



2005 SENATE BILL 435

November 15, 2005 – Introduced by Senators KANAVAS, PLALE, HARSDORF, STEPP and ROESSLER, cosponsored by Representatives NISCHKE, HAHN, SHERIDAN, BERCEAU, FIELDS, GUNDERSON, HINES, TRAVIS and POPE-ROBERTS. Referred to Committee on Job Creation, Economic Development and Consumer Affairs.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.21 (4), 71.26 (2) (a), 71.34
2 (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and **to create** 71.07 (5e), 71.10 (4) (ga),
3 71.28 (5e), 71.30 (3) (dq), 71.47 (5e) and 71.49 (1) (dq) of the statutes; **relating**
4 **to:** creating an income and franchise tax credit for the sales and use taxes paid
5 for tangible personal property that is used in research or manufacturing by a
6 biotechnology business, an institution of higher education, or a governmental
7 unit.

Analysis by the Legislative Reference Bureau

Under this bill, a person may claim an income and franchise tax credit in an amount that is equal to the sales and use taxes that the person paid in the taxable year on the purchase of machines, equipment, animals, and certain other tangible personal property that are sold to a biotechnology business for use exclusively in research. Under the bill, a biotechnology business is a business that is primarily engaged in the application of biotechnologies that use a living organism or parts of an organism to produce or modify products to improve plants or animals, develop microorganisms for specific uses, identify targets for small molecule pharmaceutical development, or transform biological systems into useful processes and products.

Under the bill, a person may also claim an income and franchise tax credit in an amount that is equal to the sales and use taxes that the person paid in the taxable

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year on the purchase of machines, equipment, and certain other tangible personal property that are used exclusively in raising animals that are sold primarily to a biotechnology business, a public or private institution of higher education, or a governmental unit for use by any such entity in research or manufacturing.

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.** 71.05 (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)~~, and (5e)
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, company's, or
6 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)** BIOTECHNOLOGY CREDIT. (a) *Definitions.* In this subsection:

9 1. "Animals" include bacteria, viruses, and other microorganisms.

10 2. "Biotechnologies" include recombinant deoxyribonucleic acid techniques,
11 biochemistry, molecular and cellular biology, genetics, genetic engineering,
12 biological cell fusion, and other bioprocesses.

13 3. "Biotechnology business" means a business, as certified by the department
14 in the manner prescribed by the department, that is primarily engaged in the
15 application of biotechnologies that use a living organism or parts of an organism to
16 produce or modify products to improve plants or animals, develop microorganisms
17 for specific uses, identify targets for small molecule pharmaceutical development, or
18 transform biological systems into useful processes and products.

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

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1 5. “Manufacturing” has the meaning given in s. 77.54 (6m).

2 6. “Qualified research” means qualified research as defined under section 41
3 (d) (1) of the Internal Revenue Code, except that research conducted by a public or
4 private institution of higher education or by a governmental unit is “qualified
5 research” if the research is intended to be useful in developing a new or improved
6 product or service and the research satisfies section 41 (d) (1) (B) (i) and (C) of the
7 Internal Revenue Code.

8 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
9 claimant may claim as a credit against the taxes imposed under s. 71.02 or 71.08, up
10 to the amount of the taxes, an amount that is equal to the amount of the taxes
11 imposed under subchapter III of ch. 77 that the claimant paid in the taxable year on
12 the purchase of any of the following:

13 1. Machines and processing equipment, including accessories, attachments,
14 and parts for the machines or equipment, that are used exclusively and directly by
15 the claimant in raising animals that are sold primarily to a biotechnology business,
16 a public or private institution of higher education, or a governmental unit for
17 exclusive and direct use by any such entity in qualified research or manufacturing.

18 2. The items listed in s. 77.54 (3m) (a) to (m), medicines, semen for artificial
19 insemination, fuel, and electricity that are used exclusively and directly by the
20 claimant in raising animals that are sold primarily to a biotechnology business, a
21 public or private institution of higher education, or a governmental unit for exclusive
22 and direct use by any such entity in qualified research or manufacturing.

23 3. Machines and processing equipment, including accessories, attachments,
24 and parts for the machines or equipment, that are used exclusively and directly by

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1 the claimant in qualified research in biotechnology, if the claimant is a biotechnology
2 business.

3 4. Tangible personal property that is consumed or destroyed or loses its identity
4 while being used exclusively and directly by the claimant in qualified research in
5 biotechnology, if the claimant is a biotechnology business.

6 5. Animals that are used exclusively and directly by the claimant in qualified
7 research in biotechnology, if the claimant is a biotechnology business.

8 (c) *Limitations.* 1. A claimant who claims a credit under par. (b) 1. and 2. shall
9 obtain written documentation from the claimant's customers related to each
10 customer's use of animals, including the percentage of animals sold to the customer
11 that are used exclusively and directly in qualified research.

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

20 (d) *Administration.* 1. The department shall publish on the department's
21 Internet site a list of all biotechnology businesses certified by the department.

22 2. Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies
23 to the credit under this subsection.

24 **SECTION 3.** 71.08 (1) (intro.) of the statutes, as affected by 2005 Wisconsin Act
25 is amended to read:

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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), (3n), (3s),
4 (3t), (5b), (5d), (5e), (6), (6e), and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds),
5 (1dx), (1fd), (2m), (3), (3n), and (3t) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds),
6 (1dx), (1fd), (2m), (3), (3n), and (3t) and subchs. VIII and IX and payments to other
7 states under s. 71.07 (7), is less than the tax under this section, there is imposed on
8 that natural person, married couple filing jointly, trust, or estate, instead of the tax
9 under s. 71.02, an alternative minimum tax computed as follows:

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

11 71.10 (4) (ga) Biotechnology credit under s. 71.07 (5e).

12 **SECTION 5.** 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), (3n), (3s), (3t), ~~and (5b), and (5e)~~ and passed
15 through to partners shall be added to the partnership's income.

16 **SECTION 6.** 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), (3g), (3n), (3t), ~~and (5b), and (5e)~~ and not passed through by a
25 partnership, limited liability company, or tax-option corporation that has added that

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

10 **SECTION 7.** 71.28 (5e) of the statutes is created to read:

11 71.28 (5e) BIOTECHNOLOGY CREDIT. (a) *Definitions.* In this subsection:

12 1. "Animals" include bacteria, viruses, and other microorganisms.

13 2. "Biotechnologies" include recombinant deoxyribonucleic acid techniques,
14 biochemistry, molecular and cellular biology, genetics, genetic engineering,
15 biological cell fusion, and other bioprocesses.

16 3. "Biotechnology business" means a business, as certified by the department
17 in the manner prescribed by the department, that is primarily engaged in the
18 application of biotechnologies that use a living organism or parts of an organism to
19 produce or modify products to improve plants or animals, develop microorganisms
20 for specific uses, identify targets for small molecule pharmaceutical development, or
21 transform biological systems into useful processes and products.

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

23 5. "Manufacturing" has the meaning given in s. 77.54 (6m).

24 6. "Qualified research" means qualified research as defined under section 41
25 (d) (1) of the Internal Revenue Code, except that research conducted by a public or

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1 private institution of higher education or by a governmental unit is “qualified
2 research” if the research is intended to be useful in developing a new or improved
3 product or service and the research satisfies section 41 (d) (1) (B) (i) and (C) of the
4 Internal Revenue Code.

5 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
6 claimant may claim as a credit against the taxes imposed under s. 71.23, up to the
7 amount of the taxes, an amount that is equal to the amount of the taxes imposed
8 under subchapter III of ch. 77 that the claimant paid in the taxable year on the
9 purchase of any of the following:

10 1. Machines and processing equipment, including accessories, attachments,
11 and parts for the machines or equipment, that are used exclusively and directly by
12 the claimant in raising animals that are sold primarily to a biotechnology business,
13 a public or private institution of higher education, or a governmental unit for
14 exclusive and direct use by any such entity in qualified research or manufacturing.

15 2. The items listed in s. 77.54 (3m) (a) to (m), medicines, semen for artificial
16 insemination, fuel, and electricity that are used exclusively and directly by the
17 claimant in raising animals that are sold primarily to a biotechnology business, a
18 public or private institution of higher education, or a governmental unit for exclusive
19 and direct use by any such entity in qualified research or manufacturing.

20 3. Machines and processing equipment, including accessories, attachments,
21 and parts for the machines or equipment, that are used exclusively and directly by
22 the claimant in qualified research in biotechnology, if the claimant is a biotechnology
23 business.

SENATE BILL 435**SECTION 7**

1 4. Tangible personal property that is consumed or destroyed or loses its identity
2 while being used exclusively and directly by the claimant in qualified research in
3 biotechnology, if the claimant is a biotechnology business.

4 5. Animals that are used exclusively and directly by the claimant in qualified
5 research in biotechnology, if the claimant is a biotechnology business.

6 (c) *Limitations.* 1. A claimant who claims a credit under par. (b) 1. and 2. shall
7 obtain written documentation from the claimant's customers related to each
8 customer's use of animals, including the percentage of animals sold to the customer
9 that are used exclusively and directly in qualified research.

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

18 (d) *Administration.* 1. The department shall publish on the department's
19 Internet site a list of all biotechnology businesses certified by the department.

20 2. Subsection (4) (e) to (h), as it applies to the credit under sub. (4), applies to
21 the credit under this subsection.

22 **SECTION 8.** 71.30 (3) (dq) of the statutes is created to read:

23 71.30 (3) (dq) Biotechnology credit under s. 71.28 (5e).

24 **SECTION 9.** 71.34 (1) (g) of the statutes is amended to read:

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

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

11 **SECTION 11.** 71.47 (5e) of the statutes is created to read:

12 71.47 (5e) BIOTECHNOLOGY CREDIT. (a) *Definitions.* In this subsection:

13 1. "Animals" include bacteria, viruses, and other microorganisms.

14 2. "Biotechnologies" include recombinant deoxyribonucleic acid techniques,
15 biochemistry, molecular and cellular biology, genetics, genetic engineering,
16 biological cell fusion, and other bioprocesses.

17 3. "Biotechnology business" means a business, as certified by the department
18 in the manner prescribed by the department, that is primarily engaged in the
19 application of biotechnologies that use a living organism or parts of an organism to
20 produce or modify products to improve plants or animals, develop microorganisms
21 for specific uses, identify targets for small molecule pharmaceutical development, or
22 transform biological systems into useful processes and products.

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

24 5. "Manufacturing" has the meaning given in s. 77.54 (6m).

SENATE BILL 435**SECTION 11**

1 6. “Qualified research” means qualified research as defined under section 41
2 (d) (1) of the Internal Revenue Code, except that research conducted by a public or
3 private institution of higher education or by a governmental unit is “qualified
4 research” if the research is intended to be useful in developing a new or improved
5 product or service and the research satisfies section 41 (d) (1) (B) (i) and (C) of the
6 Internal Revenue Code.

7 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
8 claimant may claim as a credit against the taxes imposed under s. 71.43, up to the
9 amount of the taxes, an amount that is equal to the amount of the taxes imposed
10 under subchapter III of ch. 77 that the claimant paid in the taxable year on the
11 purchase of any of the following:

12 1. Machines and processing equipment, including accessories, attachments,
13 and parts for the machines or equipment, that are used exclusively and directly by
14 the claimant in raising animals that are sold primarily to a biotechnology business,
15 a public or private institution of higher education, or a governmental unit for
16 exclusive and direct use by any such entity in qualified research or manufacturing.

17 2. The items listed in s. 77.54 (3m) (a) to (m), medicines, semen for artificial
18 insemination, fuel, and electricity that are used exclusively and directly by the
19 claimant in raising animals that are sold primarily to a biotechnology business, a
20 public or private institution of higher education, or a governmental unit for exclusive
21 and direct use by any such entity in qualified research or manufacturing.

22 3. Machines and processing equipment, including accessories, attachments,
23 and parts for the machines or equipment, that are used exclusively and directly by
24 the claimant in qualified research in biotechnology, if the claimant is a biotechnology
25 business.

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1 4. Tangible personal property that is consumed or destroyed or loses its identity
2 while being used exclusively and directly by the claimant in qualified research in
3 biotechnology, if the claimant is a biotechnology business.

4 5. Animals that are used exclusively and directly by the claimant in qualified
5 research in biotechnology, if the claimant is a biotechnology business.

6 (c) *Limitations.* 1. A claimant who claims a credit under par. (b) 1. and 2. shall
7 obtain written documentation from the claimant's customers related to each
8 customer's use of animals, including the percentage of animals sold to the customer
9 that are used exclusively and directly in qualified research.

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

18 (d) *Administration.* 1. The department shall publish on the department's
19 Internet site a list of all biotechnology businesses certified by the department.

20 2. Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies
21 to the credit under this subsection.

22 **SECTION 12.** 71.49 (1) (dq) of the statutes is created to read:

23 71.49 (1) (dq) Biotechnology credit under s. 71.47 (5e).

24 **SECTION 13.** 77.92 (4) of the statutes is amended to read:

