<u>Department of Taxes Testimony Prep: Act 157 Section H.13; Policy Review</u>

Question 3: *whether and under what circumstances the Department of Taxes should have, and should exercise, the authority to recapture the value of incentives paid to a business that is subsequently sold or relocated out of the State, or that eliminates qualifying jobs after receiving an incentive;*

- When a business is sold during the period in which it is eligible for incentive payments-
  - Under current law, a company can continue to qualify for incentives if it continues to meet the requirements for an incentive. A change of ownership does not inherently affect eligibility for incentives.
  - However, if a company is sold and it drops below 90 percent of the application base jobs, it will be subject to recapture under current law.
- When a business is sold after all incentive claims are paid-
  - Under current law, it has no further obligations to the VEGI program.
  - If the law is changed to allow or require recapture after the incentive period, there needs to be a statutory framework to track business activities for some period into the future.
    - This may be a function VEPC can handle with informational assistance from the Department of Taxes. It would be most efficient to require in statute that a company notify VEPC if a transfer of the business occurs within X number of years.
    - Recapture would work the same but the Department needs statutory authority and a statute of limitations.

- When a business relocates during the incentive period-
  - Under current law, if a business ceases to operate in Vermont, it will drop below 90 percent of application base jobs or fail to meet the cumulative job target and will therefore be subject to recapture.
- When a business relocates after all incentive claims are paid-
  - Under current law, there is no further obligation.
  - There needs to be a statutory framework or reporting requirement, as stated above.
  - Recapture would work the same.

- How the recapture process works-
  - Brian informs the collections unit that recapture is necessary and calculates the amount of incentives that were previously received.
  - The company receives a bill for withholding (possible need to include in our new system a recapture bill). At the same time, a person identified as personally liable receives the same bill for withholding.

    - Standard collections procedures are followed, including a payment plan if necessary. Penalties and interest apply. Usually, the company pays the bill unless it no longer exists.
    - When the company no longer exists, the owner or officer responsible for the liability will settle or pay the full amount. It's not uncommon for the full amount to be in the $100,000s.
    - We have not had a case that was uncollectible.

- Elimination of qualifying jobs after the incentive period-
    - The elimination of qualifying jobs does not currently trigger recapture-
        - Recapture occurs when application base jobs drop below 90 percent OR when a business has zero job at the time of application, if it falls below 90 percent of the job target
    - We have the ability to recapture when the qualifying job target is not met. For the time period after the incentive period, there would have to be some kind of reporting requirement or tracking by VEPC for us to know qualifying jobs had decreased.

- Discretion over recapture-
    - The Department strongly prefers to not have discretion. The statute or VEPC should dictate when recapture occurs. The Department does not have that kind of relationship with the businesses and is not involved with initial approvals. We fear any discretionary decision would be arbitrary because we are not involved with application approvals.

Question 8: *quantifiable standards for the type, quality, and value of employee benefits that an applicant must offer in order for a new job to count as a "qualifying job" for purposes of the Vermont Employment Growth Incentive Program.*

- Currently, applicants check a box to certify that at least 3 of the 8 criteria for qualifying job were met (section 5930b(a)(20)).
- The Department does not investigate whether the certification is true and accurate.
  - Eligibility is based on an honor system- no evidence of compliance is necessary.
- The criteria in statute could include greater detail or be made quantifiable.
  - If the goal is to make the criteria more enforceable, the businesses could be made to submit quantifiable evidence that the criteria were met.
  - If the Department were asked to verify submitted evidence, the workload could be significant (there were 853 qualifying jobs in 2014 and one dedicated Department staff).
    - Verification of all qualifying jobs is an option; selective audits could be another approach. Would be burdensome on applicants in either case.

Question 4: *how to most effectively ensure, through the application and award process, that recipients of VEGI incentives are in compliance with all federal and State water quality and air quality laws and regulations;*

- We could require a DEC certification before initial VEPC approval or, if the legislature prefers a more frequent check, a DEC certification as part of every incentive claim.
- DEC may prefer to issue a certification that a business is “not out of compliance” rather than the more absolute certification that it is “in compliance.”

Question 7: *whether additional applicant and program data reporting and transparency could be accomplished without damage to applicant businesses*

- Incentive claims are submitted to the Department through VEPC.
    - As we understand it, VEPC also has a record of the information in incentive claims.
- Once received by the Department, claim information is treated as confidential tax information subject to Vermont tax record confidentiality laws.
- The Department uses other tax data to confirm information on the incentive application; such as corporate tax returns and W-2s.
- For the Department to disclose information, an exception to the tax confidentiality laws should be made, as well as express authority to disclose the information.

- We lack the expertise to comment on the disclosure of proprietary information.