

2009 DRAFTING REQUEST

Bill

Received: **01/14/2009**

Received By: **jkreye**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Weidner**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Business - credits**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Weidner, BB0412 -

Topic:

Research and development tax credit

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 01/14/2009	jdyer 01/15/2009		_____			State
/1			mduchek 01/15/2009	_____	sbasford 01/16/2009		State
/2	jkreye 01/29/2009	jdyer 01/29/2009	mduchek 01/29/2009	_____	cduerst 01/29/2009		State
/3	jkreye 01/30/2009	wjackson 01/30/2009	rschluet 01/30/2009	_____	cduerst 01/31/2009		

FE Sent For:

<END>

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/2	jkreye 01/29/2009	jdyer 01/29/2009	mduchek 01/29/2009	_____	cduerst 01/29/2009		

FE Sent For:

1/3 W/L 1/30



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/?	jkreye 01/14/2009	jdyer 01/15/2009		_____			State
/1		<i>1/28 jld</i>	mduchek 01/15/2009	_____	sbasford 01/16/2009		

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ND *ND PH*
<END>

1/29

2009 DRAFTING REQUEST

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Addl. Drafters:

Subject: Tax, Business - credits

Extra Copies:

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/?	jkreye	1/15 jld	M	1/15			

FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Research and Development Tax Credit
- Tracking Code: BB0412
- SBO team: General Government and Economic Development
- SBO analyst: Jenna Weidner
 - Phone: x 6-7329
 - Email: jenna.weidner@wisconsin.gov
- Agency acronym: COM
- Agency number: 143
- Priority (Low, Medium, High): High

Intent: To create an income tax credit for increasing research and development

- Timing: start Tax Year 2011
- Provide income tax credit to businesses that increase R&D by more than 125% of their 3-year R& D spending average
- Tax credit would be \$1 for each \$1 of investment above 125%

1509/11

Stays

in 1-14-09

DoA...
BB04/2
UPS-PWF
please

~~2007 ASSEMBLY BILL 770~~

February 6, 2008 - Introduced by Representatives KLEEFISCH, SMITH, STRACHOTA, KERKMAN, TOWNSEND, TURNER, VAN ROY, SEIDEL, GRONEMUS and MUSSER, cosponsored by Senators KREITLOW, KANAVAS, DARLING, SULLIVAN, LEIBHAM, KAPANKE, KEDZIE and ROESSLER. Referred to Committee on Jobs and The Economy.

do not go

X

1 AN ACT *to amend* 71.21 (3), 71.26 (2) (a), 71.26 (3) (n), 71.365 (3) and 71.45 (2)

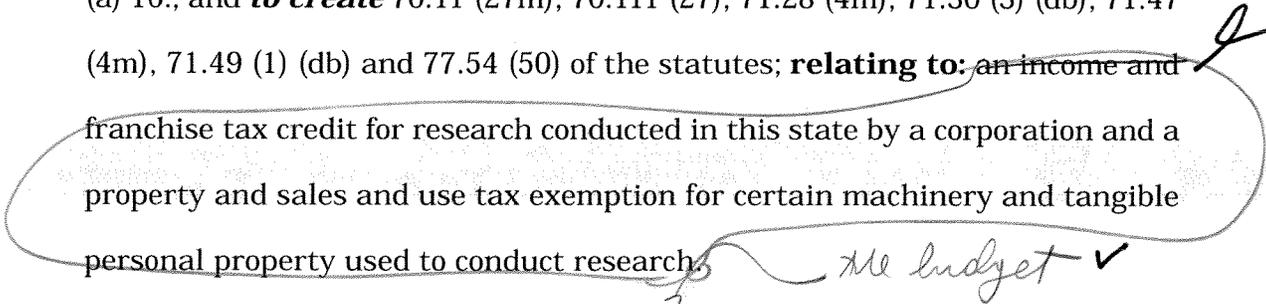
2 (a) 10.; and *to create* 70.11 (27m), 70.111 (27), 71.28 (4m), 71.30 (3) (db), 71.47

3 (4m), 71.49 (1) (db) and 77.54 (50) of the statutes; **relating to:** an income and

4 franchise tax credit for research conducted in this state by a corporation and a

5 property and sales and use tax exemption for certain machinery and tangible

6 personal property used to conduct research.



the budget ✓

Analysis by the Legislative Reference Bureau

Under current law, a corporation may claim an income and franchise tax credit in an amount equal to 5 percent of its qualified research expenses, as defined by the Internal Revenue Code, for research conducted in this state. In addition, a corporation may claim an income and franchise tax credit equal to 5 percent of the amount that it paid in the taxable year to construct and equip new facilities or expand existing facilities used in this state for qualified research, as defined by the Internal Revenue Code.

Under this bill, a corporation may also claim an income and franchise tax credit equal to the amount of its qualified research expenses in the taxable year for research conducted in this state that exceeds the amount equal to the average amount of the corporation's qualified research expenses in the previous three taxable years multiplied by 1.25. If the credit claimed by a corporation exceeds the corporation's tax liability, the state will not issue a refund, but the corporation may carry forward any remaining credit to five subsequent taxable years.

ASSEMBLY BILL 770

~~This bill also creates a property tax exemption and a sales and use tax exemption for machinery and other tangible personal property used for qualified research by persons engaged primarily in manufacturing or biotechnology in this state.~~

~~Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.~~

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

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

~~**SECTION 1.** 70.11 (27m) of the statutes is created to read:~~

~~70.11 (27m) RESEARCH MACHINERY AND EQUIPMENT. (a) In this subsection:~~

- ~~1. "Biotechnology" has the meaning given in s. 77.54 (50) (a) 1.~~
- ~~2. "Machinery" has the meaning given in sub. (27) (a) 2.~~
- ~~3. "Manufacturing" has the meaning given in sub. (27) (a) 3.~~
- ~~4. "Primarily" means more than 50 percent.~~
- ~~5. "Qualified research" means qualified research as defined under section 41~~

~~(d) (1) of the Internal Revenue Code.~~

- ~~6. "Used exclusively" has the meaning given in sub. (27) (a) 8.~~

~~(b) Machinery and equipment, including attachments, parts, and accessories, used by persons who are engaged primarily in manufacturing or biotechnology in this state and are used exclusively and directly in qualified research.~~

~~**SECTION 2.** 70.111 (27) of the statutes is created to read:~~

~~70.111 (27) RESEARCH PROPERTY. (a) In this subsection:~~

- ~~1. "Biotechnology" has the meaning given in s. 77.54 (50) (a) 1.~~
- ~~2. "Manufacturing" has the meaning given in s. 70.11 (27) (a) 3.~~
- ~~3. "Primarily" means more than 50 percent.~~

ASSEMBLY BILL 770

1 4. "Qualified research" means qualified research as defined under section 41
2 (d) (1) of the Internal Revenue Code.

3 5. "Used exclusively" has the meaning given in s. 70.11 (27) (a) 8.

4 (b) Tangible personal property used by persons who are engaged primarily in
5 manufacturing or biotechnology in this state, if the tangible personal property is
6 consumed or destroyed or loses its identity while being used exclusively and directly
7 in qualified research.

8 **SECTION 3.** 71.21 (3) of the statutes is amended to read:

9 71.21 (3) The credits under s. 71.28 (4), (4m), and (5) may not be claimed by a
10 partnership or by partners, including partners of a publicly traded partnership.

11 ~~**SECTION 4.** 71.26 (2) (a) of the statutes, as affected by 2007 Wisconsin Act 20,
12 is amended to read:~~

13 ~~71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
14 the gross income as computed under the Internal Revenue Code as modified under
15 sub. (3) minus the amount of recapture under s. 71.28 (1d) plus the amount of credit
16 computed under s. 71.28 (1), (3), (4), (4m), and (5) minus, as provided under s. 71.28
17 (3) (c) 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
18 under this paragraph at the time that the taxpayer first claimed the credit plus the
19 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
20 (1ds), (1dx), (3g), (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), and (5k) and
21 not passed through by a partnership, limited liability company, or tax-option
22 corporation that has added that amount to the partnership's, limited liability
23 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
24 the amount of losses from the sale or other disposition of assets the gain from which
25 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or~~

ASSEMBLY BILL 770

1 otherwise disposed of at a gain and minus deductions, as computed under the
 2 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
 3 amount equal to the difference between the federal basis and Wisconsin basis of any
 4 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
 5 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

INSERT
4-5
5

6 SECTION 5. 71.26 (3) (n) of the statutes is amended to read:

7 71.26 (3) (n) Sections 381, 382 and 383 (relating to carry-overs in certain
 8 corporate acquisitions) are modified so that they apply to losses under sub. (4) and
 9 credits under s. 71.28 (1di), (1dL), (1dm), (1dx), (3), (4), (4m) and (5) instead of to
 10 federal credits and federal net operating losses.

11 SECTION 6. 71.28 (4m) of the statutes is created to read:

12 71.28 (4m) SUPER RESEARCH AND DEVELOPMENT CREDIT. (a) *Definition*. In this
 13 subsection, "qualified research expenses" means qualified research expenses as
 14 defined in section 41 of the Internal Revenue Code, not including section 41 (h) of the
 15 Internal Revenue Code, that are paid or incurred for research conducted in this state.

16 (b) *Credit*. Subject to the limitations provided under this subsection, for
 17 taxable years beginning on or after January 1, 2010, a corporation may claim as a
 18 credit against the tax imposed under s. 71.23, up to the amount of those taxes, and
 19 against no more than 50 percent of the claimant's tax liability, an amount equal to
 20 the amount of qualified research expenses paid or incurred by the corporation in the
 21 taxable year that exceeds the amount calculated as follows:

22 1. Determine the average amount of the qualified research expenses paid or
 23 incurred by the corporation in the 3 taxable years immediately preceding the taxable
 24 year for which a credit is claimed under this subsection.

25 2. Multiply the amount determined under subd. 1. by 1.25.

ASSEMBLY BILL 770

1 (c) *Limitations.* Subsection (4) (b) to (d) and (i), as it applies to the credit under
2 sub. (4), applies to the credit under this subsection.

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

5 2. If a credit computed under this subsection is not entirely offset against
6 Wisconsin income or franchise taxes otherwise due, the unused balance may be
7 carried forward and credited against Wisconsin income or franchise taxes otherwise
8 due for the following 5 taxable years to the extent not offset by these taxes otherwise
9 due in all intervening years between the year in which the expense was incurred and
10 the year in which the carry-forward credit is claimed.

11 SECTION 7. 71.30 (3) (db) of the statutes is created to read:

12 71.30 (3) (db) Super research and development credit under s. 71.28 (4m).

13 SECTION 8. 71.365 (3) of the statutes is amended to read:

14 71.365 (3) CREDITS NOT ALLOWED. The credits under s. 71.28 (4), (4m), and (5)
15 may not be claimed by a tax-option corporation or shareholders of a tax-option
16 corporation.

17 SECTION 9. 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Act
18 20, is amended to read:

19 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
20 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
21 (5j), and (5k) and not passed through by a partnership, limited liability company, or
22 tax-option corporation that has added that amount to the partnership's, limited
23 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
24 (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

25 SECTION 10. 71.47 (4m) of the statutes is created to read:

INSERT
5-24

ASSEMBLY BILL 770

SECTION 10

1 71.47 (4m) SUPER RESEARCH AND DEVELOPMENT CREDIT. (a) *Definition.* In this
2 subsection, "qualified research expenses" means qualified research expenses as
3 defined in section 41 of the Internal Revenue Code, not including section 41 (h) of the
4 Internal Revenue Code, that are paid or incurred for research conducted in this state.

5 (b) *Credit.* Subject to the limitations provided under this subsection, for
6 taxable years beginning on or after January 1, 2010, a corporation may claim as a
7 credit against the tax imposed under s. 71.43, up to the amount of those taxes, and
8 against no more than 50 percent of the claimant's tax liability, an amount equal to
9 the amount of qualified research expenses paid or incurred by the corporation in the
10 taxable year that exceeds the amount calculated as follows:

11 1. Determine the average amount of the qualified research expenses paid or
12 incurred by the corporation in the 3 taxable years immediately preceding the taxable
13 year for which a credit is claimed under this subsection.

14 2. Multiply the amount determined under subd. 1. by 1.25.

15 (c) *Limitations.* Section 71.28 (4) (b) to (d) and (i), as it applies to the credit
16 under sub. (4), applies to the credit under this subsection.

17 (d) *Administration.* Section 71.28 (4) (e), (g), and (h), as it applies to the
18 credit under sub. (4), applies to the credit under this subsection.

19 2. If a credit computed under this subsection is not entirely offset against
20 Wisconsin income or franchise taxes otherwise due, the unused balance may be
21 carried forward and credited against Wisconsin income or franchise taxes otherwise
22 due for the following 5 taxable years to the extent not offset by these taxes otherwise
23 due in all intervening years between the year in which the expense was incurred and
24 the year in which the carry-forward credit is claimed.

25 SECTION 11. 71.49 (1) (db) of the statutes is created to read:

ASSEMBLY BILL 770

1 71.49 (1) (db) Super research and development credit under s. 71.47 (4m). ✓

2 ~~SECTION 12. 77.54 (50) of the statutes is created to read:~~

3 77.54 (50) (a) In this subsection:

4 1. "Biotechnology" means the application of biotechnologies; including
5 recombinant deoxyribonucleic acid techniques, biochemistry, molecular and cellular
6 biology, genetics, genetic engineering, biological cell fusion, and other bioprocesses;
7 that use living organisms or parts of an organism to produce or modify products to
8 improve plants or animals or improve animal health, develop microorganisms for
9 specific uses, identify targets for small molecule pharmaceutical development, or
10 transform biological systems into useful processes and products.

11 2. "Machinery" has the meaning given in s. 70.11 (27) (a) 2.

12 3. "Manufacturing" has the meaning given in sub. (6m).

13 4. "Primarily" means more than 50 percent.

14 5. "Qualified research" means qualified research as defined under section 41
15 (d) (1) of the Internal Revenue Code.

16 6. "Used exclusively" has the meaning given in sub. (3) (b) 3.

17 (b) The gross receipts from the sale of and the storage, use, or other
18 consumption of:

19 1. Machinery and equipment, including attachments, parts, and accessories,
20 that are sold to persons who are engaged primarily in manufacturing or
21 biotechnology in this state and are used exclusively and directly in qualified
22 research.

23 2. Tangible personal property that is sold to persons who are engaged primarily
24 in manufacturing or biotechnology in this state, if the tangible personal property is

ASSEMBLY BILL 770

SECTION 12

1 consumed or destroyed or loses its identity while being used exclusively and directly
2 in qualified research.

3 **SECTION 13. Initial applicability.**

4 (1) The treatment of sections 70.11 (27m) and 70.111 (27) of the statutes first
5 applies to the property tax assessments as of January 1, 2009.

6 **SECTION 14. Effective dates.** This act takes effect on the day after publication,
7 except as follows:

8 (1) The treatment of section 77.54 (50) of the statutes takes effect on January
9 1, 2009.

10 (END)

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1509/?ins
JK:.....

Insert 4 - 5

1 **SECTION 1.** 71.26 (2) (a) 2. [✓] of the statutes is amended to read:
2 71.26 (2) (a) 2. Plus the amount of credit computed under s. 71.28 (1), (3), (4),
3 ~~(4m)~~, [✓] and (5).

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479, 483; 2007 a. 20, 96, 97, 151, 226.

Insert 5 - 24

4 **SECTION 2.** 71.45 (2) (a) 10. [✓] of the statutes is amended to read:
5 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
6 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
7 (5j), and (5k) and not passed through by a partnership, limited liability company, or
8 tax-option corporation that has added that amount to the partnership's, limited
9 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)
10 (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), [✓]~~(4m)~~, and (5).

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226.

Kreye, Joseph

From: Weidner, Jenna M - DOA [Jenna.Weidner@wisconsin.gov]
Sent: Thursday, January 29, 2009 9:39 AM
To: Kreye, Joseph
Cc: Pawasarat, Jane - DOA
Subject: LRB 1509 edit
Attachments: 1509-P1 Research Credit DOR comments.doc

Hi Joe,

The Department of Revenue had technical edits to draft 1509 regarding the carry forward period (5 yrs vs 15 yrs) and regarding the definition of qualified research expenses. Both of the suggested changes in the attached document seem valid to us. Could you please revise 1509 to reflect these DOR suggestions?

Thanks so much,
Jenna

Jenna Weidner

Executive Policy and Budget Analyst
Wisconsin State Budget Office, DOA-DEBF
101 East Wilson Street
Madison, WI 53702
(608)266-7329
jenna.weidner@wisconsin.gov

2009-11 LRB Draft Review

Date: January 21, 2009

LRB Number: 1509/1 ("Super Research and Development Credit")

Reviewed by: Wendy Miller

Brief Description of LRB Draft:

This proposal creates a new research and development credit available to corporations, which is in addition to the research credits available under current law.

Comments on Draft:

The following aspects of this proposal are unclear or may have unintended results:

1. The carryforward period for unused credit.
2. The definition of "qualified research expenses."

See recommended changes to resolve these issues below.

Changes Needed & Why:

1. Carryforward Period

The LRB analysis on the first page of the draft indicates that any unused credit may be carried forward for 5 subsequent taxable years. However, the language in the draft states that sec. 71.28(4)(f), which applies a 15-year carryforward, applies to this new credit. If the intent is to only allow a 5-year carryforward period, the following language should be added:

Page	Line	Statutory Section	Change
3	3	71.28(4m)(d)	Subsection (4)(e) to (h), as it applies to the credit under sub. (4), applies to the credit under this subsection, <u>except that the carry-forward period provided in sub. (4)(f) is modified so that the carry-forward period is 5 taxable years instead of 15 taxable years.</u>
4	9	71.47(4m)(d)	(Same as change to sec. 71.28(4m)(d))

2. Definition of "Qualified Research Expenses"

The definition of "qualified research expenses" in secs. 71.28(4m) and 71.47(4m) contains an erroneous reference to section 41(h) of the Internal Revenue Code. Section 41(h) of the Internal Revenue Code is not part of the definition of "qualified research expenses." Rather, it is a provision which specifies that the federal research credit is no longer available after a certain date (currently December 31, 2009). It may be helpful to specify in the language that section 41(h) of the Internal Revenue Code does not apply to the credit created by this proposal. However, that reference should be separate from the definition of "qualified research expenses."

Is the intent to define "qualified research expenses" in the same manner for this credit as for the research credits available under current law? If so, the definition in this proposal must be changed so that compensation used in computing the Development Zones Jobs Credit and Development Zones Credit does not qualify as a "qualified research expense," and the recommended language for secs. 71.28(4m) and 71.47(4m) is as follows:

In this subsection, "qualified research expenses" means qualified research expenses as defined in section 41 of the Internal Revenue Code, except that "qualified research expenses" includes only expenses incurred by the claimant and incurred for research conducted in this state for the taxable year, and except that "qualified research expenses" does not include compensation used in computing the credits under subs. (1dj) and (1dx).



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1509/1

JK:jld:md

RMM

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DOA:.....Weidner, BB0412 - Research and development tax credit

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-29-09

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1

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

Under current law, a corporation may claim an income and franchise tax credit in an amount equal to 5 percent of its qualified research expenses, as defined by the Internal Revenue Code, for research conducted in this state. In addition, a corporation may claim an income and franchise tax credit equal to 5 percent of the amount that it paid in the taxable year to construct and equip new facilities or expand existing facilities used in this state for qualified research, as defined by the Internal Revenue Code.

Under this bill, a corporation may also claim an income and franchise tax credit equal to the amount of its qualified research expenses in the taxable year for research conducted in this state that exceeds the amount equal to the average amount of the corporation's qualified research expenses in the previous three taxable years multiplied by 1.25. If the credit claimed by a corporation exceeds the corporation's tax liability, the state will not issue a refund, but the corporation may carry forward any remaining credit to five subsequent taxable years.

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

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

1 **SECTION 1.** 71.21 (3) of the statutes is amended to read:

2 71.21 (3) The credits under s. 71.28 (4), (4m), and (5) may not be claimed by a
3 partnership or by partners, including partners of a publicly traded partnership.

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

5 71.26 (2) (a) 2. Plus the amount of credit computed under s. 71.28 (1), (3), (4),
6 (4m), and (5).

7 **SECTION 3.** 71.26 (3) (n) of the statutes is amended to read:

8 71.26 (3) (n) Sections 381, 382 and 383 (relating to carry-overs in certain
9 corporate acquisitions) are modified so that they apply to losses under sub. (4) and
10 credits under s. 71.28 (1di), (1dL), (1dm), (1dx), (3), (4), (4m), and (5) instead of to
11 federal credits and federal net operating losses.

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

13 71.28 (4m) SUPER RESEARCH AND DEVELOPMENT CREDIT. (a) *Definition.* In this
14 subsection, "qualified research expenses" means qualified research expenses as
15 defined in section 41 of the Internal Revenue Code, not including section 41 (h) of the
16 Internal Revenue Code, that are paid or incurred for research conducted in this state.

17 (b) *Credit.* Subject to the limitations provided under this subsection, for
18 taxable years beginning on or after January 1, 2011, a corporation may claim as a
19 credit against the tax imposed under s. 71.23, up to the amount of those taxes, an
20 amount equal to the amount of qualified research expenses paid or incurred by the
21 corporation in the taxable year that exceeds the amount calculated as follows:

22 1. Determine the average amount of the qualified research expenses paid or
23 incurred by the corporation in the 3 taxable years immediately preceding the taxable
24 year for which a credit is claimed under this subsection.

25 2. Multiply the amount determined under subd. 1. by 1.25.

INSERT
2-16 ✓

1 (c) *Limitations.* Subsection (4) (b) to (d) and (i), as it applies to the credit under
2 sub. (4), applies to the credit under this subsection.

3 (d) *Administration.* Subsection (4) (e) ^{(g) and} (h), as it applies to the credit under
4 sub. (4), applies to the credit under this subsection.

✓
(3)
✓
(INSERT
3-4) →

5 **SECTION 5.** 71.30 (3) (db) of the statutes is created to read:

6 71.30 (3) (db) Super research and development credit under s. 71.28 (4m).

7 **SECTION 6.** 71.365 (3) of the statutes is amended to read:

8 71.365 (3) CREDITS NOT ALLOWED. The credits under s. 71.28 (4), (4m), and (5)
9 may not be claimed by a tax-option corporation or shareholders of a tax-option
10 corporation.

11 **SECTION 7.** 71.45 (2) (a) 10. of the statutes is amended to read:

12 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
13 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
14 (5j), and (5k) and not passed through by a partnership, limited liability company, or
15 tax-option corporation that has added that amount to the partnership's, limited
16 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)
17 (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

18 **SECTION 8.** 71.47 (4m) of the statutes is created to read:

19 71.47 (4m) SUPER RESEARCH AND DEVELOPMENT CREDIT. (a) *Definition.* In this
20 subsection, "qualified research expenses" means qualified research expenses as
21 defined in section 41 of the Internal Revenue Code, not including section 41 (h) of the
22 Internal Revenue Code, that are paid or incurred for research conducted in this state.

23 (b) *Credit.* Subject to the limitations provided under this subsection, for
24 taxable years beginning on or after January 1, 2011, a corporation may claim as a
25 credit against the tax imposed under s. 71.43, up to the amount of those taxes, an

✓
(INSERT 3-22)

1 amount equal to the amount of qualified research expenses paid or incurred by the
2 corporation in the taxable year that exceeds the amount calculated as follows:

3 1. Determine the average amount of the qualified research expenses paid or
4 incurred by the corporation in the 3 taxable years immediately preceding the taxable
5 year for which a credit is claimed under this subsection.

6 2. Multiply the amount determined under subd. 1. by 1.25.

7 (c) *Limitations.* Section 71.28 (4) (b) to (d) and (i), as it applies to the credit
8 under s. 71.28 (4), applies to the credit under this subsection. ✓

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

11 **SECTION 9.** 71.49 (1) (db) of the statutes is created to read:

12 71.49 (1) (db) Super research and development credit under s. 71.47 (4m).

13 (END)

INSET
4-10 ✓

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1509/2ins
JK:jld:md

Insert 2 - 16

1 ~~NO~~ except that "qualified research expenses" includes only expenses incurred by
2 the claimant for research conducted in this state for the taxable year and except that
3 "qualified research expenses" do not include compensation used in computing the
4 credits under subs. (1dj) and (1dx) ~~NO~~

Insert 3 - 4

5 2. If a credit computed under this subsection is not entirely offset against
6 Wisconsin income or franchise taxes otherwise due, the unused balance may be
7 carried forward and credited against Wisconsin income or franchise taxes otherwise
8 due for the following 5 taxable years to the extent not offset by these taxes otherwise
9 due in all intervening years between the year in which the expense was incurred and
10 the year in which the carry-forward credit is claimed.

Insert 3 - 22

11 ~~NO~~ except that "qualified research expenses" includes only expenses incurred by
12 the claimant for research conducted in this state for the taxable year and except that
13 "qualified research expenses" do not include compensation used in computing the
14 credits under subs. (1dj) and (1dx) ~~NO~~

Insert 4 - 10

15 2. If a credit computed under this subsection is not entirely offset against
16 Wisconsin income or franchise taxes otherwise due, the unused balance may be
17 carried forward and credited against Wisconsin income or franchise taxes otherwise
18 due for the following 5 taxable years to the extent not offset by these taxes otherwise
19 due in all intervening years between the year in which the expense was incurred and
20 the year in which the carry-forward credit is claimed.

(end ins)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1509/2

JK:jld:md

† WLj

RMP

DOA:.....Weidner, BB0412 - Research and development tax credit

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 1-30-09

DN

Do Not Gen

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

Under current law, a corporation may claim an income and franchise tax credit in an amount equal to 5 percent of its qualified research expenses, as defined by the Internal Revenue Code, for research conducted in this state. In addition, a corporation may claim an income and franchise tax credit equal to 5 percent of the amount that it paid in the taxable year to construct and equip new facilities or expand existing facilities used in this state for qualified research, as defined by the Internal Revenue Code.

Under this bill, a corporation may also claim an income and franchise tax credit equal to the amount of its qualified research expenses in the taxable year for research conducted in this state that exceeds the amount equal to the average amount of the corporation's qualified research expenses in the previous three taxable years multiplied by 1.25. If the credit claimed by a corporation exceeds the corporation's tax liability, the state will not issue a refund, but the corporation may carry forward any remaining credit to five subsequent taxable years.

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

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

1 **SECTION 1.** 71.21 (3) of the statutes is amended to read:

2 71.21 (3) The credits under s. 71.28 (4), (4m), and (5) may not be claimed by a
3 partnership or by partners, including partners of a publicly traded partnership.

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

5 71.26 (2) (a) 2. Plus the amount of credit computed under s. 71.28 (1), (3), (4),
6 (4m), and (5).

7 **SECTION 3.** 71.26 (3) (n) of the statutes is amended to read:

8 71.26 (3) (n) Sections 381, 382 and 383 (relating to carry-overs in certain
9 corporate acquisitions) are modified so that they apply to losses under sub. (4) and
10 credits under s. 71.28 (1di), (1dL), (1dm), (1dx), (3), (4), (4m), and (5) instead of to
11 federal credits and federal net operating losses.

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

13 71.28 (4m) SUPER RESEARCH AND DEVELOPMENT CREDIT. (a) *Definition.* In this
14 subsection, “qualified research expenses” means qualified research expenses as
15 defined in section 41 of the Internal Revenue Code, except that “qualified research
16 expenses” includes only expenses incurred by the claimant for research conducted
17 in this state for the taxable year and except that “qualified research expenses” do not
18 include compensation used in computing the credits under subs. (1dj) and (1dx).

19 (b) *Credit.* Subject to the limitations provided under this subsection, for
20 taxable years beginning on or after January 1, 2011, a corporation may claim as a
21 credit against the tax imposed under s. 71.23, up to the amount of those taxes, an
22 amount equal to the amount of qualified research expenses paid or incurred by the
23 corporation in the taxable year that exceeds the amount calculated as follows:

1 1. Determine the average amount of the qualified research expenses paid or
2 incurred by the corporation in the 3 taxable years immediately preceding the taxable
3 year for which a credit is claimed under this subsection.

4 2. Multiply the amount determined under subd. 1. by 1.25.

5 (c) *Limitations.* Subsection (4) (b) to (d) and (i), as it applies to the credit under
6 sub. (4), applies to the credit under this subsection.

7 (d) *Administration.* 1. Subsection (4) (e), (g), and (h), as it applies to the credit
8 under sub. (4), applies to the credit under this subsection.

9 2. If a credit computed under this subsection is not entirely offset against
10 Wisconsin income or franchise taxes otherwise due, the unused balance may be
11 carried forward and credited against Wisconsin income or franchise taxes otherwise
12 due for the following 5 taxable years to the extent not offset by these taxes otherwise
13 due in all intervening years between the year in which the expense was incurred and
14 the year in which the carry-forward credit is claimed.

15 **SECTION 5.** 71.30 (3) (db) of the statutes is created to read:

16 71.30 (3) (db) Super research and development credit under s. 71.28 (4m).

17 **SECTION 6.** 71.365 (3) of the statutes is amended to read:

18 71.365 (3) CREDITS NOT ALLOWED. The credits under s. 71.28 (4), ~~(4m)~~, and (5)
19 may not be claimed by a tax-option corporation or shareholders of a tax-option
20 corporation.

21 **SECTION 7.** 71.45 (2) (a) 10. of the statutes is amended to read:

22 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
23 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
24 (5j), and (5k) and not passed through by a partnership, limited liability company, or
25 tax-option corporation that has added that amount to the partnership's, limited

1 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)
2 (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

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7 expenses" includes only expenses incurred by the claimant for research conducted
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11 taxable years beginning on or after January 1, 2011, a corporation may claim as a
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6 (END)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1509/3dn
JK:jd:md

Wlj

Date

^{1/2}
This draft reconciles LRB-1509 and LRB-1280. Both of these drafts should continue
to appear in the compiled bill. ^{1/P1}

Joseph T. Kreye
Senior Legislative Attorney
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1509/3dn
JK:wlj:rs

January 30, 2009

This draft reconciles LRB-1509/2 and LRB-1280/P1. Both of these drafts should continue to appear in the compiled bill.

Joseph T. Kreye
Senior Legislative Attorney
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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1509/3
JK:jld&wlj:rs

DOA:.....Weidner, BB0412 - Research and development tax credit

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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