

## 2007 SENATE BILL 334

November 19, 2007 – Introduced by Senators KANAVAS, DARLING, ROESSLER, OLSEN and PLALE, cosponsored by Representatives STRACHOTA, KERKMAN, TOWNSEND, VOS, KAUFERT, LEMAHIEU, ALBERS, HAHN and NASS. Referred to Committee on Commerce, Utilities and Rail.

1     **AN ACT to amend** 71.05 (6) (a) 15., 71.07 (5b) (c) 1., 71.07 (5d) (c) 1., 71.21 (4),  
2             71.26 (2) (a), 71.28 (5b) (c) 1., 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5b) (c) 1., 77.92  
3             (4), 560.205 (1) (f), 560.205 (1) (h) and 560.205 (3) (d) of the statutes; **relating**  
4             **to:** allocating early stage seed and angel investment credits and excluding early  
5             stage seed and angel investment credits from taxable income.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, generally, a taxpayer may claim a credit against the taxpayer's income and franchise tax liability on certain amounts invested in new businesses under the early stage seed investment tax credit or the angel investment tax credit. However, consistent with the administration of other tax credits, a taxpayer who claims an early stage seed investment or angel investment tax credit must include the amount of the credit in the calculation of the taxpayer's taxable income. Under this bill, for income and franchise tax purposes, a taxpayer does not include the amount of the early stage seed investment or angel investment tax credit in the calculation of the taxpayer's taxable income.

Under current law, the total amount of early stage seed investment credits that taxpayers may claim for all taxable years combined is \$35,000,000 and the total amount of angel investment credits that taxpayers may claim for all taxable years combined is \$30,000,000. Under this bill, the total amount of early stage seed investment credits and angel investment credits that taxpayers may claim for all taxable years combined is \$65,000,000.

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Under current law, the Department of Commerce (Commerce) may certify businesses to receive angel investments if the businesses meet certain criteria, such as having less than 100 employees. Under the bill, for certification purposes, Commerce must give preference to businesses with less than 100 employees, but may certify businesses with 100 employees or more and allow tax credits in lesser amounts for investments in such businesses. In addition, the bill allows Commerce to certify a business that is testing or producing a product at the time that business seeks certification.

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:***

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), (3w), ~~(5b), (5d), [and]~~  
4           (5e), (5f), and (5h) and not passed through by a partnership, limited liability  
5           company, or tax-option corporation that has added that amount to the partnership's,  
6           company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g).

7           **SECTION 2.** 71.07 (5b) (c) 1. of the statutes is amended to read:

8           71.07 **(5b)** (c) 1. The maximum amount of the credits that may be claimed under  
9           this subsection, sub. (5d), and ss. 71.28 (5b) and 71.47 (5b) for all taxable years  
10          combined is ~~\$35,000,000~~ \$65,000,000.

11          **SECTION 3.** 71.07 (5d) (c) 1. of the statutes is amended to read:

12          71.07 **(5d)** (c) 1. The maximum amount of the credits that may be claimed under  
13          this subsection, sub. (5b), and ss. 71.28 (5b) and 71.47 (5b) for all taxable years  
14          combined is ~~\$30,000,000~~ \$65,000,000.

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

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1           71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
2           (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), ~~(5b)~~, (5e), (5f), (5g), and (5h)  
3           and passed through to partners shall be added to the partnership's income.

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

23          **SECTION 6.** 71.28 (5b) (c) 1. of the statutes is amended to read:

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1           71.28 **(5b)** (c) 1. The maximum amount of the credits that may be claimed under  
2 this subsection and ss. 71.07 (5b) and (5d) and 71.47 (5b) for all taxable years  
3 combined is ~~\$35,000,000~~ \$65,000,000.

4           **SECTION 7.** 71.34 (1) (g) of the statutes is amended to read:

5           71.34 **(1)** (g) An addition shall be made for credits computed by a tax–option  
6 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),  
7 (3n), (3t), (3w), ~~(5b)~~, (5e), (5f), (5g), and (5h) and passed through to shareholders.

8           **SECTION 8.** 71.45 (2) (a) 10. of the statutes is amended to read:

9           71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit  
10 computed under s. 71.47 (1dd) to (1dx), (3n), (3w), ~~(5b)~~, (5e), (5f), (5g), and (5h) and  
11 not passed through by a partnership, limited liability company, or tax–option  
12 corporation that has added that amount to the partnership’s, limited liability  
13 company’s, or tax–option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) and  
14 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

15           **SECTION 9.** 71.47 (5b) (c) 1. of the statutes is amended to read:

16           71.47 **(5b)** (c) 1. The maximum amount of the credits that may be claimed under  
17 this subsection and ss. 71.07 (5b) and (5d) and 71.28 (5b) for all taxable years  
18 combined is ~~\$35,000,000~~ \$65,000,000.

19           **SECTION 10.** 77.92 (4) of the statutes is amended to read:

20           77.92 **(4)** “Net business income,” with respect to a partnership, means taxable  
21 income as calculated under section 703 of the Internal Revenue Code; plus the items  
22 of income and gain under section 702 of the Internal Revenue Code, including taxable  
23 state and municipal bond interest and excluding nontaxable interest income or  
24 dividend income from federal government obligations; minus the items of loss and  
25 deduction under section 702 of the Internal Revenue Code, except items that are not

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1 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
2 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),  
3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), (3w), ~~(5b)~~, (5e), (5f),  
4 (5g), and (5h); and plus or minus, as appropriate, transitional adjustments,  
5 depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and  
6 (19); but excluding income, gain, loss, and deductions from farming. “Net business  
7 income,” with respect to a natural person, estate, or trust, means profit from a trade  
8 or business for federal income tax purposes and includes net income derived as an  
9 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

10 **SECTION 11.** 560.205 (1) (f) of the statutes is amended to read:

11 560.205 (1) (f) It is engaged in, or has committed to engage in, manufacturing,  
12 agriculture, or processing or assembling products and conducting research and  
13 development or developing a new product or business process. The fact that a  
14 business is testing or producing a product at the time that the business seeks  
15 certification under this subsection shall not preclude the business from being  
16 certified under this subsection.

17 **SECTION 12.** 560.205 (1) (h) of the statutes is amended to read:

18 560.205 (1) (h) It Except as provided in rules promulgated under sub. (3) (d),  
19 it has less than 100 employees.

20 **SECTION 13.** 560.205 (3) (d) of the statutes is amended to read:

21 560.205 (3) (d) *Rules.* The department of commerce, in consultation with the  
22 department of revenue, shall promulgate rules to administer this section. The rules  
23 shall further define “bona fide angel investment” for purposes of s. 71.07 (5d) (a) 1.  
24 The rules shall provide that, for purposes of certifying businesses under sub. (1), the  
25 department shall give preference to businesses with less than 100 employees, but

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1 may certify businesses with 100 employees or more and allow tax credits in lesser  
2 amounts, based on a sliding scale, for investments in such businesses. The rules  
3 shall limit the aggregate amount of tax credits under s. 71.07 (5d) that may be  
4 claimed for investments in businesses certified under sub. (1) at \$3,000,000 per  
5 calendar year for calendar years beginning after December 31, 2004, and before  
6 January 1, 2008. The rules shall also limit the aggregate amount of the tax credits  
7 under ss. 71.07 (5b), 71.28 (5b), and 71.47 (5b) that may be claimed for investments  
8 paid to fund managers certified under sub. (2) at \$3,500,000 per calendar year for  
9 calendar years beginning after December 31, 2004, and before January 1, 2008. The  
10 rules shall also limit the aggregate amount of the tax credits under ss. 71.07 (5b) and  
11 (5d), 71.28 (5b), and 71.47 (5b) that may be claimed for investments under subs. (1)  
12 and (2) at \$6,500,000 per calendar year for calendar years beginning after December  
13 31, 2007.

14 **SECTION 14. Initial applicability.**

15 (1) This act first applies to taxable years beginning on January 1, 2008.

16 (END)