



2003 ASSEMBLY BILL 522

September 18, 2003 - Introduced by Representatives McCORMICK, NISCHKE, STASKUNAS, HAHN, KRAWCZYK, GRONEMUS, WEBER, GIELOW and OTT, cosponsored by Senators KANAVAS, STEPP, LASSA, REYNOLDS and ROESSLER. Referred to Committee on Economic Development.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)
2 (a) 10., 77.92 (4), 560.30 (3), 560.37 (4) and 560.37 (5); and **to create** 71.07 (7m),
3 71.10 (4) (cp), 71.28 (7m), 71.30 (3) (dm), 71.47 (7m) and 71.49 (1) (dm) of the
4 statutes; **relating to:** creating a certified capital company income and
5 franchise tax credit.

Analysis by the Legislative Reference Bureau

Under current law, the department of commerce (department) is authorized to certify investments (certified capital investments) made by investors (certified investors) in companies that have been certified by the department (certified capital companies). A certified capital company in which a certified capital investment is made must then invest the certified capital investment, according to a specified schedule, in a business in this state that fulfills certain requirements, including having no more than 100 employees and a net worth of no more than \$5,000,000 (qualified businesses). The investment in the qualified business must satisfy certain requirements, and the qualified business must agree to comply with certain requirements as a condition of the investment.

If a certified investor is a certain type of insurer, including a life insurer or an out-of-state insurer doing a fire or marine insurance business or a casualty or surety business, the certified investor may claim a tax credit for the certified capital investment against license fees that are based on gross premiums and that are owed to the state instead of income or franchise taxes. The credit must be claimed over a

ASSEMBLY BILL 522

ten-year period, with ten percent of the investment used to offset the license fee that is due each year.

This bill creates an income and franchise tax credit for certified capital investments similar to the credit that certain insurers may claim to offset license fees. The following public utilities may claim the credit against the amount of their income or franchise tax liability in the taxable year: railroads; light, heat, and power companies; air carrier companies; pipeline companies; electric cooperative associations; and telephone companies. The following financial institutions organized under state law may also claim the credit against the amount of their income or franchise tax liability in the taxable year: credit unions; savings banks; savings and loan associations; and banks. The limitations and conditions that apply to the certified capital investment credit for certain insurers apply to the income and franchise tax credit.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

2 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s)~~, and (7m) and not passed
4 through by a partnership, limited liability company, or tax-option corporation that
5 has added that amount to the partnership's, company's, or tax-option corporation's
6 income under s. 71.21 (4) or 71.34 (1) (g).

7 **SECTION 2.** 71.07 (7m) of the statutes is created to read:

8 71.07 **(7m)** CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

- 9 1. "Certified capital company" has the meaning given in s. 560.30 (2).
10 2. "Certified capital investment" has the meaning given in s. 560.30 (4).
11 3. "Claimant" means a person who is subject to taxation under subchs. I, II, and
12 IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under
13 ch. 214, a savings and loan association organized under ch. 215, or a bank organized
14 under ch. 221.

ASSEMBLY BILL 522

1 4. "Investment date" has the meaning given in s. 560.30 (6).

2 5. "Investment pool" has the meaning given in s. 560.30 (7).

3 6. "Qualified investment" has the meaning given in s. 560.30 (11).

4 (b) A claimant who makes a certified capital investment may claim as a credit
5 against the tax imposed under s. 71.02, up to the amount of those taxes, for 10 years
6 beginning with the year of the investment, an amount equal to either 10 percent of
7 that investment or the amount by which the sum of the claimant's certified capital
8 investments and the claimant's qualified investments exceeds the claimant's
9 qualified investments in the taxable year before the claimant first claimed the credit
10 under this subsection, whichever is less.

11 (c) Subsection 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under 71.28
12 (4), applies to the credit under this subsection.

13 (d) Partnerships, limited liability companies, and tax-option corporations may
14 not claim the credit under this subsection, but the eligibility for, and the amount of,
15 the credit are based on their payment of a certified capital investment. A
16 partnership, limited liability company, or tax-option corporation shall compute the
17 amount of credit that each of its partners, members, or shareholders may claim and
18 shall provide that information to each of them. Partners, members of limited liability
19 companies, and shareholders of tax-option corporations may claim the credit in
20 proportion to their ownership interest.

21 (e) 1. If a certified capital company is decertified, or an investment pool is
22 disqualified, under s. 560.37 before the certified capital company fulfills the
23 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
24 pool, any claimant that has received a credit under this subsection with respect to

ASSEMBLY BILL 522

1 that investment pool shall repay that credit to the department of revenue and may
2 not claim more credit in respect to that investment pool.

3 2. If a certified capital company fulfills the investment requirement under s.
4 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
5 company is decertified, or an investment pool is disqualified, under s. 560.37 before
6 the certified capital company fulfills the investment requirement under s. 560.34
7 (1m) (a) 2. for that investment pool, any claimant that has received a credit under
8 this subsection with respect to that investment pool shall repay all credits that were
9 claimed for taxable years after the taxable year that includes the 3rd anniversary of
10 the investment date of the investment pool and may claim no more credits for taxable
11 years after the taxable year that includes the 3rd anniversary of the investment date
12 of the investment pool.

13 **SECTION 3.** 71.10 (4) (cp) of the statutes is created to read:

14 71.10 (4) (cp) The certified capital company credit under s. 71.07 (7m).

15 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

16 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
17 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s)~~, and (7m) and passed through to
18 partners shall be added to the partnership's income.

19 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

20 71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means
21 the gross income as computed under the Internal Revenue Code as modified under
22 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
23 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
24 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g)~~, and (7m)
25 and not passed through by a partnership, limited liability company, or tax-option

ASSEMBLY BILL 522

1 corporation that has added that amount to the partnership's, limited liability
2 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
3 the amount of losses from the sale or other disposition of assets the gain from which
4 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
5 otherwise disposed of at a gain and minus deductions, as computed under the
6 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
7 amount equal to the difference between the federal basis and Wisconsin basis of any
8 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
9 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

10 **SECTION 6.** 71.28 (7m) of the statutes is created to read:

11 71.28 (7m) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

12 1. "Certified capital company" has the meaning given in s. 560.30 (2).

13 2. "Certified capital investment" has the meaning given in s. 560.30 (4).

14 3. "Claimant" means a person who is subject to taxation under subchs. I, II, and
15 IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under
16 ch. 214, a savings and loan association organized under ch. 215, or a bank organized
17 under ch. 221.

18 4. "Investment date" has the meaning given in s. 560.30 (6).

19 5. "Investment pool" has the meaning given in s. 560.30 (7).

20 6. "Qualified investment" has the meaning given in s. 560.30 (11).

21 (b) A claimant who makes a certified capital investment may claim as a credit
22 against the tax imposed under s. 71.23, up to the amount of those taxes, for 10 years
23 beginning with the year of the investment, an amount equal to either 10 percent of
24 that investment or the amount by which the sum of the claimant's certified capital
25 investments and the claimant's qualified investments exceeds the claimant's

ASSEMBLY BILL 522

1 qualified investments in the taxable year before the claimant first claimed the credit
2 under this subsection, whichever is less.

3 (c) Subsection (4) (e), (f), (g), and (h), as it applies to the credit under sub. (4),
4 applies to the credit under this subsection.

5 (d) Partnerships, limited liability companies, and tax-option corporations may
6 not claim the credit under this subsection, but the eligibility for, and the amount of,
7 the credit are based on their payment of a certified capital investment. A
8 partnership, limited liability company, or tax-option corporation shall compute the
9 amount of credit that each of its partners, members, or shareholders may claim and
10 shall provide that information to each of them. Partners, members of limited liability
11 companies, and shareholders of tax-option corporations may claim the credit in
12 proportion to their ownership interest.

13 (e) 1. If a certified capital company is decertified, or an investment pool is
14 disqualified, under s. 560.37 before the certified capital company fulfills the
15 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
16 pool, any claimant that has received a credit under this subsection with respect to
17 that investment pool shall repay that credit to the department of revenue and may
18 not claim more credit in respect to that investment pool.

19 2. If a certified capital company fulfills the investment requirement under s.
20 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
21 company is decertified, or an investment pool is disqualified, under s. 560.37 before
22 the certified capital company fulfills the investment requirement under s. 560.34
23 (1m) (a) 2. for that investment pool, any claimant that has received a credit under
24 this subsection with respect to that investment pool shall repay all credits that were
25 claimed for taxable years after the taxable year that includes the 3rd anniversary of

ASSEMBLY BILL 522

1 the investment date of the investment pool and may claim no more credits for taxable
2 years after the taxable year that includes the 3rd anniversary of the investment date
3 of the investment pool.

4 **SECTION 7.** 71.30 (3) (dm) of the statutes is created to read:

5 71.30 (3) (dm) The certified capital company credit under s. 71.28 (7m).

6 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

7 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
8 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
9 (3g), and (7m) and passed through to shareholders.

10 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

11 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
12 computed under s. 71.47 (1dd) to (1dx) and (7m) and not passed through by a
13 partnership, limited liability company or tax-option corporation that has added that
14 amount to the partnership's, limited liability company's or tax-option corporation's
15 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
16 s. 71.47 (1), (3), (4) and (5).

17 **SECTION 10.** 71.47 (7m) of the statutes is created to read:

18 71.47 (7m) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

19 1. "Certified capital company" has the meaning given in s. 560.30 (2).

20 2. "Certified capital investment" has the meaning given in s. 560.30 (4).

21 3. "Claimant" means a person who is subject to taxation under subchs. I, II, and
22 IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under
23 ch. 214, a savings and loan association organized under ch. 215, or a bank organized
24 under ch. 221.

25 4. "Investment date" has the meaning given in s. 560.30 (6).

ASSEMBLY BILL 522

1 5. “Investment pool” has the meaning given in s. 560.30 (7).

2 6. “Qualified investment” has the meaning given in s. 560.30 (11).

3 (b) A claimant who makes a certified capital investment may claim as a credit
4 against the tax imposed under s. 71.43, up to the amount of those taxes, for 10 years
5 beginning with the year of the investment, an amount equal to either 10 percent of
6 that investment or the amount by which the sum of the claimant’s certified capital
7 investments and the claimant’s qualified investments exceeds the claimant’s
8 qualified investments in the taxable year before the claimant first claimed the credit
9 under this subsection, whichever is less.

10 (c) Subsection 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under 71.28
11 (4), applies to the credit under this subsection.

12 (d) Partnerships, limited liability companies, and tax-option corporations may
13 not claim the credit under this subsection, but the eligibility for, and the amount of,
14 the credit are based on their payment of a certified capital investment. A
15 partnership, limited liability company, or tax-option corporation shall compute the
16 amount of credit that each of its partners, members, or shareholders may claim and
17 shall provide that information to each of them. Partners, members of limited liability
18 companies, and shareholders of tax-option corporations may claim the credit in
19 proportion to their ownership interest.

20 (e) 1. If a certified capital company is decertified, or an investment pool is
21 disqualified, under s. 560.37 before the certified capital company fulfills the
22 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
23 pool, any claimant that has received a credit under this subsection with respect to
24 that investment pool shall repay that credit to the department of revenue and may
25 not claim more credit in respect to that investment pool.

ASSEMBLY BILL 522

1 2. If a certified capital company fulfills the investment requirement under s.
2 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
3 company is decertified, or an investment pool is disqualified, under s. 560.37 before
4 the certified capital company fulfills the investment requirement under s. 560.34
5 (1m) (a) 2. for that investment pool, any claimant that has received a credit under
6 this subsection with respect to that investment pool shall repay all credits that were
7 claimed for taxable years after the taxable year that includes the 3rd anniversary of
8 the investment date of the investment pool and may claim no more credits for taxable
9 years after the taxable year that includes the 3rd anniversary of the investment date
10 of the investment pool.

11 **SECTION 11.** 71.49 (1) (dm) of the statutes is created to read:

12 71.49 (1) (dm) The certified capital company credit under s. 71.47 (7m).

13 **SECTION 12.** 77.92 (4) of the statutes is amended to read:

14 77.92 (4) “Net business income”, with respect to a partnership, means taxable
15 income as calculated under section 703 of the Internal Revenue Code; plus the items
16 of income and gain under section 702 of the Internal Revenue Code, including taxable
17 state and municipal bond interest and excluding nontaxable interest income or
18 dividend income from federal government obligations; minus the items of loss and
19 deduction under section 702 of the Internal Revenue Code, except items that are not
20 deductible under s. 71.21; plus guaranteed payments to partners under section 707
21 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
22 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s),~~ and (7m); and plus or
23 minus, as appropriate, transitional adjustments, depreciation differences, and basis
24 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
25 loss, and deductions from farming. “Net business income”, with respect to a natural

ASSEMBLY BILL 522

1 person, estate, or trust, means profit from a trade or business for federal income tax
2 purposes and includes net income derived as an employee as defined in section 3121
3 (d) (3) of the Internal Revenue Code.

4 **SECTION 13.** 560.30 (3) of the statutes is amended to read:

5 560.30 (3) "Certified capital company tax credit" means the tax credit under
6 ~~s. ss. 71.07 (7m), 71.28 (7m), 71.47 (7m), and 76.635.~~

7 **SECTION 14.** 560.37 (4) of the statutes is amended to read:

8 560.37 (4) EFFECT OF DECERTIFICATION. Decertification of a certified capital
9 company or an investment pool has the effects specified in ~~s. ss. 71.07 (7m) (e), 71.28~~
10 ~~(7m) (e), 71.47 (7m) (e), and 76.635 (4).~~

11 **SECTION 15.** 560.37 (5) of the statutes is amended to read:

12 560.37 (5) NOTICES TO CERTIFIED INVESTORS. The department shall notify a
13 certified investor when the certified capital company tax credit arising from a
14 certified investment is no longer subject to recapture and forfeiture under ~~s. ss. 71.07~~
15 ~~(7m) (e), 71.28 (7m) (e), 71.47 (7m) (e), and 76.635 (4).~~

16 **SECTION 16. Initial applicability.**

17 (1) This act first applies to taxable years beginning on January 1 of the year
18 in which this subsection takes effect, except that if this subsection takes effect after
19 July 31 this act first applies to taxable years beginning on January 1 of the year
20 following the year in which this subsection takes effect.

21 (END)