



## 2001 SENATE BILL 76

March 6, 2001 – Introduced by Senators MOORE, ROBSON, BURKE, ROESSLER, GEORGE, SCHULTZ, DARLING and ROSENZWEIG, cosponsored by Representatives SERATTI, POCAN, TURNER, MORRIS-TATUM, MILLER, SCHOOFF, PLALE, TOWNSEND, BERCEAU, LASSA, RILEY and LEIBHAM. Referred to Committee on Universities, Housing, and Government Operations.

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 (5dv), 71.10 (4) (cp), 71.28 (5dv), 71.30  
3             (3) (dm), 71.47 (5dv) and 71.49 (1) (dm) of the statutes; **relating to:** an income  
4             and franchise tax credit for small businesses that pay a guarantee fee.

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### *Analysis by the Legislative Reference Bureau*

This bill creates an income tax and franchise tax credit for small businesses. Under the bill, a small business may claim as a credit against taxes the amount that the business paid as a guarantee fee to obtain financing that is guaranteed by the federal small business administration.

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 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.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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

5             **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

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1           71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
2           (2di), (2dj), (2dL), (2dr), (2ds), (2dx) and, (3s), and (5dv) and not passed through by  
3           a partnership, limited liability company, or tax-option corporation that has added  
4           that amount to the partnership's, company's, or tax-option corporation's income  
5           under s. 71.21 (4) or 71.34 (1) (g).

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

7           71.07 (5dv) SMALL BUSINESS GUARANTEE FEE CREDIT. (a) In this subsection,  
8           “claimant” means a person who files a claim under this subsection.

9           (b) Subject to the limitations provided in this subsection, a claimant may claim  
10          as a credit against the tax imposed under s. 71.02 an amount equal to the amount  
11          the claimant paid in the taxable year for a guarantee fee to obtain financing that is  
12          guaranteed by the federal small business administration.

13          (c) No credit may be allowed under this subsection unless the claimant submits  
14          with the claimant's return documentation, as determined by the department of  
15          revenue, that the claimant paid a fee as described under par. (b).

16          (d) No credit may be allowed under this subsection for any portion of the  
17          guarantee fee that the claimant claims as a deduction for federal tax purposes.

18          (e) 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          (f) 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,  
22          the credit are based on their payment of a fee as described under par. (b). A  
23          partnership, limited liability company, or tax-option corporation shall compute the  
24          amount of credit that each of its partners, members, or shareholders may claim and  
25          shall provide that information to each of them. Partners, members of limited liability

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

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

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

6 71.10 (4) (cp) The small business guarantee fee credit under s. 71.07 (5dv).

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

8 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
9 (2dj), (2dL), (2ds), (2dx) ~~and, (3s), and (5dv)~~ and passed through to partners shall be  
10 added to the partnership's income.

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

12 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means  
13 the gross income as computed under the ~~internal revenue code~~ Internal Revenue  
14 Code as modified under sub. (3) minus the amount of recapture under s. 71.28 (1di)  
15 plus the amount of credit computed under s. 71.28 (1) and (3) to (5) plus the amount  
16 of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds) ~~and, (1dx),~~  
17 ~~and (5dv)~~ and not passed through by a partnership, limited liability company, or  
18 tax-option corporation that has added that amount to the partnership's, limited  
19 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)  
20 (g) plus the amount of losses from the sale or other disposition of assets the gain from  
21 which would be wholly exempt income, as defined in sub. (3) (L), if the assets were  
22 sold or otherwise disposed of at a gain and minus deductions, as computed under the  
23 ~~internal revenue code~~ Internal Revenue Code as modified under sub. (3), plus or  
24 minus, as appropriate, an amount equal to the difference between the federal basis  
25 and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed

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1 of in a taxable transaction during the taxable year, except as provided in par. (b) and  
2 s. 71.45 (2) and (5).

3 **SECTION 6.** 71.28 (5dv) of the statutes is created to read:

4 71.28 (5dv) SMALL BUSINESS GUARANTEE FEE CREDIT. (a) In this subsection,  
5 “claimant” means a person who files a claim under this subsection.

6 (b) Subject to the limitations provided under this subsection, a claimant may  
7 claim as a credit against the tax imposed under s. 71.23 an amount equal to the  
8 amount the claimant paid in the taxable year for a guarantee fee to obtain financing  
9 that is guaranteed by the federal small business administration.

10 (c) No credit may be allowed under this subsection unless the claimant submits  
11 with the claimant’s return documentation, as determined by the department of  
12 revenue, that the claimant paid a fee as described under par. (b).

13 (d) No credit may be allowed under this subsection for any portion of the  
14 guarantee fee that the claimant claims as a deduction for federal tax purposes.

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

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

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

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

4 71.30 (3) (dm) The small business guarantee fee credit under s. 71.28 (5dv).

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

6 71.34 (1) (g) An addition shall be made for credits computed by a tax-option  
7 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx) ~~and, (3), and~~  
8 (5dv) and passed through to shareholders.

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

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

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

17 71.47 (5dv) SMALL BUSINESS GUARANTEE FEE CREDIT. (a) In this subsection,  
18 "claimant" means a person who files a claim under this subsection.

19 (b) Subject to the limitations provided in this subsection, a claimant may claim  
20 as a credit against the tax imposed under s. 71.43 an amount equal to the amount  
21 the claimant paid in the taxable year for a guarantee fee to obtain financing that is  
22 guaranteed by the federal small business administration.

23 (c) No credit may be allowed under this subsection unless the claimant submits  
24 with the claimant's return documentation, as determined by the department of  
25 revenue, that the claimant paid a fee as described under par. (b).

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1 (d) No credit may be allowed under this subsection for any portion of the  
2 guarantee fee that the claimant claims as a deduction for federal tax purposes.

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

5 (f) Partnerships, limited liability companies, and tax-option corporations may  
6 not claim the credit under this subsection, but the eligibility for, and the amount of,  
7 the credit are based on their payment of a fee as described under par. (b). A  
8 partnership, limited liability company, or tax-option corporation shall compute the  
9 amount of credit that each of its partners, members, or shareholders may claim and  
10 shall provide that information to each of them. Partners, members of limited liability  
11 companies, and shareholders of tax-option corporations may claim the credit in  
12 proportion to their ownership interests.

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

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

16 71.49 (1) (dm) The small business guarantee fee credit under s. 71.47 (5dv).

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

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

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

8 **SECTION 13. Initial applicability.**

9 (1) This act first applies to taxable years beginning on January 1 of the year  
10 in which this subsection takes effect, except that if this subsection takes effect after  
11 July 31, this act first applies to taxable years beginning on January 1 of the year  
12 following the year in which this subsection takes effect.

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(END)