

# State of Wisconsin



2009 Assembly Bill 749

Date of enactment: **May 10, 2010**  
Date of publication\*: **May 24, 2010**

## 2009 WISCONSIN ACT 269

AN ACT *to amend* 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.10 (4) (i), 71.21 (4), 71.26 (2) (a) 4., 71.30 (3) (f), 71.34 (1k) (g), 71.45 (2) (a) 10., 71.49 (1) (f) and 77.92 (4); and *to create* 20.835 (2) (bc), 71.07 (3rm), 71.28 (3rm), 71.47 (3rm) and 560.209 of the statutes; **relating to**: an income and franchise tax credit for equipment used to harvest or process woody biomass.

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

**SECTION 1.** 20.835 (2) (bc) of the statutes is created to read:

20.835 (2) (bc) *Woody biomass harvesting and processing credit.* A sum sufficient to make the payments under ss. 71.07 (3rm), 71.28 (3rm), and 71.47 (3rm).

**SECTION 2.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), and (8r) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

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

71.07 (3rm) **WOODY BIOMASS HARVESTING AND PROCESSING CREDIT.** (a) *Definitions.* In this subsection:

1. "Claimant" means a person who files a claim under this subsection.

2. "Used primarily" means used to the exclusion of all other uses except for use not exceeding 25 percent of total use.

3. "Woody biomass" means trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest or woodland or on agricultural land.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 560.209, for taxable years beginning after December 31, 2009, and before January 1, 2016, a claimant may claim as a credit against the taxes imposed under s. 71.02 or 71.08, up to the amount of the tax, an amount equal to 10 percent of the amount the claimant paid in the taxable year for equipment that is used primarily to harvest or process woody biomass that is used as fuel or as a component of fuel.

(c) *Limitations.* 1. No credit may be allowed under this subsection for any amount that the claimant paid for expenses described under par. (b) that the claimant also claimed as a deduction under section 162 of the Internal Revenue Code.

2. The aggregate amount of credits that a claimant may claim under this subsection is \$100,000.

\* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

3. The maximum amount of the credits that may be claimed under this subsection and ss. 71.28 (3rm) and 71.47 (3rm) is \$900,000, as allocated under s. 560.209.

4. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of expenses under par. (b), except that the aggregate amount of credits that the entity may compute shall not exceed \$100,000. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

5. If 2 or more persons own and operate a woody biomass harvesting or processing operation, each person may claim a credit under par. (b) in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the operation shall not exceed \$100,000.

(d) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise due under s. 71.02 or 71.08, the amount of the claim not used to offset the tax due shall be certified by the department of revenue to the department of administration for payment by check, share draft, or other draft drawn from the appropriation account under s. 20.835 (2) (bc).

**SECTION 4.** 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married couple filing jointly, trust, or estate under s. 71.02, not considering the credits under ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p), (3q), (3r), (3rm), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (6), (6e), (8r), and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w), 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w), 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s. 71.07 (7), is less than the tax under this section, there is imposed on that natural person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax computed as follows:

**SECTION 5.** 71.10 (4) (i) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland preservation credit under ss. 71.57 to 71.61, farmland preservation credit, 2010 and beyond under s. 71.613, homestead credit under subch. VIII, farmland tax relief credit under s. 71.07 (3m), dairy

manufacturing facility investment credit under s. 71.07 (3p), jobs tax credit under s. 71.07 (3q), meat processing facility investment credit under s. 71.07 (3r), woody biomass harvesting and processing credit under s. 71.07 (3rm), film production services credit under s. 71.07 (5f), film production company investment credit under s. 71.07 (5h), veterans and surviving spouses property tax credit under s. 71.07 (6e), enterprise zone jobs credit under s. 71.07 (3w), beginning farmer and farm asset owner tax credit under s. 71.07 (8r), earned income tax credit under s. 71.07 (9e), estimated tax payments under s. 71.09, and taxes withheld under subch. X.

**SECTION 6.** 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), and (8r) and passed through to partners shall be added to the partnership's income.

**SECTION 7.** 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), and (8r) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g).

**SECTION 8.** 71.28 (3rm) of the statutes is created to read:

71.28 (3rm) WOODY BIOMASS HARVESTING AND PROCESSING CREDIT. (a) *Definitions.* In this subsection:

1. "Claimant" means a person who files a claim under this subsection.

2. "Used primarily" means used to the exclusion of all other uses except for use not exceeding 25 percent of total use.

3. "Woody biomass" means trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest or woodland or on agricultural land.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 560.209, for taxable years beginning after December 31, 2009, and before January 1, 2016, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of the tax, an amount equal to 10 percent of the amount the claimant paid in the taxable year for equipment that is used primarily to harvest or process woody biomass that is used as fuel or as a component of fuel.

(c) *Limitations.* 1. No credit may be allowed under this subsection for any amount that the claimant paid for expenses described under par. (b) that the claimant also

claimed as a deduction under section 162 of the Internal Revenue Code.

2. The aggregate amount of credits that a claimant may claim under this subsection is \$100,000.

3. The maximum amount of the credits that may be claimed under this subsection and ss. 71.07 (3rm) and 71.47 (3rm) is \$900,000, as allocated under s. 560.209.

4. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of expenses under par. (b), except that the aggregate amount of credits that the entity may compute shall not exceed \$100,000. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

5. If 2 or more persons own and operate a woody biomass harvesting or processing operation, each person may claim a credit under par. (b) in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the operation shall not exceed \$100,000.

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

2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise due under s. 71.23, the amount of the claim not used to offset the tax due shall be certified by the department of revenue to the department of administration for payment by check, share draft, or other draft drawn from the appropriation account under s. 20.835 (2) (bc).

**SECTION 9.** 71.30 (3) (f) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.30 (3) (f) The total of farmland preservation credit under subch. IX, farmland tax relief credit under s. 71.28 (2m), dairy manufacturing facility investment credit under s. 71.28 (3p), jobs credit under s. 71.28 (3q), meat processing facility investment credit under s. 71.28 (3r), woody biomass harvesting and processing credit under s. 71.28 (3rm), enterprise zone jobs credit under s. 71.28 (3w), film production services credit under s. 71.28 (5f), film production company investment credit under s. 71.28 (5h), beginning farmer and farm asset owner tax credit under s. 71.28 (8r), and estimated tax payments under s. 71.29.

**SECTION 10.** 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.34 (1k) (g) An addition shall be made for credits computed by a tax-option corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3t),

(3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), and (8r) and passed through to shareholders.

**SECTION 11.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), and (8r) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

**SECTION 12.** 71.47 (3rm) of the statutes is created to read:

71.47 (3rm) **WOODY BIOMASS HARVESTING AND PROCESSING CREDIT.** (a) *Definitions.* In this subsection:

1. "Claimant" means a person who files a claim under this subsection.

2. "Used primarily" means used to the exclusion of all other uses except for use not exceeding 25 percent of total use.

3. "Woody biomass" means trees and woody plants, including limbs, tops, needles, leaves, and other woody parts, grown in a forest or woodland or on agricultural land.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 560.209, for taxable years beginning after December 31, 2009, and before January 1, 2016, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the tax, an amount equal to 10 percent of the amount the claimant paid in the taxable year for equipment that is used primarily to harvest or process woody biomass that is used as fuel or as a component of fuel.

(c) *Limitations.* 1. No credit may be allowed under this subsection for any amount that the claimant paid for expenses described under par. (b) that the claimant also claimed as a deduction under section 162 of the Internal Revenue Code.

2. The aggregate amount of credits that a claimant may claim under this subsection is \$100,000.

3. The maximum amount of the credits that may be claimed under this subsection and ss. 71.07 (3rm) and 71.28 (3rm) is \$900,000, as allocated under s. 560.209.

4. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of expenses under par. (b), except that the aggregate amount of credits that the entity may compute shall not exceed \$100,000. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, mem-

bers of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

5. If 2 or more persons own and operate a woody biomass harvesting or processing operation, each person may claim a credit under par. (b) in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the operation shall not exceed \$100,000.

(d) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise due under s. 71.43, the amount of the claim not used to offset the tax due shall be certified by the department of revenue to the department of administration for payment by check, share draft, or other draft drawn from the appropriation account under s. 20.835 (2) (bc).

**SECTION 13.** 71.49 (1) (f) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.49 (1) (f) The total of farmland preservation credit under subch. IX, farmland tax relief credit under s. 71.47 (2m), dairy manufacturing facility investment credit under s. 71.47 (3p), jobs credit under s. 71.47 (3q), meat processing facility investment credit under s. 71.47 (3r), woody biomass harvesting and processing credit under s. 71.47 (3rm), enterprise zone jobs credit under s. 71.47 (3w), film production services credit under s. 71.47 (5f), film production company investment credit under s. 71.47 (5h), beginning farmer and farm asset owner tax credit under s. 71.47 (8r), and estimated tax payments under s. 71.48.

**SECTION 14.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

77.92 (4) "Net business income," with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702

of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), and (8r); and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions from farming. "Net business income," with respect to a natural person, estate, or trust, means profit from a trade or business for federal income tax purposes and includes net income derived as an employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

**SECTION 15.** 560.209 of the statutes is created to read:

**560.209 Woody biomass harvesting and processing credit.** (1) The department of commerce shall implement a program to certify taxpayers as eligible for the woody biomass harvesting and processing credit under ss. 71.07 (3rm), 71.28 (3rm), and 71.47 (3rm).

(2) If the department of commerce certifies a taxpayer under sub. (1), the department of commerce shall determine the amount of credits to allocate to that taxpayer. The total amount of woody biomass harvesting and processing credits allocated to taxpayers in any fiscal year may not exceed \$900,000. In each fiscal year, the department of commerce shall allocate \$450,000 in tax credits to businesses that, individually, have no more than \$5,000,000 in gross receipts from doing business in this state for the taxable year in which the credit is claimed.

(3) The department of commerce shall inform the department of revenue of every taxpayer certified under sub. (1) and the amount of credits allocated to the taxpayer.

(4) The department of commerce, in consultation with the department of revenue, shall promulgate rules to administer this section.

**SECTION 15m. Nonstatutory provisions.**

(1) **REQUIRED GENERAL FUND BALANCE.** Section 20.003 (4) of the statutes does not apply to the action of the legislature in enacting this act.