

2001 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB124)

Received: 04/19/2001

Received By: jkreye

Wanted: 04/23/2001

Identical to LRB:

For: Jeffrey Plale (608) 266-0610

By/Representing: susie

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - corp. inc. and fran.
Tax Credits - miscellaneous

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

Breast milk facility credit

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 04/19/2001	jdye 04/20/2001					
/1			martykr 04/20/2001		lrb_docadmin 04/20/2001	lrb_docadmin 04/20/2001	

FE Sent For:

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1?	jkreye	1 4/20 jkreye	4/20	JK 4/20			

FE Sent For:

<END>

Kreye, Joseph

01-1929

From: Schooff, Susie
Sent: Tuesday, April 17, 2001 11:45 AM
To: Ourada, Thomas D; Kreye, Joseph
Cc: Plale, Jeff
Subject: Plale's Lactation Tax Credit Bill (AB124)

Importance: High

Tom and Joe,

Good morning to both of you. I was wondering if the two of you would be able to have a meeting in Representative Plale's office regarding fixing some language for AB124. I just spoke with Rep. Lehman's office and they would be willing to exec on AB124, on April 25, as long as a sub is introduced with the following changes.

Andrew Nolan, from Lehman's office, discussed various changes that needed to be made to a sub.

1. Facilities need to be located in Wisconsin.
2. Cap it at \$300,000 (the amendment did this).
3. Pro-rate the available credit. My understanding is that Joe is working on similar language for AB183, Rep. Hoven's daycare tax credit bill. We would like similar language added. However, we do have some questions... if a business has applied for a credit and they don't use it all can they carry it forward, do they need to re-apply or does it end?
4. If a business applies for a credit one year... then because of demand it's pro-rated... and the amount does not cover cost... can they re-apply the following year? Tom, are there examples of this happening now, or in the past, with tax credits?
5. Tom, can you clarify the issue regarding the Alternative minimum tax?

Please let me know when the two of you would be available. Lehman's office has promised to exec but only if the sub is introduced. Jeff is available Thursday morning or late afternoon or Friday am.

Thanks,
Susie Schooff
Office of Rep. Jeff Plale
266-0610

A claimant may claim as a credit against the tax imposed under s. 71.02 or ~~71.08~~ an amount equal to 50% of the amount paid or incurred in a taxable year by the claimant to construct or equip a breast-milk facility, up to a maximum credit of \$10,000. A credit may be claimed in each succeeding taxable year that a claimant constructs or builds an additional breast-milk facility.

^a for cash basis taxpayer,
for ~~cash basis~~ taxpayer,
on accrual

in this state

\$5000

same for 2 subchapters

paid = cash basis

incurred = a

▷ revise "claimant" in s. 71.07 to include only sole pros, partners & members.

sub for AB124

* need for Monday afternoon

DRAFT

MEMORANDUM

April 17, 2001

TO: Tom Ourada
FROM: Meredith Krejny
Pam Walgren
SUBJECT: LRB 1929/1—Income and Franchise Tax Credit for Businesses That Equip a Facility for Employees to Pump and Store Breast Milk

LRB 1929/1 provides that the breast pump facility credit may be offset against the tax imposed under section 71.02, the "regular" income tax. However, the order of computation places the credit so that it is subtracted after the alternative minimum tax (AMT). If the credit is intended to apply to the AMT, then section 71.07(5d)(b) should be changed to state the credit may be claimed against the AMT. If the credit is not meant to be applied against the AMT, then the order of computation should be changed so that the credit is deducted before the AMT.

The AMT was designed to prevent taxpayers with high incomes from using special tax benefits to avoid paying taxes. The AMT is a computation that reduces the benefit of certain deductions and credits and attempts to ensure that individuals who benefit from these tax advantages will pay at least a minimum amount of tax.


The calculation of the Wisconsin AMT begins with the federal alternative minimum taxable income and is patterned after the federal AMT. Because the federal AMT income thresholds have not been indexed for inflation, a growing number of taxpayers are subject to the AMT each year. Federal alternative minimum tax rates range from 26% to 28%; the state alternative minimum tax rate is 6.5%. Currently, about 3,500 of 2.5 million Wisconsin individual income tax returns apply the AMT.

Income tax credits may be designed to be taken either against the regular income tax or the AMT, depending upon where they are placed in the computation order under section 71.10 (4). Credits that are allowed against the regular income tax include the itemized deductions credit, the school property tax credit, the historic credits and the working families tax credit. Credits that are placed after the AMT in the computation order and used to offset the AMT include the married persons credit, manufacturing sales tax credit, and the development zones credit.

To the extent that a credit is placed so that it would offset the AMT, it would provide a greater benefit to the taxpayer. However, it would also work against the purpose for the AMT, ensuring that high-income individuals pay at least a certain amount of tax.

The following table shows the effect of placing the credit before and after the AMT. In this example, the breast pump facility credit is assumed to be \$4,000. Since the amount of the AMT is the difference between a separate AMT calculation and the regular computed tax, placing the

credit before the AMT in the computation order increases the amount of AMT added to the total tax liability. Placing the credit after the AMT calculation reduces total tax liability by the amount of the credit, \$4,000, as compared to placing the credit before the AMT.

	Credit Applied 	
	After AMT	Before AMT
Taxable Income	\$ 750,000	\$ 750,000
Tax	50,100	50,100
Itemized Deduction Credit	600	600
School Property Tax Credit	300	300
Breast Pump Facility Credit		4,000
Total Credits Before AMT	900	4,900
Tax Before AMT	49,200	45,200
AMT	2,500	6,500
Gross Tax	51,700	51,700
Married Couple Credit	10	10
Breast Pump Facility Credit	4,000	
Total Credits After AMT	4,010	10
Net Tax	\$ 47,690	\$ 51,690

*change order
of computation
- 71.10 (4)
before (4)*

*needed
W. 30 (3)*

The number of taxpayers that would claim this credit is unknown, but is expected to be less than 100. The following table shows the annualized fiscal effect if 100 businesses claimed credits in the amounts shown. The Department estimates that approximately 75% of credits claimed in a year are used to offset tax liability.

Estimated Number of Claimants	100	100	100
<u>Maximum Individual Claim</u>	<u>\$ 4,000</u>	<u>\$ 5,000</u>	<u>\$ 8,000</u>
Total Amount of Annual Claims	400,000	500,000	800,000
Annual Fiscal Effect (75%)	<u>300,000</u>	375,000	600,000

This method would provide some credit to all applicants and avoid a potential problem under the equal protection clause of the U.S. Constitution by treating similarly situated taxpayers the same.

MK:PW:skr
t:\memo\mk\pw\ourada.518.doc

change claim to \$5,000



State of Wisconsin
2001 - 2002 LEGISLATURE

LRBs0093/

JK:.....

Jed

ASSEMBLY SUBSTITUTE AMENDMENT,
TO 2001 ASSEMBLY BILL 124

in 4-19-01

due Monday
4-23-01
10AM

AN ACT ^{gen}...; relating to: an income and franchise tax credit for a business that constructs or equips a facility for its employees to pump and store breast milk. ✓

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

~~VEND~~

2001 ASSEMBLY BILL 124

February 14, 2001 - Introduced by Representatives PLALE, HOVEN, JESKEWITZ, SCHOOFF, GRONEMUS, YOUNG, BOCK, POWERS, STASKUNAS, SINICKI, MILLER, OTT, BALOW, WASSERMAN and BERCEAU, cosponsored by Senators GEORGE, BURKE, SCHULTZ, ZIEN, ROESSLER and ROSENZWEIG. 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 (5d), 71.10 (4) (fm), 71.28 (5d), 71.30
 3 (3) (dm), 71.47 (5d) and 71.49 (1) (dm) of the statutes; **relating to:** an income
 4 and franchise tax credit for a business that constructs or equips a facility for its
 5 employees to pump and store breast milk.

Analysis by the Legislative Reference Bureau

This bill creates an income tax and franchise tax credit for businesses that construct or equip a facility for an employee to pump and store breast milk during the employee's 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 or incurred by a business to construct or equip a facility for an employee to pump and store breast milk during the employee's working hours. The credit may not exceed \$10,000 in a taxable year. If the credit claimed by a business exceeds the business' tax liability, the state will not issue a refund check, but the business may carry forward any remaining credit to subsequent taxable years.

ASSEMBLY BILL 124

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) BREAST-MILK FACILITY CREDIT. (a) In this subsection:

9 1. "Breast-milk facility" means a private location that has a clean water source,
10 a sink, and equipment for the pumping and storage of breast milk, and is used
11 exclusively by a claimant's employees to pump and store breast milk during the
12 employees' working hours.

13 ~~2. "Claimant" means a person who files a claim under this subsection.~~

14 (b) A claimant may claim as a credit against the tax imposed under s. 71.02 an
15 amount equal to 50% of the amount paid or incurred by the claimant to construct or
16 equip a breast-milk facility, except that the credit shall not exceed \$10,000 in a
17 taxable year.

18 (c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
19 under s. 71.28 (4), apply to the credit under this subsection.

20 (d) Partnerships, limited liability companies, and tax-option corporations may
21 not claim the credit under this subsection, but the eligibility for, and the amount of,

INSERT 2-17 ✓

ASSEMBLY BILL 124

1 the credit are based on the amount paid or incurred under par. (b). A partnership,
2 limited liability company, or tax-option corporation shall compute the amount of
3 credit that each of its partners, members, or shareholders may claim and shall
4 provide that information to each of them. Partners, members of limited liability
5 companies, and shareholders of tax-option corporations may claim the credit in
6 proportion to their ownership interest.

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

9 **SECTION 3.** 71.10^(dw) (4) ~~was~~ of the statutes is created to read:

10 71.10 (4) ~~was~~^(dw) Breast-milk facility credit under s. 71.07 (5d). ✓

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

12 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
13 (2dj), (2dL), (2ds), (2dx) ~~and~~, (3s), and (5d) and passed through to partners shall be
14 added to the partnership's income.

15 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

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

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SECTION 5

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

6 SECTION 6. 71.28 (5d) of the statutes is created to read:

7 71.28 (5d) BREAST-MILK FACILITY CREDIT. (a) In this subsection:

8 1. "Breast-milk facility" means a private location that has a clean water source,
9 a sink, and equipment for the pumping and storage of breast milk, and is used
10 exclusively by a claimant's employees to pump and store breast milk during the
11 employees' working hours.

12 2. "Claimant" means a person who files a claim under this subsection.

~~13 (b) A claimant may claim as a credit against the tax imposed under s. 71.23 an
14 amount equal to 50% of the amount paid or incurred by the claimant to construct or
15 equip a breast-milk facility, except that the credit shall not exceed \$10,000 in a
16 taxable year.~~

17 (c) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit
18 under sub. (4), apply to the credit under this subsection.

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

INSERT 4-16 ✓

ASSEMBLY BILL 124

1 companies, and shareholders of tax-option corporations may claim the credit in
2 proportion to their ownership interest.

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

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

6 71.30 (3) (dm) Breast-milk facility credit under s. 71.28 (5d).

7 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

8 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
9 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx) ~~and, (3), and~~
10 (5d) and passed through to shareholders.

11 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

12 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
13 computed under s. 71.47 (1dd) to (1dx) and (5d) and not passed through by a
14 partnership, limited liability company or tax-option corporation that has added that
15 amount to the partnership's, limited liability company's or tax-option corporation's
16 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
17 s. 71.47 (1), (3), (4) and (5).

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

19 71.47 (5d) BREAST-MILK FACILITY CREDIT. (a) In this subsection:

20 1. "Breast-milk facility" means a private location that has a clean water source,
21 a sink, and equipment for the pumping and storage of breast milk, and is used
22 exclusively by a claimant's employees to pump and store breast milk during the
23 employees' working hours.

24 2. "Claimant" means a person who files a claim under this subsection.

ASSEMBLY BILL 124

INSERT
6-4

~~(b) A claimant may claim as a credit against the tax imposed under s. 71.49 an amount equal to 50% of the amount paid or incurred by the claimant to construct or equip a breast-milk facility, except that the credit shall not exceed \$10,000 in a taxable year.~~

(c) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit under s. 71.28 (4), apply to the credit under this subsection.

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

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

SECTION 11. 71.49 (1) (dm) of the statutes is created to read:

71.49 (1) (dm) Breast-milk facility credit under s. 71.47 (5d).

SECTION 12. 77.92 (4) of the statutes is amended to read:

77.92 (4) "Net business income", with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not

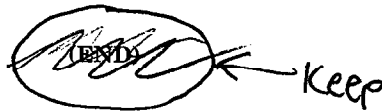
ASSEMBLY BILL 124

1 deductible under s. 71.21; plus guaranteed payments to partners under section 707
2 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
3 (2di), (2dj), (2dL), (2dr), (2ds), (2dx) and (3s) and (5d); and plus or minus, as
4 appropriate, transitional adjustments, depreciation differences and basis
5 differences under s. 71.05 (13), (15), (16), (17) and (19); but excluding income, gain,
6 loss and deductions from farming. "Net business income", with respect to a natural
7 person, estate or trust, means profit from a trade or business for federal income tax
8 purposes and includes net income derived as an employee as defined in section 3121
9 (d) (3) of the Internal Revenue Code.

10 **SECTION 13. Initial applicability.**

11 (1) BREAST-MILK FACILITY CREDIT. This act first applies to taxable years
12 beginning on January 1 of the year in which this subsection takes effect, except that
13 if this subsection takes effect after July 31 this act first applies to taxable years
14 beginning on January 1 of the year after the year in which this subsection takes
15 effect.

16

A handwritten signature is enclosed in a hand-drawn circle. An arrow points from the right side of the circle to the word "keep" written in cursive.

Insert 2 - 17

1 2. "Claimant" means a sole proprietor, a partner, a member of a limited liability
2 company, or a shareholder of a tax option corporation who files a claim under this
3 ~~section~~ *subsection* ✓

4 (b) A claimant may claim as a credit against the tax imposed under s. 71.02 ✓ an
5 amount equal to 50% of the amount paid, ~~for a claimant who is a cash basis taxpayer,~~
6 or incurred, ~~for a claimant who is an accrual basis taxpayer,~~ to construct or equip a
7 breast-milk facility in this state, up to a maximum credit of \$5,000. ✓ A claimant may
8 claim a credit in each succeeding taxable year that the claimant constructs or equips
9 an additional breast-milk facility. ✓

Insert 4 - 16

10 (b) A claimant may claim as a credit against the tax imposed under s. 71.23 ✓ an
11 amount equal to 50% of the amount paid, ~~for a claimant who is a cash basis taxpayer,~~
12 or incurred, ~~for a claimant who is an accrual basis taxpayer,~~ to construct or equip a
13 breast-milk facility in this state, up to a maximum credit of \$5,000. A claimant may
14 claim a credit in each succeeding taxable year that the claimant constructs or equips
15 an additional breast-milk facility. ✓

Insert 6 - 4

16 (b) A claimant may claim as a credit against the tax imposed under s. 71.43 ✓ an
17 amount equal to 50% of the amount paid, ~~for a claimant who is a cash basis taxpayer,~~
18 or incurred, ~~for a claimant who is an accrual basis taxpayer,~~ to construct or equip a
19 breast-milk facility in this state, up to a maximum credit of \$5,000. A claimant may
20 claim a credit in each succeeding taxable year that the claimant constructs or equips
21 an additional breast-milk facility.