



2003 ASSEMBLY BILL 538

September 25, 2003 - Introduced by Representatives NISCHKE, McCORMICK, LADWIG, MUSSER, MONTGOMERY, TOWNS, OWENS, M. LEHMAN, WEBER, VAN ROY, KRAWCZYK, OLSEN and OTT, cosponsored by Senators KANAVAS, STEPP, LEIBHAM, WELCH, DARLING, ZIEN and LASSA. 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. and 77.92 (4); and **to create** 71.05 (6) (b) 34., 71.05 (24), 71.07 (5d), 71.10
3 (4) (gx), 71.28 (5d), 71.30 (3) (eop), 71.47 (5d), 71.49 (1) (eop) and 560.03 (24) to
4 (27) of the statutes; **relating to:** creating a qualified new business venture tax
5 credit and a capital gains tax exemption regarding investments in certified
6 venture capital funds and qualified new business ventures, requiring a study
7 of new Wisconsin businesses, facilitating the development of certain investor
8 networks, excluding from taxable income gains from a start-up technology
9 business, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates an income and franchise tax credit for investments in a new business venture that has its headquarters and the majority of its employees in this state. The bill requires a business desiring certification as a new business venture for purposes of this tax credit to apply to the Department of Commerce. The amount of the tax credit is equal to 20 percent of the taxpayer's investment in a new business venture in the taxable year, except that if the taxpayer's investment exceeds \$100,000 in the taxable year the taxpayer may claim 20 percent of \$100,000 plus ten

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percent of the amount of the investment that exceeds \$100,000. In addition, if the taxpayer is a broker-dealer, the taxpayer may claim a tax credit in amount equal to ten percent of the first \$500,000 raised in an offering of a new business venture in the taxable year. Under current law, a broker-dealer is, generally, any person engaged in the business of effecting transactions in securities.

This bill also requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to annually conduct and publish the results of a study of Wisconsin businesses to determine new business formation trends and identify obstacles faced by new Wisconsin businesses and areas where changes in governmental policy may satisfy the needs of new Wisconsin businesses. In addition, the bill requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to provide education and other support to facilitate the development of networks of investors that review new businesses or proposed new businesses for potential investment (commonly called "angel capital networks").

Under current law, there is an income tax exclusion for individuals and tax-option corporations for 60 percent of the net capital gains realized from the sale of assets held for at least one year.

Under this bill, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may elect to defer the payment of income taxes on the gain realized from the sale of any asset held more than one year, to the extent that the gain is not already excluded from taxation, or any asset that is an investment in a venture capital fund (original asset), if the claimant completes a number of requirements.

Under the bill, the claimant must place the gain from the original asset in a segregated account in a financial institution, purchase another capital asset that is an investment in a venture capital fund or in a qualified new business venture (replacement asset) within 90 days after the sale of the original asset that generated the gain, and notify the Department of Revenue (DOR) on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. The cost of the replacement asset must be equal to or greater than the gain generated by the sale of the original asset.

The bill also specifies that the basis of the replacement asset shall be its cost minus the gain generated by the sale of the original asset. If a claimant defers the payment of income taxes on the gain generated by the sale of the original asset, the claimant may not use that gain to net the claimant's gains and losses as the claimant could do if the claimant did not elect to defer the payment of taxes on the gain.

In addition, under the bill, the capital gain realized from the sale of an asset that is an investment in a start-up technology business may be excluded from taxation, if the business has its principal operations in this state, it has been in operation for more than three years, its owner has three years of relevant business experience or education, it is engaged primarily in a technology field, its net worth does not exceed \$3,000,000, and it secures financing equal to at least \$250,000.

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Under this bill, the Department of Commerce must promulgate rules establishing a procedure for certifying venture capital funds for purposes of the capital gains tax exemption described above. A venture capital fund may obtain a certification only if the venture capital fund is a private seed and venture capital partnership or entity fund, the venture capital fund has its principal place of business in Wisconsin, and the venture capital fund commits to make equity investments in businesses located in Wisconsin. The bill requires the Department of Commerce, upon request of any person, to issue a written notice indicating whether a venture capital fund is certified. Each such notice that indicates a venture capital fund is certified must include the following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE." The bill also requires the Department of Commerce, upon issuing or discontinuing a certification, to notify DOR and give DOR a copy of the certification or discontinuance.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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 (5d) 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.** 71.05 (6) (b) 34. of the statutes is created to read:

8 71.05 (6) (b) 34. To the extent that the gains are not excluded from taxation
9 under subd. 9. or sub. (24), 100 percent of the capital gain as computed under the
10 Internal Revenue Code if the gain is realized from the sale of an asset that is an
11 investment in a start-up technology business. For purposes of this subdivision, the

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1 capital gains and capital losses for all assets shall be netted before application of the
2 percentage. In this subdivision, a “start-up technology business” is a business that
3 satisfies all of the following conditions:

4 a. Its principal business operations are located in this state.

5 b. It has been in operation for no more than 3 years.

6 c. Its owner has at least 3 years of relevant business or technology experience,
7 or any other experience that the department determines is sufficient to increase the
8 likelihood of the success of the business, or its owner has successfully completed an
9 entrepreneurial venture development curriculum; a degree in business
10 management, business administration, or a related field or a degree in a technology
11 field; or any other training that the department determines is sufficient to increase
12 the likelihood of the success of the business.

13 d. It is a business engaged primarily in a technology field.

14 e. Its net worth does not exceed \$3,000,000.

15 f. In the taxable year in which cash investments are first made in the business,
16 it secures total equity financing or near equity financing equal to at least \$250,000.
17 “Near equity” means debt that may be converted to equity at the option of the debt
18 holder and royalty agreements.

19 **SECTION 3.** 71.05 (24) of the statutes is created to read:

20 71.05 (24) INCOME TAX DEFERRAL; INVESTMENTS IN CERTAIN VENTURE CAPITAL FUNDS
21 AND QUALIFIED NEW BUSINESS VENTURES. (a) In this subsection:

22 1. “Claimant” means an individual; an individual partner or member of a
23 partnership, limited liability company, or limited liability partnership; or an
24 individual shareholder of a tax-option corporation.

25 2. “Financial institution” has the meaning given in s. 69.30 (1) (b).

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1 3. "Long-term capital gain" means the gain realized from the sale of any asset
2 held more than one year.

3 (b) To the extent that the gains are not excluded from taxation under sub. (6)
4 (b) 9., a claimant may subtract from federal adjusted gross income any amount of a
5 long-term capital gain, or any gain realized from the sale of an asset that is an
6 investment in a qualified new business venture that is certified under s. 560.03 (26)
7 or a venture capital fund that is certified under s. 560.03 (27), if the claimant does
8 all of the following:

9 1. Immediately deposits the gain in a segregated account in a financial
10 institution.

11 2. Within 90 days after the sale of the asset that generated the gain, purchases
12 another capital asset, which is an investment in a qualified new business venture
13 that is certified under s. 560.03 (26) or a venture capital fund that is certified under
14 s. 560.03 (27), of equal or greater value using all of the proceeds in the account
15 described under subd. 1.

16 3. After purchasing a capital asset as described under subd. 2., immediately
17 notifies the department, on a form prepared by the department, that the claimant
18 will not declare on the claimant's income tax return the gain described under subd.
19 1. because the claimant has reinvested the capital gain as described under subd. 2.

20 (c) The basis of the purchased capital asset described in par. (b) 2. shall be
21 calculated by subtracting the gain described in par. (b) 1. from the cost of the
22 purchased asset described in par. (b) 2.

23 (d) If a claimant defers the payment of income taxes on a capital gain under this
24 subsection, the claimant may not use the gain described under par. (b) 1. to net
25 capital gains and losses, as described under sub. (10) (c).

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1 **SECTION 4.** 71.07 (5d) of the statutes is created to read:

2 71.07 **(5d)** QUALIFIED NEW BUSINESS VENTURE CREDIT. (a) In this subsection:

3 1. “Broker-dealer” has the meaning given in s. 551.02 (3).

4 2. “Claimant” means a person who files a claim under this subsection.

5 3. “Qualified new business venture” means a business that is certified under
6 s. 560.03 (26).

7 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
8 a claimant may claim as a credit against the tax imposed under s. 71.02, up to the
9 amount of those taxes, any of the following:

10 1. An amount equal to 20 percent of the claimant’s investment in a qualified
11 new business venture in the taxable year, except that if the claimant’s investment
12 exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000
13 plus 10 percent of the amount of the investment that exceeds \$100,000.

14 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
15 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

16 (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
17 under s. 71.28 (4), apply to the credit under this subsection.

18 (d) Partnerships, limited liability companies, and tax-option corporations may
19 not claim the credit under this subsection, but the eligibility for, and the amount of,
20 the credit are based on the amounts described under par. (b) that are attributable to
21 their business operations. A partnership, limited liability company, or tax-option
22 corporation shall compute the amount of credit that each of its partners, members,
23 or shareholders may claim and shall provide that information to each of them.
24 Partners, members of limited liability companies, and shareholders of tax-option
25 corporations may claim the credit in proportion to their ownership interest.

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1 (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
2 applies to the credit under this subsection.

3 **SECTION 5.** 71.10 (4) (gx) of the statutes is created to read:

4 71.10 (4) (gx) Qualified new business venture credit under s. 71.07 (5d).

5 **SECTION 6.** 71.21 (4) of the statutes is amended to read:

6 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
7 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s), and (5d)~~ and passed through to
8 partners shall be added to the partnership's income.

9 **SECTION 7.** 71.26 (2) (a) of the statutes is amended to read:

10 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
11 the gross income as computed under the Internal Revenue Code as modified under
12 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
13 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
14 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g), and (5d)~~
15 and not passed through by a partnership, limited liability company, or tax-option
16 corporation that has added that amount to the partnership's, limited liability
17 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
18 the amount of losses from the sale or other disposition of assets the gain from which
19 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
20 otherwise disposed of at a gain and minus deductions, as computed under the
21 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
22 amount equal to the difference between the federal basis and Wisconsin basis of any
23 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
24 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

25 **SECTION 8.** 71.28 (5d) of the statutes is created to read:

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1 71.28 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT. (a) In this subsection:

2 1. “Broker-dealer” has the meaning given in s. 551.02 (3).

3 2. “Claimant” means a person who files a claim under this subsection.

4 3. “Qualified new business venture” means a business that is certified under
5 s. 560.03 (26).

6 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
7 a claimant may claim as a credit against the tax imposed under s. 71.23, up to the
8 amount of those taxes, any of the following:

9 1. An amount equal to 20 percent of the claimant’s investment in a qualified
10 new business venture in the taxable year, except that if the claimant’s investment
11 exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000
12 plus 10 percent of the amount of the investment that exceeds \$100,000.

13 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
14 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

15 (c) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit
16 under sub. (4), apply to the credit under this subsection.

17 (d) Partnerships, limited liability companies, and tax-option corporations may
18 not claim the credit under this subsection, but the eligibility for, and the amount of,
19 the credit are based on the amounts described under par. (b) that are attributable to
20 their business operations. A partnership, limited liability company, or tax-option
21 corporation shall compute the amount of credit that each of its partners, members,
22 or shareholders may claim and shall provide that information to each of them.
23 Partners, members of limited liability companies, and shareholders of tax-option
24 corporations may claim the credit in proportion to their ownership interest.

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

3 **SECTION 9.** 71.30 (3) (eop) of the statutes is created to read:

4 71.30 (3) (eop) Qualified new business venture credit under s. 71.28 (5d).

5 **SECTION 10.** 71.34 (1) (g) of the statutes is amended to read:

6 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
7 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
8 (3g), and (5d) and passed through to shareholders.

9 **SECTION 11.** 71.45 (2) (a) 10. of the statutes is amended to read:

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

16 **SECTION 12.** 71.47 (5d) of the statutes is created to read:

17 71.47 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT. (a) In this subsection:

- 18 1. "Broker-dealer" has the meaning given in s. 551.02 (3).
19 2. "Claimant" means a person who files a claim under this subsection.
20 3. "Qualified new business venture" means a business that is certified under
21 s. 560.03 (26).

22 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
23 a claimant may claim as a credit against the tax imposed under s. 71.43, up to the
24 amount of those taxes, any of the following:

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1 1. An amount equal to 20 percent of the claimant’s investment in a qualified
2 new business venture in the taxable year, except that if the claimant’s investment
3 exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000
4 plus 10 percent of the amount of the investment that exceeds \$100,000.

5 2. If the claimant is a broker–dealer, an amount equal to 10 percent of the first
6 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

7 (c) The carry–over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
8 under s. 71.28 (4), apply to the credit under this subsection.

9 (d) Partnerships, limited liability companies, and tax–option corporations may
10 not claim the credit under this subsection, but the eligibility for, and the amount of,
11 the credit are based on the amounts described under par. (b) that are attributable to
12 their business operations. A partnership, limited liability company, or tax–option
13 corporation shall compute the amount of credit that each of its partners, members,
14 or shareholders may claim and shall provide that information to each of them.
15 Partners, members of limited liability companies, and shareholders of tax–option
16 corporations may claim the credit in proportion to their ownership interest.

17 (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
18 applies to the credit under this subsection.

19 **SECTION 13.** 71.49 (1) (eop) of the statutes is created to read:

20 71.49 (1) (eop) Qualified new business venture credit under s. 71.47 (5d).

21 **SECTION 14.** 77.92 (4) of the statutes is amended to read:

22 77.92 (4) “Net business income”, with respect to a partnership, means taxable
23 income as calculated under section 703 of the Internal Revenue Code; plus the items
24 of income and gain under section 702 of the Internal Revenue Code, including taxable
25 state and municipal bond interest and excluding nontaxable interest income or

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1 dividend income from federal government obligations; minus the items of loss and
2 deduction under section 702 of the Internal Revenue Code, except items that are not
3 deductible under s. 71.21; plus guaranteed payments to partners under section 707
4 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
5 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s), and (5d)~~; and plus or
6 minus, as appropriate, transitional adjustments, depreciation differences, and basis
7 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
8 loss, and deductions from farming. “Net business income”, with respect to a natural
9 person, estate, or trust, means profit from a trade or business for federal income tax
10 purposes and includes net income derived as an employee as defined in section 3121
11 (d) (3) of the Internal Revenue Code.

12 **SECTION 15.** 560.03 (24) to (27) of the statutes are created to read:

13 560.03 (24) In cooperation with the department of financial institutions and
14 the Board of Regents of the University of Wisconsin System, annually conduct and
15 publish the results of a study of Wisconsin businesses to determine new business
16 formation trends and identify obstacles faced by new Wisconsin businesses and areas
17 where changes in governmental policy may satisfy the needs of new Wisconsin
18 businesses. As part of the study, the department of commerce shall conduct a survey
19 of Wisconsin businesses.

20 (25) In cooperation with the department of financial institutions and the Board
21 of Regents of the University of Wisconsin System, provide education and other
22 support to facilitate the development networks of investors that review new
23 businesses or proposed new businesses for potential investment.

24 (26) Certify businesses as qualified new business ventures for purposes of ss.
25 71.05 (24), 71.07 (5d), 71.28 (5d), and 71.47 (5d). The department shall promulgate

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1 rules for the administration of this subsection. The rules shall require a business
2 desiring certification to submit an application to the department. The department
3 shall maintain a list of businesses certified under this subsection and shall permit
4 public access to the list through the department's Internet website. The department
5 shall notify the department of revenue of every business certified under this
6 subsection and the date on which any such business is decertified. A business may
7 be certified under this subsection, and may maintain such certification, only if the
8 business satisfies all of the following conditions:

9 (a) It has its headquarters in this state.

10 (b) At least 51 percent of the employees employed by the business are employed
11 in this state.

12 (c) Its average annual net income for each of the 2 taxable years immediately
13 preceding the taxable year for which a credit is claimed does not exceed \$20,000,000.

14 (d) It's net worth in the taxable year for which a credit is claimed does not
15 exceed \$75,000,000.

16 (e) It is not engaged predominantly in providing professional services by
17 accountants, lawyers, or physicians.

18 (f) It is not engaged predominantly in trade or in the leisure and hospitality
19 industry.

20 (g) It is not engaged in banking or lending or in developing real estate for resale.

21 (h) It does not make loans to, or investments in, certified capital companies, as
22 defined in s. 560.30 (2).

23 (i) It has been in operation in this state for at least one year but not more than
24 10 consecutive years.

25 **(27)** Certify venture capital funds as follows:

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1 (a) The department shall promulgate rules establishing a procedure for the
2 department to certify venture capital funds for purposes of the capital gains tax
3 exemption under s. 71.05 (24). The rules shall do all of the following:

4 1. Require a venture capital fund that desires to obtain a certification to file an
5 application with the department.

6 2. Permit a venture capital fund to obtain a certification only if the venture
7 capital fund is a private seed and venture capital partnership or entity fund, the
8 venture capital fund has its principal place of business in Wisconsin, and the venture
9 capital fund commits to make equity investments in businesses, as described under
10 sub. (26), that are located in Wisconsin.

11 3. Require an applicant for certification or a certified venture capital fund to
12 provide the department with any information the department determines is
13 necessary to ensure eligibility for certification and compliance with this subsection
14 and rules promulgated under this subsection.

15 (b) Upon request of any person, the department shall issue a written notice
16 indicating whether a venture capital fund is certified under this subsection for
17 purposes of the capital gains tax exemption under s. 71.05 (24). Each notice under
18 this paragraph that indicates a venture capital fund is certified shall include the
19 following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT
20 RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED
21 THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR
22 OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX
23 ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE."

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1 (c) Upon the issuance or discontinuance of a certification, the department of
2 commerce shall notify the department of revenue and provide the department of
3 revenue a copy of the certification or discontinuance.

SECTION 16. Nonstatutory provisions.

4
5 (1) RULES. The department of commerce shall submit in proposed form the rules
6 required under section 560.03 (26) and (27) of the statutes, as created by this act, to
7 the legislative council staff under section 227.15 (1) of the statutes no later than the
8 first day of the 6th month beginning after the effective date of this subsection.

SECTION 17. Initial applicability.

9
10 (1) QUALIFIED NEW BUSINESS VENTURE CREDIT. The treatment of sections 71.05
11 (6) (a) 15., 71.07 (5d), 71.10 (4) (gx), 71.21 (4), 71.26 (2) (a), 71.28 (5d), 71.30 (3) (eop),
12 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5d), 71.49 (1) (eop), and 77.92 (4) of the statutes
13 first applies to taxable years beginning on January 1, 2006.

14 (2) INCOME TAX DEFERRAL. The treatment of section 71.05 (24) of the statutes
15 first applies to taxable years beginning on January 1, 2006.

16 (3) CAPITAL GAINS EXEMPTION. The treatment of section 71.05 (6) (b) 34. of the
17 statutes first applies to taxable years beginning on January 1, 2006.

18 **SECTION 18. Effective dates.** This act takes effect on July 1, 2004, except as
19 follows:

20 (1) RULES. SECTION 16 (1) of this act takes effect on the day after publication.

21 (END)