

1999 ASSEMBLY BILL 393

June 24, 1999 – Introduced by Representatives HOVEN, HUEBSCH, AINSWORTH, SPILLNER, HASENOHRL, PLOUFF, F. LASEE, KAUFERT, KELSO, PLALE, JESKEWITZ, ALBERS, GOETSCH, SYKORA, WAUKAU, GUNDERSON and BOCK, cosponsored by Senators RISSER, DARLING, DRZEWIECKI, PANZER, SCHULTZ, ROESSLER, ROBSON, WIRCH and CLAUSING. Referred to Committee on Ways and Means.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.10 (4) (i), 71.21 (4), 71.26
2 (2) (a), 71.30 (3) (f), 71.34 (1) (g), 71.45 (2) (a) 10., 71.49 (1) (f) and 77.92 (4); and
3 **to create** 71.07 (5d), 71.28 (5d) and 71.47 (5d) of the statutes; **relating to:**
4 income and franchise tax credits for a business to construct, equip and operate
5 a day care center for the children of employes.

Analysis by the Legislative Reference Bureau

This bill creates an income tax and franchise tax credit for a corporation that constructs and equips a day care center or pays a day care center to care for the children of the corporation's employes during the employes' working hours. Sole proprietorships, corporations and insurers may claim the credit. Partnerships, limited liability companies and tax-option corporations compute the credit but pass it on to the partners, members and shareholders in proportion to their ownership interests.

The credit is an amount equal to 50% of the amount paid by the corporation during a taxable year to construct and equip a day care center that is owned and operated by the corporation or an amount equal to 50% of the amount paid by the corporation during a taxable year to a day care center to care for the children of the corporation's employes during the employes' working hours. A corporation may also claim a credit equal to 50% of the amount paid by the corporation to operate the corporation's day care center for a taxable year, less any amount paid by the corporation's employes to operate the corporation's day care center.

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If the credit claimed by a corporation exceeds the corporation's tax liability, the state will not issue a refund check, but the corporation may carry forward any remaining credit to the next five taxable years. If a day care center that is constructed and equipped by a corporation ceases its operation within five years from the date that construction of the day care center was completed, the corporation must pay back the credit received in proportion to the period of time that the day care center operated.

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), (2dr), (2ds), (2dx) ~~and~~, (3s) and (5d) and not passed through by a
4 partnership, limited liability company or tax-option corporation that has added that
5 amount to the partnership's, company's or tax-option corporation's income under s.
6 71.21 (4) or 71.34 (1) (g).

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

8 71.07 **(5d)** DAY CARE CENTER CREDIT. (a) In this subsection, "claimant" means
9 a person who files a claim under this subsection.

10 (b) A claimant may claim as a credit against the tax imposed under s. 71.02 any
11 of the following:

12 1. An amount equal to 50% of the amount paid or incurred by the claimant
13 during the taxable year to construct and equip a licensed day care center under s.
14 48.65, that is owned and operated by the claimant, to care for the children of the
15 claimant's employes during the employes' working hours.

16 2. An amount equal to 50% of the amount paid by the claimant to operate the
17 claimant's day care center under subd. 1. for the taxable year, less any amount paid

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1 by the claimant's employes to operate the claimant's day care center under subd. 1.
2 for the taxable year.

3 3. An amount equal to 50% of the amount paid by the claimant during the
4 taxable year to a licensed day care center under s. 48.65, other than a day care center
5 under subd. 1., to provide care for the children of the claimant's employes during the
6 employes' working hours.

7 (c) The amount of the credit under this subsection shall not exceed \$50,000 in
8 a taxable year for each claimant and the total amount of the credit under this
9 subsection for all claimants shall not exceed \$1,500,000 in a fiscal year.

10 (d) No credit may be allowed under this subsection unless the claimant files an
11 application with the department of revenue before the end of the taxable year in
12 which amounts are paid or expenses are incurred under par. (b) and includes with
13 that application a statement from the department of health and family services that
14 verifies that the day care center under par. (b) is licensed under s. 48.65. No credit
15 may be allowed under this subsection after the department of revenue has awarded
16 the total amount of the credit for all claimants under par. (c).

17 (e) Section 71.28 (4) (e), as it applies to the credit under s. 71.28 (4), applies to
18 the credit under this subsection.

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

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1 (g) Partnerships, limited liability companies and tax-option corporations may
2 not claim the credit under this subsection, but the eligibility for, and the amount of,
3 the credit are based on the amount paid or incurred under par. (b). A partnership,
4 limited liability company or tax-option corporation shall compute the amount of
5 credit that each of its partners, members or shareholders may claim and shall
6 provide that information to each of them. Partners, members of limited liability
7 companies and shareholders of tax-option corporations may claim the credit in
8 proportion to their ownership interest.

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

11 (i) Except as provided under par. (j), if the operation of a day care center under
12 par. (b) 1. ceases within 5 years after the date on which the construction of the day
13 care center is completed, a claimant who receives credits under par. (b) 1. and 2. for
14 the construction and operation of such a day care center shall add to the claimant's
15 liability for taxes imposed under s. 71.02 an amount equal to the total amount of the
16 credits received under par. (b) 1. and 2. multiplied by the following percentage:

17 1. If the operation of the day care center ceases during the first year after the
18 date on which the construction of the day care center is completed, 100%.

19 2. If the operation of the day care center ceases during the 2nd year after the
20 date on which the construction of the day care center is completed, 80%.

21 3. If the operation of the day care center ceases during the 3rd year after the
22 date on which the construction of the day care center is completed, 60%.

23 4. If the operation of the day care center ceases during the 4th year after the
24 date on which the construction of the day care center is completed, 40%.

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1 5. If the operation of the day care center ceases during the 5th year after the
2 date on which the construction of the day care center is completed, 20%.

3 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
4 within 5 years after the date on which the construction of the claimant's day care
5 center is completed or to a claimant who presents evidence to the department of
6 revenue that the majority of the claimant's employes do not want to enroll their
7 children in the claimant's day care center.

8 **SECTION 3.** 71.08 (1) (intro.) of the statutes is amended to read:

9 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
10 couple filing jointly, trust or estate under s. 71.02, not considering the credits under
11 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (5d),
12 (6) and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) ~~and~~ (3) and
13 (5d) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) ~~and~~ (3) and (5d)
14 and subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than
15 the tax under this section, there is imposed on that natural person, married couple
16 filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative
17 minimum tax computed as follows:

18 **SECTION 4.** 71.10 (4) (i) of the statutes is amended to read:

19 71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland
20 preservation credit under subch. IX, homestead credit under subch. VIII, farmland
21 tax relief credit under s. 71.07 (3m), farmers' drought property tax credit under s.
22 71.07 (2fd), day care center credit under s. 71.07 (5d), earned income tax credit under
23 s. 71.07 (9e), estimated tax payments under s. 71.09, and taxes withheld under
24 subch. X.

25 **SECTION 5.** 71.21 (4) of the statutes is amended to read:

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1 71.21 **(4)** Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
2 (2dj), (2dL), (2ds), (2dx) and (3s) and (5d) and passed through to partners shall be
3 added to the partnership's income.

4 **SECTION 6.** 71.26 (2) (a) of the statutes is amended to read:

5 71.26 **(2)** (a) *Corporations in general.* The “net income” of a corporation means
6 the gross income as computed under the internal revenue code as modified under
7 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
8 computed under s. 71.28 (1) and (3) to (5) plus the amount of the credit computed
9 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds) and (1dx) and (5d) and not passed
10 through by a partnership, limited liability company or tax-option corporation that
11 has added that amount to the partnership's, limited liability company's or tax-option
12 corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from
13 the sale or other disposition of assets the gain from which would be wholly exempt
14 income, as defined in sub. (3) (L), if the assets were sold or otherwise disposed of at
15 a gain and minus deductions, as computed under the internal revenue code as
16 modified under sub. (3), plus or minus, as appropriate, an amount equal to the
17 difference between the federal basis and Wisconsin basis of any asset sold,
18 exchanged, abandoned or otherwise disposed of in a taxable transaction during the
19 taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

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

21 71.28 **(5d)** DAY CARE CENTER CREDIT. (a) In this subsection, “claimant” means
22 a person who files a claim under this subsection.

23 (b) A claimant may claim as a credit against the tax imposed under s. 71.23 any
24 of the following:

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1 1. An amount equal to 50% of the amount paid or incurred by the claimant
2 during the taxable year to construct and equip a licensed day care center under s.
3 48.65, that is owned and operated by the claimant, to care for the children of the
4 claimant's employes during the employes' working hours.

5 2. An amount equal to 50% of the amount paid by the claimant to operate the
6 claimant's day care center under subd. 1. for the taxable year, less any amount paid
7 by the claimant's employes to operate the claimant's day care center under subd. 1.
8 for the taxable year.

9 3. An amount equal to 50% of the amount paid by the claimant during the
10 taxable year to a licensed day care center under s. 48.65, other than a day care center
11 under subd. 1., to provide care for the children of the claimant's employes during the
12 employes' working hours.

13 (c) The amount of the credit under this subsection shall not exceed \$50,000 in
14 a taxable year for each claimant, and the total amount of the credit under this
15 subsection for all claimants shall not exceed \$1,500,000 in a fiscal year.

16 (d) No credit may be allowed under this subsection unless the claimant files an
17 application with the department of revenue before the end of the taxable year in
18 which amounts are paid or expenses are incurred under par. (b) and includes with
19 that application a statement from the department of health and family services that
20 verifies that the day care center under par. (b) is licensed under s. 48.65. No credit
21 may be allowed under this subsection after the department of revenue has awarded
22 the total amount of the credit for all claimants under par. (c).

23 (e) Subsection (4) (e), as it applies to the credit under sub. (4), applies to the
24 credit under this subsection.

ASSEMBLY BILL 393**SECTION 7**

1 (f) If a credit computed under this subsection is not entirely offset against
2 income or franchise taxes otherwise due, the unused balance may be carried forward
3 and credited against income or franchise taxes otherwise due for the following 5
4 taxable years to the extent not offset by those taxes otherwise due in all intervening
5 years between the year in which the expense was incurred and the year in which the
6 carry-forward credit is claimed.

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

15 (h) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
16 to the credit under this subsection.

17 (i) Except as provided in par. (j), if the operation of a day care center under par.
18 (b) 1. ceases within 5 years after the date on which the construction of the day care
19 center is completed, a claimant who receives credits under par. (b) 1. and 2. for the
20 construction and operation of such a day care center shall add to the claimant's
21 liability for taxes imposed under s. 71.23 an amount equal to the total amount of the
22 credits received under par. (b) 1. and 2. multiplied by the following percentage:

23 1. If the operation of the day care center ceases during the first year after the
24 date on which the construction of the day care center is completed, 100%.

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1 2. If the operation of the day care center ceases during the 2nd year after the
2 date on which the construction of the day care center is completed, 80%.

3 3. If the operation of the day care center ceases during the 3rd year after the
4 date on which the construction of the day care center is completed, 60%.

5 4. If the operation of the day care center ceases during the 4th year after the
6 date on which the construction of the day care center is completed, 40%.

7 5. If the operation of the day care center ceases during the 5th year after the
8 date on which the construction of the day care center is completed, 20%.

9 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
10 within 5 years after the date on which the construction of the claimant's day care
11 center is completed or to a claimant who presents evidence to the department of
12 revenue that the majority of the claimant's employes do not want to enroll their
13 children in the claimant's day care center.

14 **SECTION 8.** 71.30 (3) (f) of the statutes is amended to read:

15 71.30 **(3)** (f) The total of farmers' drought property tax credit under s. 71.28
16 (1fd), farmland preservation credit under subch. IX, farmland tax relief credit under
17 s. 71.28 (2m), day care center credit under s. 71.28 (5d) and estimated tax payments
18 under s. 71.29.

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

20 71.34 **(1)** (g) An addition shall be made for credits computed by a tax-option
21 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx) ~~and~~ (3) and (5d)
22 and passed through to shareholders.

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

24 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
25 computed under s. 71.47 (1dd) to (1dx) and (5d) and not passed through by a

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1 partnership, limited liability company or tax-option corporation that has added that
2 amount to the partnership's, limited liability company's or tax-option corporation's
3 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
4 s. 71.47 (1), (3), (4) and (5).

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

6 71.47 **(5d)** DAY CARE CENTER CREDIT. (a) In this subsection, "claimant" means
7 a person who files a claim under this subsection.

8 (b) A claimant may claim as a credit against the tax imposed under s. 71.43 any
9 of the following:

10 1. An amount equal to 50% of the amount paid or incurred by the claimant
11 during the taxable year to construct and equip a licensed day care center under s.
12 48.65, that is owned and operated by the claimant, to care for the children of the
13 claimant's employes during the employes' working hours.

14 2. An amount equal to 50% of the amount paid by the claimant to operate the
15 claimant's day care center under subd. 1. for the taxable year, less any amount paid
16 by the claimant's employes to operate the claimant's day care center under subd. 1.
17 for the taxable year.

18 3. An amount equal to 50% of the amount paid by the claimant during the
19 taxable year to a licensed day care center under s. 48.65, other than a day care center
20 under subd. 1., to provide care for the children of the claimant's employes during the
21 employes' working hours.

22 (c) The amount of the credit under this subsection shall not exceed \$50,000 in
23 a taxable year for each claimant, and the total amount of the credit under this
24 subsection for all claimants shall not exceed \$1,500,000 in a fiscal year.

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1 (d) No credit may be allowed under this subsection unless the claimant files an
2 application with the department of revenue before the end of the taxable year in
3 which amounts are paid or expenses are incurred under par. (b) and includes with
4 that application a statement from the department of health and family services that
5 verifies that the day care center under par. (b) is licensed under s. 48.65. No credit
6 may be allowed under this subsection after the department of revenue has awarded
7 the total amount of the credit for all claimants under par. (c).

8 (e) Section 71.28 (4) (e), as it applies to the credit under s. 71.28 (4), applies to
9 the credit under this subsection.

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

16 (g) Partnerships, limited liability companies and tax-option corporations may
17 not claim the credit under this subsection, but the eligibility for, and the amount of,
18 the credit are based on the amount paid or incurred under par. (b). A partnership,
19 limited liability company or tax-option corporation shall compute the amount of
20 credit that each of its partners, members or shareholders may claim and shall
21 provide that information to each of them. Partners, members of limited liability
22 companies and shareholders of tax-option corporations may claim the credit in
23 proportion to their ownership interest.

24 (h) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
25 applies to the credit under this subsection.

ASSEMBLY BILL 393**SECTION 11**

1 (i) Except as provided in par. (j), if the operation of a day care center under par.

2 (b) 1. ceases within 5 years after the date on which the construction of the day care

3 center is completed, a claimant who receives credits under par. (b) 1. and 2. for the

4 construction and operation of such a day care center shall add to the claimant's

5 liability for taxes imposed under s. 71.43 an amount equal to the total amount of the

6 credits received under par. (b) 1. and 2. multiplied by the following percentage:

7 1. If the operation of the day care center ceases during the first year after the

8 date on which the construction of the day care center is completed, 100%.

9 2. If the operation of the day care center ceases during the 2nd year after the

10 date on which the construction of the day care center is completed, 80%.

11 3. If the operation of the day care center ceases during the 3rd year after the

12 date on which the construction of the day care center is completed, 60%.

13 4. If the operation of the day care center ceases during the 4th year after the

14 date on which the construction of the day care center is completed, 40%.

15 5. If the operation of the day care center ceases during the 5th year after the

16 date on which the construction of the day care center is completed, 20%.

17 (j) Paragraph (i) does not apply to a claimant whose business ceases operation

18 within 5 years after the date on which the construction of the claimant's day care

19 center is completed or to a claimant who presents evidence to the department of

20 revenue that the majority of the claimant's employees do not want to enroll their

21 children in the claimant's day care center.

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

23 71.49 (1) (f) The total of farmers' drought property tax credit under s. 71.47

24 (1fd), farmland preservation credit under subch. IX, farmland tax relief credit under

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1 s. 71.47 (2m), day care center credit under s. 71.28 (5d) and estimated tax payments
2 under s. 71.48.

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

4 77.92 (4) “Net business income”, with respect to a partnership, means taxable
5 income as calculated under section 703 of the internal revenue code; plus the items
6 of income and gain under section 702 of the internal revenue code; minus the items
7 of loss and deduction under section 702 of the internal revenue code; plus payments
8 treated as not made to partners under section 707 (a) of the internal revenue code;
9 plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds),
10 (2dx) ~~and~~, (3s) and (5d); but excluding income, gain, loss and deductions from
11 farming. “Net business income”, with respect to a natural person, estate or trust,
12 means profit from a trade or business for federal income tax purposes and includes
13 net income derived as an employe as defined in section 3121 (d) (3) of the internal
14 revenue code.

15 **SECTION 14. Initial applicability.**

16 (1) DAY CARE CENTER CREDIT. This act first applies to taxable years beginning
17 on January 1 of the year in which this subsection takes effect, except that, if this
18 subsection takes effect after July 31, this act first applies to taxable years beginning
19 on January 1 of the year following the year in which this subsection takes effect.

20 (END)