



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #325

Qualified New Business Venture Exception from Penalty Payment (General Fund Taxes -- Income and Franchise Taxes)

[LFB 2015-17 Budget Summary: Page 182, #13]

CURRENT LAW

A business may be certified as a qualified new business venture (QNBV) by the Wisconsin Economic Development Corporation (WEDC), provided the business meets certain statutory conditions. A certified QNBV is eligible to receive investments for which the investor may be eligible for an angel investment tax credit. The credit can be used against the individual income tax, including the alternative minimum tax, in an amount equal to 25% of the claimant's investment.

To be certified as a QNBV, the business must agree that it will not relocate outside Wisconsin during the three years after it receives an investment for which a person may claim an angel tax credit and must agree to pay WEDC a penalty if it does so. A business is determined to relocate outside Wisconsin when it locates more than 51% of any of the following outside of this state: (a) its employees; (b) its total payroll; or (c) the activities of its headquarters, as determined by WEDC. The penalties are equal to 100% of the angel tax credits claimed as a result of the investment if the relocation occurs within one year of certification, 80% if it occurs in the second year, or 60% if it occurs in the third year.

GOVERNOR

Create an exemption to penalties under current law for a business that WEDC certified as a QNBV prior to April 20, 2012, and that, in reliance on that certification, executed a note or bond that is convertible to an equity interest.

DISCUSSION POINTS

1. The current law clawback provisions were enacted by the Legislature in 2011 Wisconsin Act 213, and took effect on April 19, 2012. Under current law, a person who makes a loan to a QNBV is not eligible for an angel investment tax credit unless the debt is later converted into an ownership interest. Once the debt is converted into an ownership interest, the investor is eligible to claim the credit.

2. According to WEDC, at least one QNBV (StudyBlue) received a convertible loan prior to the effective date of Act 213. Although it maintained its presence in this state, that business subsequently expanded its operations outside of Wisconsin so that it is considered to have relocated outside of this state under the clawback provisions. The convertible notes were issued in August of 2011 and were converted to equity in December of 2012. On July 7, 2014, WEDC determined that StudyBlue was subject to the clawback penalties, even though it maintained its presence in Wisconsin. However, WEDC postponed collection of the payment pending proposed legislative changes. The Governor's proposal is intended to prevent StudyBlue from being penalized in this situation.

3. The Corporation states that StudyBlue would be exempted from paying a penalty of \$186,750 under the Governor's proposal. It is possible that additional companies could be affected by the proposed change; however, WEDC is unaware of any other company that may be impacted by any other investment under this proposed change.

4. It could be argued that it is unfair to retroactively penalize a company. At the time of issuing the convertible note, the QNBV could not have known that accepting the loan and expanding its payroll in another state would make it subject to a penalty. Conversely, it could be argued that the Legislature's intent under the Act 213 clawback provisions was to encourage QNBVs to expand their Wisconsin operations.

5. Adopting the Governor's proposal would reduce the amount of penalty monies that would have otherwise been paid to WEDC by \$186,750. As a result, monies available to WEDC for use in economic development grant or loan awards to other Wisconsin companies would be reduced by the same amount.

ALTERNATIVES

1. Approve the Governor's recommendation
2. Delete provision.

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