

CR 10-108

ORDER OF THE DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce adopts an order to renumber Comm 129.09 (5) to (11) and 129.125 (1) (intro.) to (d);

to renumber and amend Comm 129.13 (2) (a) 3. and (3) (a) 3.;

to amend Comm 129.12 (6) (a) 1. a. and 129.13 (2) (a) 2. and (3) (a) 2.; and

to create Comm 129.09 (6), 129.125 (1) (b) and 129.13 (2) (a) 3. and (3) (a) 3. and Note [2] relating to tax credits for angel investments and early stage seed investments, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.205 (3) (d), as modified by 2009 Wisconsin Act 265.

2. Statutory Authority.

Sections 227.11 (2) (a) and 560.205 (3) (d).

3. Explanation of Agency Authority.

Section 227.11 (2) (a) of the Statutes authorizes the Department to promulgate rules interpreting the provisions of any Statute administered by the Department. Section 560.205 (3) (d) directs the Department to promulgate rules for administering the corresponding statutory requirements for angel investment tax credits and early stage seed investment tax credits.

4. Related Statute or Rule.

Several statutes and other Departmental rules address tax incentives for business development in Wisconsin. For example, (1) sections 560.70 to 560.7995 of the Statutes and chapters Comm 100, 107, 112 and 118 address statewide tax-credit programs for job creation, capital investment, employee training and corporate headquarters; and (2) several other sections of chapter 560 and other Comm chapters address more-narrowly targeted business development incentives, such as for film productions, dairy manufacturing facilities, and fuel and electricity used in manufacturing.

5. Plain Language Analysis.

The rule revisions in this order would update this chapter to make it consistent with the portion of 2009 Wisconsin Act 265 that raises the yearly limits on tax credits for angel investments and for early stage seed investments, as regulated by the Department under section 560.205 of the Statutes. The revisions also would enable a non-taxpayer entity – such as a retirement account, trust account or pension fund – that has made an investment in a certified fund, to sell or transfer a tax credit for an early stage seed investment.

6. Summary of, and Comparison With, Existing or Proposed Federal Regulations.

Neither the Department nor the Department of Revenue is aware of any existing or proposed federal regulation that applies these tax credits.

7. Comparison With Rules in Adjacent States.

Minnesota offers various tax credit programs, but none that are similar to the Early Stage Business Investment program in Wisconsin.

Iowa offers a University-Based Research Utilization Program to provide tax credits to businesses and university employees to promote the adoption of new technology developed at the state universities. Businesses must be utilizing technology based on patents awarded to Iowa State University, the University of Iowa, or the University of Northern Iowa and be less than 1 year old. Researchers who developed the intellectual property utilized by the business are also eligible for up to 10 percent of the businesses tax liability in individual income tax credits. Administrative rules for this program are available in the Iowa Administrative Code, 261-Chapter 63. Further information is available through the Iowa Department of Economic Development Web site at www.iowalifechanging.com.

Illinois offers various tax credit programs, but none that are similar to the Early Stage Business Investment program in Wisconsin.

Michigan offers a High-Tech and High Wage MEGA Tax Credit program that provides tax credits to promote the development of high-tech businesses in traditional and emerging industries. A business is eligible for tax credits to offset their Michigan business tax liability. Tax credit amounts are based on job creation. There are no rules for the program, however guidelines can be found through the Michigan Economic Development Corporation's Web site at www.themedc.org.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rule revisions were derived from and consisted of incorporating the criteria in 2009 Wisconsin Act 265, and included consultation with the Department of Revenue.

9. Analysis and Supporting Documents Used to Determine Effect on Small Business or in Preparation of an Economic Impact Report.

The primary document that was used to determine the effect of the rule revisions on small business was 2009 Wisconsin Act 265. This Act applies its private-sector requirements only to businesses and individuals for which a corresponding tax credit is desired.

10. Effect on Small Business.

The rule revisions are not expected to impose significant costs or other adverse impacts on small businesses because the rule revisions only address raising the yearly limits on tax credits for angel investments and for early stage seed investments, and transferring or selling tax credits for early stage seed investments.

11. Agency Contact Person.

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SECTION 1. Comm 129.09 (6) to (11) are renumbered Comm 129.09 (7) to (12).

SECTION 2. Comm 129.12 (6) (a) 1. a. is amended to read:

Comm 129.12 (6) (a) 1. a. Investments made after December 31, 2007, in a certified business receiving tax credits under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b) or 76.638, Stats., are not maintained by the angel investor, angel investment network, or certified fund manager for a minimum of 36 months from the date of investment.

SECTION 3. Comm 129.125 (1) (intro.) to (d) are renumbered Comm 129.125 (1) (a) (intro.) to 4.

SECTION 4. Comm 129.125 (1) (b) is created to read:

Comm 129.125 (1) (b) In this section, “eligible to claim a credit” means has made an investment in a certified fund that has received tax credits as identified by a verification form issued by the department.

SECTION 5. Comm 129.13 (2) (a) 2. is amended to read:

Comm 129.13 (2) (a) 2. \$5,500,000 per calendar year for calendar years beginning after December 31, 2007, and before January 1, ~~2011~~ 2010.

SECTION 6. Comm 129.13 (2) (a) 3. is renumbered Comm 129.13 (2) (a) 4. and amended to read:

Comm 129.13 (2) (a) 4. ~~\$18,000,000~~ \$20,000,000 per calendar year for calendar years beginning after December 31, 2010.

SECTION 7. Comm 129.13 (2) (a) 3. is created to read:

Comm 129.13 (2) (a) 3. \$6,500,000 for calendar year 2010.

SECTION 8. Comm 129.13 (3) (a) 2. is amended to read:

Comm 129.13 (3) (a) 2. \$6,000,000 per calendar year for calendar years beginning after December 31, 2007, and before January 1, ~~2011~~ 2010.

SECTION 9. Comm 129.13 (3) (a) 3. is renumbered Comm 129.13 (3) (a) 4. and amended to read:

Comm 129.13 (3) (a) 4. ~~\$18,500,000~~ \$20,500,000 per calendar year for calendar years beginning after December 31, 2010.

SECTION 10. Comm 129.13 (3) (a) 3. is created to read:

Comm 129.13 (2) (a) 3. \$8,000,000 for calendar year 2010.

SECTION 11. Comm 129.13 Note [2] is created to read:

Comm 129.13 Note [2]: The Department may reallocate credits under this section that are unused in any calendar year to a person eligible for the jobs tax credits under sections 71.07 (3q), 71.28 (3q), and 71.47 (3q) of the Statutes, as authorized by section 560.205 (3) (d) of the Statutes. Under that authorization, the Department must notify the Legislature's Joint Committee on Finance in writing of the proposed reallocation, and one of the following must then occur prior to the allocation:

(1) The cochairpersons of the Joint Committee on Finance fail to notify the Department, within 14 working days after the date of the Department's notification, that the Committee has scheduled a meeting for the purpose of reviewing the proposed reallocation.

(2) The cochairpersons of the Joint Committee on Finance notify the Department that the Committee has approved the proposed reallocation.

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall become effective on the first day of the month commencing after publication in the Wisconsin administrative register.
