

2007 ASSEMBLY BILL 894

February 28, 2008 – Introduced by Representatives DAVIS, KRAMER, ALBERS, JESKEWITZ, F. LASEE, MONTGOMERY, MUSSER, STRACHOTA, TAUCHEN, VOS, VUKMIR and BALLWEG, cosponsored by Senators SCHULTZ, DARLING, LEIBHAM and ROESSLER. Referred to Committee on Health and Healthcare Reform.

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 (5n), 71.10 (4) (cr), 71.28 (5n), 71.30
3 (3) (dr), 71.47 (5n), 71.49 (1) (dr), 73.03 (64) and 180.0121 (3) of the statutes;
4 **relating to:** an income and franchise tax credit for providing health care
5 benefits under a cafeteria plan.

Analysis by the Legislative Reference Bureau

This bill creates an income and franchise tax credit for employers who create certain health care benefit plans (known as “cafeteria plans” under federal law) for their employees. The credit is \$200 and may be claimed for the taxable year in which the employer creates the cafeteria plan. The bill also requires the Department of Revenue to include with its income and franchise tax forms information about cafeteria plans. In addition, the Department of Financial Institutions (DFI) must provide information regarding cafeteria plans to each entity that submits articles of incorporation with DFI.

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:

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1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2007 Wisconsin Act
2 20, is amended to read:

3 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e),
5 (5f), (5h), (5i), (5j), ~~and (5k),~~ and (5n) and not passed through by a partnership,
6 limited liability company, or tax-option corporation that has added that amount to
7 the partnership's, company's, or tax-option corporation's income under s. 71.21 (4)
8 or 71.34 (1) (g).

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

10 71.07 **(5n)** CAFETERIA PLAN CREDIT. (a) *Definitions.* In this subsection:

11 1. "Cafeteria plan" means a benefits plan described under section 125 of the
12 Internal Revenue Code.

13 2. "Claimant" means a person who files a claim under this subsection.

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 the taxes, \$200 for the taxable year in which the claimant establishes a
17 cafeteria plan for the claimant's employees.

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

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

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

4 71.10 (4) (cr) Cafeteria plan credit under s. 71.07 (5n).

5 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2007 Wisconsin Act 20, is
6 amended to read:

7 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
8 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e), (5f), (5g),
9 (5h), (5i), (5j), ~~and (5k)~~, and (5n) and passed through to partners shall be added to
10 the partnership's income.

11 **SECTION 5.** 71.26 (2) (a) of the statutes, as affected by 2007 Wisconsin Act 20,
12 is amended to read:

13 71.26 (2) (a) *Corporations in general*. The “net income” of a corporation means
14 the gross income as computed under the Internal Revenue Code as modified under
15 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
16 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
17 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
18 under this paragraph at the time that the taxpayer first claimed the credit plus the
19 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
20 (1ds), (1dx), (3g), (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and
21 (5n) and not passed through by a partnership, limited liability company, or
22 tax-option corporation that has added that amount to the partnership's, limited
23 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
24 (g) plus the amount of losses from the sale or other disposition of assets the gain from
25 which would be wholly exempt income, as defined in sub. (3) (L), if the assets were

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

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

7 **71.28 (5n) CAFETERIA PLAN CREDIT.** (a) *Definitions.* In this subsection:

8 1. “Cafeteria plan” means a benefits plan described under section 125 of the
9 Internal Revenue Code.

10 2. “Claimant” means a person who files a claim under this subsection.

11 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
12 claimant may claim as a credit against the taxes imposed under s. 71.23, up to the
13 amount of the taxes, \$200 for the taxable year in which the claimant establishes a
14 cafeteria plan for the claimant’s employees.

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

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

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

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1 71.30 (3) (dr) Cafeteria plan credit under s. 71.28 (5n).

2 **SECTION 8.** 71.34 (1) (g) of the statutes, as affected by 2007 Wisconsin Act 20,
3 is amended to read:

4 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
5 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
6 (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and (5n) and passed
7 through to shareholders.

8 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Act
9 20, 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), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
12 (5j), ~~and (5k)~~, and (5n) and not passed through by a partnership, limited liability
13 company, or tax-option corporation that has added that amount to the partnership's,
14 limited liability company's, or tax-option corporation's income under s. 71.21 (4) or
15 71.34 (1) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and
16 (5).

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

18 71.47 (5n) CAFETERIA PLAN CREDIT. (a) *Definitions.* In this subsection:

19 1. "Cafeteria plan" means a benefits plan described under section 125 of the
20 Internal Revenue Code.

21 2. "Claimant" means a person who files a claim under this subsection.

22 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
23 claimant may claim as a credit against the taxes imposed under s. 71.43, up to the
24 amount of the taxes, \$200 for the taxable year in which the claimant establishes a
25 cafeteria plan for the claimant's employees.

ASSEMBLY BILL 894**SECTION 10**

1 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
2 corporations may not claim the credit under this subsection, but the eligibility for,
3 and the amount of, the credit are based on providing the cafeteria plan as described
4 under par. (b). A partnership, limited liability company, or tax-option corporation
5 shall compute the amount of credit that each of its partners, members, or
6 shareholders may claim and shall provide that information to each of them.
7 Partners, members of limited liability companies, and shareholders of tax-option
8 corporations may claim the credit in proportion to their ownership interests.

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

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

12 71.49 (1) (dr) Cafeteria plan credit under s. 71.47 (5n).

13 **SECTION 12.** 73.03 (64) of the statutes is created to read:

14 73.03 (64) To include information regarding the creation of cafeteria plans
15 under 26 USC 125, and the tax benefits related to such plans under 26 USC 125 and
16 ss. 71.07 (5n), 71.28 (5n), and 71.47 (5n), with income and franchise tax forms
17 published by the department.

18 **SECTION 13.** 77.92 (4) of the statutes, as affected by 2007 Wisconsin Act 20, is
19 amended to read:

20 77.92 (4) “Net business income,” with respect to a partnership, means taxable
21 income as calculated under section 703 of the Internal Revenue Code; plus the items
22 of income and gain under section 702 of the Internal Revenue Code, including taxable
23 state and municipal bond interest and excluding nontaxable interest income or
24 dividend income from federal government obligations; minus the items of loss and
25 deduction under section 702 of the Internal Revenue Code, except items that are not

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1 deductible under s. 71.21; plus guaranteed payments to partners under section 707
2 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3s), (3n), (3p), (3t), (3w), (5e),
4 (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and (5n); and plus or minus, as appropriate,
5 transitional adjustments, depreciation differences, and basis differences under s.
6 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions
7 from farming. “Net business income,” with respect to a natural person, estate, or
8 trust, means profit from a trade or business for federal income tax purposes and
9 includes net income derived as an employee as defined in section 3121 (d) (3) of the
10 Internal Revenue Code.

11 **SECTION 14.** 180.0121 (3) of the statutes is created to read:

12 180.0121 (3) The department shall provide written information regarding the
13 creation of cafeteria plans under 26 USC 125, and the tax benefits related to such
14 plans under 26 USC 125 and ss. 71.07 (5n), 71.28 (5n), and 71.47 (5n), to each entity
15 that submits articles of incorporation to the department for filing.

16 **SECTION 15. Initial applicability.**

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

18 (END)