



## 2005 ASSEMBLY BILL 913

January 13, 2006 - Introduced by Representatives ALBERS, MUSSER, TOWNSEND, HAHN, MONTGOMERY, KERKMAN and SUDER, cosponsored by Senators STEPP, GROTHMAN and KEDZIE. 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 (5e), 71.10 (4) (gxb), 71.28 (5e), 71.30  
3           (3) (epb), 71.47 (5e) and 71.49 (1) (epb) of the statutes; **relating to:** an income  
4           and franchise tax credit for the sales and use tax paid on construction  
5           materials, labor, and services that are sold under a lump sum contract.

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### *Analysis by the Legislative Reference Bureau*

This bill creates an income and franchise tax credit for the sales and use taxes that a claimant paid on certain construction materials and services. The credit is equal to the sales and use taxes paid any amount charged as a part of a lump sum contract for tangible personal property or taxable services that are sold as part of the contract, if the total of all such amounts is less than 10 percent of the total amount of the contract and regardless of whether the amounts charged for labor and services are separately set forth from the amount received for the tangible personal property. Under the bill, a lump sum contract is a contract to perform real property construction activities and for which the contractor quotes the charge for labor, services of subcontractors, and materials as one price, including a contract for which the contractor subsequently itemizes the charges for labor, services of subcontractors, and materials as part of a schedule of values or similar document.

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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), (3s), (3t), (5b), ~~and (5d), (5e),~~  
4           and (5g) and not passed through by a partnership, limited liability company, or  
5           tax-option corporation that has added that amount to the partnership's, company's,  
6           or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g).

7           **SECTION 2.** 71.07 (5e) of the statutes is created to read:

8           71.07 **(5e)** LUMP SUM CONTRACT CREDIT. (a) *Definitions.* In this subsection:

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

10          2. "Contractor" has the meaning given in s. 77.51 (2).

11          3. "Lump sum contract" means a contract to perform real property construction  
12          activities and for which the contractor quotes the charge for labor, services of  
13          subcontractors, and materials as one price, including a contract for which the  
14          contractor itemizes the charges for labor, services of subcontractors, and materials  
15          as part of a schedule of values or similar document.

16          4. "Real property construction activities" has the meaning given in s. 77.51 (2).

17          5. "Subcontractors" has the meaning given in s. 77.51 (2).

18          (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
19          claimant may claim as a credit against the taxes imposed under s. 71.02, up to the  
20          amount of those taxes, an amount that is equal to the taxes imposed under ss. 77.52  
21          and 77.53 that the claimant paid on amounts charged as part of a lump sum contract

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1 for tangible personal property or taxable services that are sold as part of the lump  
2 sum contract, if the total of all such amounts charged is less than 10 percent of the  
3 total amount of the lump sum contract.

4 (c) *Limitations.* Partnerships, limited liability companies, and tax-option  
5 corporations may not claim the credit under this subsection, but the eligibility for,  
6 and the amount of, the credit are based on their payment of amounts described under  
7 par. (b). A partnership, limited liability company, or tax-option corporation shall  
8 compute the amount of credit that each of its partners, members, or shareholders  
9 may claim and shall provide that information to each of them. Partners, members  
10 of limited liability companies, and shareholders of tax-option corporations may  
11 claim the credit in proportion to their ownership interests.

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

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

15 71.10 (4) (gxb) Lump sum contract credit under s. 71.07 (5e).

16 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2005 Wisconsin Act 74, is  
17 amended to read:

18 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
19 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (5b), (5e), and (5g) and passed  
20 through to partners shall be added to the partnership's income.

21 **SECTION 5.** 71.26 (2) (a) of the statutes, as affected by 2005 Wisconsin Act 74,  
22 is amended to read:

23 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means  
24 the gross income as computed under the Internal Revenue Code as modified under  
25 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit

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

16 **SECTION 6.** 71.28 (5e) of the statutes is created to read:

17 71.28 (5e) LUMP SUM CONTRACT CREDIT. (a) *Definitions.* In this subsection:

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

19 2. "Contractor" has the meaning given in s. 77.51 (2).

20 3. "Lump sum contract" means a contract to perform real property construction  
21 activities and for which the contractor quotes the charge for labor, services of  
22 subcontractors, and materials as one price, including a contract for which the  
23 contractor itemizes the charges for labor, services of subcontractors, and materials  
24 as part of a schedule of values or similar document.

25 4. "Real property construction activities" has the meaning given in s. 77.51 (2).

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1           5. “Subcontractors” has the meaning given in s. 77.51 (2).

2           (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
3 claimant may claim as a credit against the taxes imposed under s. 71.23, up to the  
4 amount of those taxes, an amount that is equal to the taxes imposed under ss. 77.52  
5 and 77.53 that the claimant paid on amounts charged as part of a lump sum contract  
6 for tangible personal property or taxable services that are sold as part of the lump  
7 sum contract, if the total of all such amounts charged is less than 10 percent of the  
8 total amount of the lump sum contract.

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

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

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

20           71.30 (3) (epb) Lump sum contract credit under s. 71.28 (5e).

21           **SECTION 8.** 71.34 (1) (g) of the statutes, as affected by 2005 Wisconsin Act 74,  
22 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), (3g),  
25 (3n), (3t), (5b), (5e), and (5g) and passed through to shareholders.

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1           **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2005 Wisconsin Act  
2 74, is amended to read:

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

9           **SECTION 10.** 71.47 (5e) of the statutes is created to read:

10           71.47 **(5e)** LUMP SUM CONTRACT CREDIT. (a) *Definitions.* In this subsection:

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

12           2. "Contractor" has the meaning given in s. 77.51 (2).

13           3. "Lump sum contract" means a contract to perform real property construction  
14 activities and for which the contractor quotes the charge for labor, services of  
15 subcontractors, and materials as one price, including a contract for which the  
16 contractor itemizes the charges for labor, services of subcontractors, and materials  
17 as part of a schedule of values or similar document.

18           4. "Real property construction activities" has the meaning given in s. 77.51 (2).

19           5. "Subcontractors" has the meaning given in s. 77.51 (2).

20           (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
21 claimant may claim as a credit against the taxes imposed under s. 71.43, up to the  
22 amount of those taxes, an amount that is equal to the taxes imposed under ss. 77.52  
23 and 77.53 that the claimant paid on amounts charged as part of a lump sum contract  
24 for tangible personal property or taxable services that are sold as part of the lump

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1 sum contract, if the total of all such amounts charged is less than 10 percent of the  
2 total amount of the lump sum contract.

3 (c) *Limitations.* Partnerships, limited liability companies, and tax-option  
4 corporations may not claim the credit under this subsection, but the eligibility for,  
5 and the amount of, the credit are based on their payment of amounts described under  
6 par. (b). A partnership, limited liability company, or tax-option corporation shall  
7 compute the amount of credit that each of its partners, members, or shareholders  
8 may claim and shall provide that information to each of them. Partners, members  
9 of limited liability companies, and shareholders of tax-option corporations may  
10 claim the credit in proportion to their ownership interests.

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

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

14 71.49 (1) (epb) Lump sum contract credit under s. 71.47 (5e).

15 **SECTION 12.** 77.92 (4) of the statutes, as affected by 2005 Wisconsin Act 74, is  
16 amended to read:

17 77.92 (4) "Net business income," with respect to a partnership, means taxable  
18 income as calculated under section 703 of the Internal Revenue Code; plus the items  
19 of income and gain under section 702 of the Internal Revenue Code, including taxable  
20 state and municipal bond interest and excluding nontaxable interest income or  
21 dividend income from federal government obligations; minus the items of loss and  
22 deduction under section 702 of the Internal Revenue Code, except items that are not  
23 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
24 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),  
25 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), (5b), (5e), and (5g);

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

7 **SECTION 13. Initial applicability.**

8 (1) This act first applies to taxable years beginning on January 1, 2006.

9 (END)