

2003 Assembly Bill 507

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2003 WISCONSIN ACT 99

AN ACT to amend 71.05 (6) (a) 15., 71.07 (3s) (c) 1., 71.08 (1) (intro.), 71.21 (4), 71.26 (2) (a), 71.28 (3) (c) 1., 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (3) (c) 1., 77.54 (2) and 77.92 (4); and to create 71.05 (6) (b) 3m., 71.07 (3s) (c) 7., 71.07 (3t), 71.10 (4) (gbb), 71.28 (3) (c) 7., 71.28 (3t), 71.30 (3) (bb), 71.45 (2) (a) 10b., 71.47 (3) (c) 7., 71.47 (3t), 71.49 (1) (bb), 77.54 (30) (a) 6. and 560.28 of the statutes; relating to: the income and franchise tax credit for sales tax and use tax paid on fuel and electricity consumed in manufacturing and granting rule-making authority.

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

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

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

SECTION 2. 71.05 (6) (b) 3m. of the statutes is created to read:

71.05 (6) (b) 3m. As provided under s. 71.07 (3s) (c) 7., the amount of the credit under s. 71.07 (3s) that the taxpayer added back to income under s. 71.05 (6) (a) at the time that the taxpayer first claimed the credit.

SECTION 3. 71.07 (3s) (c) 1. of the statutes is amended to read:

71.07 (3s) (c) 1. The credit under par. (b), including any credits carried over, may be offset only against the amount of the tax imposed upon or measured by the business operations of the claimant in which the fuel and elec-

tricity are consumed. If Except as provided in subd. 7., if the credit computed is not entirely offset against taxes otherwise due, the unused balance shall be carried forward and credited against taxes otherwise due for the following 15 taxable years to the extent not offset by taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

SECTION 4. 71.07 (3s) (c) 7. of the statutes is created to read:

71.07 (3s) (c) 7. No credit may be claimed under this subsection for taxable years that begin after December 31, 2005. For credits that are claimed but unused under this subsection for taxable years that begin before January 1, 2006, up to 50 percent may be used in each of the following 2 taxable years if the taxpayer has \$25,000 or less in unused credits as of January 1, 2006. For taxable years beginning after December 31, 2005, and before January 1, 2008, a taxpayer who has more than \$25,000 in unused credits as of January 1, 2006, may deduct an amount in each year that is equal to 50 percent of the amount the taxpayer added back to income under s. 71.05 (6) (a) at the time that the taxpayer first claimed the credit or, with regard to credits passed through from a partnership, limited liability company, or tax-option corpora-

* Section 991.11, WISCONSIN STATUTES 2001-02 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

tion, 50 percent of the amount that the entity added back to its income and was included in the partner's, member's, or shareholder's Wisconsin net income at the time that the credit was first claimed.

SECTION 5. 71.07 (3t) of the statutes is created to read:

71.07 (3t) MANUFACTURING INVESTMENT CREDIT. (a) *Definition.* In this subsection, "claimant" means a person who files a claim under this subsection.

(b) *Credit.* Subject to the limitations provided in this subsection and in s. 560.28, for taxable years beginning after December 31, 2007, a claimant may claim as a credit, amortized over 15 taxable years starting with the taxable year beginning after December 31, 2007, against the tax imposed under s. 71.02 and 71.08, up to the amount of the tax, an amount equal to the claimant's unused credits under s. 71.07 (3s).

(c) *Limitations.* 1. No credit may be claimed under this subsection unless the claimant submits with the claimant's return a copy of the claimant's certification by the department of commerce under s. 560.28, except that, with regard to credits claimed by partners of a partnership, members of a limited liability company, or shareholders of a tax-option corporation, the entity shall provide a copy of its certification under s. 560.28 to the partner, member, or shareholder to submit with his or her return.

2. 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 of their unused credits under s. 71.07 (3s). 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.

(d) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

2. The amount of any unused credit under this subsection in any taxable year may be carried forward to subsequent taxable years, up to 15 taxable years.

SECTION 6. 71.08 (1) (intro.) of the statutes is amended to read:

71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married couple filing jointly, trust or estate under s. 71.02, not considering the credits under ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), ~~(3t)~~, (6), ~~(6s)~~, and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) ~~and (3), and (3t)~~ and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) ~~and (3), and (3t)~~ and subchs. VIII and IX and payments to other states under

s. 71.07 (7), is less than the tax under this section, there is imposed on that natural person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative minimum tax computed as follows:

SECTION 7. 71.10 (4) (gbb) of the statutes is created to read:

71.10 (4) (gbb) Manufacturing investment credit under s. 71.07 (3t).

SECTION 8. 71.21 (4) of the statutes is amended to read:

71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s), and (3t)~~ and passed through to partners shall be added to the partnership's income.

SECTION 9. 71.26 (2) (a) of the statutes is amended to read:

71.26 (2) (a) Corporations in general. The "net income" of a corporation means the gross income as computed under the Internal Revenue Code as modified under sub. (3) minus the amount of recapture under s. 71.28 (1d) plus the amount of credit computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c) 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income under this paragraph at the time that the taxpayer first claimed the credit plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g), and (3t)~~ and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or other disposition of assets the gain from which would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise disposed of at a gain and minus deductions, as computed under the Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an amount equal to the difference between the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

SECTION 10. 71.28 (3) (c) 1. of the statutes is amended to read:

71.28 (3) (c) 1. If Except as provided in subd. 7., if the credit computed under par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance shall be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

SECTION 11. 71.28 (3) (c) 7. of the statutes is created to read:

71.28 (3) (c) 7. No credit may be claimed under this subsection for taxable years that begin after December 31, 2005. For credits that are claimed but unused under this subsection for taxable years that begin before January 1, 2006, up to 50 percent may be used in each of the following 2 taxable years if the taxpayer has \$25,000 or less in unused credits as of January 1, 2006. For taxable years beginning after December 31, 2005, and before January 1, 2008, a taxpayer who has more than \$25,000 in unused credits as of January 1, 2006, may deduct an amount in each year that is equal to 50 percent of the amount the taxpayer added back to income under s. 71.26 (2) (a) at the time that the taxpayer first claimed the credit or, with regard to credits passed through from a partnership, limited liability company, or tax-option corporation, 50 percent of the amount that the entity added back to its income and was included in the partner's, member's, or shareholder's Wisconsin net income at the time that the credit was first claimed.

SECTION 12. 71.28 (3t) of the statutes is created to read:

71.28 (3t) MANUFACTURING INVESTMENT CREDIT. (a) *Definition.* In this subsection, "claimant" means a person who files a claim under this subsection.

(b) *Credit.* Subject to the limitations provided in this subsection and in s. 560.28, for taxable years beginning after December 31, 2007, a claimant may claim as a credit, amortized over 15 taxable years starting with the taxable year beginning after December 31, 2007, against the tax imposed under s. 71.23, up to the amount of the tax, an amount equal to the claimant's unused credits under s. 71.28 (3).

(c) *Limitations.* 1. No credit may be claimed under this subsection unless the claimant submits with the claimant's return a copy of the claimant's certification by the department of commerce under s. 560.28, except that, with regard to credits claimed by partners of a partnership, members of a limited liability company, or shareholders of a tax-option corporation, the entity shall provide a copy of its certification under s. 560.28 to the partner, member, or shareholder to submit with his or her return.

2. 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 of their unused credits under s. 71.28 (3). 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.

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

2. The amount of any unused credit under this subsection in any taxable year may be carried forward to subsequent taxable years, up to 15 taxable years.

SECTION 13. 71.30 (3) (bb) of the statutes is created to read:

71.30 (3) (bb) Manufacturing investment credit under s. 71.28 (3t).

SECTION 14. 71.34 (1) (g) of the statutes is amended to read:

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

SECTION 15. 71.45 (2) (a) 10. of the statutes is amended to read:

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

SECTION 16. 71.45 (2) (a) 10b. of the statutes is created to read:

71.45 (2) (a) 10b. By subtracting from federal taxable income, as provided under s. 71.47 (3) (c) 7., the amount of the credit under s. 71.47 (3) that the taxpayer added to income under subd. 10. at the time that the taxpayer first claimed the credit.

SECTION 17. 71.47 (3) (c) 1. of the statutes is amended to read:

71.47 (3) (c) 1. If Except as provided in subd. 7., if the credit computed under par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance shall be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

SECTION 18. 71.47 (3) (c) 7. of the statutes is created to read:

71.47 (3) (c) 7. No credit may be claimed under this subsection for taxable years that begin after December 31, 2005. For credits that are claimed but unused under this subsection for taxable years that begin before January 1, 2005, up to 50 percent may be used in each of the following 2 taxable years if the taxpayer has \$25,000 or less in unused credits as of January 1, 2006. For taxable

years beginning after December 31, 2005, and before January 1, 2008, a taxpayer who has more than \$25,000 in unused credits as of January 1, 2006, may deduct an amount in each year that is equal to 50 percent of the amount the taxpayer added back to income under s. 71.45 (2) (a) 10. at the time that the taxpayer first claimed the credit or, with regard to credits passed through from a partnership, limited liability company, or tax-option corporation, 50 percent of the amount that the entity added back to its income and was included in the partner's, member's, or shareholder's Wisconsin net income at the time that the credit was first claimed.

SECTION 19. 71.47 (3t) of the statutes is created to read:

71.47 (3t) **MANUFACTURING INVESTMENT CREDIT.** (a) *Definition.* In this subsection, "claimant" means a person who files a claim under this subsection.

(b) *Credit.* Subject to the limitations provided in this subsection and in s. 560.28, for taxable years beginning after December 31, 2007, a claimant may claim as a credit, amortized over 15 taxable years starting with the taxable year beginning after December 31, 2007, against the tax imposed under s. 71.43, up to the amount of the tax, an amount equal to the claimant's unused credits under s. 71.47 (3).

(c) *Limitations.* 1. No credit may be claimed under this subsection unless the claimant submits with the claimant's return a copy of the claimant's certification by the department of commerce under s. 560.28, except that, with regard to credits claimed by partners of a partnership, members of a limited liability company, or shareholders of a tax-option corporation, the entity shall provide a copy of its certification under s. 560.28 to the partner, member, or shareholder to submit with his or her return.

2. 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 of their unused credits under s. 71.47 (3). 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.

(d) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

2. The amount of any unused credit under this subsection in any taxable year may be carried forward to subsequent taxable years, up to 15 taxable years.

SECTION 20. 71.49 (1) (bb) of the statutes is created to read:

71.49 (1) (bb) Manufacturing investment credit under s. 71.47 (3t).

SECTION 21. 77.54 (2) of the statutes is amended to read:

77.54 (2) The gross receipts from sales of and the storage, use or other consumption of tangible personal property becoming an ingredient or component part of an article of tangible personal property or which is consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale, ~~but this exemption shall not include fuel or electricity except as provided in sub. (30) (a) 6.~~

SECTION 22. 77.54 (30) (a) 6. of the statutes is created to read:

77.54 (30) (a) 6. Fuel and electricity consumed in manufacturing tangible personal property in this state.

SECTION 23. 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 deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s), and (3t);~~ and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions from farming. "Net business income", with respect to a natural person, estate, or trust, means profit from a trade or business for federal income tax purposes and includes net income derived as an employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

SECTION 24. 560.28 of the statutes is created to read:

560.28 Manufacturing investment credit. (1) **DEFINITION.** In this section, "full-time job" means a regular, nonseasonal full-time position in which an individual, as a condition of employment, is required to work at least 35 hours in a week.

(2) **CERTIFICATION.** The department shall promulgate rules for the certification of businesses as eligible to claim tax credits under s. 71.07 (3t), 71.28 (3t), or 71.47 (3t). The rules shall permit a business to obtain a certification only if the person satisfies one of the following conditions:

(a) The business has retained from the effective date of this paragraph [revisor inserts date], 100 percent of the business's full-time jobs in this state.

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(b) The business's average annual investment in this state since January 1, 2003, is equal to no less than 2 percent of the total book value of the business's depreciable assets in facilities that are based in this state.

(c) The business's average annual investment in this state since January 1, 2003, is no less than \$5,000,000.

(d) Any other criteria that is specific to an industry,

as promulgated by rule by the department of commerce, in consultation with the department of revenue.

SECTION 25. Initial applicability.

(1) The treatment of section 77.54 (2) and (30) (a) 6. of the statutes first applies to fuel and electricity sold on January 1, 2006.
