

2001 ASSEMBLY BILL 183

March 8, 2001 – Introduced by Representatives HOVEN, PLALE, AINSWORTH, ALBERS, BALOW, BOYLE, BOCK, BERCEAU, GRONEMUS, HUEBSCH, JESKEWITZ, GUNDERSON, KREIBICH, KAUFERT, JOHNSRUD, LADWIG, F. LASEE, LEIBHAM, LIPPERT, MUSSER, MCCORMICK, MILLER, OLSEN, OWENS, OTT, PLOUFF, PETROWSKI, RHOADES, REYNOLDS, SYKORA, TOWNSEND, VRAKAS, SERATTI and WADE, cosponsored by Senators ROESSLER, RISSER, DARLING, FARROW, HUELSMAN, ROSENZWEIG, SCHULTZ and WIRCH. Referred to Committee on Ways and Means.

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:** an income and franchise tax credit
 4 for a business to construct, equip, operate, or provide a day care center for the
 5 children of employees.

Analysis by the Legislative Reference Bureau

This bill creates an income tax and franchise tax credit for a business to construct, equip, operate, or provide a day care center for the children of its employees during work hours. A business may claim as a credit any of the following amounts, but not exceeding \$50,000 a year: 1) 50% of the amount the business paid to construct and equip a day care center that the business owns and operates; 2) 50% of the amount the business paid to operate its own day care center; and 3) if the business does not construct its own day care center, 50% of the amount the business paid to a day care center to provide day care to the children of its employees. The total amount of all such credits, for all businesses, will not exceed \$1,500,000 a year.

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. If a business claims a credit that exceeds its 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 183

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:

9 1. "Claimant" means a person who files a claim under this subsection.

10 2. "Equipment" means equipment that is depreciable property for income tax
11 or franchise tax purposes.

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

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

18 2. An amount that is equal to the amount paid by the claimant to operate the
19 claimant's day care center, as described under subd. 1., for the taxable year; minus
20 any amount paid by an employee of the claimant to reimburse the claimant for any
21 amount paid by the claimant under this subdivision; multiplied by 50%. A claimant

ASSEMBLY BILL 183

1 may claim and be allocated a credit under this subdivision regardless of whether the
2 claimant has claimed or been allocated a credit under subd. 1.

3 3. An amount that is equal to 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 as described under subd. 1., to provide care for the children of the claimant's
6 employees during the employees' working hours; minus any amount paid by an
7 employee of the claimant to reimburse the claimant for any amount paid by the
8 claimant under this subdivision; multiplied by 50%.

9 (c) Except as provided in par. (dm), the amount of the credit under this
10 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total
11 amount of the credit for all claimants under this subsection and ss. 71.28 (5d) and
12 71.47 (5d) shall not exceed \$1,500,000 in a state fiscal year.

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

22 2. After March 1, the department shall allocate randomly the credits under this
23 subsection and ss. 71.28 (5d) and 71.47 (5d). After the department has allocated the
24 credits, the department shall compile a waiting list of claimants who were not
25 allocated credits and shall allocate randomly any unused credits to the claimants on

ASSEMBLY BILL 183**SECTION 2**

1 the waiting list. No credit may be allowed under this subsection after the
2 department has awarded the total amount of the credit for all claimants under par.
3 (c).

4 (dm) Claimants who jointly construct, equip, or operate a licensed day care
5 center may jointly claim the credit as provided under this subsection, if the claimants
6 file a joint application under par. (d) 1. Claimants who file a joint application and
7 who are allocated a credit under par. (b) may apportion the amount of the credit
8 among the joint claimants in any manner that the joint claimants choose. The total
9 amount of the credit for the joint claimants shall not exceed \$50,000 in a taxable year.

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

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

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

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

22 (i) Except as provided under par. (j), if the operation of a day care center under
23 par. (b) 1. ceases within 5 years after the date on which the construction of the day
24 care center is completed, a claimant who receives credits under par. (b) 1. and 2. for
25 the construction and operation of such a day care center shall add to the claimant's

ASSEMBLY BILL 183

1 liability for taxes imposed under s. 71.02 an amount equal to the total amount of the
2 credits received under par. (b) 1. and 2. multiplied by the following percentage:

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

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

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

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

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

13 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
14 within 5 years after the date on which the construction of the claimant's day care
15 center is completed; or whose day care center ceases operation for not more than 30
16 consecutive days in a taxable year; or who presents evidence to the department of
17 revenue that the majority of the claimant's employees with children who are eligible
18 to enroll in the claimant's day care center do not want to enroll their children in the
19 claimant's day care center.

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

21 71.10 (4) (cp) The day care center credit under s. 71.07 (5d).

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

23 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
24 the gross income as computed under the internal revenue code as modified under
25 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit

ASSEMBLY BILL 183**SECTION 4**

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

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

14 **71.28 (5d) DAY CARE CENTER CREDIT.** (a) In this subsection:

15 1. "Claimant" means a person who files a claim under this subsection.

16 2. "Equipment" means equipment that is depreciable property for income tax
17 or franchise tax purposes.

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

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

24 2. An amount that is equal to the amount paid by the claimant to operate the
25 claimant's day care center, as described under subd. 1., for the taxable year; minus

ASSEMBLY BILL 183

1 any amount paid by an employee of the claimant to reimburse the claimant for any
2 amount paid by the claimant under this subdivision; multiplied by 50%. A claimant
3 may claim and be allocated a credit under this subdivision regardless of whether the
4 claimant has claimed or been allocated a credit under subd. 1.

5 3. An amount that is equal to the amount paid by the claimant during the
6 taxable year to a licensed day care center under s. 48.65, other than a day care center
7 as described under subd. 1., to provide care for the children of the claimant's
8 employees during the employees' working hours; minus any amount paid by an
9 employee of the claimant to reimburse the claimant for any amount paid by the
10 claimant under this subdivision; multiplied by 50%.

11 (c) Except as provided in par. (dm), the amount of the credit under this
12 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total
13 amount of the credit for all claimants under this subsection and ss. 71.07 (5d) and
14 71.47 (5d) shall not exceed \$1,500,000 in a state fiscal year.

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

24 2. After March 1, the department shall allocate randomly the credits under this
25 subsection and ss. 71.07 (5d) and 71.47 (5d). After the department has allocated the

ASSEMBLY BILL 183**SECTION 5**

1 credits, the department shall compile a waiting list of claimants who were not
2 allocated credits and shall allocate randomly any unused credits to the claimants on
3 the waiting list. No credit may be allowed under this subsection after the
4 department has awarded the total amount of the credit for all claimants under par.
5 (c).

6 (dm) Claimants who jointly construct, equip, or operate a licensed day care
7 center may jointly claim the credit as provided under this subsection, if the claimants
8 file a joint application under par. (d) 1. Claimants who file a joint application and
9 who are allocated a credit under par. (b) may apportion the amount of the credit
10 among the joint claimants in any manner that the joint claimants choose. The total
11 amount of the credit for the joint claimants shall not exceed \$50,000 in a taxable year.

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

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

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

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

24 (i) Except as provided under par. (j), if the operation of a day care center under
25 par. (b) 1. ceases within 5 years after the date on which the construction of the day

ASSEMBLY BILL 183

1 care center is completed, a claimant who receives credits under par. (b) 1. and 2. for
2 the construction and operation of such a day care center shall add to the claimant's
3 liability for taxes imposed under s. 71.23 an amount equal to the total amount of the
4 credits received under par. (b) 1. and 2. multiplied by the following percentage:

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

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

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

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

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

15 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
16 within 5 years after the date on which the construction of the claimant's day care
17 center is completed; or whose day care center ceases operation for not more than 30
18 consecutive days in a taxable year; or who presents evidence to the department of
19 revenue that the majority of the claimant's employees with children who are eligible
20 to enroll in the claimant's day care center do not want to enroll their children in the
21 claimant's day care center.

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

23 71.30 (3) (dm) The day care center credit under s. 71.28 (5d).

24 **SECTION 7.** 71.45 (2) (a) 10. of the statutes is amended to read:

ASSEMBLY BILL 183**SECTION 7**

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

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

8 71.47 **(5d)** DAY CARE CENTER CREDIT. (a) In this subsection:

9 1. "Claimant" means a person who files a claim under this subsection.

10 2. "Equipment" means equipment that is depreciable property for income tax
11 or franchise tax purposes.

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

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

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

24 3. An amount that is equal to the amount paid by the claimant during the
25 taxable year to a licensed day care center under s. 48.65, other than a day care center

ASSEMBLY BILL 183

1 as described under subd. 1., to provide care for the children of the claimant's
2 employees during the employees' working hours; minus any amount paid by an
3 employee of the claimant to reimburse the claimant for any amount paid by the
4 claimant under this subdivision; multiplied by 50%.

5 (c) Except as provided in par. (dm), the amount of the credit under this
6 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total
7 amount of the credit for all claimants under this subsection and ss. 71.07 (5d) and
8 71.28 (5d) shall not exceed \$1,500,000 in a state fiscal year.

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

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

ASSEMBLY BILL 183**SECTION 8**

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

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

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

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

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

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

ASSEMBLY BILL 183

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

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

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

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

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

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

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

19 71.49 (1) (dm) The day care center credit under s. 71.47 (5d).

20 **SECTION 10.** 77.92 (4) of the statutes is amended to read:

21 77.92 (4) "Net business income", with respect to a partnership, means taxable
22 income as calculated under section 703 of the Internal Revenue Code; plus the items
23 of income and gain under section 702 of the Internal Revenue Code, including taxable
24 state and municipal bond interest and excluding nontaxable interest income or
25 dividend income from federal government obligations; minus the items of loss and

ASSEMBLY BILL 183**SECTION 10**

1 deduction under section 702 of the Internal Revenue Code, except items that are not
2 deductible under s. 71.21; plus guaranteed payments to partners under section 707
3 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dr), (2ds), (2dx) ~~and~~, (3s), and (5d); and plus or minus, as
5 appropriate, transitional adjustments, depreciation differences and basis
6 differences under s. 71.05 (13), (15), (16), (17) and (19); but excluding income, gain,
7 loss and deductions from farming. “Net business income”, with respect to a natural
8 person, estate or trust, means profit from a trade or business for federal income tax
9 purposes and includes net income derived as an employee as defined in section 3121
10 (d) (3) of the Internal Revenue Code.

11 **SECTION 11. Initial applicability.**

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

16 (END)