



**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



P.O. Box 7970
Madison, Wisconsin 53707
(608) 266-1018
TDD: Contact Through Relay

Jim Doyle, Governor
Richard J. Leinenkugel, Secretary

January 20, 2010

Robert Marchant
Senate Chief Clerk
B20 Southeast, State Capitol
P.O. Box 7882
Madison, Wisconsin 53707-7882

Patrick Fuller
Assembly Chief Clerk
Room 401
17 West Main Street
Madison, Wisconsin 53703

Dear Chief Clerks:

NOTICE OF ADMINISTRATIVE RULES IN FINAL DRAFT FORM

CLEARINGHOUSE RULE NO.: 09-082

RULE NO.: Chapter Comm 129

RELATING TO: Tax Credits for Angel Investments and Early Stage Seed Investments

Section 227.19, Stats., requires agencies to submit proposed rules in final draft form to the chief clerk of each house for referral to the appropriate legislative standing committees.

The following information, as required by law, is being submitted to you.

1. Rules in final draft form (in triplicate).
2. Report consisting of:
 - a) Rule Report.
 - b) Public Hearing Attendance Record.
 - c) Public Hearing Comment and Agency Response Form.
 - d) Legislative Council Rules Clearinghouse Report.
 - e) Response to Legislative Council Rules Clearinghouse Report.
 - f) Fiscal Estimate.
 - g) Final Regulatory Flexibility Analysis.

If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted

A handwritten signature in black ink, appearing to read "Richard J. Leinenkugel".

Richard J. Leinenkugel
Secretary

RULE REPORT

Department of Commerce

Clearinghouse Rule No.: 09-082

Rule No.: Chapter Comm 129

Relating to: Tax Credits for Angel Investments and Early Stage Seed Investments

Contact person for substantive questions:

Contact person for internal processing:

Name Sam Rockweiler

Name (same)

Title Code Development Consultant

Title _____

Telephone Number 266-0797

Telephone Number _____

1. Basis and purpose of the proposed rule.

As required by section 560.205 (3) (d) of the Statutes, these proposed rule changes would update chapter Comm 129 to make it consistent with the portions of 2007 Wisconsin Act 20 and 2009 Wisconsin Act 2 that address tax credits for angel investments and early stage seed investments.

2. How the proposed rule advances relevant statutory goals or purposes.

The proposed rules are consistent with the Department's statutory duty to foster the growth and diversification of the economy of Wisconsin.

3. Changes to the rule analysis or fiscal estimate that was prepared for public hearing.

No substantive changes were made to the rule analysis or fiscal estimate.

FISCAL ESTIMATE
DOA-2048 (R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No. /Adm. Rule No.
Chapter Comm 129

Amendment No. if Applicable

Subject

Tax Credits for Angel Investments and Early Stage Seed Investments

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation Increase Existing Revenues
- Decrease Existing Appropriation Decrease Existing Revenues
- Create New Appropriation

Increase Costs - May be Possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:

Towns Villages Cities

2. Decrease Costs
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

Counties Others _____

School Districts WTCS Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The applicant information and Departmental review thereof that are addressed in the rules are substantially similar to the currently required information and review – and therefore are not expected to have any significant fiscal effect on the Department.

The rules are not expected to impose any significant costs on local governments or the private sector, because preparation of the submittal information that is addressed in the rules is not expected to have a significant new cost.

Long-Range Fiscal Implications

None known.

Agency/Prepared by: (Name & Phone No.)

Commerce/ Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

Jim O'Keefe / 264-7837

Date

9/9/09

FISCAL ESTIMATE WORKSHEET
 Detailed Estimate of Annual Fiscal Effect
 DOA-2047(R06/99)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
 Chapter Comm 129

Amendment No.

Subject

Tax Credits for Angel Investments and Early Stage Seed Investments

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 None known.

II. Annualized Costs:	Annualized Fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs By Category		
State Operations - Salaries and Fringes	\$0	-\$0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations - Other Costs	\$0	-\$0
Local Assistance	\$0	-\$0
Aids to Individuals or Organizations	\$0	-\$0
TOTAL State Costs By Category	\$0	-\$0
B. State Costs By Source of Funds	Increased Costs	Decreased Costs
GPR	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Rev.	Decreased Rev.
GPR Taxes	\$0	-\$0
GPR Earned	\$0	-\$0
FED	\$0	-\$0
PRO/PRS	\$0	-\$0
SEG/SEG-S	\$0	-\$0
TOTAL State Revenues	\$0	-\$0

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)

Commerce/Jim O'Keefe 264-7837

Authorized Signature/Telephone No.

Jim O'Keefe 264-7837

Date

9/9/09

FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Commerce

CLEARINGHOUSE RULE NO.: 09-082

RULE NO.: Chapter Comm 129

RELATING TO: Tax Credits for Angel Investments and Early Stage Seed Investments

Final regulatory flexibility analysis not required. (Statement of determination required.)

1. Reason for including or failing to include the following methods for reducing impact of the rule on small businesses: Less stringent compliance or reporting requirements; less stringent schedules or deadlines for compliance or reporting requirements; simplification of compliance or reporting requirements; establishment of performance standards to replace design or operational standards; exemption from any or all requirements.

Less stringent requirements are not proposed for small businesses because the directing legislation, section 560.205 of the Statutes, does not provide such flexibility.

2. Issues raised by small businesses during hearings, changes in proposed rules as a result of comments by small businesses and reasons for rejecting any alternatives suggested by small businesses.

Small businesses recommended (1) an informational Note for clarifying the purpose of side-by-side investments by in-state investors, for investments by out-of-state investors and (2) allowing approval of eligibility for tax credits that are then issued in the following year, for qualifying investments that are submitted after all available credits are issued in an individual year. The Department has incorporated both recommendations into the proposed rules.

(Continued on reverse side)

3. Nature and estimated cost of preparation of any reports by small businesses.

The transfer of tax credits that is newly enabled by the proposed rules includes filing a required notice with the Department, but the cost of this notice is not expected to be significant.

4. Nature and estimated cost of other measures and investments required of small businesses.

The rules are not expected to impose significant costs on small businesses for other measures because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for angel investments and early stage seed investments.

5. Additional cost to agency of administering or enforcing a rule which includes any of the methods in 1. for reducing impact on small businesses.

None of the methods listed in 1. for reducing small-business impacts are included in the proposed rules.

6. Impact on public health, safety and welfare caused by including any of the methods in 1. for reducing impact on small businesses.

None of the methods listed in 1. for reducing small-business impacts are included in the proposed rules.

DEPARTMENT OF COMMERCE
PUBLIC HEARING ATTENDANCE RECORD

RULE NO.: Chapter Comm 129 DATE: Tuesday, October 27, 2009
RELATING TO: Tax Credits for Angel Investments and Early Stage TIME: 10:00 a.m.
Seed Investments
LOCATION: Thompson Commerce Center, Third Floor, Room 3B CITY: Madison, WI

Name	Representation (Business, Assoc., Group, Self, etc.)	City and State	Appearing in Support	Appearing in Opposition	Appearing for Information
Bon Kyeon	Bio Forward	Madison	✓		
Ralph Kauten	Quintessence Biosciences	Madison	✓		

**DEPARTMENT OF COMMERCE
SUMMARY OF PUBLIC HEARING COMMENTS AND AGENCY RESPONSE**

Clearinghouse Rule Number: 09-082		Hearing Location: Madison, Wisconsin	
Rule Number: Chapter Comm 129		Hearing Date: October 27, 2009	
Relating to: Tax Credits for Angel Investments and Early Stage Seed Investments			
Comments: Oral or Exhibit No.	Presenter, Group Represented, City and State	Comments/Recommendations	Agency Response
Oral and 1	Ron Kuehn BioForward Madison, Wisconsin	<p>Strongly supports the proposed rules, which are important updates to a critical economic development tool. The stage is set for communities across Wisconsin to benefit from innovative businesses that are developing cutting-edge technologies.</p> <p>States section Comm 129.12 (3) (b) 3. is a welcome provision that is intended to hold program participants accountable for the wise use of the program's credits and to provide protections to the program's integrity from possible bad actors. The Department has flexibility through this section to restrict potential investments from out-of-state investors with little experience or insignificant connections to the State. This limitation should ensure that the participants act in a manner which furthers the purposes of the program. If an out-of-state investor is unknown or inexperienced, this section requires a significant investment from an experienced, in-state source. Also, a minimal side-by-side investment by a small, inexperienced in-state investor will be required if a highly reputable, out-of-state firm wants to invest in a certified company. Hopes the Department's flexibility to allow some smaller, inexperienced in-state investors to partner with larger, out-of-state investors will enable the in-state investors to grow into larger investors. Recommends adding a Note that makes this intent clear to all program participants.</p> <p>States Comm 129.13 correctly identifies the maximum limits for each of the tax credits on an annual calendar basis, but it does not provide the Department with desirable options if all available credits are issued before the expiration of the calendar year and a worthy qualified investment application is submitted within that same year. Recommends modifying the rule to enable the Department to approve the investment's eligibility for tax credits and to guarantee the issuance of the credits at the beginning of the next calendar year. It would not be in the State's best interest to have quality investors sit on the sidelines for part of a year because all of the credits were already issued for that calendar year.</p> <p>States the process that was used in developing both the proposed rules and the statutory changes which preceded them was very democratic and resulted in an admirable product. Supports the two changes recommended by BioForward.</p>	<p>Support is noted.</p> <p>Agree. The Note has been added.</p>
Oral	Ralph Kauten Quintessence Biosciences Madison, Wisconsin		<p>Agree. The rule has been changed as recommended.</p> <p>Support is noted.</p>

File reference: Comm 129/Hearing summary



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 09-082

AN ORDER to repeal Comm 129.10 (5); to renumber Comm 129.10 (6) and (7); to amend Comm 129.11 (1) (intro.) and 129.14 (1) (a); to repeal and recreate Comm 129.02 (3), 129.10 (1), 129.12 (6), and 129.13; and to create Comm 129.12 (3) (b) 3., 129.125, 129.135, and 129.36 (1) (c), relating to tax credits for angel investments and early stage seed investments, and affecting small businesses.

Submitted by **DEPARTMENT OF COMMERCE**

09-28-2009 RECEIVED BY LEGISLATIVE COUNCIL.

10-19-2009 REPORT SENT TO AGENCY.

RNS:SG

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 09-082

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. The department should remove or clarify the circular reference regarding “headquarters” and “headquarters functions” in s. Comm 129.02 (3). Generally, does the department intend a literal interpretation of the phrase “the majority of” in the definition of “headquarters”? How will the department measure the extent of financial, personnel, legal, or planning functions? What is the department’s intent with regard to defining headquarters on a divisional, regional, national, or global basis? Is it the department’s intent for more than one location of a business to qualify as a headquarters?

b. In s. Comm 129.10 (1), the department should clarify the meanings of phrases regarding business activities that are eligible for qualification as a qualified new business venture. For example, what qualifies as “proprietary technology” for purposes of s. Comm 129.10 (1) (c) 1. c.? What is “pre-commercialization activity” under s. Comm 129.10 (1) (c) 2.?

4. Adequacy of References to Related Statutes, Rules and Forms

The rule analysis cites s. 560.208, Stats., as created by 2009 Wisconsin Act 28 (to be renumbered s. 560.2085, Stats.). While the phrase “qualified new business venture” appears in this section, it relates to the term as applied to s. 71.05 (24), Stats. It appears this reference to qualified new business venture is distinct from the phrase as applied in subch. II of ch. Comm 129, and the statutory citations related to that subchapter. The department should clarify the

scope of the phrase “qualified new business venture” as used in the rule, or remove references to s. 560.2085, Stats., if it is determined to be inapplicable.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Is it the department’s intent to notify the Department of Revenue (DOR) in all instances described in s. Comm 129.12 (6) (a) 1. and 2., or only instances when the department chooses to revoke tax credits? The department should clarify s. Comm 129.12 (6) (a) (intro.) regarding notification to DOR.

b. In s. Comm 129.13, the department uses the word “aggregate” to describe limits on the program as well as individual companies and investors. The section would be improved by reorganization or additional language that clarifies the distinction between statewide limits and per-company or per-investor limits.

RESPONSE TO LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT

Department of Commerce

CLEARINGHOUSE RULE NO.: 09-082

RULE NO.: Chapter Comm 129

RELATING TO: Tax Credits for Angel Investments and Early Stage Seed Investments

Agency contact person for substantive questions.

Name: Sam Rockweiler

Title: Code Development Consultant

Telephone No. 266-0797

Legislative Council report recommendations accepted in whole.

Yes

No

1. Review of statutory authority [s. 227.15(2)(a)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

2. Review of rules for form, style and placement in administrative code [s. 227.15(2)(c)]

a. Accepted

b. Accepted in part

c. Rejected

d. Comments attached

3. Review rules for conflict with or duplication of existing rules [s. 227.15(2)(d)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
4. Review rules for adequate references to related statutes, rules and forms [s. 227.15(2)(e)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
5. Review language of rules for clarity, grammar, punctuation and plainness [s. 227.15(2)(f)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
6. Review rules for potential conflicts with, and comparability to, related federal regulations [s. 227.15(2)(g)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached
7. Review rules for permit action deadline [s. 227.15(2)(h)]
- a. Accepted
 - b. Accepted in part
 - c. Rejected
 - d. Comments attached

RESPONSE COMMENTS TO LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

Clearinghouse comment 2. b. The Department prefers to not codify a definition of “pre-commercialization activity” at this time because there are several different industries that would each define this phrase differently, and the Department needs flexibility to address these industries appropriately.

File reference: Comm 129/Legislative Review Clghse



State of Wisconsin \ Department of Commerce

RULES IN FINAL DRAFT FORM

Rule No.: Chapter Comm 129

Relating to: Tax Credits for Angel Investments and Early Stage Seed Investments

Clearinghouse Rule No.: 09-082

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal Comm 129.10 (5);
to renumber Comm 129.10 (6) and (7);
to amend Comm 129.11 (1) (intro.) and 129.14 (1) (a);
to repeal and recreate Comm 129.02 (3), 129.10 (1), 129.12 (6), 129.13; and
to create Comm 129.12 (3) (b) 3., 129.125, 129.135 and 129.36 (1) (c) relating to tax credits for
angel investments and early stage seed investments, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.205, as modified by 2007 Wisconsin Act 20 and 2009 Wisconsin Act 2.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.205 (3) (d).

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.205 (3) (d) directs the Department to promulgate rules for administering the corresponding statutory requirements for angel investment tax credits and early stage seed investment tax credits.

4. Related Statute or Rule.

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin. For example, (1) sections 560.70 to 560.7995 of the Statutes and chapters Comm 100, 107, 112 and 118 address statewide tax-credit programs for job creation, capital investment, employee training and corporate headquarters; and (2) several other sections of chapter 560 and other Comm chapters address more-narrowly targeted business development incentives, such as for film productions, dairy manufacturing facilities, and fuel and electricity used in manufacturing.

5. Plain Language Analysis.

The rules in this order would (1) revise the eligibility requirements for these tax credits, (2) newly enable insurers to apply for these tax credits, (3) substantially increase the aggregate amount of investment in a qualified new business venture that may qualify for the tax credits, (4) substantially increase the aggregate amount of tax credits that may be claimed, (5) newly require investments to be maintained for at least 3 years, (6) newly enable transferring the credits to another person, (7) newly enable carrying forward the early stage tax credits, and (8) newly enable the Department to require a grant or loan origination fee.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulation that applies these tax credits.

7. Comparison With Rules in Adjacent States.

Minnesota offers various tax credit programs, but none that are similar to the Early Stage Business Investment program in Wisconsin. Minnesota has no rules addressing loan and grant origination fees for its economic development programs.

Iowa offers a University-Based Research Utilization Program to provide tax credits to businesses and university employees to promote the adoption of new technology developed at the state universities. Businesses must be utilizing technology based on patents awarded to Iowa State University, the University of Iowa, or the University of Northern Iowa and be less than 1 year old. Researchers who developed the intellectual property utilized by the business are also eligible for up to 10 percent of the businesses tax liability in individual income tax credits. Administrative rules for this program are available in the Iowa Administrative Code, 261-Chapter 63. Further information is available through the Iowa Department of Economic Development Web site at www.iowalifechanging.com. Iowa has no rules addressing loan and grant origination fees for its economic development programs.

Illinois offers various tax credit programs, but none that are similar to the Early Stage Business Investment program in Wisconsin. Illinois has no rules addressing loan and grant origination fees for its economic development programs.

Michigan offers a High-Tech and High Wage MEGA Tax Credit program that provides tax credits to promote the development of high-tech businesses in traditional and emerging industries. A business is eligible for tax credits to offset their Michigan business tax liability. Tax credit amounts are based on job creation. There are no rules for the program, however guidelines can be found through the Michigan Economic Development Corporation's Web site at www.themedc.org. Michigan has no rules addressing loan and grant origination fees for its economic development programs.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2 and 28; (2)

incorporating applicable best practices the Department has developed in administering similar programs for business development and tax-credit verification; and (3) reviewing Internet-based sources of related federal, state, and private-sector information.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary documents that were used to determine the effect of the rules on small business were 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2 and 28. These Acts apply their private-sector requirements only to businesses and individuals for which a corresponding tax credit is desired.

10. Effect on Small Business.

The rules are not expected to impose significant costs or other adverse impacts on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for angel investments and early stage seed investments.

11. Agency Contact Person.

Chris Schiffner, Wisconsin Department of Commerce, Division of Business Development, 201 West Washington Avenue, Madison, WI, 53703; telephone: (608) 267-2425; e-mail: chris.schiffner@wi.gov.

File reference: Comm 129/rules 2009 analysis LR

SECTION 1. Comm 129.02 (3) is repealed and recreated to read:

Comm 129.02 (3) "Headquarters" means the commercial business location where staff members or employees are physically employed and where at least 51% of the company's financial, personnel, legal, planning, or other headquarters functions are handled.

SECTION 2. Comm 129.09 (10) is renumbered Comm 129.09 (11).

SECTION 3. Comm 129.09 (10) is created to read:

Comm 129.09 (10) "Proprietary technology" means a product or process that is marketed under exclusive legal right of the inventor or maker and is protected by secrecy, patent, trademark or copyright against free competition.

SECTION 4. Comm 129.10 (1) is repealed and recreated to read:

Comm 129.10 (1) CERTIFICATION CONDITIONS. A business may be certified by the department as a qualified new business venture for the purposes of ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b) and 76.638, Stats., and may retain the certification, only if the business satisfies all of the following conditions:

- (a) It has its headquarters in this state.
- (b) At least 51% of the employees employed by the business are employed in this state.
- (c) It has the potential for increasing jobs in this state, or increasing capital investment in this state, or both, and any of the following apply:
 1. It is engaged in, or has committed to engage in, innovation in this state in any of the following:
 - a. Manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology.
 - b. Processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative-technology products, or other products that are produced using manufacturing methods which are enabled by applying proprietary technology.
 - c. Services that are enabled by applying proprietary technology.

2. It is undertaking pre-commercialization activity related to proprietary technology that includes conducting research, developing a new product or business process, or developing a service which is principally reliant on applying proprietary technology.

(d) It is not primarily engaged in real estate development; insurance; banking; lending; lobbying; political consulting; professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants; wholesale or retail trade; leisure; hospitality; transportation; or construction, except construction of power production plants that derive energy from a renewable resource as defined in s. 196.378 (1) (h), Stats.

(e) At the time it is first certified, it meets all of the following:

1. It has fewer than 100 full-time-equivalent employees.
2. It has been in operation for not more than 10 consecutive years.
3. It has not received aggregate private equity investment in cash of more than \$10 million.

(f) It qualifies under the criteria established in sub. (3).

SECTION 5. Comm 129.10 (5) is repealed.

SECTION 6. Comm 129.10 (6) and (7) are renumbered Comm 129.10 (5) and (6).

SECTION 7. Comm 129.11 (1) (intro.) is amended to read:

Comm 129.11 (1) CERTIFICATION CONDITIONS. Investment fund managers shall be certified by the department for the purposes of ss. 71.07 (5b), 71.28 (5b), 71.47 (5b) and 76.638, Stats. In determining whether to certify an applicant as a certified fund manager, the department shall consider all of the following factors:

SECTION 8. Comm 129.12 (3) (b) 3. is created to read:

Comm 129.12 (3) (b) 3. Funds invested by certified fund managers, with principal offices based outside of this state, shall be made side by side with equity investors based in this state or be made in certified companies with investors based in this state with a minimum participation by state investors as determined by the department based on the following criteria:

- a. The fund manager's experience in managing venture capital funds and investing in high-growth businesses.

b. The fund manager's past performance of investment funds managed by the fund manager, businesses assisted and the ability to access follow-on funding.

c. The fund manager's focus on targeted industries, group members and geographic distribution.

d. The portion of the investment fund's capital that the fund manager expects to invest in qualified new business ventures and the commitment to investment in this state.

Note: The intent of this subdivision is to provide the Department flexibility in order to protect the program from potential misuse and to help grow in-state investors. Out-of-state investors with strong management, a strong history of performance, and a focus on targeted industries and companies in this geographic region will have minimal side-by-side investment requirements. In contrast, out-of-state investors with smaller fund size, minimal experience, or a broad fund focus that does not parallel the goals of the program may have larger side-by-side investment requirements.

SECTION 9. Comm 129.12 (6) is repealed and recreated to read:

Comm 129.12 (6) REVOCATION OF CREDITS. (a) 1. The department may revoke tax credits issued under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b) or 76.638, Stats., under any of the following conditions:

a. Investments made in a certified business receiving tax credits under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b) or 76.638, Stats., are not maintained by the angel investor, angel investment network, or certified fund manager for a minimum of 36 months from the date of investment.

b. Investment funds are not used for legitimate business purposes as determined by the department.

2. The department shall notify the department of revenue of any tax credits revoked under subd. 1.

(b) If tax credits have been transferred under s. Comm 129.125, the certified fund manager shall be responsible for repayment of any revoked tax credits.

SECTION 10. Comm 129.125 is created to read:

Comm 129.125 Transfer. (1) A person who is a member of a certified fund and who is eligible to claim a credit under s. 71.07 (5b), 71.28 (5b), 71.47 (5b) or 76.638, Stats., may sell or otherwise transfer the credit to another person who is subject to the taxes or fees imposed under s. 71.07 (5b), 71.28 (5b), 71.47 (5b) or 76.638, Stats., if all of the following apply:

(a) The person transferring the tax credit has been allocated a tax credit by the certified fund manager.

(b) The person transferring the tax credit has received prior authorization from the certified fund manager.

(c) The person transferring the tax credit will not be selling or otherwise transferring early stage seed investment tax credit more than once per investment in a certified business in any 12-month period.

(d) The tax credit to be sold or otherwise transferred has not previously been sold or transferred under this section.

(2) The certified fund manager shall notify the department and the department of revenue of the transfer and shall submit all of the following information:

(a) A copy of the transfer documents showing the transfer of tax credits from the seller to the buyer.

(b) A fee in the amount of 1% of the amount of the tax credit sold or otherwise transferred, to be deposited in the appropriation account under s. 20.143 (1) (gm), Stats.

(c) Any other documents as required by the department to verify the sale or transfer of tax credits.

SECTION 11. Comm 129.13 is repealed and recreated to read:

Comm 129.13 Tax credit limits. (1) QUALIFIED NEW BUSINESS VENTURE. The aggregate amount of investment in any one qualified new business venture that may qualify for tax credits under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b) and 76.638, Stats., shall be limited to an amount determined by the department at the time of certification or recertification, up to each of the following maximums:

(a) \$4,000,000 in qualified investments for taxable years beginning before January 1, 2011.

(b) \$8,000,000 in qualified investments for taxable years beginning after December 31, 2010.

Note: Certified businesses seeking to increase the maximum qualified investment amount after December 31, 2010, under this subsection will be required to request an increase to the aggregate amount of investment that may qualify for tax credits and be approved by the Department at the time of recertification.

(2) **ANGEL INVESTMENTS.** (a) Statewide, the aggregate amount of tax credits under s. 71.07 (5d), Stats., that may be claimed for investments in businesses certified under s. Comm 129.10 shall be limited to each of the following, except as provided in par. (b):

1. \$3,000,000 per calendar year for calendar years beginning after December 31, 2004, and before January 1, 2008.

2. \$5,500,000 per calendar year for calendar years beginning after December 31, 2007, and before January 1, 2011.

3. \$18,000,000 per calendar year for calendar years beginning after December 31, 2010.

(b) An additional \$250,000 in angel investment tax credits will be made available for investments in nanotechnology businesses, for taxable years beginning after December 31, 2010.

(c) If the demand for tax credits exceeds the amount of tax credits available as identified in par. (a), the department may reserve tax credits from the following calendar year for qualifying investments.

(d) \$2,000,000 in aggregate investment by any one angel investor or member of an angel investment network in any one qualified new business venture shall qualify for tax credits for taxable years beginning before January 1, 2008.

Note: The limit in this paragraph was previously \$500,000 and was amended to \$2,000,000 in 2007 Wisconsin Act 20 section 1981. For taxable years after December 31, 2007, there is no limit to the aggregate investment by an angel investor or investment network in a qualified new business venture that qualifies for tax credits except for the limits imposed under subsection (1).

(3) EARLY STAGE SEED INVESTMENTS. (a) Statewide, the aggregate amount of tax credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b) and 76.638, Stats., that may be claimed for investments by fund managers in businesses certified under s. Comm 129.10 shall be limited to each of the following, except as provided in par. (b):

1. \$3,500,000 per calendar year for calendar years beginning after December 31, 2004, and before January 1, 2008.

2. \$6,000,000 per calendar year for calendar years beginning after December 31, 2007, and before January 1, 2011.

3. \$18,500,000 per calendar year for calendar years beginning after December 31, 2010.

(b) An additional \$250,000 in early stage seed investment tax credits will be made available for investments in nanotechnology businesses, for taxable years beginning after December 31, 2010.

(c) If the demand for tax credits exceeds the amount of tax credits available as identified in par. (a), the department may reserve tax credits from the following calendar year for qualifying investments.

(d) \$2,000,000 in aggregate investment by any one certified fund manager in any one qualified new business venture shall qualify for tax credits for taxable years beginning before January 1, 2008.

Note: Under this paragraph, there is no limit to the aggregate investment amount by a certified fund manager in a qualified new business venture that qualifies for tax credits, for taxable years after December 31, 2007, except for the limits imposed under subsection (1).

SECTION 12. Comm 129.135 is created to read:

Comm 129.135 Credit carryforward. (1) Notwithstanding the amount limitations under s. Comm 129.13, the department, in consultation with the department of revenue, may carry forward to subsequent taxable years unclaimed credit amounts of the early stage seed investment credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b) and 76.638, Stats., and the angel investment credit under s. 71.07 (5d), Stats.

(2) Annually, no later than July 1, the department shall submit its recommendations for the carry forward of credit amounts to the department of revenue.

SECTION 13. Comm 129.14 (1) (a) is amended to read:

Comm 129.14 (1) (a) The total amount of tax credits verified under ss. 71.07 (5b) and (5d), 71.28 (5b), ~~and 71.47 (5b)~~ and 76.638, Stats., per taxable year.

SECTION 14. Comm 129.36 (1) (c) is created to read:

Comm 129.36 (1) (c) The department may charge a grant or loan recipient an origination fee of not more than 2 % of the grant or loan amount if the grant or loan equals or exceeds \$100,000. The department shall deposit all origination fees collected under this subsection into the appropriation account under s. 20.143 (1) (gm), Stats.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.

File reference: Comm 129/rules 2009 LR ac