



**SENATE SUBSTITUTE AMENDMENT 1,
TO 2005 SENATE BILL 566**

February 6, 2006 - Offered by Senator KANAVAS.

1 **AN ACT** *to repeal* 180.0622 (2) (b); *to renumber and amend* 180.0622 (2) (a);
2 *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2) (a) 10.,
3 77.92 (4), 551.23 (10), 551.23 (11) (a), 551.23 (11) (b), 551.23 (18) and 551.53 (1)
4 (b); and *to create* 71.05 (24), 71.07 (5e), 71.10 (4) (cg), 71.28 (5e), 71.30 (3) (epp),
5 71.47 (5e), 71.49 (1) (epp) and 551.02 (4w) of the statutes; **relating to:** creating
6 income and franchise tax credits for the offering of a Wisconsin business;
7 excluding from taxable income gains from a Wisconsin business; liability of
8 shareholders; and exemptions from securities registration requirements.

Analysis by the Legislative Reference Bureau

Under current law, a person may claim certain income and franchise tax credits based on the amount that the person invests in qualified new business ventures, as certified by the Department of Commerce. A qualified new business venture is, generally, a business that has its headquarters and the majority of its employees in this state and has been in operation in this state for not more than seven consecutive years.

Under the substitute amendment, a broker-dealer may claim an income and franchise tax credit in an amount equal to 10 percent of the first \$500,000 raised in

an offering of a Wisconsin business in the taxable year. Under current law, a broker-dealer is, generally, any person engaged in the business of effecting transactions in securities.

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

Under this substitute amendment, 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 subtract from federal adjusted gross income the amount of capital gain realized from the sale of any asset held more than one year (original asset), to the extent that the gain is not already excluded from taxation.

Under the substitute amendment, the claimant must place the gain from the original asset in a segregated account in a financial institution, must invest all of the proceeds in the account in a Wisconsin business within 180 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 will not declare the gain from the original asset because the proceeds have been reinvested in a Wisconsin business.

A “Wisconsin business” is defined as a business that is headquartered in Wisconsin; that employs at least 51 percent of its employees in this state; that is engaged in, or is committed to engage, in businesses such as manufacturing, agriculture, conducting research, or developing new products or business processes; that is not engaged in businesses such as real estate development, insurance, banking, lobbying, political consulting, professional services, retail, leisure, hospitality, transportation, or construction; that has less than 500 employees; and that has been in operation in this state for not more than seven consecutive years.

The substitute amendment also specifies that the basis of the investment shall be its cost minus the gain generated by the sale of the original asset. If a claimant claims the subtraction allowed under the substitute amendment, 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 claim the subtraction.

Current law imposes personal liability on each shareholder of a corporation organized under the laws of this state, including an insurance company that issues stock, for any amount owed by the corporation to its employees for up to six months of work per employee. The amount of a shareholder’s personal liability is limited to the value of the shares that the shareholder owns. This substitute amendment eliminates those provisions of current law.

The substitute amendment also makes changes to exemptions from security registration requirements. Under current law, a person may not offer or sell a security unless the security is registered with the Division of Securities of the Department of Financial Institutions (division) or unless the security or transaction is exempt from registration.

One exemption under current law applies to a transaction in which the total number of security holders after the sale does not exceed 25. Certain financial

institutions, institutional investors, broker-dealers, investment advisors, and other persons are not counted in determining whether that number is exceeded. In addition, other requirements must be satisfied for the exemption to apply, including the following: 1) no commissions for the sale must be paid to persons in this state who are not licensed broker-dealers and agents; and 2) no advertising for the sale may be published unless it is approved by the division. This substitute amendment changes the exemption so that it applies if the number of security holders does not exceed 100, without counting the persons who are not counted under current law. In addition, the exemption applies even if commissions are paid to a "finder," which the substitute amendment defines as a person whose activities are limited to identifying, introducing, or both, a potential investor to the issuer, or a broker-dealer, who subsequently sells the security to the potential investor. In addition, for a person to qualify as a "finder," the person may not, with respect to any particular issuer of securities, be involved in security sales that exceed \$1,000,000 in any year. In addition, the substitute amendment eliminates the requirement that advertising must be approved by the division. Instead, the substitute amendment requires the advertising to be filed with the division within three business days of its first use.

Another exemption under current law applies to a transaction pursuant to an offer directed to no more than 25 persons in this state during any 12-month period, except that the division may increase or decrease the number of persons to whom an offer is directed. In addition, certain other requirements, including requirements regarding compensation, must be satisfied for the exemption to apply. This substitute amendment changes the exemption so that it applies to an offer directed to no more than 300 persons in this state. The substitute amendment allows the division to increase the number of persons, but does not allow the division to decrease the number. Also, the substitute amendment allows compensation to be paid to a licensed broker-dealer or agent or a "finder," which the substitute amendment defines as described above. In addition, the substitute amendment requires that, for the exemption to apply, any advertising must be filed with the division within three business days of its first use.

Current law also allows the division, by order or rule, to exempt a transaction if the division finds that registration is not necessary or appropriate for the protection of investors. Based on this authority, the division has promulgated a rule that exempts transactions in which the aggregate offering price of the securities sold in the offering to persons in this state does not exceed \$5,000,000. In addition, certain other requirements must be satisfied for the rule to apply. Under this substitute amendment, if the division exempts a transaction, and the exemption depends in whole or in part on the aggregate offering price of the securities sold in the offering to persons in this state, then the exemption must apply to a transaction

in which such price does not exceed \$20,000,000, or any greater amount specified by the division by rule or order.

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), (3n), (3s), (3t), (5b), ~~and (5d), and (5e)~~
4 and not passed through by a partnership, limited liability company, or tax-option
5 corporation that has added that amount to the partnership's, company's, or
6 tax-option corporation's 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 EXEMPTION; LONG-TERM CAPITAL GAINS; WISCONSIN
9 BUSINESSES. (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.

16 4. "Wisconsin business" means a business to which all of the following apply:

17 a. Its headquarters is in this state.

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

1 c. It is engaged in, or has committed to engage in, manufacturing, agriculture,
2 processing or assembling products, conducting research and development, or
3 developing a new product or business process.

4 d. It is not engaged in real estate development; insurance; banking; lending;
5 lobbying; political consulting; professional services proved by attorneys,
6 accountants, business consultants, physicians, or health care consultants; wholesale
7 or retail trade; leisure; hospitality; transportation; or construction.

8 e. It has less than 500 employees.

9 f. It has been in operation in this state for not more than 7 consecutive years.

10 (b) To the extent that the gain is not excluded from taxation under sub. (6) (b)
11 9., a claimant may subtract from federal adjusted gross income any amount of a
12 long-term capital gain if the claimant does all of the following:

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

15 2. Within 180 days after the sale of the asset that generated the gain, invests
16 in a Wisconsin business using all of the proceeds in the account described under subd.

17 1.

18 3. After investing in a Wisconsin business as described under subd. 2.,
19 immediately notifies the department, on a form prepared by the department, that the
20 claimant will not declare on the claimant's income tax return the gain described
21 under subd. 1. because the claimant has reinvested the capital gain as described
22 under subd. 2.

23 (c) The basis of the investment described in par. (b) 2. shall be calculated by
24 subtracting the gain described in par. (b) 1. from the cost of the investment described
25 in par. (b) 2.

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

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

5 71.07 (5e) WISCONSIN BUSINESS OFFERINGS CREDIT. (a) *Definitions.* In this
6 subsection:

7 1. “Agent” has the meaning given in s. 551.02 (2).

8 2. “Broker-dealer” has the meaning given in s. 551.02 (3).

9 3. “Claimant” means an agent or a broker-dealer who files a claim under this
10 subsection.

11 4. “Wisconsin business” has the meaning given in s. 71.05 (24) (a) 4.

12 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
13 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
14 amount of the tax, an amount equal to 10 percent of the first \$500,000 raised in an
15 offering of a Wisconsin business in the taxable year.

16 (c) *Limitations.* 1. The maximum amount of the credits that may be claimed
17 in each taxable year under this subsection and ss. 71.28 (5e) and 71.47 (5e) is
18 \$3,000,000.

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

1 companies, and shareholders of tax-option corporations may claim the credit in
2 proportion to their ownership interests.

3 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
4 s. 71.28 (4), applies to the credit under this subsection.

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

6 71.10 (4) (cg) Wisconsin business offerings credit under s. 71.07 (5e).

7 **SECTION 5.** 71.21 (4) of the statutes, as affected by 2005 Wisconsin Act 74, is
8 amended to read:

9 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
10 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (5b), (5e), and (5g) and passed
11 through to partners shall be added to the partnership's income.

12 **SECTION 6.** 71.26 (2) (a) of the statutes, as affected by 2005 Wisconsin Act 74,
13 is amended to read:

14 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
15 the gross income as computed under the Internal Revenue Code as modified under
16 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
17 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
18 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
19 under this paragraph at the time that the taxpayer first claimed the credit plus the
20 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
21 (1ds), (1dx), (3g), (3n), (3t), (5b), (5e), and (5g) and not passed through by a
22 partnership, limited liability company, or tax-option corporation that has added that
23 amount to the partnership's, limited liability company's, or tax-option corporation's
24 income under s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or
25 other disposition of assets the gain from which would be wholly exempt income, as

1 defined in sub. (3) (L), if the assets were sold or otherwise disposed of at a gain and
2 minus deductions, as computed under the Internal Revenue Code as modified under
3 sub. (3), plus or minus, as appropriate, an amount equal to the difference between
4 the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or
5 otherwise disposed of in a taxable transaction during the taxable year, except as
6 provided in par. (b) and s. 71.45 (2) and (5).

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

8 71.28 (5e) WISCONSIN BUSINESS OFFERINGS CREDIT. (a) *Definitions.* In this
9 subsection:

10 1. “Agent” has the meaning given in s. 551.02 (2).

11 2. “Broker-dealer” has the meaning given in s. 551.02 (3).

12 3. “Claimant” means an agent or a broker-dealer who files a claim under this
13 subsection.

14 4. “Wisconsin business” has the meaning given in s. 71.05 (24) (a) 4.

15 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
16 claimant may claim as a credit against the tax imposed under s. 71.23, up to the
17 amount of the tax, an amount equal to 10 percent of the first \$500,000 raised in an
18 offering of a Wisconsin business in the taxable year.

19 (c) *Limitations.* 1. The maximum amount of the credits that may be claimed
20 in each taxable year under this subsection and ss. 71.07 (5e) and 71.47 (5e) is
21 \$3,000,000.

22 2. Partnerships, limited liability companies, and tax-option corporations may
23 not claim the credit under this subsection, but the eligibility for, and the amount of,
24 the credit are based on their payment of amounts described under par. (b). A
25 partnership, limited liability company, or tax-option corporation shall compute the

1 amount of credit that each of its partners, members, or shareholders may claim and
2 shall provide that information to each of them. Partners, members of limited liability
3 companies, and shareholders of tax-option corporations may claim the credit in
4 proportion to their ownership interests.

5 (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under
6 sub. (4), applies to the credit under this subsection.

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

8 71.30 (3) (epp) Wisconsin business offerings credit under s. 71.28 (5e).

9 **SECTION 9.** 71.34 (1) (g) of the statutes, as affected by 2005 Wisconsin Act 74,
10 is amended to read:

11 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
12 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
13 (3n), (3t), (5b), (5e), and (5g) and passed through to shareholders.

14 **SECTION 10.** 71.45 (2) (a) 10. of the statutes, as affected by 2005 Wisconsin Act
15 74, is amended to read:

16 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
17 computed under s. 71.47 (1dd) to (1dx), (3n), (5b), (5e), and (5g) and not passed
18 through by a partnership, limited liability company, or tax-option corporation that
19 has added that amount to the partnership's, limited liability company's, or
20 tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) and the amount of
21 credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

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

23 71.47 (5e) WISCONSIN BUSINESS OFFERINGS CREDIT. (a) *Definitions.* In this
24 subsection:

25 1. "Agent" has the meaning given in s. 551.02 (2).

1 2. “Broker-dealer” has the meaning given in s. 551.02 (3).

2 3. “Claimant” means an agent or a broker-dealer who files a claim under this
3 subsection.

4 4. “Wisconsin business” has the meaning given in s. 71.05 (24) (a) 4.

5 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
6 claimant may claim as a credit against the tax imposed under s. 71.43, up to the
7 amount of the tax, an amount equal to 10 percent of the first \$500,000 raised in an
8 offering of a Wisconsin business in the taxable year.

9 (c) *Limitations.* 1. The maximum amount of the credits that may be claimed
10 in each taxable year under this subsection and ss. 71.07 (5e) and 71.28 (5e) is
11 \$3,000,000.

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

20 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
21 s. 71.28 (4), applies to the credit under this subsection.

22 **SECTION 12.** 71.49 (1) (epp) of the statutes is created to read:

23 71.49 (1) (epp) Wisconsin business offerings credit under s. 71.47 (5e).

24 **SECTION 13.** 77.92 (4) of the statutes, as affected by 2005 Wisconsin Act 74, is
25 amended to read:

1 77.92 (4) “Net business income,” with respect to a partnership, means taxable
2 income as calculated under section 703 of the Internal Revenue Code; plus the items
3 of income and gain under section 702 of the Internal Revenue Code, including taxable
4 state and municipal bond interest and excluding nontaxable interest income or
5 dividend income from federal government obligations; minus the items of loss and
6 deduction under section 702 of the Internal Revenue Code, except items that are not
7 deductible under s. 71.21; plus guaranteed payments to partners under section 707
8 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
9 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), (5b), (5e), and (5g);
10 and plus or minus, as appropriate, transitional adjustments, depreciation
11 differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but
12 excluding income, gain, loss, and deductions from farming. “Net business income,”
13 with respect to a natural person, estate, or trust, means profit from a trade or
14 business for federal income tax purposes and includes net income derived as an
15 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

16 **SECTION 14.** 180.0622 (2) (a) of the statutes is renumbered 180.0622 (2) and
17 amended to read:

18 180.0622 (2) ~~Except as provided in par. (b) or unless~~ Unless otherwise provided
19 in the articles of incorporation, a shareholder of a corporation is not personally liable
20 for the acts or debts of the corporation, except that a shareholder may become
21 personally liable by his or her acts or conduct other than as a shareholder.

22 **SECTION 15.** 180.0622 (2) (b) of the statutes is repealed.

23 **SECTION 16.** 551.02 (4w) of the statutes is created to read:

24 551.02 (4w) “Finder” means a person whose activities are limited to
25 identifying, introducing, or both, a potential investor to a broker–dealer licensed in

1 this state, or an issuer, who subsequently sells a security to the potential investor,
2 if the person's activities result in sales of an issuer's securities that do not exceed
3 \$1,000,000 in any period of 12 consecutive months.

4 **SECTION 17.** 551.23 (10) of the statutes is amended to read:

5 551.23 (10) Any offer or sale of its securities by an issuer having its principal
6 office in this state, if the aggregate number of persons holding directly or indirectly
7 all of the issuer's securities, after the securities to be issued are sold, does not exceed
8 ~~25~~ 100, exclusive of persons under sub. (8), if no commission or other remuneration
9 is paid or given directly or indirectly for soliciting any person in this state, except to
10 broker-dealers and agents licensed in this state and to finders, and if no advertising
11 is published unless it has been ~~permitted by~~ filed with the division within 3 business
12 days of the advertising's first use.

13 **SECTION 18.** 551.23 (11) (a) of the statutes is amended to read:

14 551.23 (11) (a) Any transaction pursuant to an offer directed by the offeror to
15 not more than ~~25~~ 300 persons in this state, excluding persons exempt under sub. (8)
16 but including persons exempt under sub. (10), during any period of 12 consecutive
17 months, whether or not the offeror or any of the offerees is then present in this state,
18 if the offeror reasonably believes that all the persons in this state are purchasing for
19 investment, ~~and if~~ if no commission or other remuneration is paid or given directly or
20 indirectly for soliciting any person in this state other than those exempt by sub. (8)
21 except for commission or other remuneration paid or given directly or indirectly to
22 broker-dealers and agents licensed in this state and to finders, and if no advertising
23 is published unless it has been filed with the division within 3 business days of the
24 advertising's first use.

25 **SECTION 19.** 551.23 (11) (b) of the statutes is amended to read:

1 551.23 (11) (b) The division may by rule or order, as to any security or
2 transaction or any type of security or transaction, withdraw or further condition this
3 exemption, or increase ~~or decrease~~ the number of offerees permitted, or waive the
4 conditions in par. (a), and may require reports of sales under this exemption.

5 **SECTION 20.** 551.23 (18) of the statutes is amended to read:

6 551.23 (18) Any other transaction as to which the division by rule or order finds
7 that registration is not necessary or appropriate for the protection of investors,
8 except that any exemption adopted by rule or order under this subsection that
9 depends, in whole or in part, on the aggregate offering price of securities sold in an
10 offering to persons in this state shall apply to a transaction in which such price does
11 not exceed \$20,000,000 or any greater amount specified by the division by rule or
12 order.

13 **SECTION 21.** 551.53 (1) (b) of the statutes is amended to read:

14 551.53 (1) (b) That has not been filed with the division not later than the date
15 of publication or circulation, except for advertising relating to a federal covered
16 security or except as the division may otherwise provide by rule or order and except
17 as provided in s. 551.23 (10) and (11) (a).

18 **SECTION 22. Initial applicability.**

19 (1) WISCONSIN BUSINESS OFFERINGS TAX CREDIT. The treatment of sections 71.05
20 (6) (a) 15., 71.07 (5e), 71.10 (4) (cg), 71.21 (4), 71.26 (2) (a), 71.28 (5e), 71.30 (3) (epp),
21 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5e), 71.49 (1) (epp), and 77.92 (4) of the statutes
22 first applies to taxable years beginning on January 1, 2006.

23 (2) INCOME TAX EXEMPTION; LONG-TERM CAPITAL GAINS; WISCONSIN BUSINESSES. The
24 treatment of section 71.05 (24) of the statutes first applies to taxable years beginning
25 on January 1, 2006.

