



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-3234/1

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## 2003 ASSEMBLY BILL 976

March 11, 2004 - Introduced by Representatives WIECKERT, HINES, HAHN and FREESE, cosponsored by Senator ROESSLER. Referred to Committee on Ways and Means.

1     **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)  
2           (a) 10. and 77.92 (4); and *to create* 71.07 (3n), 71.10 (4) (gx), 71.28 (3n), 71.30  
3           (3) (eop), 71.47 (3n) and 71.49 (1) (eop) of the statutes; **relating to:** creating an  
4           income and franchise tax credit for expenses related to film production services.

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### *Analysis by the Legislative Reference Bureau*

This bill creates an income and franchise tax credit entitled the entertainment, broadcasting, and film economic rebate tax credit (EBERT). The amount of the tax credit is equal to 25 percent of the salary or wages paid to the taxpayer's employees in the taxable year for services rendered in this state to produce a film, video, or television production, as approved by the Department of Revenue, and paid to employees who were residents of this state at the time that they were paid. The total amount of the credit that may be claimed by a taxpayer may not exceed an amount equal to the first \$25,000 of salary or wages paid to each of the taxpayer's employees in the taxable year, not including the salary or wages paid to the taxpayer's two highest paid employees in the taxable year. If the total amount of the credit claimed by a taxpayer exceeds the taxpayer's tax liability, the state will not issue a refund, but the taxpayer may carry forward any remaining credit to subsequent taxable years.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*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), (3n), and (3s) 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.** 71.07 (3n) of the statutes is created to read:

8           71.07 **(3n)** ENTERTAINMENT, BROADCASTING, AND FILM ECONOMIC REBATE TAX CREDIT.  
9           (a) In this subsection:

10           1. "Accredited production" means a film, video, or television production, as  
11           approved by the department, for which the aggregate salary and wages included in  
12           the cost of the production for the period ending 12 months after the month in which  
13           the principal filming or taping of the production begins exceeds \$100,000 for a  
14           production that is 30 minutes or longer or \$50,000 for a production that is less than  
15           30 minutes. "Accredited production" does not include any of the following, regardless  
16           of the production costs:

17           a. News, current events, or public programming or a program that includes  
18           weather or market reports.

19           b. A talk show.

20           c. A production with respect to a game, questionnaire, or contest.

21           d. A sports event or sports activity.

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- 1 e. A gala presentation or awards show.
- 2 f. A finished production that solicits funds.
- 3 g. A production for which the production company is required under 18 U.S.C.
- 4 2257 to maintain records with respect to a performer portrayed in a single media or
- 5 multimedia program.
- 6 h. A production produced primarily for industrial, corporate, or institutional
- 7 purposes.
- 8 2. "Claimant" means a film production company that is operating or has
- 9 operated an accredited production in this state, if the company owns the copyright
- 10 in the accredited production or has contracted directly with the copyright owner or
- 11 a person acting on the owner's behalf.
- 12 (b) Subject to the limitations provided in this subsection, a claimant may claim
- 13 as a credit against the tax imposed under s. 71.02 an amount equal to 25 percent of
- 14 the salary or wages paid to the claimant's employees in the taxable year for services
- 15 rendered in this state to produce an accredited production and paid to employees who
- 16 were residents of this state at the time that they were paid.
- 17 (c) No amount of the salary or wages paid under par. (b) may be the basis for
- 18 a credit under this subsection unless the salary or wages are paid for services
- 19 rendered after December 31, 2003, and directly incurred for the production stages
- 20 of the accredited production, from the final script stage to the end of the
- 21 post-production stage.
- 22 (d) The total amount of the credit that may be claimed by a claimant under par.
- 23 (b) shall not exceed an amount equal to the first \$25,000 of salary or wages paid to
- 24 each of the claimant's employees, as described in par. (b), in the taxable year, not

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1 including the salary or wages paid to the claimant's 2 highest paid employees, as  
2 described in par. (b), in the taxable year.

3 (e) No credit may be allowed under this subsection unless the claimant files an  
4 application with the department, at the time and in the manner prescribed by the  
5 department, and the department approves the application.

6 (f) Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies  
7 to the credit under this subsection.

8 (g) Partnerships, limited liability companies, and tax-option corporations may  
9 not claim the credit under this subsection, but the eligibility for, and the amount of,  
10 the credit are based on their payment of wages and salaries. A partnership, limited  
11 liability company, or tax-option corporation shall compute the amount of credit that  
12 each of its partners, members, or shareholders may claim and shall provide that  
13 information to each of them. Partners, members of limited liability companies, and  
14 shareholders of tax-option corporations may claim the credit in proportion to their  
15 ownership interest.

16 **SECTION 3.** 71.10 (4) (gx) of the statutes is created to read:

17 71.10 (4) (gx) Entertainment, broadcasting, and film economic rebate tax credit  
18 under s. 71.07 (3n).

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

20 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
21 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), and (3s) and passed through to partners  
22 shall be added to the partnership's income.

23 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

24 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means  
25 the gross income as computed under the Internal Revenue Code as modified under

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1 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit  
2 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed  
3 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g), and (3n)~~  
4 and not passed through by a partnership, limited liability company, or tax-option  
5 corporation that has added that amount to the partnership's, limited liability  
6 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus  
7 the amount of losses from the sale or other disposition of assets the gain from which  
8 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or  
9 otherwise disposed of at a gain and minus deductions, as computed under the  
10 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an  
11 amount equal to the difference between the federal basis and Wisconsin basis of any  
12 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction  
13 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

14 **SECTION 6.** 71.28 (3n) of the statutes is created to read:

15 71.28 (3n) ENTERTAINMENT, BROADCASTING, AND FILM ECONOMIC REBATE TAX CREDIT.

16 (a) In this subsection:

17 1. "Accredited production" means a film, video, or television production, as  
18 approved by the department, for which the aggregate salary and wages included in  
19 the cost of the production for the period ending 12 months after the month in which  
20 the principal filming or taping of the production begins exceeds \$100,000 for a  
21 production that is 30 minutes or longer or \$50,000 for a production that is less than  
22 30 minutes. "Accredited production" does not include any of the following, regardless  
23 of the production costs:

24 a. News, current events, or public programming or a program that includes  
25 weather or market reports.

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- 1           b. A talk show.
- 2           c. A production with respect to a game, questionnaire, or contest.
- 3           d. A sports event or sports activity.
- 4           e. A gala presentation or awards show.
- 5           f. A finished production that solicits funds.
- 6           g. A production for which the production company is required under 18 U.S.C.
- 7           2257 to maintain records with respect to a performer portrayed in a single media or
- 8           multimedia program.
- 9           h. A production produced primarily for industrial, corporate, or institutional
- 10          purposes.
- 11          2. “Claimant” means a film production company that is operating or has
- 12          operated an accredited production in this state, if the company owns the copyright
- 13          in the accredited production or has contracted directly with the copyright owner or
- 14          a person acting on the owner’s behalf.
- 15          (b) Subject to the limitations provided in this subsection, a claimant may claim
- 16          as a credit against the tax imposed under s. 71.23 an amount equal to 25 percent of
- 17          the salary or wages paid to the claimant’s employees in the taxable year for services
- 18          rendered in this state to produce an accredited production and paid to employees who
- 19          were residents of this state at the time that they were paid.
- 20          (c) No amount of the salary or wages paid under par. (b) may be the basis for
- 21          a credit under this subsection unless the salary or wages are paid for services
- 22          rendered after December 31, 2003, and directly incurred for the production stages
- 23          of the accredited production, from the final script stage to the end of the
- 24          post-production stage.

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1 (d) The total amount of the credit that may be claimed by a claimant under par.  
2 (b) shall not exceed an amount equal to the first \$25,000 of salary or wages paid to  
3 each of the claimant's employees, as described in par. (b), in the taxable year, not  
4 including the salary or wages paid to the claimant's 2 highest paid employees, as  
5 described in par. (b), in the taxable year.

6 (e) No credit may be allowed under this subsection unless the claimant files an  
7 application with the department, at the time and in the manner prescribed by the  
8 department, and the department approves the application.

9 (f) Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to  
10 the credit under this subsection.

11 (g) Partnerships, limited liability companies, and tax-option corporations may  
12 not claim the credit under this subsection, but the eligibility for, and the amount of,  
13 the credit are based on their payment of wages and salaries. A partnership, limited  
14 liability company, or tax-option corporation shall compute the amount of credit that  
15 each of its partners, members, or shareholders may claim and shall provide that  
16 information to each of them. Partners, members of limited liability companies, and  
17 shareholders of tax-option corporations may claim the credit in proportion to their  
18 ownership interest.

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

20 71.30 (3) (eop) Entertainment, broadcasting, and film economic rebate tax  
21 credit under s. 71.28 (3n).

22 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

23 71.34 (1) (g) An addition shall be made for credits computed by a tax-option  
24 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and  
25 (3g), and (3n) and passed through to shareholders.

**ASSEMBLY BILL 976****SECTION 9**

1           **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

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

8           **SECTION 10.** 71.47 (3n) of the statutes is created to read:

9           71.47 **(3n)** ENTERTAINMENT, BROADCASTING, AND FILM ECONOMIC REBATE TAX CREDIT.

10          (a) In this subsection:

11           1. "Accredited production" means a film, video, or television production, as  
12           approved by the department, for which the aggregate salary and wages included in  
13           the cost of the production for the period ending 12 months after the month in which  
14           the principal filming or taping of the production begins exceeds \$100,000 for a  
15           production that is 30 minutes or longer or \$50,000 for a production that is less than  
16           30 minutes. "Accredited production" does not include any of the following, regardless  
17           of the production costs:

18           a. News, current events, or public programming or a program that includes  
19           weather or market reports.

20           b. A talk show.

21           c. A production with respect to a game, questionnaire, or contest.

22           d. A sports event or sports activity.

23           e. A gala presentation or awards show.

24           f. A finished production that solicits funds.



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1           g. A production for which the production company is required under 18 U.S.C.  
2           2257 to maintain records with respect to a performer portrayed in a single media or  
3           multimedia program.

4           h. A production produced primarily for industrial, corporate, or institutional  
5           purposes.

6           2. "Claimant" means a film production company that is operating or has  
7           operated an accredited production in this state, if the company owns the copyright  
8           in the accredited production or has contracted directly with the copyright owner or  
9           a person acting on the owner's behalf.

10           (b) Subject to the limitations provided in this subsection, a claimant may claim  
11           as a credit against the tax imposed under s. 71.43 an amount equal to 25 percent of  
12           the salary or wages paid to the claimant's employees in the taxable year for services  
13           rendered in this state to produce an accredited production and paid to employees who  
14           were residents of this state at the time that they were paid.

15           (c) No amount of the salary or wages paid under par. (b) may be the basis for  
16           a credit under this subsection unless the salary or wages are paid for services  
17           rendered after December 31, 2003, and directly incurred for the production stages  
18           of the accredited production, from the final script stage to the end of the  
19           post-production stage.

20           (d) The total amount of the credit that may be claimed by a claimant under par.  
21           (b) shall not exceed an amount equal to the first \$25,000 of salary or wages paid to  
22           each of the claimant's employees, as described in par. (b), in the taxable year, not  
23           including the salary or wages paid to the claimant's 2 highest paid employees, as  
24           described in par. (b), in the taxable year.

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1           (e) No credit may be allowed under this subsection unless the claimant files an  
2 application with the department, at the time and in the manner prescribed by the  
3 department, and the department approves the application.

4           (f) Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies  
5 to the credit under this subsection.

6           (g) Partnerships, limited liability companies, and tax-option corporations may  
7 not claim the credit under this subsection, but the eligibility for, and the amount of,  
8 the credit are based on their payment of wages and salaries. A partnership, limited  
9 liability company, or tax-option corporation shall compute the amount of credit that  
10 each of its partners, members, or shareholders may claim and shall provide that  
11 information to each of them. Partners, members of limited liability companies, and  
12 shareholders of tax-option corporations may claim the credit in proportion to their  
13 ownership interest.

14           **SECTION 11.** 71.49 (1) (eop) of the statutes is created to read:

15           71.49 (1) (eop) Entertainment, broadcasting, and film economic rebate tax  
16 credit under s. 71.47 (3n).

17           **SECTION 12.** 77.92 (4) of the statutes is amended to read:

18           77.92 (4) “Net business income”, with respect to a partnership, means taxable  
19 income as calculated under section 703 of the Internal Revenue Code; plus the items  
20 of income and gain under section 702 of the Internal Revenue Code, including taxable  
21 state and municipal bond interest and excluding nontaxable interest income or  
22 dividend income from federal government obligations; minus the items of loss and  
23 deduction under section 702 of the Internal Revenue Code, except items that are not  
24 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
25 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),

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1 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), and (3g), (3n), and (3s); and plus or minus,  
2 as appropriate, transitional adjustments, depreciation differences, and basis  
3 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,  
4 loss, and deductions from farming. "Net business income", with respect to a natural  
5 person, estate, or trust, means profit from a trade or business for federal income tax  
6 purposes and includes net income derived as an employee as defined in section 3121  
7 (d) (3) of the Internal Revenue Code.

8 **SECTION 13. Initial applicability.**

9 (1) This act first applies to taxable years beginning on January 1, 2004.

10

(END)