



State of Wisconsin
2003 - 2004 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 538**

November 5, 2003 - Offered by Representative NISCHKE.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.21 (4), 71.26 (2) (a), 71.34
2 (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and **to create** 71.05 (6) (b) 9m., 71.07 (5d),
3 71.10 (4) (gx), 71.28 (5d), 71.30 (3) (eop), 71.47 (5d), 71.49 (1) (eop) and 560.03
4 (24) to (27) of the statutes; **relating to:** creating a qualified new business
5 venture tax credit and increasing the capital gains exclusion regarding
6 investments in certified venture capital funds and qualified new business
7 ventures, requiring a study of new Wisconsin businesses, facilitating the
8 development of certain investor networks, and granting rule-making
9 authority.

Analysis by the Legislative Reference Bureau

This substitute amendment 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 substitute amendment requires a business desiring certification as a new business venture for purposes of this tax credit to apply to the Department of Commerce. To obtain certification, the business must be

a corporation or limited liability company, must not be engaged in the transportation or construction business, and must satisfy certain other criteria. The Department of Commerce may certify only the first 1,000 businesses that apply for any taxable year and must process applications in the order in which they are received. 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.

This substitute amendment 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 substitute amendment 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").

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

Under this substitute amendment, for assets held more than one year, the income tax exclusion for capital gains is increased to 100 percent, to the extent that the gain is not already excluded from taxation, for gains realized on the sale of an investment in a certified venture capital fund or in a certified new business venture.

Under this substitute amendment, the Department of Commerce must promulgate rules establishing a procedure for certifying venture capital funds for purposes of the capital gains tax exemption described above. A venture capital fund may 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 maintain an average of 50 percent of its equity investments in businesses located in Wisconsin. The substitute amendment requires the Department of Commerce, upon request of any person, to issue a written notice indicating whether a venture capital fund is certified. 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 substitute amendment also requires the Department of Commerce, upon issuing

or discontinuing a certification, to notify DOR and give DOR a copy of the certification or discontinuance.

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

7 **SECTION 2.** 71.05 (6) (b) 9m. of the statutes is created to read:

8 71.05 **(6)** (b) 9m. On assets held more than one year, to the extent that the gains
9 are not excluded from taxation under subd. 9., 100 percent of the capital gain as
10 computed under the Internal Revenue Code if the gain is realized from the sale of an
11 asset that is an investment in a qualified new business venture that is certified under
12 s. 560.03 (26) or a venture capital fund that is certified under s. 560.03 (27). For
13 purposes of this subdivision, the capital gains and capital losses for all assets shall
14 be netted before application of the percentage.

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

16 71.07 **(5d)** QUALIFIED NEW BUSINESS VENTURE CREDIT. (a) In this subsection:

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

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

20 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
21 a claimant may claim as a credit against the tax imposed under s. 71.02 or 71.08, up

1 to the amount of those taxes, an amount equal to 20 percent of the claimant's equity
2 investment made directly in a qualified new business venture in the taxable year,
3 except that if the claimant's investment exceeds \$100,000 in the taxable year the
4 claimant may claim 20 percent of \$100,000 plus 10 percent of the amount of the
5 investment that exceeds \$100,000.

6 (bm) If an investment for which a claimant claims a credit under par. (b) is held
7 by the claimant for less than one year, the claimant shall pay to the department, in
8 the manner prescribed by the department, the amount of the credit that the claimant
9 received related to the investment.

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

12 (d) 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 the amounts described under par. (b) that are attributable to
15 their business operations. A partnership, limited liability company, or tax-option
16 corporation shall compute the amount of credit that each of its partners, members,
17 or shareholders may claim and shall provide that information to each of them.
18 Partners, members of limited liability companies, and shareholders of tax-option
19 corporations may claim the credit in proportion to their ownership interest.

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

22 **SECTION 4.** 71.08 (1) (intro.) of the statutes is amended to read:

23 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
24 couple filing jointly, trust or estate under s. 71.02, not considering the credits under
25 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (5d),

1 (6), ~~(6s)~~, and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and
2 (3) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) and (3) and
3 subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than the
4 tax under this section, there is imposed on that natural person, married couple filing
5 jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax
6 computed as follows:

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

8 71.10 (4) (gx) Qualified new business venture credit under s. 71.07 (5d).

9 **SECTION 6.** 71.21 (4) of the statutes is amended to read:

10 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
11 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), and (3s), and (5d) and passed through to
12 partners shall be added to the partnership's income.

13 **SECTION 7.** 71.26 (2) (a) of the statutes 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) plus the amount of the credit computed
18 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), and (3g), and (5d)
19 and not passed through by a partnership, limited liability company, or tax-option
20 corporation that has added that amount to the partnership's, limited liability
21 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
22 the amount of losses from the sale or other disposition of assets the gain from which
23 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
24 otherwise disposed of at a gain and minus deductions, as computed under the
25 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an

1 amount equal to the difference between the federal basis and Wisconsin basis of any
2 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
3 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

4 **SECTION 8.** 71.28 (5d) of the statutes is created to read:

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

6 1. “Claimant” means a person who files a claim under this subsection.

7 2. “Qualified new business venture” means a business that is certified under
8 s. 560.03 (26).

9 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
10 a claimant may claim as a credit against the tax imposed under s. 71.23, up to the
11 amount of those taxes, an amount equal to 20 percent of the claimant’s equity
12 investment made directly in a qualified new business venture in the taxable year,
13 except that if the claimant’s investment exceeds \$100,000 in the taxable year the
14 claimant may claim 20 percent of \$100,000 plus 10 percent of the amount of the
15 investment that exceeds \$100,000.

16 (bm) If an investment for which a claimant claims a credit under par. (b) is held
17 by the claimant for less than one year, the claimant shall pay to the department, in
18 the manner prescribed by the department, the amount of the credit that the claimant
19 received related to the investment.

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

22 (d) 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 the amounts described under par. (b) that are attributable to
25 their business operations. A partnership, limited liability company, or tax-option

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

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

7 **SECTION 9.** 71.30 (3) (eop) of the statutes is created to read:

8 71.30 (3) (eop) Qualified new business venture credit under s. 71.28 (5d).

9 **SECTION 10.** 71.34 (1) (g) of the statutes is amended to read:

10 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
11 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
12 (3g), and (5d) and passed through to shareholders.

13 **SECTION 11.** 71.45 (2) (a) 10. of the statutes is amended to read:

14 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
15 computed under s. 71.47 (1dd) to (1dx) and (5d) and not passed through by a
16 partnership, limited liability company or tax-option corporation that has added that
17 amount to the partnership's, limited liability company's or tax-option corporation's
18 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
19 s. 71.47 (1), (3), (4) and (5).

20 **SECTION 12.** 71.47 (5d) of the statutes is created to read:

21 71.47 (5d) QUALIFIED NEW BUSINESS VENTURE CREDIT. (a) In this subsection:

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

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

1 (b) Subject to the limitations provided in this subsection and in s. 560.03 (26),
2 a claimant may claim as a credit against the tax imposed under s. 71.43, up to the
3 amount of those taxes, an amount equal to 20 percent of the claimant's direct
4 investment made directly in a qualified new business venture in the taxable year,
5 except that if the claimant's investment exceeds \$100,000 in the taxable year the
6 claimant may claim 20 percent of \$100,000 plus 10 percent of the amount of the
7 investment that exceeds \$100,000.

8 (bm) If an investment for which a claimant claims a credit under par. (b) is held
9 by the claimant for less than one year, the claimant shall pay to the department, in
10 the manner prescribed by the department, the amount of the credit that the claimant
11 received related to the investment.

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

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

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

24 **SECTION 13.** 71.49 (1) (eop) of the statutes is created to read:

25 71.49 (1) (eop) Qualified new business venture credit under s. 71.47 (5d).

1 **SECTION 14.** 77.92 (4) of the statutes is amended to read:

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

17 **SECTION 15.** 560.03 (24) to (27) of the statutes are created to read:

18 560.03 (24) In cooperation with the department of financial institutions and
19 the Board of Regents of the University of Wisconsin System, annually conduct and
20 publish the results of a study of Wisconsin businesses to determine new business
21 formation trends and identify obstacles faced by new Wisconsin businesses and areas
22 where changes in governmental policy may satisfy the needs of new Wisconsin
23 businesses. As part of the study, the department of commerce shall conduct a survey
24 of Wisconsin businesses.

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

5 **(26)** Certify businesses as qualified new business ventures for purposes of ss.
6 71.05 (6) (b) 9m., 71.07 (5d), 71.28 (5d), and 71.47 (5d). The department shall
7 promulgate rules for the administration of this subsection. The rules shall require
8 a business desiring certification to submit an application to the department in each
9 taxable year for which the business desires certification. The department shall
10 process applications in the order in which they were received and shall certify only
11 the first 1,000 eligible businesses that apply for certification for a taxable year. The
12 department shall maintain a list of businesses certified under this subsection and
13 shall permit public access to the list through the department's Internet website. The
14 department shall notify the department of revenue of every business certified under
15 this subsection and the date on which any such business is decertified. A business
16 may be certified under this subsection, and may maintain such certification, only if
17 the business satisfies all of the following conditions:

18 (a) It has its headquarters in this state.

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

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

23 (d) Its net worth in the taxable year for which a credit is claimed does not
24 exceed \$40,000,000.

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

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

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

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

8 (i) It has been in operation in this state for not more than 10 consecutive years.

9 (j) It is a corporation or limited liability company.

10 (k) It is not engaged in the transportation or construction business.

11 **(27)** Certify venture capital funds as follows:

12 (a) The department shall promulgate rules establishing a procedure for the
13 department to certify venture capital funds for purposes of the capital gains tax
14 exemption under s. 71.05 (6) (b) 9m. The rules shall do all of the following:

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

17 2. Permit a venture capital fund to obtain a certification only if the venture
18 capital fund is a private seed and venture capital partnership or entity fund, the
19 venture capital fund has its principal place of business in Wisconsin, and the venture
20 capital fund commits to maintain an average, calculated over a 4-year period, of 50
21 percent of its equity investments in businesses, as described under sub. (26), that are
22 located in Wisconsin.

23 3. Require an applicant for certification or a certified venture capital fund to
24 provide the department with any information the department determines is

1 necessary to ensure eligibility for certification and compliance with this subsection
2 and rules promulgated under this subsection.

3 (b) Upon request of any person, the department shall issue a written notice
4 indicating whether a venture capital fund is certified under this subsection for
5 purposes of the capital gains tax exemption under s. 71.05 (6) (b) 9m. Each notice
6 under this paragraph that indicates a venture capital fund is certified shall include
7 the following statement: "THE WISCONSIN DEPARTMENT OF COMMERCE HAS NOT
8 RECOMMENDED OR APPROVED AN INVESTMENT IN THIS VENTURE CAPITAL FUND OR ASSESSED
9 THE MERITS OR RISKS OF SUCH AN INVESTMENT. INVESTORS SHOULD RELY SOLELY ON THEIR
10 OWN INVESTIGATION AND ANALYSIS AND SEEK INVESTMENT, FINANCIAL, LEGAL, AND TAX
11 ADVICE BEFORE MAKING THEIR OWN DECISION REGARDING INVESTMENT IN THIS ENTERPRISE."

12 (c) Upon the issuance or discontinuance of a certification, the department of
13 commerce shall notify the department of revenue and provide the department of
14 revenue a copy of the certification or discontinuance.

15 **SECTION 16. Nonstatutory provisions.**

16 (1) RULES. The department of commerce shall submit in proposed form the rules
17 required under section 560.03 (26) and (27) of the statutes, as created by this act, to
18 the legislative council staff under section 227.15 (1) of the statutes no later than the
19 first day of the 6th month beginning after the effective date of this subsection.

20 **SECTION 17. Initial applicability.**

21 (1) QUALIFIED NEW BUSINESS VENTURE CREDIT. The treatment of sections 71.05
22 (6) (a) 15., 71.07 (5d), 71.08 (1) (intro.), 71.10 (4) (gx), 71.21 (4), 71.26 (2) (a), 71.28
23 (5d), 71.30 (3) (eop), 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (5d), 71.49 (1) (eop), and 77.92
24 (4) of the statutes first applies to taxable years beginning on January 1, 2006.

