

2011 DRAFTING REQUEST

Assembly Amendment (AA-AB129)

Received: **05/18/2011**

Received By: **jkreye**

Wanted: **As time permits**

Companion to LRB:

For: **Mike Kuglitsch (608) 267-5158**

By/Representing: **matt**

May Contact:

Drafter: **jkreye**

Subject: **Tax, Business - credits**

Addl. Drafters: **mgallagh**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kuglitsch@legis.wi.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**
michael.gallagher@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Franchise tax tax credit for jobs now fund investments

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|---------------------|------------------------|----------------|-----------------------|-----------------------|-----------------|
| /? | | | | | | | |
| /1 | jkreye 05/18/2011 | jdyer 05/19/2011 | rschluet 05/19/2011 | _____ | ggodwin 05/19/2011 | ggodwin 05/19/2011 | |

FE Sent For:

<END>

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| /? | jkreye | 1/5/18 jld | SKA | _____ | _____ | | |

FE Sent For:

<END>

Kreye, Joseph

From: Berken, Nathan
Sent: Wednesday, May 18, 2011 3:51 PM
To: Henning, Anna; Spencer, Matt; Gallagher, Michael
Cc: Rep.Kuglitsch; Kreye, Joseph
Subject: RE: Amendments for AB-129

Thanks Anna,

We would like to include eligibility for insurance companies paying the state franchise tax on Wisconsin income. Can you guys go ahead and start drafting that?

Thanks!
Nathan

--

Nathan Berken
Research Assistant
Office of State Representative Mary Williams
(608) 266-7506

From: Henning, Anna
Sent: Wednesday, May 18, 2011 3:33 PM
To: Berken, Nathan; Spencer, Matt; Gallagher, Michael
Cc: Rep.Kuglitsch; Kreye, Joseph
Subject: RE: Amendments for AB-129

Hi Nathan,

All corporations that do business or exercise their franchise in Wisconsin in a corporate capacity are subject to the state franchise tax on their Wisconsin income. In addition, a corporation may be subject to the franchise tax if it buys or sells lottery prizes and the winning tickets were purchased here. The relevant statutory provision is s. 71.43 (2), Stats., which I've pasted below.

Also, just to clarify – although a single section governs who is subject to franchise taxes, the sections dealing with tax credits for income and franchise taxes are divided within three separate subchapters in ch. 71 – governing taxation of individuals, corporations, and insurance companies. Thus, I believe it would be relatively easy for the drafters to apply the credits only to insurance companies, if the committee wanted to keep that limitation.

Let me know if you have any questions.

Anna

s. 71.43

(2) Franchise tax on corporations. For the privilege of exercising its franchise, buying or selling lottery prizes if the winning tickets were originally bought in this state or doing business in this state in a corporate capacity, except as provided under s. 71.23 (3), every domestic or foreign corporation, except corporations specified in ss. 71.26 (1) and 71.45 (1) (a), shall annually pay a franchise tax according to or measured by its entire Wisconsin net income of the preceding taxable year at the rates set forth in s. 71.46 (2). In addition, except as provided in ss. 71.23 (3), 71.26 (1) and 71.45 (1) (a), a corporation that ceases doing business in this state shall pay a special franchise tax according to or measured by its entire Wisconsin net income for the taxable year during which the corporation ceases doing business in this state at the rate under s. 71.46

(2). Every corporation organized under the laws of this state shall be deemed to be residing within this state for the purposes of this franchise tax. All provisions of this chapter and ch. 73 relating to income taxation of corporations shall apply to franchise taxes imposed under this subsection, unless the context requires otherwise. The tax imposed by this subsection on insurance companies subject to taxation under this chapter shall be based on Wisconsin net income computed under s. 71.45, and no other provision of this chapter relating to computation of taxable income for other corporations shall apply to such insurance companies, except for s. 71.255. All other provisions of this chapter shall apply to insurance companies subject to taxation under this chapter unless the context clearly requires otherwise.

Anna Henning
Staff Attorney
Wisconsin Legislative Council
(608) 266-0292
anna.henning@legis.wisconsin.gov

From: Berken, Nathan
Sent: Wednesday, May 18, 2011 1:46 PM
To: Spencer, Matt; Gallagher, Michael
Cc: Henning, Anna; Rep.Kuglitsch
Subject: RE: Amendments for AB-129

Thanks Matt -

Michael or Anna,

In regards to the amendment to allow a person who pays the franchise tax to also be eligible for the certified jobs now fund program, could you provide a list (or the statutory reference) of who pays franchise taxes and would therefore be eligible?

Also, since the exec session will be next Tuesday, May 24th, would it be possible to have these amendments by the end of the day Thursday, or early Friday (of this week)?

Thanks!
Nathan

--
Nathan Berken
Research Assistant
Office of State Representative Mary Williams
(608) 266-7506

From: Spencer, Matt
Sent: Wednesday, May 18, 2011 1:41 PM
To: Gallagher, Michael
Cc: Henning, Anna; Berken, Nathan; Rep.Kuglitsch
Subject: Amendments for AB-129

Mike-

I have attached proposed amendments for AB-129. As of now there are only three, but we are working on a fourth that will be in your hands by the end of the day. This bill is going to exe on Thursday, May 24, so the sooner we get them the better. I have CCed Anna Henning, who the Leg. Counsel for the Jobs, Economy, and Small Business Committee as well as Nathan Berken who is the clerk. Should you have any questions please feel free to call me at 608-267-5158 or speak with the others.

Regards,

<< File: Amendments for 129.doc >>

Matthew Spencer
Office of Rep. Mike Kuglitsch
608-267-5158



Jld

**ASSEMBLY AMENDMENT ,
TO 2011 ASSEMBLY BILL 129**

in Wed 5-18
due Friday 5-20

- 1 At the locations indicated, amend the bill as follows: ✓
- 2 **1.** Page 29, line 9: after “(8s),” insert “(8t),” ✓
- 3 **2.** Page 29, line 16: delete “71.47 (8s) (e)” and substitute “and 71.47 (8s) (e) and
- 4 (8t) (e)” ✓
- 5 **3.** Page 29, line 19: after “71.47 (8s) (e)” insert “and (8t) (e)” ✓
- 6 **4.** Page 29, line 23: after “71.47 (8s) (e)” insert “and (8t) (e)” ✓
- 7 **5.** Page 31, line 11: after that line insert:
- 8 “SECTION 56d. ✓ 71.47 (8t) ✓ of the statutes is created to read:
- 9 71.47 (8t) JOBS NOW FUND INVESTMENT CREDIT. (a) ✓ Definitions. In this
- 10 subsection: ✓
- 11 1. “Allocation date” has the meaning given in s. 239.20 (2). ✓
- 12 2. “Certified jobs now fund” has the meaning given in s. 239.20 (3). ✓

1 3. "Claimant" means a person who files a claim under this subsection.

2 4. "Designated capital" has the meaning given in s. 239.20 (4).

3 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
4 239.22, for taxable years beginning after December 31, 2013, a claimant who makes
5 an investment of designated capital and who has been awarded a credit under s.
6 239.22 (2) (a), may claim as a credit against the tax imposed under s. 71.43, up to the
7 amount of the tax, the amount determined under s. 239.22 (2) (b).

8 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
9 corporations may not claim the credit under this subsection, but the eligibility for,
10 and the amount of, the credit are based on their investment of designated capital for
11 which a credit has been awarded under s. 239.22 (2) (a). A partnership, limited
12 liability company, or tax-option corporation shall compute the amount of credit that
13 each of its partners, members, or shareholders may claim and shall provide that
14 information to each of them. Partners, members of limited liability companies, and
15 shareholders of tax-option corporations may claim the credit in proportion to their
16 ownership interests.

17 (d) *Carry-forward.* 1. If the credit under this subsection is not entirely offset
18 against the taxes imposed under s. 71.43 that are otherwise due, the unused balance
19 may be carried forward and credited against those taxes in the following years to the
20 extent that it is not offset by those taxes otherwise due in all the years between the
21 year in which the initial credit is claimed and the year in which the carry-forward
22 credit is claimed.

23 2. The amount of the carry-forward computed under subd. 1. shall be reduced
24 by the amount of any credit transferred under par. (e).

1 (e) *Sale of credit.* A claimant who is awarded a credit under s. 239.22 (2) (a),
2 or to whom a credit is sold or transferred as provided under this paragraph, may sell
3 or otherwise transfer the credit to another person who is subject to the tax imposed
4 under s. 71.43 if the claimant notifies the department and the Wisconsin Venture
5 Capital Authority created under ch. 239 of the sale or transfer and includes with the
6 notification a copy of the sale or transfer documents. If a credit that has been sold
7 or transferred under this paragraph is subject to recapture under par. (f) 2., the
8 person who claimed the credit is liable for the repayment provided under par. (f) 2.
9 No credit may be sold or transferred under this paragraph until 180 days after the
10 date on which the person becomes eligible to claim the credit.

11 (f) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the credit
12 under s. 71.28 (4), applies to the credit under this subsection.

13 2. If a certified jobs now fund in which the claimant's designated capital has
14 been invested is decertified under s. 239.26 (2) (b) and the jobs now fund has not made
15 the investments required under s. 239.23 (4) (a) and (b) within 4 years after the
16 allocation date for the claimant's investment, any claimant that has received a credit
17 under this subsection with the same allocation date with respect to such decertified
18 jobs now fund shall repay the credit amount to the department, for deposit into the
19 general fund, and may not claim any more credits under this subsection with respect
20 to the decertified jobs now fund.

21 3. The department shall promulgate rules to administer this subsection."

22 **6.** Page 31, line 13: after that line insert:

23 "SECTION 57d. 71.49 (1) (dp) of the statutes is created to read:

24 71.49 (1) (dp) Jobs now fund investment credit under s. 71.47 (8t)."

