

Abstract: Recent legislation provides incentives and assistance to new businesses through two types of tax credits for venture capitalists. The legislation also creates a technology commercialization grant and loan program.

Legislation Provides Opportunities for Venture Capital Investment in Wisconsin

By Jim Phillips and Sarah McNally

On April 15, 2004, Governor Doyle signed into law 2003 Wisconsin Act 255, which provides investment incentives and assistance to new businesses. The legislation provides two types of tax credits to venture capitalists—the angel investment tax credit and the early stage seed investment tax credit. In addition, the legislation creates a technology commercialization grant and loan program.

Angel Investment Tax Credit

The angel investment tax credit generally allows individual investors to claim a non-refundable credit against Wisconsin income tax equal to 25% of the amount the individual invests in a qualified angel investment. Half of the credit is available in the year the qualified angel investment is made and half in the following year. The maximum amount of a claimant's investment that may be used as a basis for the angel investment tax credit is limited to \$500,000 (or a maximum credit of \$62,500 per year per investment). Unused credits may be carried forward for up to 15 years. The new legislation limits the aggregate amount of angel investment tax credits claimed by all Wisconsin taxpayers for all certified businesses to \$3 million per year with an overall lifetime cap of \$30 million. Angel investors may begin claiming the credits for taxable years beginning on or after January 1, 2005. As currently drafted, it appears that only direct investments by individuals and trusts will qualify for the tax credit while investments made through limited liability companies or partnerships will not be eligible. However, it remains to be seen whether the Department of Commerce, in its rulemaking process, will interpret the definition of eligible angel investors to include single-investment partnerships or limited liability companies.

The angel investment credit may only be claimed for equity investments and other qualified expenditures in businesses that meet the following requirements as certified by the Department of Commerce:

- The business has its headquarters in Wisconsin.
- At least 51% of the business's employees are employed in Wisconsin.
- The business is engaged in, or is committed to engage in, manufacturing, agriculture, processing or assembling products, conducting research and development, or developing a new product or business process.
- The business is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, wholesale or retail trade, leisure, hospitality, transportation, construction or professional services provided by attorneys, accountants, business consultants, physicians or health care consultants.
- The business has less than 100 employees.
- The business has not been in operation for more than seven consecutive years.
- The business has not received more than \$1 million in investments that qualified for angel investment tax credits.

**Legislation Provides Opportunities for
Venture Capital Investment in Wisconsin (continued)**

Early Stage Seed Investment Tax Credit

For indirect investments in certified businesses, the early stage seed investment tax credit allows individual, trust and corporate investors (including investments made through partnerships and limited liability companies) to claim a non-refundable credit equal to 25% of the claimant's initial investment in qualifying venture capital funds. To be eligible for the credit, a qualifying fund manager must invest the claimant's investment in certified businesses as described above. Overall, the bill limits the aggregate amount of early stage seed investment tax credits claimed by all Wisconsin taxpayers for all certified investments to \$3 million per year with an overall lifetime cap of \$35 million. Fund investors may begin claiming the early stage seed investment tax credits for years beginning on or after January 1, 2005. Unused credits may be carried forward for 15 years.

Before investors can claim the early stage seed investment tax credit, the Department of Commerce must certify the investment fund managers. In determining certification, the Department of Commerce must consider a number of factors, including:

- the fund manager's experience in managing venture capital funds

- the past performance of investment funds managed by the fund manager
- the expected level of investment in the fund to be managed
- the fund manager's commitment to placing investments in certified businesses

Technology Commercialization Grant and Loan Program

The new legislation also creates a technology commercialization grant and loan program which will provide grants and loans to assist individuals and companies in obtaining federal government grants and third-party financing. The Department of Commerce will evaluate submissions for these grants and loans based on various factors including whether the applicant will use the grant or loan proceeds to further a business in Wisconsin. Access to these grants and loans is expected to be made available later this year.

In combination, the new tax credits and the grant and loan program provide incentives for investment in emerging Wisconsin companies. We encourage you to keep these opportunities in mind when evaluating upcoming investments. At this point, the Department of Commerce must work out the details of implementing these programs by addressing such issues as the yearly apportionment of tax credits among qualifying investments and the certification process for fund managers. While the new law may have limited application, in the right circumstances it could be helpful in venture capital formations or in financing new ventures. We will monitor these developments and, if desired, update you with important changes as they occur.

For more information about this recent legislation or Godfrey & Kahn's Tax Team, contact Jim Phillips (jphillips@gklaw.com) or Sarah McNally (smcnally@gklaw.com) at 414-273-3500 or any other member of the Tax Team. ♦

Tax Team Members

<i>Appleton:</i>	Joseph Thornton (jthornton@gklaw.com)	
<i>Madison:</i>	Robert Chritton (rchritton@gklaw.com) Michael Skindrud (mskindrud@gklaw.com)	Melissa Scholz (mscholz@gklaw.com)
<i>Milwaukee:</i>	Daniel Geraghty (dgeraghty@gklaw.com) Ken Hunt (khunt@gklaw.com) Debra Koenig (dkoenig@gklaw.com) Sarah McNally (smcnally@gklaw.com) James Phillips (jphillips@gklaw.com)	Rebecca Himmelspach (rhimmelspach@gklaw.com) Lecia Johnson (ljohnson@gklaw.com) Richard Marcus (rmarcus@gklaw.com) Doug Patch (dpatch@gklaw.com)
<i>Waukesha:</i>	Scott Fabry (sfabry@gklaw.com)	Jennifer Hanneman (jhanneman@gklaw.com)

Appleton 100 West Lawrence St Appleton, WI 54911 Tel 920-830-2800 Fax 920-830-3530	Green Bay 333 Main St, Suite 600 Green Bay, WI 54301 Tel 920-432-9300 Fax 920-436-7988	Madison LaFollette Godfrey & Kahn One East Main St Madison, WI 53703 Tel 608-257-3911 Fax 608-257-0609	Milwaukee 780 North Water St Milwaukee, WI 53202 Tel 414-273-3500 Fax 414-273-5198	Waukesha N21 W23350 Ridgeview Pky Waukesha, WI 53188 Tel 262-951-7000 Fax 262-951-7001
---	---	--	---	---