

2001 DRAFTING REQUEST

Assembly Amendment (AA-AB579)

Received: 10/29/2001

Received By: jkreye

Wanted: Today

Identical to LRB:

For: Glenn Grothman (608) 264-8486

By/Representing: maggie

This file may be shown to any legislator: NO

Drafter: jkreye

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Addl. Drafters:

Subject: Tax - corp. inc. and fran.

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Capital investment credit for income and franchise taxes

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 10/29/2001	gilfokm 10/29/2001	pgreensl 10/29/2001	_____	lrb_docadmin 10/29/2001	lrb_docadmin 10/29/2001	

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/1	jkreye	1-10/29 Kmg	10/29 PS	10/29 PS/Ch			
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Grothman

10-29

limits to the costs of forming and syndicating the CAPCO and for professional fees paid. The Department recommends the following changes to ss. 560.30 (10) (a) to (d), Stats.:

- a) The costs of forming, and syndicating, ~~managing or operating~~ the CAPCO provided such costs do not exceed 10% of the CAPCO's certified capital;
- b) An annual management fee that does not exceed 2.5% of the CAPCO's total certified capital;
- c) Reasonable and necessary fees paid for professional services related to the operation of the CAPCO not to exceed 10% unless approved by Commerce;
- d) A projected increase in federal or state taxes, ~~including penalties and interest on those taxes~~, of the equity owners of the CAPCO if those amounts are related to the CAPCO's ownership, management or operation.

The Department further recommends that the costs associated with applying for certification as a Small Business Investment Company ("SBIC") should be a qualified distribution to remove barriers for the CAPCO to pursue certification as the same. The suggested language is to create section 560.30 (10) (e), Stats.,

- (e) Reasonable costs incurred to apply for qualified federal funding programs as determined by the department.

3. Insurance Company Participation

Current Law: Presently, only insurance companies paying "premium taxes" are eligible to take a credit against the same for an investment in a certified capital company. The controlling statutes include: ss. 76.63, 76.65, 76.66, or 76.67. Tax credits equal to 100% of the certified capital invested may be taken over 10 years, at a rate of 10% per year. Two explanations have been offered for the focus on premium insurance companies, including: First, it is viewed as a fee for each premium sold in the state, with the fee collected by the Office of the Commissioner of Insurance. It is not a tax, such as those paid by the Property and Casualty Insurance companies to the Department of Revenue, which are deposited in the General Fund. As a consequence, there is not a "Uniformity Clause" issue. Second, the premium tax is a more stable funding source.

Problem: Thirty-three (33) insurance companies are eligible to take this credit. Yet, this number includes only two Wisconsin-based companies, Sentry and Northwestern Mutual.

Recommended Solution: The Department recommends that language be created to permit all insurance companies, domestic and non-domestic, operating in Wisconsin to participate in the program. The credit should be eligible to be taken against the income tax or franchise tax paid by insurance companies.

2001 ASSEMBLY BILL 579

October 17, 2001 - Introduced by Representatives WARD, LIPPERT, VRAKAS, TOWNSEND, HUNDERTMARK, GRONEMUS, HAHN, SYKORA, WALKER, DUFF, LADWIG, OWENS, D. MEYER, KRAWCZYK, BOYLE, OLSEN, M. LEHMAN, MILLER, STASKUNAS, PLALE, GUNDERSON, OTT, BALOW, COLON, STARZYK, SERATTI, BERCEAU, LA FAVE, JENSEN, TURNER, YOUNG, KRUG, SHILLING, WASSERMAN, WILLIAMS, FREESE, SUDER, KEDZIE, KESTELL, PETTIS, RICHARDS, HUEBSCH, JESKEWITZ, MUSSER and RILEY, cosponsored by Senators MOORE, PLACHE, BURKE, M. MEYER, KANAVAS, ERPENBACH, HANSEN, WIRCH, DARLING, GEORGE, SHIBILSKI, BRESKE, ROESSLER, WELCH, HUELSMAN, SCHULTZ and S. FITZGERALD. Referred to Committee on Economic Development.

1 **AN ACT to renumber** 560.32 (2) (c) and 560.35 (1m); **to renumber and amend**
2 560.32 (2) (b), 560.33 (1) (b) and 560.34 (1) (d); **to amend** 560.33 (1) (c) and
3 560.35 (3); and **to create** 560.32 (2) (b) 2., 560.32 (2) (c) 2., 560.33 (1) (b) 2.,
4 560.34 (1) (d) 2. and 560.35 (1m) (b) of the statutes; **relating to:** certified capital
5 investment limitations, qualified business requirements, and reviews of
6 certified capital company financial statements.

Analysis by the Legislative Reference Bureau

Under current law, the department of commerce (department) is authorized to certify investments (certified capital investments) made by investors (certified investors) in companies that have been certified by the department (certified capital companies). A certified capital company in which a certified capital investment is made must then invest the certified capital investment, according to a specified schedule, in a business in this state that fulfills certain requirements, including having no more than 100 employees and a net worth of no more than \$5,000,000 (qualified businesses). The investment in the qualified business must satisfy certain requirements, and the qualified business must agree to comply with certain requirements as a condition of the investment.

If a certified investor is a certain type of insurer, including a life insurer or an out-of-state insurer doing a fire or marine insurance business or a casualty or surety business, the certified investor may claim a tax credit for the certified capital

ASSEMBLY BILL 579

investment against license fees that are based on gross premiums and that are owed to the state instead of income or franchise taxes. The credit must be claimed over a ten-year period, with 10% of the investment used to offset the license fee that is due each year.

This bill makes various changes to the certified capital company program. Current law allows the department to certify no more than \$10,000,000 in certified capital investments per certified investor and no more than \$50,000,000 in total certified capital investments. This bill authorizes the department to certify another \$100,000,000 in certified capital investments and to certify, in certified capital investments per certified investor, up to the greater of \$10,000,000 or 15% of the total certified investments that the department may certify over and above the original \$50,000,000 that the department was authorized to certify.

Currently, at least 75% of the employees of a qualified business must be employed in this state. The bill provides that, alternatively, at least 75% of the total payroll of the qualified business must be paid to employees who are employed in this state.

Currently, a qualified business must have an average annual net income, after federal income taxes and excluding any carry-over losses, of not more than \$2,000,000. The bill provides that a qualified business that is a partnership, limited liability company, or tax option corporation shall calculate its net annual income based on the net annual income, after federal income taxes and excluding any carry-over losses, of its partners, members, or shareholders that is related to the economic activity of the partnership, limited liability company, or tax option corporation.

Currently, a certified capital company must have its financial statements annually audited by a certified public accountant to ensure compliance with the statutory requirements. The bill allows the financial statements to be annually reviewed by a certified public accountant to ensure compliance, without the necessity of an actual audit.

The bill also provides that, if a qualified business violates any condition that it agreed to as a condition of a qualified investment, the qualified investment will be valued at one-half of the actual amount invested. This provision affects whether the certified capital company that made the qualified investment is in compliance with requirements to make a specified level of qualified investments, which in turn affects whether the qualified investor that made the certified capital investment in the certified capital company is entitled to the tax credit that applies to a certified investor that is a life insurer or an out-of-state insurer doing a fire or marine insurance business or a casualty or surety business.

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.** 560.32 (2) (b) of the statutes is renumbered 560.32 (2) (b) 1. and
2 amended to read:

3 560.32 (2) (b) 1. The Prior to the effective date of this subdivision [revisor
4 inserts date], the department may certify an investment under this subsection only
5 if, after the certification, the department will not have certified a total of more than
6 \$50,000,000 in investments under this subsection.

7 **SECTION 2.** 560.32 (2) (b) 2. of the statutes is created to read:

8 560.32 (2) (b) 2. The department may, beginning on the effective date of this
9 subdivision [revisor inserts date], certify up to \$100,000,000 in investments under
10 this subsection, excluding any investments certified under subd. 1.

11 **SECTION 3.** 560.32 (2) (c) of the statutes is renumbered 560.32 (2) (c) 1.

12 **SECTION 4.** 560.32 (2) (c) 2. of the statutes is created to read:

13 560.32 (2) (c) 2. The department may not certify an investment under par. (b)
14 2. if, after the certification, the investor, together with all affiliates of the investor,
15 would have in certified capital investments under par. (b) 2. more than the greater
16 of \$10,000,000 or 15% of the total amount of investments that the department may
17 certify under par. (b) 2.

18 **SECTION 5.** 560.33 (1) (b) of the statutes is renumbered 560.33 (1) (b) (intro.)
19 and amended to read:

20 560.33 (1) (b) (intro.) The business has no more than 100 employees, at and any
21 of the following applies:

22 1. At least 75% of whom those employees are employed in this state.

23 **SECTION 6.** 560.33 (1) (b) 2. of the statutes is created to read:

24 560.33 (1) (b) 2. At least 75% of the total payroll of the business is paid to
25 employees who are employed in this state.

ASSEMBLY BILL 579

1 **SECTION 7.** 560.33 (1) (c) of the statutes is amended to read:

2 560.33 (1) (c) During its 2 most recent fiscal years, the business had, together
3 with all of its consolidated affiliates, an average annual net income, after federal
4 income taxes and excluding any carry-over losses, of not more than \$2,000,000, as
5 determined in accordance with generally accepted accounting principles. For
6 purposes of this paragraph, a partnership, limited liability company, or tax-option
7 corporation shall calculate its net annual income based on the net annual income,
8 after federal income taxes and excluding any carry-over losses, of its partners,
9 members, or shareholders that is related to the economic activity of the partnership,
10 limited liability company, or tax-option corporation.

11 **SECTION 8.** 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)
12 and amended to read:

13 560.34 (1) (d) (intro.) As a condition of the investment, the qualified business
14 agrees, as long as the certified capital corporation continues to hold the investment,
15 to maintain do any of the following:

16 1. Maintain at least 75% of its employees in this state.

17 **SECTION 9.** 560.34 (1) (d) 2. of the statutes is created to read:

18 560.34 (1) (d) 2. Pay at least 75% of its total payroll to employees who are
19 employed in this state.

20 **SECTION 10.** 560.35 (1m) of the statutes is renumbered 560.35 (1m) (a).

21 **SECTION 11.** 560.35 (1m) (b) of the statutes is created to read:

22 560.35 (1m) (b) If a qualified business violates an agreement made under s.
23 560.34 (1) (b) to (e), for purposes of the requirements under subs. (2) (b) and (c) and
24 (3) and ss. 560.34 (1m) (a), 560.36 (3), and 560.37 (2), (3), and (3m) (a) 2. and the
25 certified capital company tax credit, the certified capital company's qualified

ASSEMBLY BILL 579

1 investments with respect to that qualified business shall be valued at one-half of the
2 actual amount invested by the certified capital company.

3 **SECTION 12.** 560.35 (3) of the statutes is amended to read:

4 560.35 (3) FINANCIAL STATEMENTS. Within 90 days of the end of the certified
5 capital company's fiscal year, the certified capital company shall provide to the
6 department a copy of its annual audited financial statements, including together
7 with the opinion of an independent certified public accountant who has audited or
8 otherwise reviewed the financial statements. The audit or other review shall
9 address the methods of operation and conduct of the business of the certified capital
10 company to determine whether the certified capital company is complying with this
11 subchapter and the rules promulgated under this subchapter, including whether
12 certified capital has been invested in the manner required under s. 560.34. The
13 financial statements provided under this subsection shall be segregated by
14 investment pool and shall be separately audited or otherwise reviewed on that basis
15 to allow the department to determine whether the certified capital company is in
16 compliance with s. 560.34 (1m).

17

(END)



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBa0865/1
JK&PJK: /y....
Kmg

ASSEMBLY AMENDMENT,
TO 2001 ASSEMBLY BILL 579

in 10-29-01

Today

ON THE FLOOR TOMMORROW

#. Page 1, line 5: after "limitations," insert "creating a certified capital company income and franchise tax credit for insurers,"

At the locations indicated, amend the bill as follows:

1. Page 3, line 1: before that line insert:

SECTION 1^{AM} 71.45 (2) (a) 10. of the statutes is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dx) and (7) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under s. 71.47 (1), (3), (4), and (5).

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; s. 13.93 (2) (c).

SECTION 1b. 71.47 (7) of the statutes is created to read:

71.47 (7) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

1. "Certified capital company" has the meaning given in s. 560.30 (2).

2. "Certified capital investment" has the meaning given in s. 560.30 (4).

1 3. "Investment date" has the meaning given in s. 560.30 (6). ✓

2 4. "Investment pool" has the meaning given in s. 560.30 (7). ✓

3 5. "Qualified investment" has the meaning given in s. 560.30 (11). ✓

4 (b) An insurer who makes a certified capital investment may claim as a credit
5 against the tax imposed under s. 71.43, for 10 years beginning with the year of the
6 investment, an amount equal to either 10% of that investment or the amount by
7 which the sum of the insurer's certified capital investments and the insurer's
8 qualified investments exceeds the insurer's qualified investments in the taxable year
9 before the insurer first claimed the credit under this section, whichever is less.

10 (c) Subsection 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under 71.28
11 (4), applies to the credit under this subsection.

12 (d) Partnerships, limited liability companies, and tax-option corporations may ✓
13 not claim the credit under this subsection, but the eligibility for, and the amount of,
14 the credit are based on their payment of a certified capital investment. A
15 partnership, limited liability company, or tax-option corporation shall compute the ✓
16 amount of credit that each of its partners, members, or shareholders may claim and ✓
17 shall provide that information to each of them. Partners, members of limited liability
18 companies, and shareholders of tax-option corporations may claim the credit in ✓
19 proportion to their ownership interest.

20 (e) 1. If a certified capital company is decertified, or an investment pool is
21 disqualified, under s. 560.37 before the certified capital company fulfills the
22 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
23 pool, any insurer that has received a credit under this subsection with respect to that
24 investment pool shall repay that credit to the department of revenue and may not
25 claim more credit in respect to that investment pool.

1 2. If a certified capital company fulfills the investment requirement under s.
 2 ✓ 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
 3 company is decertified, or an investment pool is disqualified, under s. 560.37 before
 4 the certified capital company fulfills the investment requirement under s. 560.34
 5 ✓ (1m) (a) 2. for that investment pool, any insurer that has received a credit under this
 6 subsection with respect to that investment pool shall repay all credits that were
 7 claimed for taxable years after the taxable year that includes the 3rd anniversary of
 8 the investment date of the investment pool and may claim no more credits for taxable
 9 years after the taxable year that includes the 3rd anniversary of the investment date
 10 of the investment pool.

11 (f) An insurer may sell a credit under this subsection to another insurer who
 12 is subject to the tax imposed under s. 71.43 if the insurer notifies the commissioner
 13 of insurance and the department of revenue of the sale and includes with such
 14 notifications copies of the transfer documents.

15 **SECTION 1d.** 71.49 (1) (dm) of the statutes is created to read:
 16 71.49 (1) (dm) Certified capital company credit under s. 71.47 (7).

17 **SECTION 1f.** 560.30 (3) of the statutes is amended to read:
 18 560.30 (3) "Certified capital company tax credit" means the tax credit under
 19 s. ss. 71.47 (7) and 76.635.

(S) (B) SECTION

20 History: 1997 a. 215.
 ✓ 2. Page 3, line 1: delete "1" and substitute "1m".

21 3. Page 5, line 16: after that line insert:

22 "SECTION 12m. 560.37 (4) of the statutes is amended to read:

1 560.37 (4) EFFECT OF DECERTIFICATION. Decertification of a certified capital
2 company or an investment pool has the effects specified in s. ss. 71.47 (7) (e) and
3 76.635 (4).

History: 1997 a. 215.

4 **SECTION 12n.** 560.37 (5) of the statutes is amended to read:

5 560.37 (5) NOTICES TO CERTIFIED INVESTORS. The department shall notify a
6 certified investor when the certified capital company tax credit arising from a
7 certified investment is no longer subject to recapture and forfeiture under s. ss. 71.47
8 (7) (e) and 76.635 (4).

History: 1997 a. 215.

9 **SECTION 12p. Initial applicability.**

10 (1) The treatment of sections 71.47 (7) and 560.37 (4) and (5) of the statutes first
11 applies to taxable years beginning ^{on} January 1, 2002. ← ~~stat~~

12

(END)

Barman, Mike

From: Barman, Mike

Sent: Tuesday, October 30, 2001 5:09 PM

To: Rep.Grothman

Subject: LRBa0865/1 (attached)

10/30/2001