

Clearinghouse Rule 09-082

**PROPOSED ORDER OF THE
DEPARTMENT OF COMMERCE**

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal Comm 129.10 (5);
to renumber Comm 129.10 (6) and (7);
to amend Comm 129.11 (1) (intro.) and 129.14 (1) (a);
to repeal and recreate Comm 129.02 (3), 129.10 (1), 129.12 (6), 129.13; and
to create Comm 129.12 (3) (b) 3., 129.125, 129.135 and 129.36 (1) (c) relating to tax credits for
angel investments and early stage seed investments, and affecting small businesses.

Rule Summary

1. Statutes Interpreted.

Section 560.205, as modified by 2007 Wisconsin Act 20 and 2009 Wisconsin Act 2, and
section 560.208 as created by 2009 Wisconsin Act 28.

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 rules in this order would (1) revise the eligibility requirements for these tax credits, (2) newly enable insurers to apply for these tax credits, (3) substantially increase the aggregate amount of investment in a qualified new business venture that may qualify for the tax credits, (4) substantially increase the aggregate amount of tax credits that may be claimed, (5) newly require investments to be maintained for at least 3 years, (6) newly enable transferring the credits to another person, (7) newly enable carrying forward the early stage tax credits, and (8) newly enable the Department to require a grant or loan origination fee.

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. Minnesota has no rules addressing loan and grant origination fees for its economic development programs.

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. Iowa has no rules addressing loan and grant origination fees for its economic development programs.

Illinois offers various tax credit programs, but none that are similar to the Early Stage Business Investment program in Wisconsin. Illinois has no rules addressing loan and grant origination fees for its economic development programs.

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. Michigan has no rules addressing loan and grant origination fees for its economic development programs.

8. Summary of Factual Data and Analytical Methodologies.

The data and methodology for developing these rules were derived from and consisted of (1) incorporating the criteria in 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2 and 28; (2) incorporating applicable best practices the Department has developed in administering similar programs for business development and tax-credit verification; and (3) reviewing Internet-based sources of related federal, state, and private-sector information.

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

The primary documents that were used to determine the effect of the rules on small business were 2007 Wisconsin Act 20 and 2009 Wisconsin Acts 2 and 28. These Acts apply their private-sector requirements only to businesses and individuals for which a corresponding tax credit is desired.

10. Effect on Small Business.

The rules are not expected to impose significant costs or other adverse impacts on small businesses because the rules address submittal of documentation, and other activities, only by applicants that choose to pursue tax credits for angel investments and early stage seed investments.

11. Agency Contact Person.

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13. Place Where Comments Are to Be Submitted, and Deadline for Submission.

Comments on the proposed rules may be submitted by e-mail to sam.rockweiler@wi.gov, no later than October 30, 2009. If e-mail submittal is not possible, written comments may be mailed, by the same date, to Sam Rockweiler, Department of Commerce, Division of Environmental and Regulatory Services, P.O. Box 14427, Madison, WI 53708-0427.

File reference: Comm 129/rules 2009 analysis