

SECTION 1. Comm 129.02 (3) is repealed and recreated to read:

**Comm 129.02 (3)** “Headquarters” means the commercial business location where staff members or employees are physically employed and where at least 51% of the company’s financial, personnel, legal, planning, or other headquarters functions are handled.

SECTION 2. Comm 129.09 (10) is renumbered Comm 129.09 (11).

SECTION 3. Comm 129.09 (10) is created to read:

**Comm 129.09 (10)** “Proprietary technology” means a product or process that is marketed under exclusive legal right of the inventor or maker and is protected by secrecy, patent, trademark or copyright against free competition.

SECTION 4. Comm 129.10 (1) is repealed and recreated to read:

**Comm 129.10 (1) CERTIFICATION CONDITIONS.** A business may be certified by the department as a qualified new business venture for the purposes of ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b) and 76.638, Stats., and may retain the certification, only if the business satisfies all of the following conditions:

- (a) It has its headquarters in this state.
- (b) At least 51% of the employees employed by the business are employed in this state.
- (c) It has the potential for increasing jobs in this state, or increasing capital investment in this state, or both, and any of the following apply:
  1. It is engaged in, or has committed to engage in, innovation in this state in any of the following:
    - a. Manufacturing, biotechnology, nanotechnology, communications, agriculture, or clean energy creation or storage technology.
    - b. Processing or assembling products, including medical devices, pharmaceuticals, computer software, computer hardware, semiconductors, any other innovative-technology products, or other products that are produced using manufacturing methods which are enabled by applying proprietary technology.
    - c. Services that are enabled by applying proprietary technology.

2. It is undertaking pre-commercialization activity related to proprietary technology that includes conducting research, developing a new product or business process, or developing a service which is principally reliant on applying proprietary technology.

(d) It is not primarily engaged in real estate development; insurance; banking; lending; lobbying; political consulting; professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants; wholesale or retail trade; leisure; hospitality; transportation; or construction, except construction of power production plants that derive energy from a renewable resource as defined in s. 196.378 (1) (h), Stats.

(e) At the time it is first certified, it meets all of the following:

1. It has fewer than 100 full-time-equivalent employees.
2. It has been in operation for not more than 10 consecutive years.
3. It has not received aggregate private equity investment in cash of more than \$10 million.

(f) It qualifies under the criteria established in sub. (3).

SECTION 5. Comm 129.10 (5) is repealed.

SECTION 6. Comm 129.10 (6) and (7) are renumbered Comm 129.10 (5) and (6).

SECTION 7. Comm 129.11 (1) (intro.) is amended to read:

**Comm 129.11 (1) CERTIFICATION CONDITIONS.** Investment fund managers shall be certified by the department for the purposes of ss. 71.07 (5b), 71.28 (5b), 71.47 (5b) and 76.638, Stats. In determining whether to certify an applicant as a certified fund manager, the department shall consider all of the following factors:

SECTION 8. Comm 129.12 (3) (b) 3. is created to read:

**Comm 129.12 (3) (b) 3.** Funds invested by certified fund managers, with principal offices based outside of this state, shall be made side by side with equity investors based in this state or be made in certified companies with investors based in this state with a minimum participation by state investors as determined by the department based on the following criteria:

- a. The fund manager's experience in managing venture capital funds and investing in high-growth businesses.

b. The fund manager's past performance of investment funds managed by the fund manager, businesses assisted and the ability to access follow-on funding.

c. The fund manager's focus on targeted industries, group members and geographic distribution.

d. The portion of the investment fund's capital that the fund manager expects to invest in qualified new business ventures and the commitment to investment in this state.

**Note:** The intent of this subdivision is to provide the Department flexibility in order to protect the program from potential misuse and to help grow in-state investors. Out-of-state investors with strong management, a strong history of performance, and a focus on targeted industries and companies in this geographic region will have minimal side-by-side investment requirements. In contrast, out-of-state investors with smaller fund size, minimal experience, or a broad fund focus that does not parallel the goals of the program may have larger side-by-side investment requirements.

SECTION 9. Comm 129.12 (6) is repealed and recreated to read:

**Comm 129.12 (6) REVOCATION OF CREDITS.** (a) 1. The department may revoke tax credits issued under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b) or 76.638, Stats., under any of the following conditions:

a. Investments made 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.

b. Investment funds are not used for legitimate business purposes as determined by the department.

2. The department shall notify the department of revenue of any tax credits revoked under subd. 1.

(b) If tax credits have been transferred under s. Comm 129.125, the certified fund manager shall be responsible for repayment of any revoked tax credits.

SECTION 10. Comm 129.125 is created to read:

**Comm 129.125 Transfer. (1)** A person who is a member of a certified fund and who is eligible to claim a credit under s. 71.07 (5b), 71.28 (5b), 71.47 (5b) or 76.638, Stats., may sell or otherwise transfer the credit to another person who is subject to the taxes or fees imposed under s. 71.07 (5b), 71.28 (5b), 71.47 (5b) or 76.638, Stats., if all of the following apply:

(a) The person transferring the tax credit has been allocated a tax credit by the certified fund manager.

(b) The person transferring the tax credit has received prior authorization from the certified fund manager.

(c) The person transferring the tax credit will not be selling or otherwise transferring early stage seed investment tax credit more than once per investment in a certified business in any 12-month period.

(d) The tax credit to be sold or otherwise transferred has not previously been sold or transferred under this section.

(2) The certified fund manager shall notify the department and the department of revenue of the transfer and shall submit all of the following information:

(a) A copy of the transfer documents showing the transfer of tax credits from the seller to the buyer.

(b) A fee in the amount of 1% of the amount of the tax credit sold or otherwise transferred, to be deposited in the appropriation account under s. 20.143 (1) (gm), Stats.

(c) Any other documents as required by the department to verify the sale or transfer of tax credits.

SECTION 11. Comm 129.13 is repealed and recreated to read:

**Comm 129.13 Tax credit limits. (1) QUALIFIED NEW BUSINESS VENTURE.** The aggregate amount of investment in any one qualified new business venture that may qualify for tax credits under ss. 71.07 (5b) and (5d), 71.28 (5b), 71.47 (5b) and 76.638, Stats., shall be limited to an amount determined by the department at the time of certification or recertification, up to each of the following maximums:

(a) \$4,000,000 in qualified investments for taxable years beginning before January 1, 2011.

(b) \$8,000,000 in qualified investments for taxable years beginning after December 31, 2010.

**Note:** Certified businesses seeking to increase the maximum qualified investment amount after December 31, 2010, under this subsection will be required to request an increase to the aggregate amount of investment that may qualify for tax credits and be approved by the Department at the time of recertification.

(2) ANGEL INVESTMENTS. (a) Statewide, the aggregate amount of tax credits under s. 71.07 (5d), Stats., that may be claimed for investments in businesses certified under s. Comm 129.10 shall be limited to each of the following, except as provided in par. (b):

1. \$3,000,000 per calendar year for calendar years beginning after December 31, 2004, and before January 1, 2008.

2. \$5,500,000 per calendar year for calendar years beginning after December 31, 2007, and before January 1, 2011.

3. \$18,000,000 per calendar year for calendar years beginning after December 31, 2010.

(b) An additional \$250,000 in angel investment tax credits will be made available for investments in nanotechnology businesses, for taxable years beginning after December 31, 2010.

(c) If the demand for tax credits exceeds the amount of tax credits available as indentified in par. (a), the department may reserve tax credits from the following calendar year for qualifying investments.

(d) \$2,000,000 in aggregate investment by any one angel investor or member of an angel investment network in any one qualified new business venture shall qualify for tax credits for taxable years beginning before January 1, 2008.

**Note:** The limit in this paragraph was previously \$500,000 and was amended to \$2,000,000 in 2007 Wisconsin Act 20 section 1981. For taxable years after December 31, 2007, there is no limit to the aggregate investment by an angel investor or investment network in a qualified new business venture that qualifies for tax credits except for the limits imposed under subsection (1).

**(3) EARLY STAGE SEED INVESTMENTS.** (a) Statewide, the aggregate amount of tax credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b) and 76.638, Stats., that may be claimed for investments by fund managers in businesses certified under s. Comm 129.10 shall be limited to each of the following, except as provided in par. (b):

1. \$3,500,000 per calendar year for calendar years beginning after December 31, 2004, and before January 1, 2008.

2. \$6,000,000 per calendar year for calendar years beginning after December 31, 2007, and before January 1, 2011.

3. \$18,500,000 per calendar year for calendar years beginning after December 31, 2010.

(b) An additional \$250,000 in early stage seed investment tax credits will be made available for investments in nanotechnology businesses, for taxable years beginning after December 31, 2010.

(c) If the demand for tax credits exceeds the amount of tax credits available as indentified in par. (a), the department may reserve tax credits from the following calendar year for qualifying investments.

(d) \$2,000,000 in aggregate investment by any one certified fund manager in any one qualified new business venture shall qualify for tax credits for taxable years beginning before January 1, 2008.

**Note:** Under this paragraph, there is no limit to the aggregate investment amount by a certified fund manager in a qualified new business venture that qualifies for tax credits, for taxable years after December 31, 2007, except for the limits imposed under subsection (1).

SECTION 12. Comm 129.135 is created to read:

**Comm 129.135 Credit carryforward.** (1) Notwithstanding the amount limitations under s. Comm 129.13, the department, in consultation with the department of revenue, may carry forward to subsequent taxable years unclaimed credit amounts of the early stage seed investment credits under ss. 71.07 (5b), 71.28 (5b), 71.47 (5b) and 76.638, Stats., and the angel investment credit under s. 71.07 (5d), Stats.

(2) Annually, no later than July 1, the department shall submit its recommendations for the carry forward of credit amounts to the department of revenue.

SECTION 13. Comm 129.14 (1) (a) is amended to read:

**Comm 129.14 (1) (a)** The total amount of tax credits verified under ss. 71.07 (5b) and (5d), 71.28 (5b), ~~and~~ 71.47 (5b) and 76.638, Stats., per taxable year.

SECTION 14. Comm 129.36 (1) (c) is created to read:

**Comm 129.36 (1) (c)** The department may charge a grant or loan recipient an origination fee of not more than 2 % of the grant or loan amount if the grant or loan equals or exceeds \$100,000. The department shall deposit all origination fees collected under this subsection into the appropriation account under s. 20.143 (1) (gm), Stats.

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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.

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*File reference: Comm 129/rules 2009 LR ac*

