



State of Wisconsin
2003 - 2004 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2003 ASSEMBLY BILL 507**

October 16, 2003 – Offered by JOINT COMMITTEE ON FINANCE.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.07 (3s) (c) 1., 71.08 (1) (intro.), 71.21 (4),
2 71.26 (2) (a), 71.28 (3) (c) 1., 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (3) (c) 1., 77.54
3 (2) and 77.92 (4); and *to create* 71.05 (6) (b) 3m., 71.07 (3s) (c) 7., 71.07 (3t),
4 71.10 (4) (gbb), 71.28 (3) (c) 7., 71.28 (3t), 71.30 (3) (bb), 71.45 (2) (a) 10b., 71.47
5 (3) (c) 7., 71.47 (3t), 71.49 (1) (bb), 77.54 (30) (a) 6. and 560.28 of the statutes;
6 **relating to:** the income and franchise tax credit for sales tax and use tax paid
7 on fuel and electricity consumed in manufacturing and granting rule-making
8 authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

9 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:
10 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
11 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s)~~, and (3t) and not passed

1 through by a partnership, limited liability company, or tax-option corporation that
2 has added that amount to the partnership's, company's, or tax-option corporation's
3 income under s. 71.21 (4) or 71.34 (1) (g).

4 **SECTION 2.** 71.05 (6) (b) 3m. of the statutes is created to read:

5 71.05 **(6)** (b) 3m. As provided under s. 71.07 (3s) (c) 7., the amount of the credit
6 under s. 71.07 (3s) that the taxpayer added back to income under s. 71.05 (6) (a) at
7 the time that the taxpayer first claimed the credit.

8 **SECTION 3.** 71.07 (3s) (c) 1. of the statutes is amended to read:

9 71.07 **(3s)** (c) 1. The credit under par. (b), including any credits carried over,
10 may be offset only against the amount of the tax imposed upon or measured by the
11 business operations of the claimant in which the fuel and electricity are consumed.
12 If Except as provided in subd. 7., if the credit computed is not entirely offset against
13 taxes otherwise due, the unused balance shall be carried forward and credited
14 against taxes otherwise due for the following 15 taxable years to the extent not offset
15 by taxes otherwise due in all intervening years between the year in which the
16 expense was incurred and the year in which the carry-forward credit is claimed.

17 **SECTION 4.** 71.07 (3s) (c) 7. of the statutes is created to read:

18 71.07 **(3s)** (c) 7. No credit may be claimed under this subsection for taxable
19 years that begin after December 31, 2005. Credits that are claimed under this
20 subsection for taxable years that begin before January 1, 2006, may be carried
21 forward for the following 2 taxable years, and in each year for an amount equal to
22 50 percent of the taxpayer's unused credits, if the taxpayer has \$25,000 or less in
23 unused credits as of January 1, 2006. For taxable years beginning after December
24 31, 2005, and before January 1, 2008, a taxpayer who has more than \$25,000 in
25 unused credits as of January 1, 2006, may deduct an amount in each year that is

1 equal to 50 percent of the amount the taxpayer added back to income under s. 71.05
2 (6) (a) at the time that the taxpayer first claimed the credit.

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

4 71.07 **(3t)** MANUFACTURING INVESTMENT CREDIT. (a) *Definition.* In this
5 subsection, “claimant” means a person who files a claim under this subsection.

6 (b) *Credit.* Subject to the limitations provided in this subsection and in s.
7 560.28, for taxable years beginning after December 31, 2007, a claimant may claim
8 as a credit, amortized over 15 taxable years starting with the taxable year beginning
9 after December 31, 2007, against the tax imposed under s. 71.02 and 71.08, up to the
10 amount of the tax, an amount equal to the claimant’s unused credits under s. 71.07
11 (3s).

12 (c) *Limitations.* 1. No credit may be claimed under this subsection unless the
13 claimant submits with the claimant’s return a copy of the claimant’s certification by
14 the department of commerce under s. 560.28.

15 2. Partnerships, limited liability companies, and tax-option corporations may
16 not claim the credit under this subsection, but the eligibility for, and the amount of,
17 the credit are based on the amount of their unused credits under s. 71.07 (3s). A
18 partnership, limited liability company, or tax-option corporation shall compute the
19 amount of credit that each of its partners, members, or shareholders may claim and
20 shall provide that information to each of them. Partners, members of limited liability
21 companies, and shareholders of tax-option corporations may claim the credit in
22 proportion to their ownership interest.

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

25 **SECTION 6.** 71.08 (1) (intro.) of the statutes is amended to read:

1 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
2 couple filing jointly, trust or estate under s. 71.02, not considering the credits under
3 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (3t),
4 (6), ~~(6s)~~, and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) ~~and~~,
5 (3), ~~and (3t)~~ and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) ~~and~~, (3),
6 ~~and (3t)~~ and subchs. VIII and IX and payments to other states under s. 71.07 (7), is
7 less than the tax under this section, there is imposed on that natural person, married
8 couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative
9 minimum tax computed as follows:

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

11 71.10 (4) (gbb) Manufacturing investment credit under s. 71.07 (3t).

12 **SECTION 8.** 71.21 (4) of the statutes is amended to read:

13 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
14 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and~~, (3s), and (3t) and passed through to
15 partners shall be added to the partnership's income.

16 **SECTION 9.** 71.26 (2) (a) of the statutes is amended to read:

17 71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means
18 the gross income as computed under the Internal Revenue Code as modified under
19 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
20 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
21 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
22 under this paragraph at the time that the taxpayer first claimed the credit plus the
23 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
24 (1ds), (1dx), ~~and (3g)~~, and (3t) and not passed through by a partnership, limited
25 liability company, or tax-option corporation that has added that amount to the

1 partnership's, limited liability company's, or tax-option corporation's income under
2 s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or other disposition
3 of assets the gain from which would be wholly exempt income, as defined in sub. (3)
4 (L), if the assets were sold or otherwise disposed of at a gain and minus deductions,
5 as computed under the Internal Revenue Code as modified under sub. (3), plus or
6 minus, as appropriate, an amount equal to the difference between the federal basis
7 and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed
8 of in a taxable transaction during the taxable year, except as provided in par. (b) and
9 s. 71.45 (2) and (5).

10 **SECTION 10.** 71.28 (3) (c) 1. of the statutes is amended to read:

11 71.28 (3) (c) 1. If Except as provided in subd. 7., if the credit computed under
12 par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise
13 due, the unused balance shall be carried forward and credited against Wisconsin
14 income or franchise taxes otherwise due for the following 15 taxable years to the
15 extent not offset by these taxes otherwise due in all intervening years between the
16 year in which the expense was incurred and the year in which the carry-forward
17 credit is claimed.

18 **SECTION 11.** 71.28 (3) (c) 7. of the statutes is created to read:

19 71.28 (3) (c) 7. No credit may be claimed under this subsection for taxable years
20 that begin after December 31, 2005. Credits that are claimed under this subsection
21 for taxable years that begin before January 1, 2006, may be carried forward for the
22 following 2 taxable years, and in each year for an amount equal to 50 percent of the
23 taxpayer's unused credits, if the taxpayer has \$25,000 or less in unused credits as
24 of January 1, 2006. For taxable years beginning after December 31, 2005, and before
25 January 1, 2008, a taxpayer who has more than \$25,000 in unused credits as of

1 January 1, 2006, may deduct an amount in each year that is equal to 50 percent of
2 the amount the taxpayer added back to income under s. 71.26 (2) (a) at the time that
3 the taxpayer first claimed the credit.

4 **SECTION 12.** 71.28 (3t) of the statutes is created to read:

5 71.28 (3t) MANUFACTURING INVESTMENT CREDIT. (a) *Definition.* In this
6 subsection, “claimant” means a person who files a claim under this subsection.

7 (b) *Credit.* Subject to the limitations provided in this subsection and in s.
8 560.28, for taxable years beginning after December 31, 2007, a claimant may claim
9 as a credit, amortized over 15 taxable years starting with the taxable year beginning
10 after December 31, 2007, against the tax imposed under s. 71.23, up to the amount
11 of the tax, an amount equal to the claimant’s unused credits under s. 71.28 (3).

12 (c) *Limitations.* 1. No credit may be claimed under this subsection unless the
13 claimant submits with the claimant’s return a copy of the claimant’s certification by
14 the department of commerce under s. 560.28.

15 2. Partnerships, limited liability companies, and tax-option corporations may
16 not claim the credit under this subsection, but the eligibility for, and the amount of,
17 the credit are based on the amount of their unused credits under s. 71.28 (3). A
18 partnership, limited liability company, or tax-option corporation shall compute the
19 amount of credit that each of its partners, members, or shareholders may claim and
20 shall provide that information to each of them. Partners, members of limited liability
21 companies, and shareholders of tax-option corporations may claim the credit in
22 proportion to their ownership interest.

23 (d) *Administration.* Subsection (4) (e), (g), and (h), as it applies to the credit
24 under sub. (4), applies to the credit under this subsection.

25 **SECTION 13.** 71.30 (3) (bb) of the statutes is created to read:

1 71.30 (3) (bb) Manufacturing investment credit under s. 71.28 (3t).

2 **SECTION 14.** 71.34 (1) (g) of the statutes is amended to read:

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

6 **SECTION 15.** 71.45 (2) (a) 10. of the statutes is amended to read:

7 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
8 computed under s. 71.47 (1dd) to (1dx) and not passed through by a partnership,
9 limited liability company or tax-option corporation that has added that amount to
10 the partnership's, limited liability company's or tax-option corporation's income
11 under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under s. 71.47
12 (1), (3), (3t), (4) and (5).

13 **SECTION 16.** 71.45 (2) (a) 10b. of the statutes is created to read:

14 71.45 (2) (a) 10b. By subtracting from federal taxable income, as provided
15 under s. 71.47 (3) (c) 7., the amount of the credit under s. 71.47 (3) that the taxpayer
16 added to income under subd. 10. at the time that the taxpayer first claimed the credit.

17 **SECTION 17.** 71.47 (3) (c) 1. of the statutes is amended to read:

18 71.47 (3) (c) 1. If Except as provided in subd. 7., if the credit computed under
19 par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise
20 due, the unused balance shall be carried forward and credited against Wisconsin
21 income or franchise taxes otherwise due for the following 15 taxable years to the
22 extent not offset by these taxes otherwise due in all intervening years between the
23 year in which the expense was incurred and the year in which the carry-forward
24 credit is claimed.

25 **SECTION 18.** 71.47 (3) (c) 7. of the statutes is created to read:

1 71.47 (3) (c) 7. No credit may be claimed under this subsection for taxable years
2 that begin after December 31, 2005. Credits that are claimed under this subsection
3 for taxable years that begin before January 1, 2005, may be carried forward for the
4 following 2 taxable years, and in each year for an amount equal to 50 percent of the
5 taxpayer’s unused credits, if the taxpayer has \$25,000 or less in unused credits as
6 of January 1, 2006. For taxable years beginning after December 31, 2005, and before
7 January 1, 2008, a taxpayer who has more than \$25,000 in unused credits as of
8 January 1, 2006, may deduct an amount in each year that is equal to 50 percent of
9 the amount the taxpayer added back to income under s. 71.45 (2) (a) 10. at the time
10 that the taxpayer first claimed the credit.

11 **SECTION 19.** 71.47 (3t) of the statutes is created to read:

12 71.47 (3t) MANUFACTURING INVESTMENT CREDIT. (a) *Definition.* In this
13 subsection, “claimant” means a person who files a claim under this subsection.

14 (b) *Credit.* Subject to the limitations provided in this subsection and in s.
15 560.28, for taxable years beginning after December 31, 2007, a claimant may claim
16 as a credit, amortized over 15 taxable years starting with the taxable year beginning
17 after December 31, 2007, against the tax imposed under s. 71.43, up to the amount
18 of the tax, an amount equal to the claimant’s unused credits under s. 71.47 (3).

19 (c) *Limitations.* 1. No credit may be claimed under this subsection unless the
20 claimant submits with the claimant’s return a copy of the claimant’s certification by
21 the department of commerce under s. 560.28.

22 2. 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 amount of their unused credits under s. 71.47 (3). A
25 partnership, limited liability company, or tax-option corporation shall compute the

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

5 (d) *Administration.* Section 71.28 (4) (e), (g), and (h), as it applies to the credit
6 under s. 71.28 (4), applies to the credit under this subsection.

7 **SECTION 20.** 71.49 (1) (bb) of the statutes is created to read:

8 71.49 (1) (bb) Manufacturing investment credit under s. 71.47 (3t).

9 **SECTION 21.** 77.54 (2) of the statutes is amended to read:

10 77.54 (2) The gross receipts from sales of and the storage, use or other
11 consumption of tangible personal property becoming an ingredient or component
12 part of an article of tangible personal property or which is consumed or destroyed or
13 loses its identity in the manufacture of tangible personal property in any form
14 destined for sale, ~~but this exemption shall not include fuel or electricity~~ except as
15 provided in sub. (30) (a) 6.

16 **SECTION 22.** 77.54 (30) (a) 6. of the statutes is created to read:

17 77.54 (30) (a) 6. Fuel and electricity sold for use in manufacturing tangible
18 personal property in this state.

19 **SECTION 23.** 77.92 (4) of the statutes is amended to read:

20 77.92 (4) "Net business income", with respect to a partnership, means taxable
21 income as calculated under section 703 of the Internal Revenue Code; plus the items
22 of income and gain under section 702 of the Internal Revenue Code, including taxable
23 state and municipal bond interest and excluding nontaxable interest income or
24 dividend income from federal government obligations; minus the items of loss and
25 deduction under section 702 of the Internal Revenue Code, except items that are not

1 deductible under s. 71.21; plus guaranteed payments to partners under section 707
2 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s), and (3t)~~; and plus or
4 minus, as appropriate, transitional adjustments, depreciation differences, and basis
5 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
6 loss, and deductions from farming. “Net business income”, with respect to a natural
7 person, estate, or trust, means profit from a trade or business for federal income tax
8 purposes and includes net income derived as an employee as defined in section 3121
9 (d) (3) of the Internal Revenue Code.

10 **SECTION 24.** 560.28 of the statutes is created to read:

11 **560.28 Manufacturing investment credit. (1) DEFINITION.** In this section,
12 “full-time job” means a regular, nonseasonal full-time position in which an
13 individual, as a condition of employment, is required to work at least 35 hours in a
14 week.

15 **(2) CERTIFICATION.** The department shall promulgate rules for the certification
16 of businesses as eligible to claim tax credits under s. 71.07 (3t), 71.28 (3t), or 71.47
17 (3t). The rules shall permit a business to obtain a certification only if the person
18 satisfies one of the following conditions:

19 (a) The business has retained from the effective date of this paragraph ...
20 [revisor inserts date], 100 percent of the business’s full-time jobs in this state.

21 (b) The business’s average annual investment in this state since January 1,
22 2003, is equal to no less than 2 percent of the total book value of the business’s
23 depreciable assets in facilities that are based in this state.

24 (c) The business’s average annual investment in this state since January 1,
25 2003, is no less than \$5,000,000.

