

2005 Assembly Bill 21

Date of enactment: **April 19, 2006**

Date of publication\*: **May 3, 2006**

## 2005 WISCONSIN ACT 362

**AN ACT** to *renumber* 71.738 (1) and 71.738 (2); to *renumber and amend* 71.01 (7r), 71.26 (3) (y) and 71.365 (1m); and to *create* 71.01 (7r) (b), 71.26 (3) (y) 2., 71.365 (1m) (b), 71.738 (1d), 71.738 (2d) and 71.765 of the statutes; **relating to:** computing expense deductions and amortization and depreciation on property used in farming for income and franchise tax purposes.

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

**SECTION 1.** 71.01 (7r) of the statutes is renumbered 71.01 (7r) (a) and amended to read:

71.01 (7r) (a) Notwithstanding sub. (6), and except as provided in par. (b), for purposes of computing amortization or depreciation, “Internal Revenue Code” means the federal Internal Revenue Code as amended to December 31, 2000, except that property that, under s. 71.02 (2) (d) 12., 1985 stats., is required to be depreciated for taxable year 1986 under the Internal Revenue Code as amended to December 31, 1980, shall continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980.

**SECTION 2.** 71.01 (7r) (b) of the statutes is created to read:

71.01 (7r) (b) Notwithstanding sub. (6), for property acquired and placed in service in taxable years beginning on or after January 1, 2006, a person who is actively engaged in farming may compute amortization and depreciation on property used in farming under any subsequent change to section 101 of P.L. 107–147 or section 201 of P.L. 108–27 enacted after December 31, 2005. For purposes of this paragraph, “actively engaged in farm-

ing” has the meaning given in 7 CFR 1400.201, and “farming” has the meaning given in section 464 (e) (1) of the Internal Revenue Code. This paragraph does not apply unless a federal law change enacted after December 31, 2005, revises section 101 of P.L. 107–147 or section 201 of P.L. 108–27.

**SECTION 3.** 71.26 (3) (y) of the statutes is renumbered 71.26 (3) (y) 1. and amended to read:

71.26 (3) (y) 1. ~~A~~ Except as provided in subd. 2., a corporation shall compute amortization and depreciation under the federal Internal Revenue Code as amended to December 31, 2000, except that property first placed in service by the taxpayer on or after January 1, 1983, but before January 1, 1987, that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under the Internal Revenue Code as amended to December 31, 1980, and property first placed in service in taxable year 1981 or thereafter but before January 1, 1987, that, under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the Internal Revenue Code as amended to December 31, 1980, shall continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980.

**SECTION 4.** 71.26 (3) (y) 2. of the statutes is created to read:

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\* Section 991.11, WISCONSIN STATUTES 2003–04 : 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].

71.26 (3) (y) 2. For property acquired and placed in service in taxable years beginning on or after January 1, 2006, a corporation that is actively engaged in farming may compute amortization and depreciation on property used in farming under any subsequent change to section 101 of P.L. 107-147 or section 201 of P.L. 108-27 enacted after December 31, 2005. For purposes of this subdivision, “actively engaged in farming” has the meaning given in 7 CFR 1400.201, and “farming” has the meaning given in section 464 (e) (1) of the Internal Revenue Code. This subdivision does not apply unless a federal law change enacted after December 31, 2005, revises section 101 of P.L. 107-147 or section 201 of P.L. 108-27.

**SECTION 5.** 71.365 (1m) of the statutes is renumbered 71.365 (1m) (a) and amended to read:

71.365 (1m) TAX-OPTION CORPORATIONS; DEPRECIATION. (a) ~~A~~ Except as provided in par. (b), a tax-option corporation shall compute amortization and depreciation under the federal Internal Revenue Code as amended to December 31, 2000, except that property first placed in service by the taxpayer on or after January 1, 1983, but before January 1, 1987, that, under s. 71.04 (15) (b) and (br), 1985 stats., is required to be depreciated under the Internal Revenue Code as amended to December 31, 1980, and property first placed in service in taxable year 1981 or thereafter but before January 1, 1987, that, under s. 71.04 (15) (bm), 1985 stats., is required to be depreciated under the Internal Revenue Code as amended to December 31, 1980, shall continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Any difference between the adjusted basis for federal income tax purposes and the adjusted basis under this chapter shall be taken into account in determining net income or loss in the year or years for which the gain or loss is reportable under this chapter. If that property was placed in service by the taxpayer during taxable year 1986 and thereafter but before the property is used in the production of income subject to taxation under this chapter, the property’s adjusted basis and the depreciation or other deduction schedule are not required to be changed from the amount allowable on the owner’s federal income tax returns for any year because the property is used in the production of income subject to taxation under this chapter. If that property was acquired in a transaction in taxable year 1986 or thereaf-

ter in which the adjusted basis of the property in the hands of the transferee is the same as the adjusted basis of the property in the hands of the transferor, the Wisconsin adjusted basis of that property on the date of transfer is the adjusted basis allowable under the Internal Revenue Code as defined for Wisconsin purposes for the property in the hands of the transferor.

**SECTION 6.** 71.365 (1m) (b) of the statutes is created to read:

71.365 (1m) (b) For property acquired and placed in service in taxable years beginning on or after January 1, 2006, a tax-option corporation that is actively engaged in farming may compute amortization and depreciation on property used in farming under any subsequent change to section 101 of P.L. 107-147 or section 201 of P.L. 108-27 enacted after December 31, 2005. For purposes of this paragraph, “actively engaged in farming” has the meaning given in 7 CFR 1400.201, and “farming” has the meaning given in section 464 (e) (1) of the Internal Revenue Code. This paragraph does not apply unless a federal law change enacted after December 31, 2005, revises section 101 of P.L. 107-147 or section 201 of P.L. 108-27.

**SECTION 7.** 71.738 (1) of the statutes is renumbered 71.738 (1m).

**SECTION 8.** 71.738 (1d) of the statutes is created to read:

71.738 (1d) “Actively engaged in farming” has the meaning given in 7 CFR 1400.201.

**SECTION 9.** 71.738 (2) of the statutes is renumbered 71.738 (2m).

**SECTION 10.** 71.738 (2d) of the statutes is created to read:

71.738 (2d) “Farming” has the meaning given in section 464 (e) (1) of the Internal Revenue Code.

**SECTION 11.** 71.765 of the statutes is created to read:

**71.765 Expense deduction; farming.** For property acquired and placed in service in taxable years beginning on or after January 1, 2008, a person who is actively engaged in farming may compute an expense deduction on property used in farming under any subsequent change to section 202 of P.L. 108-27 and section 201 of P.L. 108-357. This subsection does not apply unless a federal law change enacted after December 31, 2005, revises section 202 of P.L. 108-27 or section 201 of P.L. 108-357.