



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Added To File: 10/22/2003 (Per: MES)



☞ The 2003 drafting file for LRB 03s0200/2

has been copied/added to the 2003 drafting file for

LRB 03s0228

☞ The attached 2003 draft was incorporated into the new 2003 draft listed above. For research purposes, this cover sheet and the attached drafting file were copied, and added, as an appendix, to the new 2003 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

☞ This cover sheet was added to rear of the original 2003 drafting file. The drafting file was then returned, intact, to its folder and filed.

2003 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB261)

Received: 09/30/2003

Received By: rmarchan

Wanted: Soon

Identical to LRB:

For: Ted Kanavas (608) 266-9174

By/Representing: jeremy

This file may be shown to any legislator: NO

Drafter: rmarchan

May Contact:

Addl. Drafters: jkreye
mshovers

Subject: Econ. Development - bus. dev.
Tax Credits - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Sen.Kanavas@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

SSA (qualified new business venture tax credit, certified venture capital funds, etc.) to SB-261 (same)

Instructions:

See attached email containing instructions. Also incorporate all technical and other amendments to SB-261 done for Kanavas.

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>
/?	rmarchan	csicilia					
	09/30/2003	10/14/2003					
	jkreye	kgilfoy					
	10/01/2003	10/15/2003					
	jkreye						

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	10/14/2003			_____			
/1	jkreye 10/17/2003		pgreensl 10/16/2003	_____	mbarman 10/16/2003	mbarman 10/16/2003	
/2	mshovers 10/20/2003	kgilfoy 10/20/2003	pgreensl 10/21/2003	_____	sbasford 10/21/2003	sbasford 10/21/2003	

FE Sent For:

<END>

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1/?	rmarchan	██████	12/21	19/21			
	09/30/2003	10/14/2003	PS				
	jkreye	kgilfoy					
	10/01/2003	10/15/2003					
	jkreye	1/2-10/20					
		KMG					

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	10/14/2003			_____			
/1			pgreensl 10/16/2003	_____	mbarman 10/16/2003	mbarman 10/16/2003	

FE Sent For:

<END>

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1?	rmarchan	1-10/15 Kmg	10/16 ps	12/14 ps			

FE Sent For:

<END>

Marchant, Robert

From: Shepherd, Jeremy
Sent: Tuesday, September 30, 2003 4:54 PM
To: Marchant, Robert; Kreye, Joseph; Shovers, Marc
Cc: Reinhardt, Rob; Russell, Faith; Shanovich, Ron; Rosenak, Mary Jan; Terry Grosenheider
Subject: SB 261/AB 538 fiscal bureau changes

Rob Marchant, Joe Kreye and Marc Shovers:

After meeting with Legislative Fiscal Bureau regarding SB 261/AB 538, below are drafting instructions for a substitute amendment to SB 261/AB 538 - Qualified New Business Ventures:

- 1.) We need language that says the investment must be held for one year and if it is not, the claimant must add the credit back to his or her taxes in the following year OR have some other payback type of mechanism.
- 2.) Limit the "qualifying businesses" to corporations (C-corps, S-corps and LLC's)
- 3.) Specify that investments excluded under "trade" to mean wholesale and retail trade
- 4.) Eliminate transportation and construction from being able to receive the investments
- 5.) On page 12, line 6 - replace the language "...commits to make equity investments in businesses..." WITH "...commits to make a four-year rolling average of 50% of their equity investments in businesses..."
- 6.) Limit the credit to "direct equity investments in qualified businesses" so mutual funds cannot be started or bank loans or other debt financing would not be eligible.

Please feel free to contact Legislative Fiscal Bureau, Sen. Kanavas, Rep. Nischke or Terry Grosenheider with any questions, comments or concerns on this legislation.

Thanks!

Jeremy Shepherd
Office of Senator Ted Kanavas
266-9174

** Also need to add simple AMIs to SB-261*

Shovers, Marc

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Sent: Tuesday, September 30, 2003 4:54 PM
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Thanks!

Jeremy Shepherd
Office of Senator Ted Kanavas
266-9174

by Fri. 10-17
2003 - 2004 LEGISLATURE
SSA to

50200/11
LRB-3206/3
JK/MES/RJM: [redacted].pg
Kg pr NR

2003 SENATE BILL 261

September 24, 2003 - Introduced by Senators KANAVAS, STEPP, LEIBHAM, DARLING, BROWN, WELCH, ZIEN, LASSA and ROESSLER, cosponsored by Representatives NISCHKE, MCCORMICK, LADWIG, MUSSER, MONTGOMERY, TOWNS, OWENS, M. LEHMAN, WEBER, VAN ROY, KRAWCZYK, OLSEN and OTT. Referred to Joint Committee on Finance.

Gen. Cat.

1 AN ACT to amend 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)
2 (a) 10. and 77.92 (4); and to create 71.05 (24), 71.07 (5d), 71.10 (4) (gx), 71.28
3 (5d), 71.30 (3) (eop), 71.47 (5d), 71.49 (1) (eop) and 560.03 (24) to (27) of the
4 statutes; relating to: creating a qualified new business venture tax credit and
5 a capital gains tax exemption regarding investments in certified venture
6 capital funds and qualified new business ventures, requiring a study of new
7 Wisconsin businesses, facilitating the development of certain investor
8 networks, and granting rule-making authority.

substitute amendment
Analysis by the Legislative Reference Bureau

This ~~bill~~ creates an income and franchise tax credit for investments in a new business venture that has its headquarters and the majority of its employees in this state. The ~~bill~~ requires a business desiring certification as a new business venture for purposes of this tax credit to apply to the Department of Commerce. The amount of the tax credit is equal to 20 percent of the taxpayer's investment in a new business venture in the taxable year, except that if the taxpayer's investment exceeds \$100,000 in the taxable year the taxpayer may claim 20 percent of \$100,000 plus ten percent of the amount of the investment that exceeds \$100,000. In addition, if the taxpayer is a broker-dealer, the taxpayer may claim a tax credit in amount equal to

To obtain certification, the business ^{must} be a ^{limited} corporation or ^{limited liability} company, ^{on} must not be engaged in the transportation or construction business, and ^{must} ^{other} ^{criteria}.

SENATE BILL 261

→ substitute amendment

ten percent of the first \$500,000 raised in an offering of a new business venture in the taxable year. Under current law, a broker-dealer is, generally, any person engaged in the business of effecting transactions in securities.

This ~~(a)~~ also requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to annually conduct and publish the results of a study of Wisconsin businesses to determine new business formation trends and identify obstacles faced by new Wisconsin businesses and areas where changes in governmental policy may satisfy the needs of new Wisconsin businesses. In addition, the ~~(a)~~ requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to provide education and other support to facilitate the development of networks of investors that review new businesses or proposed new businesses for potential investment (commonly called "angel capital networks").

Under current law, there is an income tax exclusion for individuals and tax-option corporations for 60 percent of the net capital gains realized from the sale of assets held for at least one year.

Under this ~~(a)~~, an individual; an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may elect to defer the payment of income taxes on the gain realized from the sale of any asset held more than one year, to the extent that the gain is not already excluded from taxation, or any asset that is an investment in a venture capital fund (original asset), if the claimant completes a number of requirements.

Under the ~~(b)~~, the claimant must place the gain from the original asset in a segregated account in a financial institution, purchase another capital asset that is an investment in a venture capital fund or in a qualified new business venture (replacement asset) within 90 days after the sale of the original asset that generated the gain, and notify the Department of Revenue (DOR) on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. The cost of the replacement asset must be equal to or greater than the gain generated by the sale of the original asset.

The ~~(b)~~ also specifies that the basis of the replacement asset shall be its cost minus the gain generated by the sale of the original asset. If a claimant defers the payment of income taxes on the gain generated by the sale of the original asset, the claimant may not use that gain to net the claimant's gains and losses as the claimant could do if the claimant did not elect to defer the payment of taxes on the gain.

Under this ~~(b)~~, the Department of Commerce must promulgate rules establishing a procedure for certifying venture capital funds for purposes of the capital gains tax exemption described above. A venture capital fund may obtain a certification only if the venture capital fund is a private seed and venture capital partnership or entity fund, the venture capital fund has its principal place of business in Wisconsin, and the venture capital fund commits to ~~make~~ equity investments in businesses located in Wisconsin. The ~~(b)~~ requires the Department of Commerce, upon request of any person, to issue a written notice indicating whether a venture capital fund is certified. Each such notice that indicates a venture

maintain average of 50 percent of 175

SENATE BILL 261

substitute amendment

capital fund is certified must include the following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE." The ~~(21)~~ also requires the Department of Commerce, upon issuing or discontinuing a certification, to notify DOR and give DOR a copy of the certification or discontinuance.

~~This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.
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. 71.05 (6) (a) 15. of the statutes is amended to read:

2 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), and (3s), and (5d) and not passed
4 through by a partnership, limited liability company, or tax-option corporation that
5 has added that amount to the partnership's, company's, or tax-option corporation's
6 income under s. 71.21 (4) or 71.34 (1) (g).

7 SECTION 2. 71.05 (24) of the statutes is created to read:

8 71.05 (24) INCOME TAX DEFERRAL; INVESTMENTS IN CERTAIN VENTURE CAPITAL FUNDS
9 AND QUALIFIED NEW BUSINESS VENTURES. (a) In this subsection:

10 1. "Claimant" means an individual; an individual partner or member of a
11 partnership, limited liability company, or limited liability partnership; or an
12 individual shareholder of a tax-option corporation.

13 2. "Financial institution" has the meaning given in s. 69.30 (1) (b).

14 3. "Long-term capital gain" means the gain realized from the sale of any asset
15 held more than one year.

SENATE BILL 261

1 (b) To the extent that the gains are not excluded from taxation under sub. (6)
2 (b) 9., a claimant may subtract from federal adjusted gross income any amount of a
3 long-term capital gain, or any gain realized from the sale of an asset that is an
4 investment in a qualified new business venture that is certified under s. 560.03 (26)
5 or a venture capital fund that is certified under s. 560.03 (27), if the claimant does
6 all of the following:

7 1. Immediately deposits the gain in a segregated account in a financial
8 institution.

9 2. Within 90 days after the sale of the asset that generated the gain, purchases
10 another capital asset, which is an investment in a qualified new business venture
11 that is certified under s. 560.03 (26) or a venture capital fund that is certified under
12 s. 560.03 (27), of equal or greater value using all of the proceeds in the account
13 described under subd. 1.

14 3. After purchasing a capital asset as described under subd. 2., immediately
15 notifies the department, on a form prepared by the department, that the claimant
16 will not declare on the claimant's income tax return the gain described under subd.
17 1. because the claimant has reinvested the capital gain as described under subd. 2.

18 (c) The basis of the purchased capital asset described in par. (b) 2. shall be
19 calculated by subtracting the gain described in par. (b) 1. from the cost of the
20 purchased asset described in par. (b) 2.

21 (d) If a claimant defers the payment of income taxes on a capital gain under this
22 subsection, the claimant may not use the gain described under par. (b) 1. to net
23 capital gains and losses, as described under sub. (10) (c).

24 **SECTION 3.** 71.07 (5d) of the statutes is created to read:

25 **71.07 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

SENATE BILL 261

- 1 1. "Broker-dealer" has the meaning given in s. 551.02 (3).
- 2 2. "Claimant" means a person who files a claim under this subsection.
- 3 3. "Qualified new business venture" means a business that is certified under
- 4 s. 560.03 (26).

5 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
6 a claimant may claim as a credit against the tax imposed under s. 71.02, up to the
7 amount of those taxes, any of the following:

8 1. An amount equal to 20 percent of the claimant's investment in a qualified
9 new business venture in the taxable year, except that if the claimant's investment
10 exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000
11 plus 10 percent of the amount of the investment that exceeds \$100,000.

12 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
13 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

14 (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
15 under s. 71.28 (4), apply to the credit under this subsection.

16 (d) Partnerships, limited liability companies, and tax-option corporations may
17 not claim the credit under this subsection, but the eligibility for, and the amount of,
18 the credit are based on the amounts described under par. (b) that are attributable to
19 their business operations. A partnership, limited liability company, or tax-option
20 corporation shall compute the amount of credit that each of its partners, members,
21 or shareholders may claim and shall provide that information to each of them.
22 Partners, members of limited liability companies, and shareholders of tax-option
23 corporations may claim the credit in proportion to their ownership interest.

24 (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
25 applies to the credit under this subsection.

bm
 (b) If an investment for which a claimant claims a credit under par. (b) 1. is held
 for less than one year, the claimant shall pay to the department ~~the amount~~ the amount
 of the credit the claimant received related to the investment. *that* *in the manner*
 prescribed by the department, *by the claimant*

or 71.08

equity made directly

by the claimant

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MSB 6-1 ✓

1 **SECTION 4.** 71.10 (4) (gx) of the statutes is created to read:

2 71.10 (4) (gx) Qualified new business venture credit under s. 71.07 (5d).

3 **SECTION 5.** 71.21 (4) of the statutes is amended to read:

4 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
5 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s)~~, and (5d) and passed through to
6 partners shall be added to the partnership's income.

7 **SECTION 6.** 71.26 (2) (a) of the statutes is amended to read:

8 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
9 the gross income as computed under the Internal Revenue Code as modified under
10 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
11 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
12 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g)~~, and (5d)
13 and not passed through by a partnership, limited liability company, or tax-option
14 corporation that has added that amount to the partnership's, limited liability
15 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
16 the amount of losses from the sale or other disposition of assets the gain from which
17 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
18 otherwise disposed of at a gain and minus deductions, as computed under the
19 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
20 amount equal to the difference between the federal basis and Wisconsin basis of any
21 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
22 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

23 **SECTION 7.** 71.28 (5d) of the statutes is created to read:

24 71.28 (5d) **QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

25 1. "Broker-dealer" has the meaning given in s. 551.02 (3).

- 1 2. "Claimant" means a person who files a claim under this subsection.
2 3. "Qualified new business venture" means a business that is certified under
3 s. 560.03 (26).

4 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
5 a claimant may claim as a credit against the tax imposed under s. 71.23, up to the
6 amount of those taxes, any of the following:

7 1. An amount equal to 20 percent of the claimant's ^{equity} investment ^{made directly} in a qualified
8 new business venture in the taxable year, except that if the claimant's investment
9 exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000
10 plus 10 percent of the amount of the investment that exceeds \$100,000.

11 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
12 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

13 (c) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit
14 under sub. (4), apply to the credit under this subsection.

15 (d) Partnerships, limited liability companies, and tax-option corporations may
16 not claim the credit under this subsection, but the eligibility for, and the amount of,
17 the credit are based on the amounts described under par. (b) that are attributable to
18 their business operations. A partnership, limited liability company, or tax-option
19 corporation shall compute the amount of credit that each of its partners, members,
20 or shareholders may claim and shall provide that information to each of them.
21 Partners, members of limited liability companies, and shareholders of tax-option
22 corporations may claim the credit in proportion to their ownership interest.

23 (e) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
24 to the credit under this subsection.

25 **SECTION 8. 71.30 (3) (eop) of the statutes is created to read:**

If bmm (bmm) If an investment for which a claimant claims a credit under par. (b) 1. is held by the claimant for less than one year, the claimant shall pay to the department ~~the amount~~, in the manner prescribed by the department, the amount of the credit ~~the claimant received~~ related to the investment. that

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1 71.30 (3) (eop) Qualified new business venture credit under s. 71.28 (5d).

2 **SECTION 9.** 71.34 (1) (g) of the statutes is amended to read:

3 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
4 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
5 (3g), and (5d) and passed through to shareholders.

6 **SECTION 10.** 71.45 (2) (a) 10. of the statutes is amended to read:

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

13 **SECTION 11.** 71.47 (5d) of the statutes is created to read:

14 71.47 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT. (a) In this subsection:

- 15 1. "Broker-dealer" has the meaning given in s. 551.02 (3).
16 2. "Claimant" means a person who files a claim under this subsection.
17 3. "Qualified new business venture" means a business that is certified under
18 s. 560.03 (26).

19 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
20 a claimant may claim as a credit against the tax imposed under s. 71.43, up to the
21 amount of those taxes, any of the following:

- 22 1. An amount equal to 20 percent of the claimant's investment in a qualified
23 new business venture in the taxable year, except that if the claimant's investment
24 exceeds \$100,000 in the taxable year the claimant may claim 20 percent of \$100,000
25 plus 10 percent of the amount of the investment that exceeds \$100,000.

direct
made directly

1 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
2 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

3 (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
4 under s. 71.28 (4), apply to the credit under this subsection.

5 (d) Partnerships, limited liability companies, and tax-option corporations may
6 not claim the credit under this subsection, but the eligibility for, and the amount of,
7 the credit are based on the amounts described under par. (b) that are attributable to
8 their business operations. A partnership, limited liability company, or tax-option
9 corporation shall compute the amount of credit that each of its partners, members,
10 or shareholders may claim and shall provide that information to each of them.
11 Partners, members of limited liability companies, and shareholders of tax-option
12 corporations may claim the credit in proportion to their ownership interest.

13 (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
14 applies to the credit under this subsection.

15 SECTION 12. 71.49 (1) (eop) of the statutes is created to read:

16 71.49 (1) (eop) Qualified new business venture credit under s. 71.47 (5d).

17 SECTION 13. 77.92 (4) of the statutes is amended to read:

18 77.92 (4) "Net business income", with respect to a partnership, means taxable
19 income as calculated under section 703 of the Internal Revenue Code; plus the items
20 of income and gain under section 702 of the Internal Revenue Code, including taxable
21 state and municipal bond interest and excluding nontaxable interest income or
22 dividend income from federal government obligations; minus the items of loss and
23 deduction under section 702 of the Internal Revenue Code, except items that are not
24 deductible under s. 71.21; plus guaranteed payments to partners under section 707

25 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),

(bm) If an investment for which a claimant claims a credit under par. (b), is held by the claimant for less than one year, the claimant shall pay to the Department of Revenue, in the manner prescribed by the department, the amount of the credit that the claimant received related to the investment.

(b)

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1 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and~~ (3g), ~~and~~ (3s), and (5d); and plus or
2 minus, as appropriate, transitional adjustments, depreciation differences, and basis
3 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
4 loss, and deductions from farming. "Net business income", with respect to a natural
5 person, estate, or trust, means profit from a trade or business for federal income tax
6 purposes and includes net income derived as an employee as defined in section 3121
7 (d) (3) of the Internal Revenue Code.

8 **SECTION 14.** 560.03 (24) to (27) of the statutes are created to read:

9 560.03 (24) In cooperation with the department of financial institutions and
10 the Board of Regents of the University of Wisconsin System, annually conduct and
11 publish the results of a study of Wisconsin businesses to determine new business
12 formation trends and identify obstacles faced by new Wisconsin businesses and areas
13 where changes in governmental policy may satisfy the needs of new Wisconsin
14 businesses. As part of the study, the department of commerce shall conduct a survey
15 of Wisconsin businesses.

16 (25) In cooperation with the department of financial institutions and the Board
17 of Regents of the University of Wisconsin System, provide education and other
18 support to facilitate the development networks of investors that review new
19 businesses or proposed new businesses for potential investment.

20 (26) Certify businesses as qualified new business ventures for purposes of ss.
21 71.07 (5d), 71.28 (5d), and 71.47 (5d). The department shall promulgate rules for the
22 administration of this subsection. The rules shall require a business desiring
23 certification to submit an application to the department. The department shall
24 maintain a list of businesses certified under this subsection and shall permit public
25 access to the list through the department's Internet website. The department shall

✓
71.05(24)

5

1 notify the department of revenue of every business certified under this subsection
2 and the date on which any such business is decertified. A business may be certified
3 under this subsection, and may maintain such certification, only if the business
4 satisfies all of the following conditions:

5 (a) It has its headquarters in this state.

6 (b) At least 51 percent of the employees employed by the business are employed
7 in this state.

8 (c) Its average annual net income for each of the 2 taxable years immediately
9 preceding the taxable year for which a credit is claimed does not exceed \$20,000,000.

10 (d) It's net worth in the taxable year for which a credit is claimed does not
11 exceed \$75,000,000.

12 (e) It is not engaged predominantly in providing professional services by
13 accountants, lawyers, or physicians.

14 (f) It is not engaged predominantly in ^{wholesale or retail} trade or in the leisure and hospitality
15 industry.

16 (g) It is not engaged in banking or lending or in developing real estate for resale.

17 (h) It does not make loans to, or investments in, certified capital companies, as
18 defined in s. 560.30 (2).

19 (i) It has been in operation in this state for at least 3 consecutive years but not
20 more than 10 consecutive years.

21 (27) Certify venture capital funds as follows:

22 (a) The department shall promulgate rules establishing a procedure for the
23 department to certify venture capital funds for purposes of the capital gains tax
24 exemption under s. 71.05 (24). The rules shall do all of the following:

(j) It is a corporation or limited liability company.

(k) It is not ^{engaged} in the business of transportation
or construction.

maintain ^{an} average, calculated over a ~~60~~⁶⁴-year period, of 50% of its

2003 - 2004 Legislature

- 12 -

SENATE BILL 261

percent

LRB-3266/3
JK/MES/RJM:kmg&jld:pg
SECTION 14

1 1. Require a venture capital fund that desires to obtain a certification to file an
2 application with the department.

3 2. Permit a venture capital fund to obtain a certification only if the venture
4 capital fund is a private seed and venture capital partnership or entity fund, the
5 venture capital fund has its principal place of business in Wisconsin, and the venture
6 capital fund commits to ~~make~~ equity investments in businesses, as described under
7 sub. (26), that are located in Wisconsin.

8 3. Require an applicant for certification or a certified venture capital fund to
9 provide the department with any information the department determines is
10 necessary to ensure eligibility for certification and compliance with this subsection
11 and rules promulgated under this subsection.

12 (b) Upon request of any person, the department shall issue a written notice
13 indicating whether a venture capital fund is certified under this subsection for
14 purposes of the capital gains tax exemption under s. 71.05 (24). Each notice under
15 this paragraph that indicates a venture capital fund is certified shall include the
16 following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT
17 RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED
18 THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR
19 OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX
20 ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE."

21 (c) Upon the issuance or discontinuance of a certification, the department of
22 commerce shall notify the department of revenue and provide the department of
23 revenue a copy of the certification or discontinuance.

24 **SECTION 15. Nonstatutory provisions.**

1 (1) RULES. The department of commerce shall submit in proposed form the rules
2 required under section 560.03 (26) and (27) of the statutes, as created by this act, to
3 the legislative council staff under section 227.15 (1) of the statutes no later than the
4 first day of the 6th month beginning after the effective date of this subsection.

5 **SECTION 16. Initial applicability.**

71.08(1)(initial.), ✓

6 (1) QUALIFIED NEW BUSINESS VENTURE CREDIT. The treatment of sections 71.05
7 (6) (a) 15., 71.07 (5d), 71.10 (4) (gx), 71.21 (4), 71.26 (2) (a), 71.28 (5d), 71.30 (3) (eop),
8 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5d), 71.49 (1) (eop), and 77.92 (4) of the statutes
9 first applies to taxable years beginning on January 1, 2006.

10 (2) INCOME TAX DEFERRAL. The treatment of section 71.05 (24) of the statutes
11 first applies to taxable years beginning on January 1, 2006.

12 **SECTION 17. Effective dates.** This act takes effect on July 1, 2004, except as
13 follows:

14 (1) RULES. SECTION 15 (1) of this act takes effect on the day after publication.

15

(END)

Insert 6-1

Section #. 71.08 (1) (intro.) of the statutes is amended to read:

(5d)

71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married couple filing jointly, trust or estate under s. 71.02, not considering the credits under ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (6), (6s), and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than the tax under this section, there is imposed on that natural person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax computed as follows:

~~NOTE Sub. (1) (intro.) is shown as amended eff. 7-30-02 by 2001 Wis. Act 109. However, the treatment by 2002 Wis. Act 109 was held to be unconstitutional and void by the United States District Court for the Western District of Wisconsin in Wisconsin Realtors Assoc. v. Ponto, Case # 02-C-424-C. Prior to 7-30-02 it read:~~

~~(1) IMPOSITION. If the tax imposed on a natural person, married couple filing jointly, trust or estate under s. 71.02, not considering the credits under ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (6), and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than the tax under this section, there is imposed on that natural person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax computed as follows:~~

~~History: a. 109. 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27, 237; 1999 a. 9; 2001 a. 109.~~

end of insert 6-1

Shovers, Marc

From: Shepherd, Jeremy
Sent: Friday, October 17, 2003 11:39 AM
To: Kreye, Joseph; Marchant, Robert; Shovers, Marc
Cc: 'terrywg1@mac.com'
Subject: RE: FW: LRB 03s0200 Topic: SSA (qualified new business venture tax cr edit, certified venture capital funds, etc.) to SB-261 (same)

Marc,

It's a go on the 100% exclusion.

-----Original Message-----

From: Shepherd, Jeremy
Sent: Friday, October 17, 2003 10:26 AM
To: Kreye, Joseph; Marchant, Robert; Shovers, Marc
Cc: 'terrywg1@mac.com'
Subject: FW: FW: LRB 03s0200 Topic: SSA (qualified new business venture tax cr edit, certified venture capital funds, etc.) to SB-261 (same)

Marc,

I just wanted to make sure Terry's concerns (below) were addressed in the bill...

Joe,

- 1.) Page 13, line 4 - we need to remove the words "at least 3 consecutive years but"
- 2.) Page 13, line 7 - this should read: "It is not engaged in transportation or construction"

Would we be able to set up a conference call today with Terry to make sure we're all on the same page?

-----Original Message-----

From: Terry Grosenheider [mailto:terrywg1@mac.com]
Sent: Thursday, October 16, 2003 9:33 PM
To: Shepherd, Jeremy
Subject: Re: FW: LRB 03s0200 Topic: SSA (qualified new business venture tax cr edit, certified venture capital funds, etc.) to SB-261 (same)

Also Jeremy there is no capital gains tax preference for QNBV. If someone takes their gains out, they should be permitted a preference for having invested in a QNBV. If we don't want to make it a 100% exclusion, then set it at 80%. 80% is more preferable than Wisconsin's existing 60% exclusion and therefore more of an incentive for an investor to invest in the QNBV.

Many Thanks Jeremy.

Terry

PS: How did you finish in the marathon?

On Thursday, October 16, 2003, at 04:33 PM, Shepherd, Jeremy wrote:

> here it is

>
>> -----Original Message-----
>> From: Barman, Mike
>> Sent: Thursday, October 16, 2003 2:50 PM
>> To: Sen.Kanavas
>> Subject: LRB 03s0200 Topic: SSA (qualified new business venture tax
>> credit, certified venture capital funds, etc.) to SB-261 (same)
>>
>> The attached proposal has been jacketed for introduction.
>>
>> A copy has also been sent to:
>>
>> <<0200>>
> <03s02001.pdf>



State of Wisconsin
2003 - 2004 LEGISLATURE

LRBs0200/4
JK/MES/RJM:kg:pg

RMR

SENATE SUBSTITUTE AMENDMENT,
TO 2003 SENATE BILL 261

WANTED
TUES
AM

regem

1 AN ACT to amend 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.21 (4), 71.26 (2) (a), 71.34
2 (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and to create 71.05 (24), 71.07 (5d), 71.10
3 (4) (gx), 71.28 (5d), 71.30 (3) (eop), 71.47 (5d), 71.49 (1) (eop) and 560.03 (24) to
4 (27) of the statutes; relating to: creating a qualified new business venture tax
5 credit and ^{increasing the} ~~a~~ capital gains ~~tax exemption~~ ^{exclusion} regarding investments in certified
6 venture capital funds and qualified new business ventures, requiring a study
7 of new Wisconsin businesses, facilitating the development of certain investor
8 networks, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This substitute amendment creates an income and franchise tax credit for investments in a new business venture that has its headquarters and the majority of its employees in this state. The substitute amendment requires a business desiring certification as a new business venture for purposes of this tax credit to apply to the Department of Commerce. To obtain certification, the business must be a corporation or limited liability company, must not be engaged in the transportation or construction business, and must satisfy certain other criteria. The amount of the

tax credit is equal to 20 percent of the taxpayer's investment in a new business venture in the taxable year, except that if the taxpayer's investment exceeds \$100,000 in the taxable year the taxpayer may claim 20 percent of \$100,000 plus ten percent of the amount of the investment that exceeds \$100,000. In addition, if the taxpayer is a broker-dealer, the taxpayer may claim a tax credit in amount equal to ten percent of the first \$500,000 raised in an offering of a new business venture in the taxable year. Under current law, a broker-dealer is, generally, any person engaged in the business of effecting transactions in securities.

This substitute amendment also requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to annually conduct and publish the results of a study of Wisconsin businesses to determine new business formation trends and identify obstacles faced by new Wisconsin businesses and areas where changes in governmental policy may satisfy the needs of new Wisconsin businesses. In addition, the substitute amendment requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to provide education and other support to facilitate the development of networks of investors that review new businesses or proposed new businesses for potential investment (commonly called "angel capital networks").

Under current law, there is an income tax exclusion for individuals and tax-option corporations for 60 percent of the net capital gains realized from the sale of assets held for at least one year.

Under this substitute amendment, ^{the income tax exclusion for capital gains is increased to 100 percent} an individual, an individual partner or member of a partnership, limited liability company, or limited liability partnership; or an individual shareholder of a tax-option corporation (claimant) may elect to defer the payment of income taxes on the gain realized from the sale of any asset held more than one year to the extent that the gain is not already excluded from taxation, ^{for gains realized on the sale of} any asset that is an investment in a ^{certified} venture capital fund (original asset) if the claimant completes a number of requirements ^{certified new business ventures}.

Under the substitute amendment, the claimant must place the gain from the original asset in a segregated account in a financial institution, purchase another capital asset that is an investment in a venture capital fund or in a qualified new business venture (replacement asset) within 90 days after the sale of the original asset that generated the gain, and notify the Department of Revenue (DOR) on a form prepared by DOR that the claimant is deferring the payment of income tax on the gain from the original asset because the proceeds have been reinvested. The cost of the replacement asset must be equal to or greater than the gain generated by the sale of the original asset.

The substitute amendment also specifies that the basis of the replacement asset shall be its cost minus the gain generated by the sale of the original asset. If a claimant defers the payment of income taxes on the gain generated by the sale of the original asset, the claimant may not use that gain to net the claimant's gains and losses as the claimant could do if the claimant did not elect to defer the payment of taxes on the gain.

Under this substitute amendment, the Department of Commerce must promulgate rules establishing a procedure for certifying venture capital funds for purposes of the capital gains tax exemption described above. A venture capital fund may obtain a certification only if the venture capital fund is a private seed and venture capital partnership or entity fund, the venture capital fund has its principal place of business in Wisconsin, and the venture capital fund commits to maintain an average of 50 percent of its equity investments in businesses located in Wisconsin. The substitute amendment requires the Department of Commerce, upon request of any person, to issue a written notice indicating whether a venture capital fund is certified. Each such notice that indicates a venture capital fund is certified must include the following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE." The substitute amendment also requires the Department of Commerce, upon issuing or discontinuing a certification, to notify DOR and give DOR a copy of the certification or discontinuance.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 71.05 (6) (a) 15. of the statutes is amended to read:

2 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
 3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), and (3s), and (5d) and not passed
 4 through by a partnership, limited liability company, or tax-option corporation that
 5 has added that amount to the partnership's, company's, or tax-option corporation's
 6 income under s. 71.21 (4) or 71.34 (1) (g).

7 SECTION 2. 71.05 ^{(b)(b) 9m.} (24) of the statutes is created to read:

8 ~~71.05 (24) INCOME TAX DEFERRAL; INVESTMENTS IN CERTAIN VENTURE CAPITAL FUNDS~~
 9 ~~AND QUALIFIED NEW BUSINESS VENTURES (a) In this subsection:~~

10 "Claimant" means an individual; an individual partner or member of a
 11 partnership, limited liability company, or limited liability partnership; or an
 12 individual shareholder of a tax-option corporation.

(B)

percent

- 1 ~~2. "Financial institution" has the meaning given in s. 69.30 (1) (b).~~
- 2 ~~3. "Long-term capital gain" means the gain realized from the sale of any asset~~
- 3 ~~held more than one year.~~

4 ~~71.05 (b) (b) 9m.~~ To the extent that the gains are not excluded from taxation under ~~s. 69.30 (1) (b)~~
 5 ~~subd. 9.~~, ~~a claimant~~ ^{100%} ~~may subtract from federal adjusted gross income any amount of a~~ ^{of the capital gain as computed under the Internal Revenue Code}
 6 ~~long-term capital gain, or any~~ ^{if the} ~~gain~~ ^{is} realized from the sale of an asset that is an
 7 investment in a qualified new business venture that is certified under s. 560.03 (26)
 8 or a venture capital fund that is certified under s. 560.03 (27) ~~if the claimant does~~
 9 ~~all of the following:~~ → (NOH)

INS
49

- 10 ~~1. Immediately deposits the gain in a segregated account in a financial~~
- 11 ~~institution.~~
- 12 ~~2. Within 90 days after the sale of the asset that generated the gain, purchases~~
- 13 ~~another capital asset, which is an investment in a qualified new business venture~~
- 14 ~~that is certified under s. 560.03 (26) or a venture capital fund that is certified under~~
- 15 ~~s. 560.03 (27), of equal or greater value using all of the proceeds in the account~~
- 16 ~~described under subd. 1.~~
- 17 ~~3. After purchasing a capital asset as described under subd. 2., immediately~~
- 18 ~~notifies the department, on a form prepared by the department, that the claimant~~
- 19 ~~will not declare on the claimant's income tax return the gain described under subd.~~
- 20 ~~1. because the claimant has reinvested the capital gain as described under subd. 2.~~
- 21 ~~(c) The basis of the purchased capital asset described in par. (b) 2. shall be~~
- 22 ~~calculated by subtracting the gain described in par. (b) 1. from the cost of the~~
- 23 ~~purchased asset described in par. (b) 2.~~

1 (d) If a claimant defers the payment of income taxes on a capital gain under this
2 subsection, the claimant may not use the gain described under par. (b) 1. to net
3 capital gains and losses, as described under sub. (10) (c).

4 SECTION 3. 71.07 (5d) of the statutes is created to read:

5 71.07 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT. (a) In this subsection:

- 6 1. "Broker-dealer" has the meaning given in s. 551.02 (3).
7 2. "Claimant" means a person who files a claim under this subsection.
8 3. "Qualified new business venture" means a business that is certified under
9 s. 560.03 (26).

10 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
11 a claimant may claim as a credit against the tax imposed under s. 71.02 or 71.08, up
12 to the amount of those taxes, any of the following:

13 1. An amount equal to 20 percent of the claimant's equity investment made
14 directly in a qualified new business venture in the taxable year, except that if the
15 claimant's investment exceeds \$100,000 in the taxable year the claimant may claim
16 20 percent of \$100,000 plus 10 percent of the amount of the investment that exceeds
17 \$100,000.

18 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
19 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

20 (bm) If an investment for which a claimant claims a credit under par. (b) 1. is
21 held by the claimant for less than one year, the claimant shall pay to the department,
22 in the manner prescribed by the department, the amount of the credit that the
23 claimant received related to the investment.

24 (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
25 under s. 71.28 (4), apply to the credit under this subsection.

1 (d) Partnerships, limited liability companies, and tax-option corporations may
2 not claim the credit under this subsection, but the eligibility for, and the amount of,
3 the credit are based on the amounts described under par. (b) that are attributable to
4 their business operations. A partnership, limited liability company, or tax-option
5 corporation shall compute the amount of credit that each of its partners, members,
6 or shareholders may claim and shall provide that information to each of them.
7 Partners, members of limited liability companies, and shareholders of tax-option
8 corporations may claim the credit in proportion to their ownership interest.

9 (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
10 applies to the credit under this subsection.

11 **SECTION 4.** 71.08 (1) (intro.) of the statutes is amended to read:

12 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
13 couple filing jointly, trust or estate under s. 71.02, not considering the credits under
14 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (5d),
15 (6), (~~6s~~), and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and
16 (3) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and
17 subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than the
18 tax under this section, there is imposed on that natural person, married couple filing
19 jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax
20 computed as follows:

21 **SECTION 5.** 71.10 (4) (gx) of the statutes is created to read:

22 71.10 (4) (gx) Qualified new business venture credit under s. 71.07 (5d).

23 **SECTION 6.** 71.21 (4) of the statutes is amended to read:

1 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
2 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s)~~, and (5d) and passed through to
3 partners shall be added to the partnership's income.

4 **SECTION 7.** 71.26 (2) (a) of the statutes is amended to read:

5 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
6 the gross income as computed under the Internal Revenue Code as modified under
7 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
8 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
9 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g)~~, and (5d)
10 and not passed through by a partnership, limited liability company, or tax-option
11 corporation that has added that amount to the partnership's, limited liability
12 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
13 the amount of losses from the sale or other disposition of assets the gain from which
14 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
15 otherwise disposed of at a gain and minus deductions, as computed under the
16 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
17 amount equal to the difference between the federal basis and Wisconsin basis of any
18 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
19 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

20 **SECTION 8.** 71.28 (5d) of the statutes is created to read:

21 71.28 (5d) **QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

- 22 1. "Broker-dealer" has the meaning given in s. 551.02 (3).
23 2. "Claimant" means a person who files a claim under this subsection.
24 3. "Qualified new business venture" means a business that is certified under
25 s. 560.03 (26).

1 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
2 a claimant may claim as a credit against the tax imposed under s. 71.23, up to the
3 amount of those taxes, any of the following:

4 1. An amount equal to 20 percent of the claimant's equity investment made
5 directly in a qualified new business venture in the taxable year, except that if the
6 claimant's investment exceeds \$100,000 in the taxable year the claimant may claim
7 20 percent of \$100,000 plus 10 percent of the amount of the investment that exceeds
8 \$100,000.

9 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
10 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

11 (bm) If an investment for which a claimant claims a credit under par. (b) 1. is
12 held by the claimant for less than one year, the claimant shall pay to the department,
13 in the manner prescribed by the department, the amount of the credit that the
14 claimant received related to the investment.

15 (c) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit
16 under sub. (4), apply to the credit under this subsection.

17 (d) Partnerships, limited liability companies, and tax-option corporations may
18 not claim the credit under this subsection, but the eligibility for, and the amount of,
19 the credit are based on the amounts described under par. (b) that are attributable to
20 their business operations. A partnership, limited liability company, or tax-option
21 corporation shall compute the amount of credit that each of its partners, members,
22 or shareholders may claim and shall provide that information to each of them.
23 Partners, members of limited liability companies, and shareholders of tax-option
24 corporations may claim the credit in proportion to their ownership interest.

1 (e) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
2 to the credit under this subsection.

3 SECTION 9. 71.30 (3) (eop) of the statutes is created to read:

4 71.30 (3) (eop) Qualified new business venture credit under s. 71.28 (5d).

5 SECTION 10. 71.34 (1) (g) of the statutes is amended to read:

6 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
7 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
8 (3g), and (5d) and passed through to shareholders.

9 SECTION 11. 71.45 (2) (a) 10. of the statutes is amended to read:

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

16 SECTION 12. 71.47 (5d) of the statutes is created to read:

17 71.47 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT. (a) In this subsection:

- 18 1. "Broker-dealer" has the meaning given in s. 551.02 (3).
19 2. "Claimant" means a person who files a claim under this subsection.
20 3. "Qualified new business venture" means a business that is certified under
21 s. 560.03 (26).

22 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
23 a claimant may claim as a credit against the tax imposed under s. 71.43, up to the
24 amount of those taxes, any of the following:

1 1. An amount equal to 20 percent of the claimant's direct investment made
2 directly in a qualified new business venture in the taxable year, except that if the
3 claimant's investment exceeds \$100,000 in the taxable year the claimant may claim
4 20 percent of \$100,000 plus 10 percent of the amount of the investment that exceeds
5 \$100,000.

6 2. If the claimant is a broker–dealer, an amount equal to 10 percent of the first
7 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

8 (bm) If an investment for which a claimant claims a credit under par. (b) 1. is
9 held by the claimant for less than one year, the claimant shall pay to the department,
10 in the manner prescribed by the department, the amount of the credit that the
11 claimant received related to the investment.

12 (c) The carry–over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
13 under s. 71.28 (4), apply to the credit under this subsection.

14 (d) Partnerships, limited liability companies, and tax–option corporations may
15 not claim the credit under this subsection, but the eligibility for, and the amount of,
16 the credit are based on the amounts described under par. (b) that are attributable to
17 their business operations. A partnership, limited liability company, or tax–option
18 corporation shall compute the amount of credit that each of its partners, members,
19 or shareholders may claim and shall provide that information to each of them.
20 Partners, members of limited liability companies, and shareholders of tax–option
21 corporations may claim the credit in proportion to their ownership interest.

22 (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
23 applies to the credit under this subsection.

24 **SECTION 13.** 71.49 (1) (eop) of the statutes is created to read:

25 71.49 (1) (eop) Qualified new business venture credit under s. 71.47 (5d).

1 **SECTION 14.** 77.92 (4) of the statutes is amended to read:

2 77.92 (4) "Net business income", with respect to a partnership, means taxable
3 income as calculated under section 703 of the Internal Revenue Code; plus the items
4 of income and gain under section 702 of the Internal Revenue Code, including taxable
5 state and municipal bond interest and excluding nontaxable interest income or
6 dividend income from federal government obligations; minus the items of loss and
7 deduction under section 702 of the Internal Revenue Code, except items that are not
8 deductible under s. 71.21; plus guaranteed payments to partners under section 707
9 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
10 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), and (3g), and (3s), and (5d); and plus or
11 minus, as appropriate, transitional adjustments, depreciation differences, and basis
12 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
13 loss, and deductions from farming. "Net business income", with respect to a natural
14 person, estate, or trust, means profit from a trade or business for federal income tax
15 purposes and includes net income derived as an employee as defined in section 3121
16 (d) (3) of the Internal Revenue Code.

17 **SECTION 15.** 560.03 (24) to (27) of the statutes are created to read:

18 560.03 (24) In cooperation with the department of financial institutions and
19 the Board of Regents of the University of Wisconsin System, annually conduct and
20 publish the results of a study of Wisconsin businesses to determine new business
21 formation trends and identify obstacles faced by new Wisconsin businesses and areas
22 where changes in governmental policy may satisfy the needs of new Wisconsin
23 businesses. As part of the study, the department of commerce shall conduct a survey
24 of Wisconsin businesses.

1 (25) In cooperation with the department of financial institutions and the Board
2 of Regents of the University of Wisconsin System, provide education and other
3 support to facilitate the development networks of investors that review new
4 businesses or proposed new businesses for potential investment.

5 (26) Certify businesses as qualified new business ventures for purposes of ss.
6 71.05^{(c)(b) 1m}~~(26)~~, 71.07 (5d), 71.28 (5d), and 71.47 (5d). The department shall promulgate
7 rules for the administration of this subsection. The rules shall require a business
8 desiring certification to submit an application to the department. The department
9 shall maintain a list of businesses certified under this subsection and shall permit
10 public access to the list through the department's Internet website. The department
11 shall notify the department of revenue of every business certified under this
12 subsection and the date on which any such business is decertified. A business may
13 be certified under this subsection, and may maintain such certification, only if the
14 business satisfies all of the following conditions:

15 (a) It has its headquarters in this state.

16 (b) At least 51 percent of the employees employed by the business are employed
17 in this state.

18 (c) Its average annual net income for each of the 2 taxable years immediately
19 preceding the taxable year for which a credit is claimed does not exceed \$20,000,000.

20 (d) It's net worth in the taxable year for which a credit is claimed does not
21 exceed \$75,000,000.

22 (e) It is not engaged predominantly in providing professional services by
23 accountants, lawyers, or physicians.

24 (f) It is not engaged predominantly in wholesale or retail trade or in the leisure
25 and hospitality industry.

1 (g) It is not engaged in banking or lending or in developing real estate for resale.

2 (h) It does not make loans to, or investments in, certified capital companies, as
3 defined in s. 560.30 (2).

4 (i) It has been in operation in this state for ~~at least 2 consecutive years but~~ not
5 more than 10 consecutive years.

6 (j) It is a corporation or limited liability company.

7 (k) It is not engaged in the business transportation or construction.

8 (27) Certify venture capital funds as follows:

9 (a) The department shall promulgate rules establishing a procedure for the
10 department to certify venture capital funds for purposes of the capital gains tax
11 exemption under s. 71.05 ^{(6) (b) 9m ✓} ~~(24)~~. The rules shall do all of the following:

12 1. Require a venture capital fund that desires to obtain a certification to file an
13 application with the department.

14 2. Permit a venture capital fund to obtain a certification only if the venture
15 capital fund is a private seed and venture capital partnership or entity fund, the
16 venture capital fund has its principal place of business in Wisconsin, and the venture
17 capital fund commits to maintain an average, calculated over a 4-year period, of 50
18 percent of its equity investments in businesses, as described under sub. (26), that are
19 located in Wisconsin.

20 3. Require an applicant for certification or a certified venture capital fund to
21 provide the department with any information the department determines is
22 necessary to ensure eligibility for certification and compliance with this subsection
23 and rules promulgated under this subsection.

24 (b) Upon request of any person, the department shall issue a written notice
25 indicating whether a venture capital fund is certified under this subsection for

(b)(b) 9m

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purposes of the capital gains tax exemption under s. 71.05. Each notice under this paragraph that indicates a venture capital fund is certified shall include the following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE."

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(c) Upon the issuance or discontinuance of a certification, the department of commerce shall notify the department of revenue and provide the department of revenue a copy of the certification or discontinuance.

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SECTION 16. Nonstatutory provisions.

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(1) RULES. The department of commerce shall submit in proposed form the rules required under section 560.03 (26) and (27) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 6th month beginning after the effective date of this subsection.

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SECTION 17. Initial applicability.

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(1) QUALIFIED NEW BUSINESS VENTURE CREDIT. The treatment of sections 71.05 (6) (a) 15., 71.07 (5d), 71.08 (1) (intro.), 71.10 (4) (gx), 71.21 (4), 71.26 (2) (a), 71.28 (5d), 71.30 (3) (eop), 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5d), 71.49 (1) (eop), and 77.92 (4) of the statutes first applies to taxable years beginning on January 1, 2006.

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(2) ^{(65) Increased capital gains exclusion.} ~~INCOME TAX DEFERRAL~~. The treatment of section 71.05 ^{(b)(b) 9m.} ~~(2)~~ of the statutes first applies to taxable years beginning on January 1, 2006.

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SECTION 18. Effective dates. This act takes effect on July 1, 2004, except as follows:

1 (1) RULES. SECTION 16 (1) of this act takes effect on the day after publication.

2 (END)

INS 4-9

Section # 71.05 (6) (b) 9. of the statutes is amended to read:

~~71.05 (6) (b) 9. On assets held more than one year and on all assets acquired from a decedent, 60% of the capital gain as computed under the internal revenue code, not including capital gains for which the federal tax treatment is determined under section 406 of P.L. 99-514; not including amounts treated as ordinary income for federal income tax purposes because of the recapture of depreciation or any other reason; and not including amounts treated as capital gain for federal income tax purposes from the sale or exchange of a lottery prize. For purposes of this subdivision, the capital gains and capital losses for all assets shall be netted before application of the percentage.~~

History: 3, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109. 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109.



State of Wisconsin
2003 - 2004 LEGISLATURE

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SENATE SUBSTITUTE AMENDMENT ,
TO 2003 SENATE BILL 261

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.21 (4), 71.26 (2) (a), 71.34
2 (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and **to create** 71.05 (6) (b) 9m., 71.07 (5d),
3 71.10 (4) (gx), 71.28 (5d), 71.30 (3) (eop), 71.47 (5d), 71.49 (1) (eop) and 560.03
4 (24) to (27) of the statutes; **relating to:** creating a qualified new business
5 venture tax credit and increasing the capital gains exclusion regarding
6 investments in certified venture capital funds and qualified new business
7 ventures, requiring a study of new Wisconsin businesses, facilitating the
8 development of certain investor networks, and granting rule-making
9 authority.

Analysis by the Legislative Reference Bureau

This substitute amendment creates an income and franchise tax credit for investments in a new business venture that has its headquarters and the majority of its employees in this state. The substitute amendment requires a business desiring certification as a new business venture for purposes of this tax credit to apply to the Department of Commerce. To obtain certification, the business must be

a corporation or limited liability company, must not be engaged in the transportation or construction business, and must satisfy certain other criteria. The amount of the tax credit is equal to 20 percent of the taxpayer's investment in a new business venture in the taxable year, except that if the taxpayer's investment exceeds \$100,000 in the taxable year the taxpayer may claim 20 percent of \$100,000 plus ten percent of the amount of the investment that exceeds \$100,000. In addition, if the taxpayer is a broker-dealer, the taxpayer may claim a tax credit in amount equal to ten percent of the first \$500,000 raised in an offering of a new business venture in the taxable year. Under current law, a broker-dealer is, generally, any person engaged in the business of effecting transactions in securities.

This substitute amendment also requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to annually conduct and publish the results of a study of Wisconsin businesses to determine new business formation trends and identify obstacles faced by new Wisconsin businesses and areas where changes in governmental policy may satisfy the needs of new Wisconsin businesses. In addition, the substitute amendment requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to provide education and other support to facilitate the development of networks of investors that review new businesses or proposed new businesses for potential investment (commonly called "angel capital networks").

Under current law, there is an income tax exclusion for individuals and tax-option corporations for 60 percent of the net capital gains realized from the sale of assets held for at least one year.

Under this substitute amendment, the income tax exclusion for capital gains is increased to 100 percent, to the extent that the gain is not already excluded from taxation, for gains realized on the sale of an investment in a certified venture capital fund or in a certified new business venture.

Under this substitute amendment, the Department of Commerce must promulgate rules establishing a procedure for certifying venture capital funds for purposes of the capital gains tax exemption described above. A venture capital fund may obtain a certification only if the venture capital fund is a private seed and venture capital partnership or entity fund, the venture capital fund has its principal place of business in Wisconsin, and the venture capital fund commits to maintain an average of 50 percent of its equity investments in businesses located in Wisconsin. The substitute amendment requires the Department of Commerce, upon request of any person, to issue a written notice indicating whether a venture capital fund is certified. Each such notice that indicates a venture capital fund is certified must include the following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE." The substitute amendment also requires the Department of Commerce, upon issuing

or discontinuing a certification, to notify DOR and give DOR a copy of the certification or discontinuance.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

2 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s)~~, and (5d) and not passed
4 through by a partnership, limited liability company, or tax-option corporation that
5 has added that amount to the partnership's, company's, or tax-option corporation's
6 income under s. 71.21 (4) or 71.34 (1) (g).

7 **SECTION 2.** 71.05 (6) (b) 9m. of the statutes is created to read:

8 71.05 (6) (b) 9m. To the extent that the gains are not excluded from taxation
9 under subd. 9., 100 percent of the capital gain as computed under the Internal
10 Revenue Code if the gain is realized from the sale of an asset that is an investment
11 in a qualified new business venture that is certified under s. 560.03 (26) or a venture
12 capital fund that is certified under s. 560.03 (27). For purposes of this subdivision,
13 the capital gains and capital losses for all assets shall be netted before application
14 of the percentage.

15 **SECTION 3.** 71.07 (5d) of the statutes is created to read:

16 71.07 (5d) **QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

17 1. "Broker-dealer" has the meaning given in s. 551.02 (3).

18 2. "Claimant" means a person who files a claim under this subsection.

19 3. "Qualified new business venture" means a business that is certified under
20 s. 560.03 (26).

1 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
2 a claimant may claim as a credit against the tax imposed under s. 71.02 or 71.08, up
3 to the amount of those taxes, any of the following:

4 1. An amount equal to 20 percent of the claimant's equity investment made
5 directly in a qualified new business venture in the taxable year, except that if the
6 claimant's investment exceeds \$100,000 in the taxable year the claimant may claim
7 20 percent of \$100,000 plus 10 percent of the amount of the investment that exceeds
8 \$100,000.

9 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
10 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

11 (bm) If an investment for which a claimant claims a credit under par. (b) 1. is
12 held by the claimant for less than one year, the claimant shall pay to the department,
13 in the manner prescribed by the department, the amount of the credit that the
14 claimant received related to the investment.

15 (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
16 under s. 71.28 (4), apply to the credit under this subsection.

17 (d) Partnerships, limited liability companies, and tax-option corporations may
18 not claim the credit under this subsection, but the eligibility for, and the amount of,
19 the credit are based on the amounts described under par. (b) that are attributable to
20 their business operations. A partnership, limited liability company, or tax-option
21 corporation shall compute the amount of credit that each of its partners, members,
22 or shareholders may claim and shall provide that information to each of them.
23 Partners, members of limited liability companies, and shareholders of tax-option
24 corporations may claim the credit in proportion to their ownership interest.

1 (e) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
2 applies to the credit under this subsection.

3 SECTION 4. 71.08 (1) (intro.) of the statutes is amended to read:

4 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
5 couple filing jointly, trust or estate under s. 71.02, not considering the credits under
6 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (5d),
7 (6), ~~(6s)~~, and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and
8 (3) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and
9 subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than the
10 tax under this section, there is imposed on that natural person, married couple filing
11 jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax
12 computed as follows:

13 SECTION 5. 71.10 (4) (gx) of the statutes is created to read:

14 71.10 (4) (gx) Qualified new business venture credit under s. 71.07 (5d).

15 SECTION 6. 71.21 (4) of the statutes is amended to read:

16 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
17 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s)~~, and (5d) and passed through to
18 partners shall be added to the partnership's income.

19 SECTION 7. 71.26 (2) (a) of the statutes is amended to read:

20 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
21 the gross income as computed under the Internal Revenue Code as modified under
22 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
23 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
24 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g)~~, and (5d)
25 and not passed through by a partnership, limited liability company, or tax-option

1 corporation that has added that amount to the partnership's, limited liability
2 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
3 the amount of losses from the sale or other disposition of assets the gain from which
4 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
5 otherwise disposed of at a gain and minus deductions, as computed under the
6 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
7 amount equal to the difference between the federal basis and Wisconsin basis of any
8 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
9 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

10 **SECTION 8.** 71.28 (5d) of the statutes is created to read:

11 **71.28 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

- 12 1. "Broker-dealer" has the meaning given in s. 551.02 (3).
- 13 2. "Claimant" means a person who files a claim under this subsection.
- 14 3. "Qualified new business venture" means a business that is certified under
15 s. 560.03 (26).

16 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
17 a claimant may claim as a credit against the tax imposed under s. 71.23, up to the
18 amount of those taxes, any of the following:

- 19 1. An amount equal to 20 percent of the claimant's equity investment made
20 directly in a qualified new business venture in the taxable year, except that if the
21 claimant's investment exceeds \$100,000 in the taxable year the claimant may claim
22 20 percent of \$100,000 plus 10 percent of the amount of the investment that exceeds
23 \$100,000.

- 24 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
25 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

1 (bm) If an investment for which a claimant claims a credit under par. (b) 1. is
2 held by the claimant for less than one year, the claimant shall pay to the department,
3 in the manner prescribed by the department, the amount of the credit that the
4 claimant received related to the investment.

5 (c) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit
6 under sub. (4), apply to the credit under this subsection.

7 (d) Partnerships, limited liability companies, and tax-option corporations may
8 not claim the credit under this subsection, but the eligibility for, and the amount of,
9 the credit are based on the amounts described under par. (b) that are attributable to
10 their business operations. A partnership, limited liability company, or tax-option
11 corporation shall compute the amount of credit that each of its partners, members,
12 or shareholders may claim and shall provide that information to each of them.
13 Partners, members of limited liability companies, and shareholders of tax-option
14 corporations may claim the credit in proportion to their ownership interest.

15 (e) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
16 to the credit under this subsection.

17 **SECTION 9.** 71.30 (3) (eop) of the statutes is created to read:

18 71.30 (3) (eop) Qualified new business venture credit under s. 71.28 (5d).

19 **SECTION 10.** 71.34 (1) (g) of the statutes is amended to read:

20 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
21 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
22 (3g), and (5d) and passed through to shareholders.

23 **SECTION 11.** 71.45 (2) (a) 10. of the statutes is amended to read:

24 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
25 computed under s. 71.47 (1dd) to (1dx) and (5d) and not passed through by a

1 partnership, limited liability company or tax-option corporation that has added that
2 amount to the partnership's, limited liability company's or tax-option corporation's
3 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
4 s. 71.47 (1), (3), (4) and (5).

5 **SECTION 12.** 71.47 (5d) of the statutes is created to read:

6 **71.47 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT.** (a) In this subsection:

- 7 1. "Broker-dealer" has the meaning given in s. 551.02 (3).
8 2. "Claimant" means a person who files a claim under this subsection.
9 3. "Qualified new business venture" means a business that is certified under
10 s. 560.03 (26).

11 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
12 a claimant may claim as a credit against the tax imposed under s. 71.43, up to the
13 amount of those taxes, any of the following:

14 1. An amount equal to 20 percent of the claimant's direct investment made
15 directly in a qualified new business venture in the taxable year, except that if the
16 claimant's investment exceeds \$100,000 in the taxable year the claimant may claim
17 20 percent of \$100,000 plus 10 percent of the amount of the investment that exceeds
18 \$100,000.

19 2. If the claimant is a broker-dealer, an amount equal to 10 percent of the first
20 \$500,000 raised in an offering of a qualified new business venture in the taxable year.

21 (bm) If an investment for which a claimant claims a credit under par. (b) 1. is
22 held by the claimant for less than one year, the claimant shall pay to the department,
23 in the manner prescribed by the department, the amount of the credit that the
24 claimant received related to the investment.

1 (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
2 under s. 71.28 (4), apply to the credit under this subsection.

3 (d) Partnerships, limited liability companies, and tax-option corporations may
4 not claim the credit under this subsection, but the eligibility for, and the amount of,
5 the credit are based on the amounts described under par. (b) that are attributable to
6 their business operations. A partnership, limited liability company, or tax-option
7 corporation shall compute the amount of credit that each of its partners, members,
8 or shareholders may claim and shall provide that information to each of them.
9 Partners, members of limited liability companies, and shareholders of tax-option
10 corporations may claim the credit in proportion to their ownership interest.

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

13 **SECTION 13.** 71.49 (1) (eop) of the statutes is created to read:

14 71.49 (1) (eop) Qualified new business venture credit under s. 71.47 (5d).

15 **SECTION 14.** 77.92 (4) of the statutes is amended to read:

16 77.92 (4) "Net business income", with respect to a partnership, means taxable
17 income as calculated under section 703 of the Internal Revenue Code; plus the items
18 of income and gain under section 702 of the Internal Revenue Code, including taxable
19 state and municipal bond interest and excluding nontaxable interest income or
20 dividend income from federal government obligations; minus the items of loss and
21 deduction under section 702 of the Internal Revenue Code, except items that are not
22 deductible under s. 71.21; plus guaranteed payments to partners under section 707
23 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
24 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), and (3g), and (3s), and (5d); and plus or
25 minus, as appropriate, transitional adjustments, depreciation differences, and basis

1 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
2 loss, and deductions from farming. “Net business income”, with respect to a natural
3 person, estate, or trust, means profit from a trade or business for federal income tax
4 purposes and includes net income derived as an employee as defined in section 3121
5 (d) (3) of the Internal Revenue Code.

6 **SECTION 15.** 560.03 (24) to (27) of the statutes are created to read:

7 **560.03 (24)** In cooperation with the department of financial institutions and
8 the Board of Regents of the University of Wisconsin System, annually conduct and
9 publish the results of a study of Wisconsin businesses to determine new business
10 formation trends and identify obstacles faced by new Wisconsin businesses and areas
11 where changes in governmental policy may satisfy the needs of new Wisconsin
12 businesses. As part of the study, the department of commerce shall conduct a survey
13 of Wisconsin businesses.

14 **(25)** In cooperation with the department of financial institutions and the Board
15 of Regents of the University of Wisconsin System, provide education and other
16 support to facilitate the development networks of investors that review new
17 businesses or proposed new businesses for potential investment.

18 **(26)** Certify businesses as qualified new business ventures for purposes of ss.
19 71.05 (6) (b) 9m., 71.07 (5d), 71.28 (5d), and 71.47 (5d). The department shall
20 promulgate rules for the administration of this subsection. The rules shall require
21 a business desiring certification to submit an application to the department. The
22 department shall maintain a list of businesses certified under this subsection and
23 shall permit public access to the list through the department’s Internet website. The
24 department shall notify the department of revenue of every business certified under
25 this subsection and the date on which any such business is decertified. A business

1 may be certified under this subsection, and may maintain such certification, only if
2 the business satisfies all of the following conditions:

3 (a) It has its headquarters in this state.

4 (b) At least 51 percent of the employees employed by the business are employed
5 in this state.

6 (c) Its average annual net income for each of the 2 taxable years immediately
7 preceding the taxable year for which a credit is claimed does not exceed \$20,000,000.

8 (d) Its net worth in the taxable year for which a credit is claimed does not
9 exceed \$75,000,000.

10 (e) It is not engaged predominantly in providing professional services by
11 accountants, lawyers, or physicians.

12 (f) It is not engaged predominantly in wholesale or retail trade or in the leisure
13 and hospitality industry.

14 (g) It is not engaged in banking or lending or in developing real estate for resale.

15 (h) It does not make loans to, or investments in, certified capital companies, as
16 defined in s. 560.30 (2).

17 (i) It has been in operation in this state for not more than 10 consecutive years.

18 (j) It is a corporation or limited liability company.

19 (k) It is not engaged in the transportation or construction business.

20 (27) Certify venture capital funds as follows:

21 (a) The department shall promulgate rules establishing a procedure for the
22 department to certify venture capital funds for purposes of the capital gains tax
23 exemption under s. 71.05 (6) (b) 9m. The rules shall do all of the following:

24 1. Require a venture capital fund that desires to obtain a certification to file an
25 application with the department.

1 2. Permit a venture capital fund to obtain a certification only if the venture
2 capital fund is a private seed and venture capital partnership or entity fund, the
3 venture capital fund has its principal place of business in Wisconsin, and the venture
4 capital fund commits to maintain an average, calculated over a 4-year period, of 50
5 percent of its equity investments in businesses, as described under sub. (26), that are
6 located in Wisconsin.

7 3. Require an applicant for certification or a certified venture capital fund to
8 provide the department with any information the department determines is
9 necessary to ensure eligibility for certification and compliance with this subsection
10 and rules promulgated under this subsection.

11 (b) Upon request of any person, the department shall issue a written notice
12 indicating whether a venture capital fund is certified under this subsection for
13 purposes of the capital gains tax exemption under s. 71.05 (6) (b) 9m. Each notice
14 under this paragraph that indicates a venture capital fund is certified shall include
15 the following statement: “THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT
16 RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED
17 THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR
18 OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX
19 ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE.”

20 (c) Upon the issuance or discontinuance of a certification, the department of
21 commerce shall notify the department of revenue and provide the department of
22 revenue a copy of the certification or discontinuance.

23 **SECTION 16. Nonstatutory provisions.**

24 (1) RULES. The department of commerce shall submit in proposed form the rules
25 required under section 560.03 (26) and (27) of the statutes, as created by this act, to

1 the legislative council staff under section 227.15 (1) of the statutes no later than the
2 first day of the 6th month beginning after the effective date of this subsection.

3 **SECTION 17. Initial applicability.**

4 (1) **QUALIFIED NEW BUSINESS VENTURE CREDIT.** The treatment of sections 71.05
5 (6) (a) 15., 71.07 (5d), 71.08 (1) (intro.), 71.10 (4) (gx), 71.21 (4), 71.26 (2) (a), 71.28
6 (5d), 71.30 (3) (eop), 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5d), 71.49 (1) (eop), and 77.92
7 (4) of the statutes first applies to taxable years beginning on January 1, 2006.

8 (2) **INCREASED CAPITAL GAINS EXCLUSION.** The treatment of section 71.05 (6) (b)
9 9m. of the statutes first applies to taxable years beginning on January 1, 2006.

10 **SECTION 18. Effective dates.** This act takes effect on July 1, 2004, except as
11 follows:

12 (1) **RULES.** SECTION 16 (1) of this act takes effect on the day after publication.

13 (END)