

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 393**

January 4, 2000 – Offered by Representative HOVEN.

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

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

6 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:
7 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
8 (2di), (2dj), (2dL), (2dr), (2ds), (2dx) and, (3s) and (5d) and not passed through by a
9 partnership, limited liability company or tax–option corporation that has added that
10 amount to the partnership’s, company’s or tax–option corporation’s income under s.
11 71.21 (4) or 71.34 (1) (g).

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

1 71.07 (5d) DAY CARE CENTER CREDIT. (a) In this subsection:

2 1. “Claimant” means a person who files a claim under this subsection.

3 2. “Equipment” means equipment that is depreciable property for income tax
4 or franchise tax purposes.

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

7 1. An amount equal to 50% of the amount paid by the claimant during the
8 taxable year to construct, and purchase equipment for the use at, a licensed day care
9 center under s. 48.65, that is owned and operated by the claimant to care for the
10 children of the claimant’s employes during the employes’ working hours.

11 2. An amount that is equal to the amount paid by the claimant to operate the
12 claimant’s day care center, as described under subd. 1., for the taxable year; minus
13 any amount paid by an employe of the claimant to reimburse the claimant for any
14 amount paid by the claimant under this subdivision; multiplied by 50%. A claimant
15 may claim and be allocated a credit under this subdivision regardless of whether the
16 claimant has claimed or been allocated a credit under subd. 1.

17 3. An amount that is equal to the amount paid by the claimant during the
18 taxable year to a licensed day care center under s. 48.65, other than a day care center
19 as described under subd. 1., to provide care for the children of the claimant’s
20 employes during the employes’ working hours; minus any amount paid by an
21 employe of the claimant to reimburse the claimant for any amount paid by the
22 claimant under this subdivision; multiplied by 50%.

23 (c) Except as provided in par. (dm), the amount of the credit under this
24 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total

1 amount of the credit for all claimants under this subsection and ss. 71.28 (5d) and
2 71.47 (5d) shall not exceed \$1,500,000 in a state fiscal year.

3 (d) 1. No credit may be allowed under this subsection unless the claimant files
4 annually an application with the department of revenue on or before March 1 and
5 includes with that application a statement from the department of health and family
6 services that verifies that the day care center under par. (b) is licensed under s. 48.65.
7 A claimant may apply for and be allocated a credit under this subsection before the
8 claimant pays expenses under par. (b), except that, if the claimant does not pay the
9 expenses in the taxable year related to the credit, the claimant shall not receive the
10 credit and the department of revenue may allocate the amount of the credit to
11 another claimant.

12 2. After March 1, the department shall allocate randomly the credits under this
13 subsection and ss. 71.28 (5d) and 71.47 (5d). After the department has allocated the
14 credits, the department shall compile a waiting list of claimants who were not
15 allocated credits and shall allocate randomly any unused credits to the claimants on
16 the waiting list. No credit may be allowed under this subsection after the
17 department has awarded the total amount of the credit for all claimants under par.
18 (c).

19 (dm) Claimants who jointly construct, equip or operate a licensed day care
20 center may jointly claim the credit as provided under this subsection, if the claimants
21 file a joint application under par. (d) 1. Claimants who file a joint application and
22 who are allocated a credit under par. (b) may apportion the amount of the credit
23 among the joint claimants in any manner that the joint claimants choose, except that
24 the total amount of the credit for the joint claimants shall not exceed \$50,000 in a
25 taxable year.

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

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

9 (g) A partnership, limited liability company or tax-option corporation may
10 claim the credit under this subsection as an entity.

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

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

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

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

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

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

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

5 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
6 within 5 years after the date on which the construction of the claimant's day care
7 center is completed; or whose day care center ceases operation for not more than 30
8 consecutive days in a taxable year; or who presents evidence to the department of
9 revenue that the majority of the claimant's employes with children who are eligible
10 to enroll in the claimant's day center do not want to enroll their children in the
11 claimant's day care center.

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

13 71.10 (4) (cp) The day care center credit under s. 71.07 (5d).

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

15 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
16 the gross income as computed under the internal revenue code as modified under
17 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
18 computed under s. 71.28 (1) and (3) to (5) plus the amount of the credit computed
19 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds) ~~and~~ (1dx) and (5d) and not passed
20 through by a partnership, limited liability company or tax-option corporation that
21 has added that amount to the partnership's, limited liability company's or tax-option
22 corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from
23 the sale or other disposition of assets the gain from which would be wholly exempt
24 income, as defined in sub. (3) (L), if the assets were sold or otherwise disposed of at
25 a gain and minus deductions, as computed under the internal revenue code as

1 modified under sub. (3), plus or minus, as appropriate, an amount equal to the
2 difference between the federal basis and Wisconsin basis of any asset sold,
3 exchanged, abandoned or otherwise disposed of in a taxable transaction during the
4 taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

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

6 **71.28 (5d) DAY CARE CENTER CREDIT.** (a) In this subsection:

7 1. “Claimant” means a person who files a claim under this subsection.

8 2. “Equipment” means equipment that is depreciable property for income tax
9 or franchise tax purposes.

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

12 1. An amount equal to 50% of the amount paid by the claimant during the
13 taxable year to construct, and purchase equipment for the use at, a licensed day care
14 center under s. 48.65, that is owned and operated by the claimant to care for the
15 children of the claimant’s employees during the employees’ working hours.

16 2. An amount that is equal to the amount paid by the claimant to operate the
17 claimant’s day care center, as described under subd. 1., for the taxable year; minus
18 any amount paid by an employee of the claimant to reimburse the claimant for any
19 amount paid by the claimant under this subdivision; multiplied by 50%. A claimant
20 may claim and be allocated a credit under this subdivision regardless of whether the
21 claimant has claimed or been allocated a credit under subd. 1.

22 3. An amount that is equal to the amount paid by the claimant during the
23 taxable year to a licensed day care center under s. 48.65, other than a day care center
24 as described under subd. 1., to provide care for the children of the claimant’s
25 employees during the employees’ working hours; minus any amount paid by an

1 employe of the claimant to reimburse the claimant for any amount paid by the
2 claimant under this subdivision; multiplied by 50%.

3 (c) Except as provided in par. (dm), the amount of the credit under this
4 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total
5 amount of the credit for all claimants under this subsection and ss. 71.07 (5d) and
6 71.47 (5d) shall not exceed \$1,500,000 in a state fiscal year.

7 (d) 1. No credit may be allowed under this subsection unless the claimant files
8 annually an application with the department of revenue on or before March 1 and
9 includes with that application a statement from the department of health and family
10 services that verifies that the day care center under par. (b) is licensed under s. 48.65.
11 A claimant may apply for and be allocated a credit under this subsection before the
12 claimant pays expenses under par. (b), except that, if the claimant does not pay the
13 expenses in the taxable year related to the credit, the claimant shall not receive the
14 credit and the department of revenue may allocate the amount of the credit to
15 another claimant.

16 2. After March 1, the department shall allocate randomly the credits under this
17 subsection and ss. 71.07 (5d) and 71.47 (5d). After the department has allocated the
18 credits, the department shall compile a waiting list of claimants who were not
19 allocated credits and shall allocate randomly any unused credits to the claimants on
20 the waiting list. No credit may be allowed under this subsection after the
21 department has awarded the total amount of the credit for all claimants under par.

22 (c).

23 (dm) Claimants who jointly construct, equip or operate a licensed day care
24 center may jointly claim the credit as provided under this subsection, if the claimants
25 file a joint application under par. (d) 1. Claimants who file a joint application and

1 who are allocated a credit under par. (b) may apportion the amount of the credit
2 among the joint claimants in any manner that the joint claimants choose, except that
3 the total amount of the credit for the joint claimants shall not exceed \$50,000 in a
4 taxable year.

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

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

13 (g) A partnership, limited liability company or tax-option corporation may
14 claim the credit under this subsection as an entity.

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 under par. (j), if the operation of a day care center under
18 par. (b) 1. ceases within 5 years after the date on which the construction of the day
19 care center is completed, a claimant who receives credits under par. (b) 1. and 2. for
20 the 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%.

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 whose day care center ceases operation for not more than 30
12 consecutive days in a taxable year; or who presents evidence to the department of
13 revenue that the majority of the claimant's employes with children who are eligible
14 to enroll in the claimant's day center do not want to enroll their children in the
15 claimant's day care center.

16 **SECTION 6.** 71.30 (3) (dm) of the statutes is created to read:

17 71.30 (3) (dm) The day care center credit under s. 71.28 (5d).

18 **SECTION 7.** 71.45 (2) (a) 10. of the statutes 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) and (5d) and not passed through by a
21 partnership, limited liability company or tax-option corporation that has added that
22 amount to the partnership's, limited liability company's or tax-option corporation's
23 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
24 s. 71.47 (1), (3), (4) and (5).

25 **SECTION 8.** 71.47 (5d) of the statutes is created to read:

1 71.47 **(5d)** DAY CARE CENTER CREDIT. (a) In this subsection:

2 1. “Claimant” means a person who files a claim under this subsection.

3 2. “Equipment” means equipment that is depreciable property for income tax
4 or franchise tax purposes.

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

7 1. An amount equal to 50% of the amount paid by the claimant during the
8 taxable year to construct, and purchase equipment for the use at, a licensed day care
9 center under s. 48.65, that is owned and operated by the claimant to care for the
10 children of the claimant’s employes during the employes’ working hours.

11 2. An amount that is equal to the amount paid by the claimant to operate the
12 claimant’s day care center, as described under subd. 1., for the taxable year; minus
13 any amount paid by an employe of the claimant to reimburse the claimant for any
14 amount paid by the claimant under this subdivision; multiplied by 50%. A claimant
15 may claim and be allocated a credit under this subdivision regardless of whether the
16 claimant has claimed or been allocated a credit under subd. 1.

17 3. An amount that is equal to the amount paid by the claimant during the
18 taxable year to a licensed day care center under s. 48.65, other than a day care center
19 as described under subd. 1., to provide care for the children of the claimant’s
20 employes during the employes’ working hours; minus any amount paid by an
21 employe of the claimant to reimburse the claimant for any amount paid by the
22 claimant under this subdivision; multiplied by 50%.

23 (c) Except as provided in par. (dm), the amount of the credit under this
24 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total

1 amount of the credit for all claimants under this subsection and ss. 71.07 (5d) and
2 71.28 (5d) shall not exceed \$1,500,000 in a state fiscal year.

3 (d) 1. No credit may be allowed under this subsection unless the claimant files
4 annually an application with the department of revenue on or before March 1 and
5 includes with that application a statement from the department of health and family
6 services that verifies that the day care center under par. (b) is licensed under s. 48.65.
7 A claimant may apply for and be allocated a credit under this subsection before the
8 claimant pays expenses under par. (b), except that, if the claimant does not pay the
9 expenses in the taxable year related to the credit, the claimant shall not receive the
10 credit and the department of revenue may allocate the amount of the credit to
11 another claimant.

12 2. After March 1, the department shall allocate randomly the credits under this
13 subsection and ss. 71.07 (5d) and 71.28 (5d). After the department has allocated the
14 credits, the department shall compile a waiting list of claimants who were not
15 allocated credits and shall allocate randomly any unused credits to the claimants on
16 the waiting list. No credit may be allowed under this subsection after the
17 department has awarded the total amount of the credit for all claimants under par.
18 (c).

19 (dm) Claimants who jointly construct, equip or operate a licensed day care
20 center may jointly claim the credit as provided under this subsection, if the claimants
21 file a joint application under par. (d) 1. Claimants who file a joint application and
22 who are allocated a credit under par. (b) may apportion the amount of the credit
23 among the joint claimants in any manner that the joint claimants choose, except that
24 the total amount of the credit for the joint claimants shall not exceed \$50,000 in a
25 taxable year.

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

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

9 (g) A partnership, limited liability company or tax-option corporation may
10 claim the credit under this subsection as an entity.

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

13 (i) Except as provided under par. (j), if the operation of a day care center under
14 par. (b) 1. ceases within 5 years after the date on which the construction of the day
15 care center is completed, a claimant who receives credits under par. (b) 1. and 2. for
16 the construction and operation of such a day care center shall add to the claimant's
17 liability for taxes imposed under s. 71.43 an amount equal to the total amount of the
18 credits received under par. (b) 1. and 2. multiplied by the following percentage:

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

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

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

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

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

5 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
6 within 5 years after the date on which the construction of the claimant's day care
7 center is completed; or whose day care center ceases operation for not more than 30
8 consecutive days in a taxable year; or who presents evidence to the department of
9 revenue that the majority of the claimant's employes with children who are eligible
10 to enroll in the claimant's day center do not want to enroll their children in the
11 claimant's day care center.

12 **SECTION 9.** 71.49 (1) (dm) of the statutes is created to read:

13 71.49 (1) (dm) The day care center credit under s. 71.47 (5d).

14 **SECTION 10.** 77.92 (4) of the statutes, as affected by 1999 Wisconsin Act 9, is
15 amended to read:

16 77.92 (4) "Net business income", with respect to a partnership, means taxable
17 income as calculated under section 703 of the Internal Revenue Code; plus the items
18 of income and gain under section 702 of the Internal Revenue Code, including taxable
19 state and municipal bond interest and excluding nontaxable interest income or
20 dividend income from federal government obligations; minus the items of loss and
21 deduction under section 702 of the Internal Revenue Code, except items that are not
22 deductible under s. 71.21; plus guaranteed payments to partners under section 707
23 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
24 (2di), (2dj), (2dL), (2dr), (2ds), (2dx) ~~and~~, (3s) and (5d); and plus or minus, as
25 appropriate, transitional adjustments, depreciation differences and basis

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

6 **SECTION 11. Initial applicability.**

7 (1) DAY CARE CENTER CREDIT. This act first applies to taxable years beginning
8 on January 1, 2000.

9 (END)