



## 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.

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.

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### ***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.

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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.

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

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

2           70.11 **(27m)** RESEARCH MACHINERY AND EQUIPMENT. (a) In this subsection:

3           1. “Biotechnology” has the meaning given in s. 77.54 (50) (a) 1.

4           2. “Machinery” has the meaning given in sub. (27) (a) 2.

5           3. “Manufacturing” has the meaning given in sub. (27) (a) 3.

6           4. “Primarily” means more than 50 percent.

7           5. “Qualified research” means qualified research as defined under section 41  
8 (d) (1) of the Internal Revenue Code.

9           6. “Used exclusively” has the meaning given in sub. (27) (a) 8.

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

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

14           70.111 **(27)** RESEARCH PROPERTY. (a) In this subsection:

15           1. “Biotechnology” has the meaning given in s. 77.54 (50) (a) 1.

16           2. “Manufacturing” has the meaning given in s. 70.11 (27) (a) 3.

17           3. “Primarily” means more than 50 percent.

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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 (1di) 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

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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).

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.

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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*. 1. 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:

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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*. 1. 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:

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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

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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)