



2011 SENATE BILL 463

February 13, 2012 – Introduced by Senators LEIBHAM and DARLING, cosponsored by Representatives KUGLITSCH, KLENKE and TAUCHEN. Referred to Committee on Economic Development and Veterans and Military Affairs.

1 **AN ACT** *to repeal* 71.07 (5d) (c) 1.; *to amend* 73.03 (63), 238.15 (1) (intro.), 238.15
2 (1) (h), 238.15 (1) (j), 238.15 (1) (km) and 238.15 (3) (d) (intro.); and *to create*
3 238.15 (1) (m) of the statutes; **relating to:** the angel investment and early stage
4 seed investment tax credit programs.

Analysis by the Legislative Reference Bureau

Under current law, the angel investment tax credit program allows a taxpayer to claim a tax credit that equals 25 percent of a bona fide angel investment made directly in a qualified new business venture (QNBV) for the tax year. Current law provides that a QNBV is a business that is certified by the Wisconsin Economic Development Corporation (WEDC). Under current law, WEDC may certify a business as a QNBV if the business meets certain conditions, including being headquartered in this state, employing at least 51 percent of its employees in this state, and having less than 100 employees. Under this bill, in addition to the existing certification conditions, to be certified as a QNBV a business must agree to stay in this state for at least three years following the receipt of a bona fide angel investment and must agree to pay a penalty to WEDC if the business relocates outside of this state within three years of receiving a bona fide angel investment. Additionally, the bill provides that certain conditions that a business must satisfy to be certified as a QNBV, such as having less than 100 employees and not having operated in Wisconsin for more than ten consecutive years, apply only to initial certifications.

Under current law, a person who claims a tax credit for an early stage seed or angel investment must hold the investment for at least three years. If the person

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does not hold the investment for at least three years, the person must pay to the Department of Revenue (DOR) the amount of the credit that the person received related to the investment. Under this bill, a person that holds such an investment for less than three years does not have to repay the tax credit to DOR, if the person's investment becomes worthless, as determined by WEDC, or if a bona fide liquidity event occurs, as determined by WEDC.

Under current law, the maximum amount of angel investment credits that may be claimed by all claimants for all taxable years combined is \$47,500,000. The bill eliminates this limitation.

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.** 71.07 (5d) (c) 1. of the statutes is repealed.

2 **SECTION 2.** 73.03 (63) of the statutes, as affected by 2011 Wisconsin Act 32, is
3 amended to read:

4 73.03 **(63)** Notwithstanding the amount limitations specified under s. ~~71.07~~
5 ~~(5d) (c) 1.~~ and s. 238.15 (3) (d) or s. 560.205 (3) (d), 2009 stats., in consultation with
6 the department of commerce or the Wisconsin Economic Development Corporation,
7 to carry forward to subsequent taxable years unclaimed credit amounts of the early
8 stage seed investment credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638
9 and the angel investment credit under s. 71.07 (5d). Annually, no later than July 1,
10 the department of commerce or the Wisconsin Economic Development Corporation
11 shall submit to the department of revenue its recommendations for the carry forward
12 of credit amounts as provided under this subsection.

13 **SECTION 3.** 238.15 (1) (intro.) of the statutes, as affected by 2011 Wisconsin Act
14 32, is amended to read:

15 238.15 **(1)** ANGEL INVESTMENT TAX CREDITS. (intro.) The corporation shall
16 implement a program to certify businesses for purposes of s. 71.07 (5d). A business

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1 desiring certification shall submit an application to the corporation in each taxable
2 year for which the business desires certification. The business shall specify in its
3 application the investment amount it wishes to raise and the corporation may certify
4 the business and determine the amount that qualifies for purposes of s. 71.07 (5d).
5 ~~A business may be certified under this subsection, and may maintain such~~
6 ~~certification.~~ The corporation may certify or recertify a business for purposes of s.
7 71.07 (5d) only if the business satisfies all of the following conditions:

8 **SECTION 4.** 238.15 (1) (h) of the statutes, as affected by 2011 Wisconsin Act 32,
9 is amended to read:

10 238.15 (1) (h) ~~It~~ At the time it is initially certified under this subsection, it has
11 less than 100 employees.

12 **SECTION 5.** 238.15 (1) (j) of the statutes, as affected by 2011 Wisconsin Act 32,
13 is amended to read:

14 238.15 (1) (j) ~~It~~ At the time it is initially certified under this subsection, it has
15 been in operation in this state for not more than 10 consecutive years.

16 **SECTION 6.** 238.15 (1) (km) of the statutes, as affected by 2011 Wisconsin Act
17 32, is amended to read:

18 238.15 (1) (km) It has not received aggregate private equity investment in cash
19 of more than \$10,000,000 ~~prior to being~~ before it is initially certified under this
20 subsection.

21 **SECTION 7.** 238.15 (1) (m) of the statutes is created to read:

22 238.15 (1) (m) 1. It agrees that it will not relocate outside of this state during
23 the 3 years after it receives an investment for which a person may claim a tax credit
24 under s. 71.07 (5d) and agrees to pay the corporation a penalty, in an amount
25 determined under subd. 2., if the business relocates outside of this state during that

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1 3-year period. For the purposes of this paragraph, a business relocates outside of
2 this state when the business locates more than 51 percent of any of the following
3 outside of this state:

4 a. The business's employees.

5 b. The business's total payroll.

6 c. The activities of the business's headquarters, as determined by the
7 corporation.

8 2. The amount of a penalty payment under subd. 1. is any of the following:

9 a. If the relocation occurs less than 12 months after the investment, 100 percent
10 of the tax credit that was claimed under s. 71.07 (5d) as the result of the investment.

11 b. If the relocation occurs 12 months or more after the investment but less than
12 24 months after the investment, 80 percent of the tax credit that was claimed under
13 s. 71.07 (5d) as the result of the investment.

14 c. If the relocation occurs occurs 24 months or more after the investment but
15 less than 36 months after the investment, 60 percent of the tax credit that was
16 claimed under s. 71.07 (5d) as the result of the investment.

17 **SECTION 8.** 238.15 (3) (d) (intro.) of the statutes, as affected by 2011 Wisconsin
18 Act 32, is amended to read:

19 238.15 **(3)** (d) *Rules.* (intro.) The corporation, in consultation with the
20 department of revenue, shall adopt rules to administer this section. The rules shall
21 further define "bona fide angel investment" for purposes of s. 71.07 (5d) (a) 1. The
22 rules shall limit the aggregate amount of tax credits under s. 71.07 (5d) that may be
23 claimed for investments in businesses certified under sub. (1) at \$3,000,000 per
24 calendar year for calendar years beginning after December 31, 2004, and before
25 January 1, 2008, \$5,500,000 per calendar year for calendar years beginning after

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1 December 31, 2007, and before January 1, 2010, \$6,500,000 for calendar year 2010,
2 and \$20,000,000 per calendar year for calendar years beginning after December 31,
3 2010, plus, for taxable years beginning after December 31, 2010, an additional
4 \$250,000 for tax credits that may be claimed for investments in nanotechnology
5 businesses certified under sub. (1). The rules shall also limit the aggregate amount
6 of the tax credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b), and 76.638 that may be
7 claimed for investments paid to fund managers certified under sub. (2) at \$3,500,000
8 per calendar year for calendar years beginning after December 31, 2004, and before
9 January 1, 2008, \$6,000,000 per calendar year for calendar years beginning after
10 December 31, 2007, and before January 1, 2010, \$8,000,000 for calendar year 2010,
11 and \$20,500,000 per calendar year for calendar years beginning after December 31,
12 2010, plus, for taxable years beginning after December 31, 2010, an additional
13 \$250,000 for tax credits that may be claimed for investments in nanotechnology
14 businesses certified under sub. (1). The rules shall also provide that, for calendar
15 years beginning after December 31, 2007, ~~no a person may receive~~ who receives a
16 credit under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b), or 76.638 ~~unless the~~
17 ~~person's~~ must keep the investment ~~is kept~~ in a certified business, or with a certified
18 fund manager, for no less than 3 years, unless the person's investment becomes
19 worthless, as determined by the corporation, during the 3-year period or the person
20 has kept the investment for no less than 12 months and a bona fide liquidity event,
21 as determined by the corporation, occurs during the 3-year period. The rules shall
22 permit the corporation to reallocate credits under this section that are unused in any
23 calendar year to a person eligible for tax benefits, as defined under s. 238.16 (1) (d),
24 if all of the following apply:

25 (END)