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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 04-108

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]**

#### 2. Form, Style and Placement in Administrative Code

a. Section Comm 129.09 (1) should be rewritten to place the material in pars. (a) and (b) into separate subdivisions of par. (a).

b. Section Comm 129.09 (2) states that an angel investment network is an entity organized for the sole purpose of making an investment “in a single qualified new business venture.” It appears that this definition would disqualify any preexisting entity or an entity that invests in more than one business, even if the entity did not seek tax credits for its other investments. Is this the intended result?

c. In s. Comm 129.10 (1) (intro.), “the” should replace “such.”

d. In s. Comm 129.10 (c) (intro.), “any” should replace “one.”

e. The analysis to the rule should state why s. Comm 129.10 (1) (g) 1. refers to full time equivalent employees, although s. 560.205 (1) (h), Stats., uses the term “employees,” and why s. Comm 129.10 (1) (g) 2. does not include the phrase “in this state,” as does s. 560.205 (1) (j), Stats.

f. A note should be inserted after s. Comm 129.12 (6) explaining that under certain circumstances, tax credits must be paid back to the Department of Revenue.

g. The effective date clause says that this is an emergency rule. This should be corrected.

h. In s. Comm 129.31 (3) (a) (intro.), “is any of the following” should be inserted before the colon and “; or” in subd. 1. should be replaced by a period. Similar changes are needed in ss. Comm 129.32 (3) (a) (intro.) and 1., 129.33 (3) (a) (intro.) and 1., and 129.34 (3) (a) (intro.) and 1.

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

a. The definition in s. Comm 129.02 (3) is grammatically inconsistent. “Headquarters” is a noun, but the second part of the definition provided after “or” is not in the form of a noun.

b. In s. Comm 129.09 (1) (intro.), the phrase “high net worth” is unnecessary because the succeeding paragraphs specify the required net worth of an “accredited investor” and is meaningless since the phrase is not defined.

c. In s. Comm 129.09 (1) (c), the term “person” is used, while in the other paragraphs of that subsection, the term “individual” is used. The same term should be used consistently, unless the terms are used to refer to different entities.

d. In s. Comm 129.09 (1) (c), “of” should be changed to “in.” In addition, should the rule define what is meant by “proprietary” decision-making authority?

e. In s. Comm 129.09 (1) (e), the phrase “such as” should be deleted since it implies that persons other than those listed may be considered to be related to an individual. If there are other persons, the rule should specifically list them.

f. In s. Comm 129.09 (3), “that” should be changed to “who.”

g. In s. Comm 129.09 (5), “the” should be changed to “an.”

h. The definition in s. Comm 129.09 (10) should simply state that a qualified new business venture is an entity certified under s. Comm 129.10. If any of the material in the existing definition is substantive in nature, it should be placed in s. Comm 129.10 in the form of a requirement for certification.

i. Under s. Comm 129.10 (1) (d), a business may not be certified if it is engaged in real estate development, insurance, or other specified activities. Under s. Comm 129.30 (8), whether a business engages in these activities is one factor that the department must consider in determining whether to make a grant or loan, but it does not appear that engaging in these activities would disqualify a person. Is this difference intended?

j. Section Comm 129.10 (3) (a) refers to “targeted industries as determined by the department.” How will the department make this determination? How will the public be apprised of which industries are targeted? (This comment also applies to the terms “targeted industries” and “target group members” in s. Comm 129.11 (1) (e).) Finally, the factors set forth in pars. (c) through (f) are somewhat vague and should be expanded upon to define the factor and to explain how the absence or presence of each factor will impact an application for certification. Clarifying these factors is especially important since s. Comm 129.15 (1) (b) requires a business

certification to be revoked if the business fails to continue to meet the required conditions or qualifications for obtaining the certification.

k. Section Comm 129.10 (5) should be written to clarify whether the \$4 million limit is the total amount that may be invested in a single business by one investor or the total amount that may be invested in a business by all investors, and whether it is an annual limit or a total limit over the lifetime of the business.

l. Sections Comm 129.10 (7) and 129.11 (6) should require the department to notify the Department of Revenue if a certification is revoked or expired. See s. 560.205 (3) (b), Stats.

m. Section Comm 129.11 (1) (d) should be expanded to specify what is meant by “geographic distribution” and how it will impact an application for certification as a fund manager. Likewise, par. (g) of that subsection should be expanded to clarify the types of services to which the rule refers and how the provision of those services will impact an application for certification, and par. (h) should explain what is meant by “Commitment to Wisconsin” and how that commitment can be demonstrated.

n. Should the rule define “final closing” and “private placement memorandum,” used in s. Comm 129.11 (3)? In addition, is there any difference between a trade secret and a business secret? If so, the difference should be explained. If not, only one of those terms should be used in that subsection.

o. In s. Comm 129.12 (1), should the rule specify what the department will accept as “proof of the investment”?

p. Section Comm 129.12 (2) requires an individual investor to “attest” to being an accredited investor on a form prescribed by the department, while angel investor networks must provide “documentation” that each member of the network is an accredited investor. Why is there a difference in the type of proof that must be provided? Should the rule require each individual investor in a network to submit the same form that an individual must submit? If not, the rule should specify precisely what “documentation” is required for networks.

q. In s. Comm 129.12 (3) (a), “made” should be inserted after “Investments.”

r. Section Comm 129.12 (3) (b) requires an investment to meet all of the criteria set forth in subds. 1. and 2. to be eligible for a tax credit. However, the criteria apply only to investments made by a fund manager. The rule should clarify that the requirements do not apply to investments made by an individual angel investor. Also, is there any significance to the use of the term “initial” investment in subd. 1.? If not, “initial” should be deleted. If so, the rule should clarify what is meant by “initial” investment and how it differs from the “investment” referred to in par. (b) (intro.). Also, in subd. 1., “shall occur” should be changed to “occurs.”

s. The analysis should explain the reason for the limitations in s. Comm 129.12 (3) (c) and (d), since these limitations are not included in the statutes. Also, why does par. (c) permit investments made before December 31, 2005 to qualify for credits, while par. (d) provides that “no subsequent investments” qualify?

- t. In s. Comm 129.13 (1), “at” should be changed to “to.”
- u. Section Comm 129.13 (2) (b) should specify whether the \$2 million limit is an annual or a lifetime limit. Also, does that limit refer to all investments by a fund manager or only that manager’s investments in a certain business?
- v. The rule should specify how credits will be allocated if the total amount of credits claimed exceeds the limits specified in s. Comm 129.13.
- w. Section Comm 129.15 (1) (intro.) provides for revocation of certification if a business does any of the specified actions. One of those is being arrested for or convicted of a crime substantially related to the activities of the business. Is the use of “arrested” intended to apply to an officer or director of the business?
- x. Section Comm 129.30 (intro.) states that the department shall consider “any other information the department considers relevant” in making decisions relating to grants and loans under subch. III. The rule should specify the other factors that the department will consider.
- y. The phrase “or proposed business” should be added to the end of s. Comm 129.30 (5).
- z. Section Comm 129.30 (7) should be expanded to specify the attributes of a management plan or team that the department will consider favorably or negatively when reviewing grant and loan applications.
  - aa. In s. Comm 129.34 (1), “3<sup>rd</sup>” should be changed to “3rd.”
  - bb. Section Comm 129.36 (1) (b) should specify that the reporting, monitoring, and auditing requirements in sub. (2) must be included in the contract between the department and the successful applicant.
  - cc. Section Comm 129.36 (2) should specify what is meant by “periodic.”