

## 2007 ASSEMBLY BILL 138

March 5, 2007 – Introduced by Representatives VAN ROY, SHILLING, ALBERS, BALLWEG, GRONEMUS, GUNDERSON, HAHN, JESKEWITZ, F. LASEE, NYGREN, OWENS, A. OTT, SEIDEL, TOWNSEND, VOS and WOOD, cosponsored by Senators LEIBHAM, PLALE, GROTHMAN, LAZICH and KANAVAS. Referred to Committee on Small Business.

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 (5i), 71.10 (4) (gxx), 71.28 (5i), 71.30  
 3           (3) (epa), 71.47 (5i) and 71.49 (1) (gxx) of the statutes; **relating to:** an income  
 4           and franchise credit for property taxes paid on restaurant kitchen machinery  
 5           and equipment.

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### ***Analysis by the Legislative Reference Bureau***

This bill creates an income and franchise tax credit in an amount that is equal to the amount of property taxes that a taxpayer paid in the taxable year on machinery and equipment, including refrigerators and other storage equipment, used primarily in the operation of a restaurant's kitchen to prepare or serve food or beverages. Under the bill, a restaurant includes pizza delivery establishments, snack bars, beverage bars, takeout food shops, and mobile food services, including mobile snack stands, mobile canteens, and ice cream vendors.

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:***

6           **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), (2dm), (2dr), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5d), and  
3           (5e), (5f), and (5h), and (5i) and not passed through by a partnership, limited liability  
4           company, or tax-option corporation that has added that amount to the partnership's,  
5           company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g).

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

7           71.07 **(5i)** RESTAURANT KITCHEN EQUIPMENT CREDIT. (a) *Definitions.* In this  
8           subsection:

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

10          2. "Machinery" has the meaning given in s. 70.11 (27) (a) 2.

11          3. "Restaurant" includes pizza delivery establishments, snack bars, beverage  
12          bars, takeout food shops, and mobile food services, including mobile snack stands,  
13          mobile canteens, and ice cream vendors.

14          (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
15          claimant may claim as a credit against the taxes imposed under s. 71.02, up to the  
16          amount of those taxes, an amount that is equal to the taxes imposed under ch. 70 that  
17          the claimant paid in the taxable year on machinery and equipment, including  
18          refrigerators and other storage equipment, used primarily in the operation of a  
19          restaurant's kitchen to prepare or serve food or beverages.

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

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

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

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

6 71.10 (4) (gxx) Restaurant kitchen equipment credit under s. 71.07 (5i).

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), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5e), (5f), (5g), ~~and~~ (5h),  
10 and (5i) and passed through to partners shall be 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 as modified under  
14 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit  
15 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)  
16 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income  
17 under this paragraph at the time that the taxpayer first claimed the credit plus the  
18 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),  
19 (1ds), (1dx), (3g), (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and~~ (5h), and (5i) and not passed  
20 through by a partnership, limited liability company, or tax–option corporation that  
21 has added that amount to the partnership's, limited liability company's, or  
22 tax–option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus the amount  
23 of losses from the sale or other disposition of assets the gain from which would be  
24 wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise  
25 disposed of at a gain and minus deductions, as computed under the Internal Revenue

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

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

6 **71.28 (5i) RESTAURANT KITCHEN EQUIPMENT CREDIT.** (a) *Definitions.* In this  
7 subsection:

8 1. “Claimant” means a person who files a claim under this subsection.

9 2. “Machinery” has the meaning given in s. 70.11 (27) (a) 2.

10 3. “Restaurant” includes pizza delivery establishments, snack bars, beverage  
11 bars, takeout food shops, and mobile food services, including mobile snack stands,  
12 mobile canteens, and ice cream vendors.

13 (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
14 claimant may claim as a credit against the taxes imposed under s. 71.23, up to the  
15 amount of those taxes, an amount that is equal to the taxes imposed under ch. 70 that  
16 the claimant paid in the taxable year on machinery and equipment, including  
17 refrigerators and other storage equipment, used primarily in the operation of a  
18 restaurant’s kitchen to prepare or serve food or beverages.

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

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

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

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

6 71.30 (3) (epa) Restaurant kitchen equipment credit under s. 71.28 (5i).

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), (1dm), (1ds), (1dx), (3), (3g),  
10 (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h),~~ and (5i) and passed through to  
11 shareholders.

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

13 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit  
14 computed under s. 71.47 (1dd) to (1dx), (3n), (3w), (5b), (5e), (5f), (5g), ~~and (5h),~~ and  
15 (5i) and not passed through by a partnership, limited liability company, or tax–option  
16 corporation that has added that amount to the partnership’s, limited liability  
17 company’s, or tax–option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) and  
18 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

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

20 71.47 (5i) RESTAURANT KITCHEN EQUIPMENT CREDIT. (a) *Definitions.* In this  
21 subsection:

22 1. “Claimant” means a person who files a claim under this subsection.

23 2. “Machinery” has the meaning given in s. 70.11 (27) (a) 2.

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1           3. “Restaurant” includes pizza delivery establishments, snack bars, beverage  
2 bars, takeout food shops, and mobile food services, including mobile snack stands,  
3 mobile canteens, and ice cream vendors.

4           (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
5 claimant may claim as a credit against the taxes imposed under s. 71.43, up to the  
6 amount of those taxes, an amount that is equal to the taxes imposed under ch. 70 that  
7 the claimant paid in the taxable year on machinery and equipment, including  
8 refrigerators and other storage equipment, used primarily in the operation of a  
9 restaurant’s kitchen to prepare or serve food or beverages.

10           (c) *Limitations.* Partnerships, limited liability companies, and tax–option  
11 corporations may not claim the credit under this subsection, but the eligibility for,  
12 and the amount of, the credit are based on their payment of amounts under par. (b).  
13 A partnership, limited liability company, or tax–option corporation shall compute  
14 the amount of credit that each of its partners, members, or shareholders may claim  
15 and shall provide that information to each of them. Partners, members of limited  
16 liability companies, and shareholders of tax–option corporations may claim the  
17 credit in proportion to their ownership interests.

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

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

21           71.49 (1) (gxx) Restaurant kitchen equipment credit under s. 71.47 (5i).

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

23           77.92 (4) “Net business income,” with respect to a partnership, means taxable  
24 income as calculated under section 703 of the Internal Revenue Code; plus the items  
25 of income and gain under section 702 of the Internal Revenue Code, including taxable

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

**SECTION 13. Initial applicability.**

14 (1) This act first applies to taxable years beginning on January 1, 2008.

15 (END)