**LRB-3266**

# 2003 DRAFTING REQUEST

## Bill

Received: **09/11/2003**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Ted Kanavas (608) 266-9174**

By/Representing: **jeremey**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters: **mshovers**
**rmarchan**

Subject: **Tax - corp. inc. and fran.**
**Tax Credits - miscellaneous**
**Econ. Development - bus. dev.**

Extra Copies:

Submit via email: **YES**

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

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**
**robert.marchant@legis.state.wi.us**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Tax credit for new business venture; capital gains tax deferral and exlusion

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**Instructions:**

See Attached

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**Drafting History:**

| Vers. | Drafted | Reviewed | Typed | Proofed | Submitted | Jacketed | Required |
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| /P1 | jkreye 09/12/2003 rmarchan 09/12/2003 | kgilfoy 09/16/2003 jdyer 09/19/2003 | jfrantze 09/17/2003 | _______ | lemery 09/17/2003 | | State |

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| /1 | jkreye 09/19/2003 | kgilfoy 09/19/2003 | chaugen 09/19/2003 | _______ _______ | lemery 09/19/2003 | lemery 09/19/2003 | State Tax |
| /2 | | | rschluet 09/19/2003 | _______ _______ | mbarman 09/19/2003 | mbarman 09/19/2003 | State Tax |
| /3 | mshovers 09/19/2003 | kgilfoy 09/19/2003 | pgreensl 09/19/2003 | _______ _______ | lemery 09/19/2003 | lemery 09/19/2003 | State Tax |

FE Sent For:

09-22-2003 ("/3")

"Rush" per RJM

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| | /3 - 9/19 kmg | 9/19 ps | ps/lee | | | | |

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/2 - 9/19 KMG

PG 9-193

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| | jkreye 09/18/2003 | | | _______ | | | |
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**_LRB-3266_**

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| | jkreye<br>09/12/2003 | | ch 9-19<br>JF | ch 9-19<br>JF | | | |

FE Sent For:

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Extra Copies: MES

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| /P1 | jkreye | /P1 - 9/16 kmg | lb 9/17 | Rs 9/17 | | | |

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<END>

## Kreye, Joseph

**From:** Shepherd, Jeremey
**Sent:** Thursday, August 28, 2003 3:54 PM
**To:** Shovers, Marc; Kreye, Joseph
**Subject:** Kanavas request for Qualified New Business Venture bill

Marc and Joe,

Although we may already have some of these ideas drafted, Senator Kanavas would like Terry Grossenheider's ideas attached drafted into one bill.

Grossenheider Bill 8-28-03.pdf...

Thanks!

Jeremey

1. Create a "Qualified New Business Venture" designation

The Qualified New Business Venture designation is market driven, the success of the New Business Venture is based upon the entrepreneur's initiative and ability to convince individual investors they have a marketable product, service or idea. It is not based upon the deep pockets of the state. The risk lies with the entrepreneur and the investor, not with the State. The State does play a crucial role, it creates the environment for success. A significant element would be to define "QUALIFIED NEW BUSINESS VENTURE".

Using "Qualified Businesses" for CAPCO purposes as a starting point, we would propose to designate a "Qualified New Business Venture" as a business headquartered in Wisconsin, with at least 51% of its employees in Wisconsin, an average annual net income of not more than $20 million during its 2 most recent fiscal years, a net worth that is not in excess of $75 million, not predominantly engaged in professional services provided by accountants, lawyers, or physicians, Is not engaged in the development of real estate for resale, banking or lending and does not make any loans to, or investments in, certified capital companies, and not be predominantly engaged in Trade or Leisure & Hospitality. Lastly, the entity must have been formed as a Wisconsin business within the prior three years and may not be more than 10 years old.

Tax crediting

20% for first $100,000

2. Facilitate the selling of venture investments by providing incentives for broker-dealers to assist "Qualified New Business Ventures" raise capital

These are emerging growth companies. Currently, broker-dealers usually refuse to get involved in the securities offerings for startups or emerging companies because they believe that the usual broker-dealer compensation structure is not commensurate with the amount of time and resources expended and the risks assumed in connection with their participation in such offerings. Therefore, the lack of experience and contacts by the founders of the issuer/company combined with lack of incentives necessary to attract broker-dealer assistance results in such companies not raising the capital that is essential to their success. It would be an unprecedented positive proactive stance for Wisconsin to provide additional incentives for broker-dealers to participate is such offerings and enhance the venture capital environment statewide.

Provide a tax credit to a broker-dealer of 10% of the first $500,000 raised in an offering of a qualified company in any 12-month period. This guaranteed payment would shift the current incentives and encourage qualified broker-dealers to assist emerging companies raise capital.

3. Create a tax credit for investors who invest in a "Qualified New Business Venture"

Many potential angels and other early stage investors hesitate to invest in startups. An investor-friendly tax policy will go a long way toward making both investors and entrepreneurs more bullish on Wisconsin. Encouraging high risk venture capital investments by implementing straight forward tax relief would be an effective method to increase the availability of venture capital.

20% on investments up to $100,000, 10% on investments over 100,000

4. Create a tax deferral of the gain for rollover of "Qualified New Business Venture" investments

Increasing the incentives to invest either in venture capital funds or directly into early stage companies is critical to developing a strong investor base and ensuring venture level financing is available to Wisconsin companies. Deferring gain on venture investments will induce existing angels to be more active, attract out of state angels to Wisconsin and build interest in venture capital opportunities by those who may not have otherwise considered them.

5. Provide a capital gains rate break for gains from non-QNBVs that are reinvested in a "Qualified New Business Venture"

By providing investors with a lower or zero capital gains tax rate on capital gains that they reinvest in an early stage Wisconsin company, investors would have an incentive to recirculate money in Wisconsin and provide the much needed capital to support the state's venture capital industry.

6. Provide a capital gains tax break for gains from "Qualified New Business Venture" investments that are reinvested in local tax-free bonds

More conservative investors may be more inclined to accept the inherent risks and invest in a Wisconsin venture capital fund or startup company if they knew the potential gains from a high-yield, yet risky, venture capital investment would be taxed at a lower or zero rate if reinvested in more secure municipal bonds. By providing a desirable exit strategy, the state could bring a new pool of investors into the venture capital industry and supply a new pool of local debt financing.

7. Provide a 60% to 100% capital gains exclusion on state taxes for investments by entities in a "Qualified New Business Venture"

Currently there is a 60% capital gains exclusion for individuals investing in qualified small Wisconsin companies. This proposal will encourage entities to invest in Wisconsin high-tech businesses on the same basis as is provided to individuals, and will provide an incentive for venture capital firms and other entities to look more favorably on investing in Wisconsin qualified high-tech businesses.

8. Direct DFI, Commerce and University to conduct and publish an annual characterization survey of "New Business Venture" formations to determine new business formation trends, identify barriers and obstacles faced by new businesses and potential needs of new businesses.

We need to better understand the types of companies being formed, determine which of those are adding significant value to the economy, determine the barriers to entry. We cannot do this without a characterization study. Just as a physician cannot prescribe a course of treatment without an examination and an understanding of the patient's needs, neither can we as economic development professionals or government hope to assist new business formations without a thorough understanding of their needs and the barriers they face.

9. Direct Commerce, University and DFI to develop a "5 Year Plan" to foster, facilitate and support the development and growth of "Angel Capital Networks". Reallocate staff as necessary.

Angel investing requires certain knowledges that can be acquired in one of two ways, either by experience or by education. With a growing base of angel networks many are gaining experience, but many more could benefit from a coordinated effort to provide information on the basic issues involved in "Angel Investing" including: due diligence, structuring & terms, valuation analysis, and exit strategies.

10. Direct Commerce to maintain an Internet accessible listing of "Qualified New Business Ventures".

Summary

We have an economy in transition, it is composed of mature companies in mature industries. Our rate of new business formations and investment in new business formations is among the lowest in the nation. We need to do more to build a sustainable pipeline of new business formations which will ensure the future vitality of our economy. The proposals I have outlined here today will redress the weaknesses we have, while taking advantage of our strengths and creating new opportunities and new possibilities for all Wisconsinites.

These proposals will:
- reduce the risk of investment in these critical economic sectors,
- increase the potential reward based upon the success of the enterprise,
- compliment the existing and future Venture Capitalists and CAPCOs by creating and funding more startup companies,

# State of Wisconsin
**2003 – 2004 LEGISLATURE**

LRB–3266/P1
JK/MES/RJM:.......
Kmg

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

in 9-12-03

D-N

due Fri. 9-19

Gen. Cat.

AN ACT ...; **relating to:** creating a qualified new business venture tax credit, requiring a study of new Wisconsin businesses, facilitating the development of certain investor networks, and granting rule–making authority.

---

### *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 ~~10~~ 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 ~~10~~ 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 bill 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 bill 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").

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:***

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

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

**History:** 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.

**SECTION 2.** 71.07 (5d) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

**SECTION 3.** 71.10 (4) (gx) of the statutes is created to read:

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

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

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

**History:** 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 1995 a. 27, 400; 1997 a. 27; 2001 a. 16.

**SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

71.26 **(2)** (a) *Corporations in general.* The "net income" of a corporation means the gross income as computed under the Internal Revenue Code as modified under sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and~~ (3g), and (5d) 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) plus the amount of losses from the sale or other disposition of assets the gain from which would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise disposed of at a gain and minus deductions, as computed under the Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an amount equal to the difference between the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

**History:** 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33.

**SECTION 6.** 71.28 (5d) of the statutes is created to read:

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

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

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

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

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

1. An amount equal to 20 percent of the claimant's investment in a qualified new business venture in the taxable year, except that if the claimant's investment

exceeds $100,000 in the taxable year the claimant may claim 20 percent of $100,000 plus 10 percent of the amount of the investment that exceeds $100,000.

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

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

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

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

**SECTION 7.** 71.30 (3) (eop) of the statutes is created to read:

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

**SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

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

**History:** 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33.

**SECTION 9.** 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 (5d) 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; 2001 a. 16, 38, 109; 2003 a. 37.

**SECTION 10.** 71.47 (5d) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

**SECTION 11.** 71.49 (1) (eop) of the statutes is created to read:

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

**SECTION 12.** 77.92 (4) of the statutes is amended to read:

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

**History:** 1989 a. 335; 1991 a. 39, 269; 1993 a. 16, 112, 490; 1995 a. 27, 209; 1997 a. 27; 1999 a. 9; 2001 a. 16.

**SECTION 13.** 560.03 (24) to (26) of the statutes are created to read:

560.03 **(24)** In cooperation with the Department of Financial Institutions and the Board of Regents of the University of Wisconsin System, 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. As part of the study, the department of commerce shall conduct a survey of Wisconsin businesses.

**(25)** In cooperation with the Department of Financial Institutions and the Board of Regents of the University of Wisconsin System, provide education and other support to facilitate the development networks of investors that review new businesses or proposed new businesses for potential investment.

**(26)** Certify businesses as qualified new business ventures for purposes of ss. 71.07 ~~(5) (d)~~ (5d), 71.28 (5d), and 71.47 (5d). The department shall promulgate rules for the administration of this subsection. The rules shall require a business desiring certification to submit an application to the department. The department shall maintain a list of businesses certified under this subsection and shall permit public access to the list ~~via~~ through the department's Internet Website. The department shall notify the department of revenue of every business certified under this subsection and the date on which any such business is decertified. A business may be certified under this subsection, and may maintain such certification, only if the business satisfies all of the following conditions:

(a) It has its headquarters in this state.

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

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

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

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

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

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

does not make

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

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

**SECTION 14. Initial applicability.**

(1) QUALIFIED NEW BUSINESS VENTURE CREDIT. The treatment of sections 71.05 (6) (a) 15., 71.07 (5d), 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.

**SECTION 15. Effective date.**

(1) This act takes effect on July 1, 2004.

**(END)**

**DRAFTER'S NOTE**
**FROM THE**
**LEGISLATIVE REFERENCE BUREAU**

LRB–3266/P1dn
JK/MES/RJM:/:...
kmg

Senator Kanavas:

Please review this draft carefully to ensure that it is consistent with your intent. This draft is based on Terry Grosenheider's testimony before the senate select committee on job creation, but it is not identical to his recommendations. There were several gaps that needed to be addressed and it is important that you review the draft to ensure that we have filled them appropriately. Please note that this draft does not include the suggested provisions related to capital gains because the instructions related to those provisions are incomplete. Specifically:

1. The instructions recommend a state income tax deferral of the gain on new business venture investments but does not specify the length of the deferral.

2. The instructions recommend a lower state capital gains tax rate, or no state capital gains tax at all, on gains that are invested in a new business venture. Do you want a lower rate or do you want to eliminate the capital gains tax on such investments? If you want a lower rate, what should it be?

3. The instructions recommend raising the capital gains exclusion on investments in new business ventures but does not specify what the amount of the new exclusion should be.

4. Finally, to the extent that the recommendations listed above may conflict with one another, do you wish to implement all of the recommendations, implement some of the recommendations, or modify the recommendations?

Please contact us if you have any questions.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266–2263
E–mail: joseph.kreye@legis.state.wi.us

Robert J. Marchant
Legislative Attorney
Phone: (608) 261–4454
E–mail: robert.marchant@legis.state.wi.us

# DRAFTER'S NOTE
## FROM THE
## LEGISLATIVE REFERENCE BUREAU

LRB–3266/P1dn
JK&RJM:kmg:jf

September 17, 2003

Senator Kanavas:

Please review this draft carefully to ensure that it is consistent with your intent. This draft is based on Terry Grosenheider's testimony before the senate select committee on job creation, but it is not identical to his recommendations. There were several gaps that needed to be addressed and it is important that you review the draft to ensure that we have filled them appropriately. Please note that this draft does not include the suggested provisions related to capital gains because the instructions related to those provisions are incomplete. Specifically:

1. The instructions recommend a state income tax deferral of the gain on new business venture investments but does not specify the length of the deferral.

2. The instructions recommend a lower state capital gains tax rate, or no state capital gains tax at all, on gains that are invested in a new business venture. Do you want a lower rate or do you want to eliminate the capital gains tax on such investments? If you want a lower rate, what should it be?

3. The instructions recommend raising the capital gains exclusion on investments in new business ventures but does not specify what the amount of the new exclusion should be.

4. Finally, to the extent that the recommendations listed above may conflict with one another, do you wish to implement all of the recommendations, implement some of the recommendations, or modify the recommendations?

Please contact us if you have any questions.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266–2263
E–mail: joseph.kreye@legis.state.wi.us

Robert J. Marchant
Legislative Attorney
Phone: (608) 261–4454
E–mail: robert.marchant@legis.state.wi.us

## Shovers, Marc

**From:** Shepherd, Jeremey
**Sent:** Tuesday, September 16, 2003 2:46 PM
**To:** Shovers, Marc
**Cc:** Kreye, Joseph; Marchant, Robert
**Subject:** RE: Senator Kanavas request for cap gains exclusion/early start ups - FOLLOW UP

Marc,

Rob is working on drafting a tax credit bill for Senator Kanavas. The Senator would like the following language added to the bill:

If someone rolls their cap gains from an investment in a qualified venture cap fund into ANOTHER venture cap fund, they would recieve a 100% cap gains exclusion.

OR if someone takes their long term gains and invests in a qualified venture cap fund, they would recieve a 100% cap gains exclusion.

-----Original Message-----
**From:** Shepherd, Jeremey
**Sent:** Thursday, August 28, 2003 3:26 PM
**To:** Shovers, Marc
**Subject:** FW: Senator Kanavas request for cap gains exclusion/early start ups - FOLLOW UP

Marc,

I just noticed that I requested this from Joe Kreye back in March and he told me to send this to you....sorry about that.

Jeremey

-----Original Message-----
**From:** Kreye, Joseph
**Sent:** Thursday, March 20, 2003 1:16 PM
**To:** Shepherd, Jeremey
**Subject:** RE: *Additional tax law changes per Senator Kanavas

Jeremey,

For future reference, tax related requests should be forwarded to Marc Shovers (individual income tax) or to me (all other state taxes).

Joe

***Joseph T. Kreye***
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

-----Original Message-----
**From:** Shepherd, Jeremey
**Sent:** Thursday, March 20, 2003 1:12 PM
**To:** Kreye, Joseph; Marchant, Robert
**Subject:** *Additional tax law changes per Senator Kanavas

Senator Kanavas requests two more bills to be drafted:

**1. Eliminate the capital gains tax on gains from venture capital investments or gains that are re-invested in start-up companies**

2. Provide a tax credit for equity investments in venture capital funds (similar to Iowa Legislation below)

# State of Wisconsin
**~~2003 – 2004 LEGISLATURE~~**

LRB–3266/~~P1~~ 1
JK/MES/RJM:kmg:jf
+ jld

NOON 9-19

PNM NR

PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

DNOTE

and a capital gains tax exemption regarding investments in certified venture capital funds

regen

AN ACT *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and *to create* 71.07 (5d), 71.10 (4) (gx), 71.28 (5d), 71.30 (3) (eop), 71.47 (5d), 71.49 (1) (eop) and 560.03 (24) to (26) of the statutes; **relating to:** creating a qualified new business venture tax credit, requiring a plan study of new Wisconsin businesses, facilitating the development of certain investor networks, and granting rule–making authority.

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### *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 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 bill also requires the Department of Commerce, in cooperation with the Department of Financial Institutions and the University of Wisconsin System, to

INSERT ANALYSIS A&B

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 bill 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").

For further information see the ***state*** fiscal estimate, which will be printed as an appendix to this bill.

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

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

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

INSERT 2-6

**SECTION 2.** 71.07 (5d) of the statutes is created to read:

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

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

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

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

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

1. An amount equal to 20 percent of the claimant's investment in a qualified new business venture in the taxable year, except that if the claimant's investment

exceeds $100,000 in the taxable year the claimant may claim 20 percent of $100,000 plus 10 percent of the amount of the investment that exceeds $100,000.

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

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

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

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

**SECTION 3.** 71.10 (4) (gx) of the statutes is created to read:

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

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

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

**SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

71.26 **(2)** (a) *Corporations in general.* The "net income" of a corporation means the gross income as computed under the Internal Revenue Code as modified under sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and~~ (3g), and (5d) 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) plus the amount of losses from the sale or other disposition of assets the gain from which would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise disposed of at a gain and minus deductions, as computed under the Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an amount equal to the difference between the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

**SECTION 6.** 71.28 (5d) of the statutes is created to read:

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

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

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

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

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

1. An amount equal to 20 percent of the claimant's investment in a qualified new business venture in the taxable year, except that if the claimant's investment

exceeds $100,000 in the taxable year the claimant may claim 20 percent of $100,000 plus 10 percent of the amount of the investment that exceeds $100,000.

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

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

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

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

**SECTION 7.** 71.30 (3) (eop) of the statutes is created to read:

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

**SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

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

**SECTION 9.** 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 (5d) 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).

**SECTION 10.** 71.47 (5d) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

**SECTION 11.** 71.49 (1) (eop) of the statutes is created to read:

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

**SECTION 12.** 77.92 (4) of the statutes is amended to read:

77.92 **(4)** "Net business income", with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and~~ (3g), ~~and~~ (3s), and (5d); and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions from farming. "Net business income", with respect to a natural person, estate, or trust, means profit from a trade or business for federal income tax purposes and includes net income derived as an employee as defined in section 3121 (d) (3) of the Internal Revenue Code. 27

**SECTION 13.** 560.03 (24) to 26 of the statutes are created to read:

560.03 **(24)** In cooperation with the department of financial institutions and the Board of Regents of the University of Wisconsin System, 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. As part of the study, the department of commerce shall conduct a survey of Wisconsin businesses.

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

**(26)** Certify businesses as qualified new business ventures for purposes of ss. 71.07 (5d), 71.28 (5d), and 71.47 (5d). The department shall promulgate rules for the administration of this subsection. The rules shall require a business desiring certification to submit an application to the department. The department shall maintain a list of businesses certified under this subsection and shall permit public access to the list through the department's Internet website. The department shall notify the department of revenue of every business certified under this subsection and the date on which any such business is decertified. A business may be certified under this subsection, and may maintain such certification, only if the business satisfies all of the following conditions:

(a) It has its headquarters in this state.

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

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

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

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

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

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

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

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

**SECTION 14. Initial applicability.**

(1) QUALIFIED NEW BUSINESS VENTURE CREDIT. The treatment of sections 71.05 (6) (a) 15., 71.07 (5d), 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.

INSERT 9-18

~~**SECTION 15. Effective date.**~~

~~(1) This act takes effect on July 1, 2004.~~

(END)

INSERT 9-14

INSERT 9-13

d-note

INSERT 9-20

# 2003 BILL

INSERT
ANALYSIS
B

AN ACT ***to amend*** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and ***to create*** 71.07 (2r), 71.07 (5d), 71.10 (4) (gc), 71.10 (4) (gx), 71.28 (2r), 71.30 (3) (eop), 71.47 (2r), 71.49 (1) (eop) and 560.03 (24) of the statutes; **relating to:** creating an income and franchise tax credit for equity investments in a venture capital fund, creating an income tax credit for investments in community–based seed capital funds, and granting rule–making authority.

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## *Analysis by the Legislative Reference Bureau*

This bill creates an income and franchise tax credit for equity investments in venture capital funds that are certified by the Department of Commerce ~~as described below~~. The amount of the tax credit is equal to 6% of the taxpayer's equity investment in venture capital funds in the taxable year, but the total amount of all such credits awarded in any fiscal year ~~may~~ not exceed $5,000,000. If the credit claimed by a taxpayer exceeds the taxpayer's tax liability, the state will not issue a refund, but the taxpayer may carry forward any remaining credit to subsequent taxable years.

Under this bill, the Department of Commerce must promulgate rules establishing a procedure for certifying venture capital funds ~~as eligible to receive equity investments that qualify for the tax credits~~ described above. A venture capital fund may obtain a certification only if the venture capital fund is a private seed and

for purposes of the capital gains tax exemption

INSERT ANALYSIS 13 cont

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 bill requires the Department of Commerce, upon request of any person, to issue a written notice indicating whether a venture capital fund is certified ~~as eligible to receive equity investments that qualify for the tax credits described above~~. 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 bill also requires the Department of Commerce, upon issuing or discontinuing a certification, to notify ~~the Department of Revenue~~ DOR and give ~~the Department of Revenue~~ a copy of the certification or discontinuance.

TAYEM

This bill creates a nonrefundable individual income tax credit that is equal to 25 percent of the taxpayer's cash investment in a community–based seed capital fund or in a business that, generally, has been operating for no more than three years and has a net worth not exceeding $3,000,000. No individual may claim a credit for more than $50,000 in a taxable year and the total amount of all credits for all individuals who claim credits may not exceed $3,000,000 in a state fiscal year.

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:***

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

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

SECTION 2. 71.07 (2r) of the statutes is created to read:

71.07 **(2r)** EQUITY INVESTMENT IN VENTURE CAPITAL FUND CREDIT. (a) In this subsection:

(end ins)

LRB–2572/1
MES:wlj:pg

# 2003 BILL

INSERT ANALYSIS A

or any asset that is an investment in a venture capital fund

that is an investment in a venture capital fund

AN ACT *to create* 71.05 (24) of the statutes; **relating to:** creating a procedure for certain taxpayers to defer taxation on certain reinvested capital gains.

## *Analysis by the Legislative Reference Bureau*

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

Under this bill, 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 (original asset), ~~other than gain realized from the sale of the taxpayer's principal residence and two other specified exceptions~~, if the claimant completes a number of requirements.

Under the bill, the claimant must place the gain from the plain original asset in a segregated account in a financial institution, ~~must~~ purchase ~~another~~ capital asset (replacement asset) within 90 days after the sale of the original asset that generated the gain, and ~~must~~ 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 bill 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

ANALYSIS INSERT A

INSERT ANALYSIS A CONT

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.

~~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.~~

(end ins)

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

INSERT 2-6

**SECTION 1.** 71.05 (24) of the statutes is created to read:

71.05 **(24)** INCOME TAX DEFERRAL; ~~LONG–TERM CAPITAL ASSETS.~~ Investments in certain venture capital funds (a) In this subsection:

1. "Claimant" means 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.

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

3. "Long–term capital gain" means the gain realized from the sale of any asset which is an investment in a venture capital fund that is certified under s. 560.03 (27) held more than one year~~, other than gain realized from any of the following:~~.

~~a. The sale of an individual's principal residence.~~

~~b. The sale of an asset that was obtained in a tax–free exchange of capital assets.~~

~~c. The sale of property purchased as the result of an involuntary conversion.~~

(b) A claimant may subtract from federal adjusted gross income any amount of a long–term capital gain if the claimant does all of the following:

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

or any gain realized from the sale of an asset that is an investment in a venture capital fund that is certified under s. 560.03 (27)

INSERT 9-13



9-13

purposes ~~and includes net~~ income derived ~~as~~ an employee ~~as defined~~ in section 3121 (d) (3) of the Internal Revenue Code.

~~SECTION 15. 560.03 (24) of the statutes is created to read:~~ 27 (d)

INSERT 9-13

560.03 (~~24~~) 27 (d) Certify venture capital funds as follows: for purposes of the capital gains tax exemption under s. 71.05 (24)

(a) The department shall promulgate rules establishing a procedure for the department to certify venture capital funds ~~as eligible to receive equity investments that qualify for the tax credits under ss. 71.07 (2r), 71.28 (2r), and 71.47 (2r)~~. The rules shall do all of the following:

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

2. Permit a venture capital fund to 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.

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

(b) Upon request of any person, the department shall issue a written notice indicating whether a venture capital fund is certified under this subsection ~~as eligible to receive equity investments that qualify for the tax credits under ss. 71.07 (2r), 71.28 (2r), and 71.47 (2r)~~. 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

INS 9-13 cont

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."

(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.

(ad ms)

INSERT

~~**SECTION 16. Nonstatutory provisions.**~~ 560.03(27)

~~(1) RULES. The department of commerce shall submit in proposed form the rules required under section 560.24 (a) 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.~~

(a)

~~**SECTION 17. Initial applicability.**~~

~~(1) This act first applies to taxable years beginning on January 1, 2006.~~

INSERT

~~**SECTION 18. Effective dates.** This act takes effect on the first day of the 8th month beginning after publication, except as follows:~~

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

(END)

INS 2-6 CONT

which is an investment in a venture capital fund that is certified under s. 560.03 (27)

2. Within 90 days after the sale of the asset that generated the gain, purchases another capital asset of equal or greater value using all of the proceeds in the account described under subd. 1.

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

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

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

(end ins)

~~SECTION 2. Initial applicability.~~

~~(1) This act first applies to~~ taxable years beginning on January 1, 2006 ~~of the year in which this subsection takes effect, except that if this subsection takes effect after July 31, this act first applies to taxable years beginning on January 1 of the year following the year in which this subsection takes effect~~. ← plain period

~~(END)~~

INCOME TAX DEFERRAL. The treatment of section 71.05 (24) of the statutes first applies to

(end ins)
9-18

INSERT 9-18

**2003–2004 DRAFTING INSERT**
**FROM THE**
**LEGISLATIVE REFERENCE BUREAU**

LRB–3266/1ins
RJM:...:...

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(26) and

auto ref B

**SECTION 1. Nonstatutory provisions.**

(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.

**SECTION 2. Effective dates.** This act takes effect on July 1, 2004, except as follows:

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

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Auto ref B

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STATE OF WISCONSIN – LEGISLATIVE REFERENCE BUREAU – LEGAL SECTION
(608–266–3561)

D Note -3266/1

Please review ~~created~~ s. 71.05 (24) very carefully because I did not have many details on your proposal. ~~[illegible]~~ For example, is the 90-day ~~period~~ period specified in s. 71.05 (24) (b) 2. consistent with your intent?

[illegible initials]

# DRAFTER'S NOTE
## FROM THE
## LEGISLATIVE REFERENCE BUREAU

LRB–3266/1dn
MES:jld:ch

September 19, 2003

Please review created s. 71.05 (24) very carefully because I did not have many details on your proposal. For example, is the 90–day period specified in s. 71.05 (24) (b) 2. consistent with your intent?

Marc E. Shovers
Senior Legislative Attorney
Phone: (608) 266–0129
E–mail: marc.shovers@legis.state.wi.us

## Emery, Lynn

**From:** Shepherd, Jeremey
**Sent:** Friday, September 19, 2003 11:48 AM
**To:** LRB.Legal
**Subject:** Draft review: LRB 03-3266/1 Topic: Tax credit for new business venture; capital gains tax deferral and exlusion

It has been requested by <Shepherd, Jeremey> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-3266/1 Topic: Tax credit for new business venture; capital gains tax deferral and exlusion