so that policymakers and the public can accurately assess the fiscal and economic development impacts of tax policies. To promote transparency, such disclosure statements should be made available online, in an analytically useful format for policymakers and the public, in order to maximize the benefits of disclosure and to motivate and inform state tax reform efforts.

The Center on Budget and Policy Priorities in Washington, D.C. recently released a report, "State Corporate Tax Disclosure: The Next Step in Corporate Tax Reform," including a full model tax disclosure bill. (The full report is available at www.cbpp.org/2-13-07sfp.htm.) On the subsidy disclosure side, Illinois has the most comprehensive bill, the Illinois Corporate Accountability for Tax Expenditures Act (attached as Appendix A), which includes some points of development subsidy disclosure not covered by the CBPP model bill. The CBPP and Illinois bills provide a strong model for Wisconsin to guide consideration of new corporate tax reform legislation. Important components from these model bills include:

1. Requirements for disclosure from all publicly traded corporations ("C" corporations) and their subsidiaries doing business in the state. Additionally, publicly traded corporations making sales in the state but not required to file a tax return in the state must file a statement explaining why they do not file tax returns in the state.

2. Requirements for all disclosure to be based on the corporation's tax forms filed two years prior, to avoid revealing proprietary information.

3. Requirements that covered corporations disclose the following information, all of which is already compiled on corporate tax forms:

    a. The corporation's name, headquarters address, name and address of parent corporation (if applicable), and a unique corporate ID number that can be used to track state tax liability from year to year.

    b. The corporation's bottom-line tax liability in the state.

    c. Any tax credits or exemptions claimed from the state, or any other state subsidy (grants, loans, etc.) that affect the corporation's taxable income.

    d. Any operating losses or deductions claimed for the previous year that affect the corporation's taxable income.

    e. The share of nationwide income earned by the corporation that is taxable in the state.

4. Requirements for disclosure of information related to other commonly-owned corporations, e.g. subsidiaries or parent corporations, whose tax situation has an effect on the corporation located in the state. This information includes:

    a. Profits reported by other entity/entitites with which the corporation might have combined its profits for tax reporting purposes.

    b. If the corporation is a subsidiary, a disclosure of the overall profit reported to the SEC by the parent corporation.

5. In order to determine what loopholes corporations might be using to lower state tax payments, as well as the effect of various state tax policies on corporations, requirements for disclosure of the following information:

    a. Whether the corporation has made royalty or rent payments to any subsidiary companies in the past year (helps to determine whether a corporation is taking advantage of the "Toys R Us loophole").

    b. What the corporation's tax liability would have been in absence of Wisconsin's single sales factor apportionment rule (helps to determine efficacy of the rule, which is touted as a boon to economic development).

6. Requirements for disclosure of the following important pieces of data not normally found on a tax return, but that are essential factors in making disclosure useful to policymakers or the public:

    a. The corporation's industry (NAICS) code classification.

    b. Share (average over the year) of the corporation's employees based in Wisconsin.

    c. The terms and conditions of any development assistance package provided to the corporation in the form of tax credits, exemptions, grants, loans, etc. (such terms and conditions generally include promises made to the state regarding job creation, including average wages, benefits, and temporary vs. permanent jobs).

    d. An accounting of the actual number of jobs created as a result of the development package, including average wages and benefits, during the past year.

With the exception of points 5 and 6 above, all of this information is already collected on business tax returns, and should pose no real burden for Wisconsin's corporations.

To make this information as useful as possible to the public and policymakers, corporations should file this information with the state in a form that allows the state to post the data on a publicly available, searchable database. The Illinois Corporate Accountability Act, in Attachment A, provides a good illustration of this type of public access.

Conclusion

Since the 1920s, Wisconsin has been a leader in allowing its citizens limited access to corporate tax information. But its current law is not strong enough to provide the true benefits of corporate tax disclosure to its citizens. At the same time, the state lags behind many others, including two of our closest neighbors (Illinois and Minnesota), in providing clear information about state subsidies and tax breaks to corporations. We are living in a time when public trust in both government and corporate America is extremely low, and when public dollars are in short supply. Now

Appendix

A Illinois Corporate Accountability for Tax Expenditures Act

is the perfect time for Wisconsin to once again step forward as a leader, and pursue stronger corporate tax disclosure that is comprehensive, fair, and transparent to the public, policymakers, and the business community.

Illinois Public Act 93-0552

AN ACT concerning corporations.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Short title. This Act may be cited as the Corporate Accountability for Tax Expenditures Act.

Section 5. Definitions. As used in this Act: "Base years" means the first 2 complete calendar years following the effective date of a recipient receiving development assistance.

"Date of assistance" means the commencement date of the assistance agreement, which date triggers the period during which the recipient is obligated to create or retain jobs and continue operations at the specific project site.

"Default" means that a recipient has not achieved its job creation, job retention, or wage or benefit goals, as applicable, during the prescribed period therefor. "Department" means, unless otherwise noted, the Department of Commerce and Community Affairs or any successor agency.

"Development assistance" means (1) tax credits and tax exemptions (other than given under tax increment financing) given as an incentive to a recipient business organization pursuant to an initial certification or an initial designation made by the Department under the Economic Development for a Growing Economy Tax Credit Act and the Illinois Enterprise Zone Act, including the High Impact Business program, (2) grants or loans given to a recipient as an incentive to a business organization pursuant to the Large Business Development Program, the Business Development Public Infrastructure Program, or the Industrial Training Program, (3) the State Treasurer's Economic Program Loans, (4) the Illinois Department of Transportation Economic Development Program, and (5) all successor and subsequent programs and tax credits designed to promote large business relocations and expansions. "Development assistance" does not include tax increment financing, assistance provided under the Illinois Enterprise Zone Act pursuant to local ordinance, participation loans, or financial transactions through statutorily authorized financial intermediaries in support of small business loans and investments or given in connection with the development of affordable housing.

"Development assistance agreement" means any agreement executed by the State granting body and the recipient setting forth the terms and conditions of development assistance to be provided to the recipient consistent with the final application for development assistance, including but not limited to the date of assistance, submitted to and approved by the State granting body.

"Full-time, permanent job" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "full-time, permanent job" in either the legislation authorizing a program that constitutes economic development assistance under this Act or in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "full-time, permanent job" means a job in which the new employee works for the recipient at a rate of at least 35 hours per week.

"New employee" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "new employee" in either the legislation authorizing a program that constitutes economic development assistance under this Act nor in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "new employee" means a full-time, permanent employee who represents a net increase in the number of the recipient's employees statewide. "New employee" includes an employee who previously filled a new employee position with the recipient who was rehired or called back from a layoff that occurs during or following the base years.

The term "New Employee" does not include any of the following: (1) An employee of the recipient who performs a job that was previously performed by another employee in this State, if that job existed in this State for at least 6 months before hiring the employee. (2) A child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who has a direct or indirect ownership interest of at least 5% in the profits, capital, or value of any member of the recipient.

"Part-time job" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "part-time job" in either the legislation authorizing a program that constitutes economic development assistance under this Act or in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "part-time job" means a job in which the new employee works for the recipient at a rate of less than 35 hours per week.

"Recipient" means any business that receives economic development assistance. A business is any corporation, limited liability company, partnership, joint venture, association, sole proprietorship, or other legally recognized entity. "Retained employee" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "retained employee" in either the legislation authorizing a program that constitutes economic development assistance under this Act or in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "retained employee" means any employee defined as having a full-time or full-time equivalent job preserved at a specific facility or site, the continuance of which is threatened by a specific and demonstrable threat, which shall be specified in the application for development assistance.

"Specific project site" means that distinct operational unit to which any development assistance is applied.

"State granting body" means the Department, any State department or State agency that provides development assistance that has reporting requirements under this Act, and any successor agencies to any of the preceding.

"Temporary job" means either: (1) the definition therefor in the legislation authorizing the programs described in the definition of development assistance in the Act or (2) if there is no such definition, then as defined in administrative rules implementing such legislation, provided the administrative rules were in place prior to the effective date of this Act. On and after the effective date of this Act, if there is no definition of "temporary job" in either the legislation authorizing a program that constitutes economic development assistance under this Act or in any administrative rule implementing such legislation that was in place prior to the effective date of this Act, then "temporary job" means a job in which the new employee is hired for a specific duration of time or season.

"Value of assistance" means the face value of any form of development assistance.

Section 10. Unified Economic Development Budget.

(a) For each State fiscal year ending on or after June 30, 2005, the Department of Revenue shall submit an annual Unified Economic Development Budget to the General Assembly. The Unified Economic Development Budget shall be due within 3 months after the end of the fiscal year, and shall present all types of development assistance granted during the prior fiscal year, including:

(1) The aggregate amount of uncollected or diverted State tax revenues resulting from each type of development assistance provided in the tax statutes, as reported to the Department of Revenue on tax returns filed during the fiscal year.

(2) All State development assistance.

(b) All data contained in the Unified Economic

Development Budget presented to the General Assembly shall be fully subject to the Freedom of Information Act.

(c) The Department of Revenue shall submit a report of the amounts in subdivision (a)(1) of this Section to the Department, which may append such report to the Unified Economic Development Budget rather than separately reporting such amounts.

Section 15. Standardized applications for State development assistance.

(a) All final applications submitted to the Department or any other State granting body requesting development assistance shall contain, at a minimum:

(1) An application tracking number that is specific to both the State granting agency and to each application.

(2) The office mailing addresses, office telephone number, and chief officer of the granting body.

(3) The office mailing address, telephone number, 4-digit SIC number or successor number, and the name of the chief officer of the applicant or authorized designee for the specific project site for which development assistance is requested.

(4) The applicant's total number of employees at the specific project site on the date that the application is submitted to the State granting body, including the number of full-time, permanent jobs, the number of part-time jobs, and the number of temporary jobs.

(5) The type of development assistance and value of assistance being requested.

(6) The number of jobs to be created and retained or both created and retained by the applicant as a result of the development assistance, including the number of full-time, permanent jobs, the number of part-time jobs, and the number of temporary jobs.

(7) A detailed list of the occupation or job classifications and number of new employees or retained employees to be hired in full-time, permanent jobs, a schedule of anticipated starting dates of the new hires and the anticipated average wage by occupation or job classification and total payroll to be created as a result of the development assistance.

(8) A list of all other forms of development assistance that the applicant is requesting for the specific project site and the name of each State granting body from which that development assistance is being requested.

(9) A narrative, if necessary, describing why the development assistance is needed and how the applicant's use of the development assistance may reduce employment at any site in Illinois.

(10) A certification by the chief officer of the applicant or his or her authorized designee that the information contained in the application submitted to the granting body contains no knowing misrepresentation of material facts upon which eligibility for development assistance is based.

(b) Every State granting body either shall complete, or shall require the applicant to complete, an application form that meets the minimum requirements as prescribed in this Section each time an applicant applies for development assistance covered by this Act.

(c) The Department shall have the discretion to modify any standardized application for State development assistance required under subsection (a) for any grants under the Industrial Training Program that are not given as an incentive to a recipient business organization.

Section 20. State development assistance disclosure.

(a) Beginning February 1, 2005 and each year thereafter, every State granting body shall submit to the Department copies of all development assistance agreements that it approved in the prior calendar year.

(b) For each development assistance agreement for which the date of assistance has occurred in the prior calendar year, each recipient shall submit to the Department a progress report that shall include, but not be limited to, the following:

(1) The application tracking number.

(2) The office mailing address, telephone number, and the name of the chief officer of the granting body.

(3) The office mailing address, telephone number, 4-digit SIC number or successor number, and the name of the chief officer of the applicant or authorized designee for the specific project site for which the development assistance was approved by the State granting body.

(4) The type of development assistance program and value of assistance that was approved by the State granting body.

(5) The applicant's total number of employees at the specific project site on the date that the application was submitted to the State granting body and the applicant's total number of employees at the specific project site on the date of the report, including the number of full-time, permanent jobs, the number of part-time jobs, and the number of temporary jobs, and a computation of the gain or loss of jobs in each category.

(6) The number of new employees and retained employees the applicant stated in its development assistance agreement, if any, if not, then in its application, would be created by the development assistance broken down by full-time, permanent, part-time, and temporary.

(7) A declaration of whether the recipient is in compliance with the development assistance agreement.

(8) A detailed list of the occupation or job classifications and number of new employees or retained employees to be hired in full-time, permanent jobs, a schedule of anticipated starting dates of the new hires and the actual average wage by occupation or job classification and total payroll to be created as a result of the development assistance.

(9) A narrative, if necessary, describing how the recipient's use of the development assistance during the reporting year has reduced employment at any site in Illinois.

(10) A certification by the chief officer of the applicant or his or her authorized designee that the information in the progress report contains no knowing misrepresentation of material facts upon which eligibility for development assistance is based.

(c) The State granting body, or a successor agency, shall have full authority to verify information contained in the recipient's progress report, including the authority to inspect the specific project site and inspect the records of the recipient that are subject to the development assistance agreement.

(d) By June 1, 2005 and by June 1 of each year thereafter, the Department shall compile and publish all data in all of the progress reports in both written and electronic form.

(e) If a recipient of development assistance fails to comply with subsection (b) of this Section, the Department shall, within 20 working days after the reporting submittal deadlines set forth in (i) the legislation authorizing, (ii) the administrative rules implementing, or (iii) specific provisions in development assistance agreements pertaining to the development assistance programs, suspend within 33 working days any current development assistance to the recipient under its control, and shall be prohibited from completing any current or providing any future development assistance until it receives proof that the recipient has come into compliance with the requirements of subsection (b) of this Section.

(f) The Department shall have the discretion to modify the information required in the progress report required under subsection (b) consistent with the disclosure purpose of this Section for any grants under the Industrial Training Program that are not given as an incentive to a recipient business organization.

Section 25. Recapture.

(a) All development assistance agreements shall contain, at a minimum, the following recapture provisions:

(1) The recipient must (i) make the level of capital investment in the economic development project specified in the development assistance agreement; (ii) create or retain, or both, the requisite number of jobs, paying not less than specified wages for the created and retained jobs, within and for the duration of the time period specified in the legislation authorizing, or the administrative rules implementing, the development assistance programs and the development assistance agreement.

(2) If the recipient fails to create or retain the requisite number of jobs within and for the time period specified, in the legislation authorizing, or the administrative rules implementing, the development assistance programs and the development assistance agreement, the recipient shall be deemed to no longer qualify for the State economic assistance and the applicable recapture provisions shall take effect.

(3) If the recipient receives State economic assistance in the form of a High Impact Business designation pursuant to Section 5.5 of the Illinois Enterprise Zone Act and the business receives the benefit of the exemption authorized under Section 5l of the Retailers' Occupation Tax Act (for the sale of building materials incorporated into a High Impact Business location) and the recipient fails to create or retain the requisite number of jobs, as determined by the legislation authorizing the development assistance programs or the administrative rules implementing such legislation, or both, within the requisite period of time, the recipient shall be required to pay to the State the full amount of the State tax exemption that it received as a result of the High Impact Business designation.

(4) If the recipient receives a grant or loan pursuant to the Large Business Development Program, the Business Development Public Infrastructure Program, or the Industrial Training Program and the recipient fails to create or retain the requisite number of jobs for the requisite time period, as provided in the legislation authorizing the development assistance programs or the administrative rules implementing such legislation, or both, or in the development assistance agreement, the recipient shall be required to repay to the State a pro rata amount of the grant; that amount shall reflect the percentage of the deficiency between the requisite number of jobs to be created or retained by the recipient and the actual number of such jobs in existence as of the date the Department determines the recipient is in breach of the job creation or retention covenants contained in the development assistance agreement. If the recipient of development assistance under the Large Business Development Program, the Business Development Public Infrastructure Program, or the Industrial Training Program ceases operations at the specific project site,

during the 5-year period commencing on the date of assistance, the recipient shall be required to repay the entire amount of the grant or to accelerate repayment of the loan back to the State.

(5) If the recipient receives a tax credit under the Economic Development for a Growing Economy tax credit program, the development assistance agreement must provide that (i) if the number of new or retained employees falls below the requisite number set forth in the development assistance agreement, the allowance of the credit shall be automatically suspended until the number of new and retained employees equals or exceeds the requisite number in the development assistance agreement; (ii) if the recipient discontinues operations at the specific project site during the first 5 years of the 10-year term of the development assistance agreement, the recipient shall forfeit all credits taken by the recipient during such 5-year period; and (iii) in the event of a revocation or suspension of the credit, the Department shall contact the Director of Revenue to initiate proceedings against the recipient to recover wrongfully exempted Illinois State income taxes and the recipient shall promptly repay to the Department of Revenue any wrongfully exempted Illinois State income taxes. The forfeited amount of credits shall be deemed assessed on the date the Department contacts the Department of Revenue and the recipient shall promptly repay to the Department of Revenue any wrongfully exempted Illinois State income taxes.

(b) The Director may elect to waive enforcement of any contractual provision arising out of the development assistance agreement required by this Act based on a finding that the waiver is necessary to avert an imminent and demonstrable hardship to the recipient that may result in such recipient's insolvency or discharge of workers. If a waiver is granted, the recipient must agree to a contractual modification, including recapture provisions, to the development assistance agreement. The existence of any waiver granted pursuant to this subsection (c), the date of the granting of such waiver, and a brief summary of the reasons supporting the granting of such waiver shall be disclosed consistent with the provisions of Section 25 of this Act.

(c) Beginning June 1, 2004, the Department shall annually compile a report on the outcomes and effectiveness of recapture provisions by program, including but not limited to:

(i) the total number of companies that receive development assistance as defined in this Act;

(ii) the total number of recipients in violation of development agreements with the Department;

(iii) the total number of completed recapture efforts;

(iv) the total number of recapture efforts initiated; and

(v) the number of waivers granted. This report shall be disclosed consistent with the provisions of Section 20 of this Act.

(d) For the purposes of this Act, recapture provisions do not include the Illinois Department of Transportation Economic Development Program, any grants under the Industrial Training Program that are not given as an incentive to a recipient business organization, or any successor programs as described in the term "development assistance" in Section 5 of this Act.

Section 99. Effective date. This Act takes effect upon becoming law.