

2007 SENATE BILL 139

April 11, 2007 – Introduced by Senators KANAVAS, HARSDORF, PLALE, ROESSLER, SCHULTZ, KREITLOW and LEIBHAM, cosponsored by Representatives MOULTON, MURTHA, STRACHOTA, WOOD, BALLWEG, ALBERS, TOWNSEND, NASS, VAN ROY and HRAYCHUCK. Referred to Committee on Economic Development, Job Creation, Family Prosperity and Housing.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.21 (4), 71.26 (2) (a), 71.34
2 (1) (g), 71.45 (2) (a) 10. and 77.92 (4); and **to create** 71.07 (5i), 71.10 (4) (gab),
3 71.28 (5i), 71.30 (3) (dq), 71.47 (5i), 71.49 (1) (dq) and 560.207 of the statutes;
4 **relating to:** creating an income and franchise tax credit for expenses related
5 to nanotechnology and providing an exemption from emergency rule-making
6 procedures.

Analysis by the Legislative Reference Bureau

This bill creates an income and franchise tax credit for certain expenses related to nanotechnology. Under the bill, generally, a person may claim a credit that is equal to the amount of state sales and use taxes the person paid in the taxable year on the purchase of machines, equipment, and certain other tangible personal property that are used by a nanotechnology business in this state for research, development, and manufacturing. In addition, a person may claim as a credit the amount of any payments to a public or private institution of higher education, or to a consortium of such institutions, for research, equipment, or the use of research facilities, or other qualified expenses as determined by the Department of Commerce (Commerce), that are directly related to nanotechnology. The bill defines “nanotechnology” as the science and technology that enables a person to understand, measure, manipulate, and manufacture materials at the atomic, molecular, and supermolecular levels. A “nanotechnology business” is a business that is primarily engaged in applying

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nanotechnologies to create new applications or processes, or modify existing applications or processes, in order to make useful processes and products related to health care, energy, food production, manufacturing, biotechnology, information technology, or the environment. A person who wishes to claim the credit must first apply to Commerce.

Under the bill, if a person claims a credit in an amount that exceeds the person's income and franchise tax liability, the person does not receive a tax refund for the excess amount, but, instead, may carry forward the amount of any unused credit to the ten subsequent taxable years. The maximum amount of the credits that taxpayers may claim in any state fiscal year is \$2,500,000, as allocated by Commerce.

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:

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

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

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

8 71.07 **(5i)** NANOTECHNOLOGY CREDIT. (a) *Definitions.* In this subsection:

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

10 2. "Consortium" means 2 or more public institutions of higher education that
11 are conducting substantially similar qualified research or working on components
12 of the same qualified research.

13 3. "Manufacturing" has the meaning given in s. 77.54 (6m).

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1 4. “Nanotechnology” means the science and technology that enables a person
2 to understand, measure, manipulate, and manufacture materials at the atomic,
3 molecular, and supermolecular levels.

4 5. “Nanotechnology business” means a business, as certified by the department
5 of commerce in the manner prescribed by the department of commerce, that is
6 primarily engaged in applying nanotechnologies to create new applications or
7 processes, or modify existing applications or processes, in order to make useful
8 processes and products related to health care, energy, food production,
9 manufacturing, biotechnology, information technology, or the environment.

10 6. “Qualified research” means qualified research as defined under section 41
11 (d) (1) of the Internal Revenue Code, except that research conducted by a public or
12 private institution of higher education or a consortium, or a combination thereof, is
13 “qualified research” if the research is intended to be useful in developing a new or
14 improved product or service and the research satisfies section 41 (d) (1) (B) (i) and
15 (C) of the Internal Revenue Code.

16 7. “Used exclusively” means used to the exclusion of all other uses except for
17 use not exceeding 5 percent of total use.

18 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
19 560.207, for taxable years beginning on or after July 1, 2008, a claimant may claim
20 as a credit against the taxes imposed under s. 71.02 or 71.08, up to the amount of the
21 taxes, any of the following amounts that the claimant paid in the taxable year:

22 1. The taxes imposed under subch. III of ch. 77 on the purchase of machines and
23 processing equipment, including accessories, attachments, and parts for the
24 machines or equipment, that are used exclusively and directly by the claimant in the

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1 claimant's nanotechnology business for qualified research and manufacturing, if the
2 research and manufacturing occurs in this state.

3 2. Payments to a public or private institution of higher education, or to a
4 consortium, for research, equipment, or the use of research facilities, or other
5 qualified expenses as determined by the department of commerce, that are directly
6 related to nanotechnology.

7 3. The taxes imposed under subch. III of ch. 77 on the purchase of any of the
8 following that are used by the claimant's nanotechnology business for research and
9 development that occurs in this state:

10 a. Advanced computing devices, including computer hardware and software.

11 b. Data communications.

12 c. Information technology.

13 d. Laboratory materials used exclusively for nanotechnology research and
14 development.

15 (c) *Limitations.* 1. The maximum amount of the credits that may be allocated
16 to all claimants under this subsection and ss. 71.28 (5i) and 71.47 (5i) in each fiscal
17 year is \$2,500,000, as determined by the department of commerce under s. 560.207.

18 2. No credit may be allowed under this subsection unless the claimant submits
19 with the claimant's return a copy of the claimant's certification for and allocation of
20 credits under s. 560.207.

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

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1 provide that information to each of them. Partners, members of limited liability
2 companies, and shareholders of tax-option corporations may claim the credit in
3 proportion to their ownership interests.

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

6 2. If a credit computed under this subsection is not entirely offset against
7 Wisconsin income or franchise taxes otherwise due, the unused balance may be
8 carried forward and credited against Wisconsin income or franchise taxes otherwise
9 due for the following 10 taxable years to the extent not offset by these taxes otherwise
10 due in all intervening years between the year in which the expense was incurred and
11 the year in which the carry-forward credit is claimed.

12 **SECTION 3.** 71.08 (1) (intro.) of the statutes is amended to read:

13 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
14 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
15 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3c), ~~(3e)~~, (3m),
16 (3n), (3s), (3t), (3w), (5b), (5d), (5e), ~~(5f)~~, ~~(5i)~~, (6), (6e), and (9e), 71.28 (1dd), (1de), (1di),
17 (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3), (3n), (3t), and (3w), and 71.47 (1dd), (1de),
18 (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3), (3n), (3t), and (3w), and subchs. VIII
19 and IX and payments to other states under s. 71.07 (7), is less than the tax under this
20 section, there is imposed on that natural person, married couple filing jointly, trust
21 or estate, instead of the tax under s. 71.02, an alternative minimum tax computed
22 as follows:

23 **SECTION 4.** 71.10 (4) (gab) of the statutes is created to read:

24 71.10 (4) (gab) Nanotechnology credit under s. 71.07 (5i).

25 **SECTION 5.** 71.21 (4) of the statutes is amended to read:

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1 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
2 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5e), (5f), (5g), and (5h),
3 and (5i) and passed through to partners shall be added to the partnership's income.

4 **SECTION 6.** 71.26 (2) (a) of the statutes is amended to read:

5 71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means
6 the gross income as computed under the Internal Revenue Code as modified under
7 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
8 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
9 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
10 under this paragraph at the time that the taxpayer first claimed the credit plus the
11 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
12 (1ds), (1dx), (3g), (3n), (3t), (3w), (5b), (5e), (5f), (5g), and (5h), and (5i) and not passed
13 through by a partnership, limited liability company, or tax-option corporation that
14 has added that amount to the partnership's, limited liability company's, or
15 tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus the amount
16 of losses from the sale or other disposition of assets the gain from which would be
17 wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise
18 disposed of at a gain and minus deductions, as computed under the Internal Revenue
19 Code as modified under sub. (3), plus or minus, as appropriate, an amount equal to
20 the difference between the federal basis and Wisconsin basis of any asset sold,
21 exchanged, abandoned, or otherwise disposed of in a taxable transaction during the
22 taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

23 **SECTION 7.** 71.28 (5i) of the statutes is created to read:

24 71.28 (5i) NANOTECHNOLOGY CREDIT. (a) *Definitions.* In this subsection:

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

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1 2. “Consortium” means 2 or more public institutions of higher education that
2 are conducting substantially similar qualified research or working on components
3 of the same qualified research.

4 3. “Manufacturing” has the meaning given in s. 77.54 (6m).

5 4. “Nanotechnology” means the science and technology that enables a person
6 to understand, measure, manipulate, and manufacture materials at the atomic,
7 molecular, and supermolecular levels.

8 5. “Nanotechnology business” means a business, as certified by the department
9 of commerce in the manner prescribed by the department of commerce, that is
10 primarily engaged in applying nanotechnologies to create new applications or
11 processes, or modify existing applications or processes, in order to make useful
12 processes and products related to health care, energy, food production,
13 manufacturing, biotechnology, information technology, or the environment.

14 6. “Qualified research” means qualified research as defined under section 41
15 (d) (1) of the Internal Revenue Code, except that research conducted by a public or
16 private institution of higher education or a consortium, or a combination thereof, is
17 “qualified research” if the research is intended to be useful in developing a new or
18 improved product or service and the research satisfies section 41 (d) (1) (B) (i) and
19 (C) of the Internal Revenue Code.

20 7. “Used exclusively” means used to the exclusion of all other uses except for
21 use not exceeding 5 percent of total use.

22 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
23 560.207, for taxable years beginning on or after July 1, 2008, a claimant may claim
24 as a credit against the taxes imposed under s. 71.23, up to the amount of the taxes,
25 any of the following amounts that the claimant paid in the taxable year:

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1 1. The taxes imposed under subch. III of ch. 77 on the purchase of machines and
2 processing equipment, including accessories, attachments, and parts for the
3 machines or equipment, that are used exclusively and directly by the claimant in the
4 claimant's nanotechnology business for qualified research and manufacturing, if the
5 research and manufacturing occurs in this state.

6 2. Payments to a public or private institution of higher education, or to a
7 consortium, for research, equipment, or the use of research facilities, or other
8 qualified expenses as determined by the department of commerce, that are directly
9 related to nanotechnology.

10 3. The taxes imposed under subch. III of ch. 77 on the purchase of any of the
11 following that are used by the claimant's nanotechnology business for research and
12 development that occurs in this state:

13 a. Advanced computing devices, including computer hardware and software.

14 b. Data communications.

15 c. Information technology.

16 d. Laboratory materials used exclusively for nanotechnology research and
17 development.

18 (c) *Limitations.* 1. The maximum amount of the credits that may be allocated
19 to all claimants under this subsection and ss. 71.07 (5i) and 71.47 (5i) in each fiscal
20 year is \$2,500,000, as determined by the department of commerce under s. 560.207.

21 2. No credit may be allowed under this subsection unless the claimant submits
22 with the claimant's return a copy of the claimant's certification for and allocation of
23 credits under s. 560.207.

24 3. Partnerships, limited liability companies, and tax-option corporations may
25 not claim the credit under this subsection, but the eligibility for, and the amount of,

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1 the credit are based on their payment of amounts under par. (b). A partnership,
2 limited liability company, or tax-option corporation shall compute the amount of
3 credit that each of its partners, members, or shareholders may claim and shall
4 provide that information to each of them. Partners, members of limited liability
5 companies, and shareholders of tax-option corporations may claim the credit in
6 proportion to their ownership interests.

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

9 2. If a credit computed under this subsection is not entirely offset against
10 Wisconsin income or franchise taxes otherwise due, the unused balance may be
11 carried forward and credited against Wisconsin income or franchise taxes otherwise
12 due for the following 10 taxable years to the extent not offset by these taxes otherwise
13 due in all intervening years between the year in which the expense was incurred and
14 the year in which the carry-forward credit is claimed.

15 **SECTION 8.** 71.30 (3) (dq) of the statutes is created to read:

16 71.30 (3) (dq) Nanotechnology credit under s. 71.28 (5i).

17 **SECTION 9.** 71.34 (1) (g) of the statutes is amended to read:

18 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
19 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
20 (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h), and (5i)~~ and passed through to
21 shareholders.

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

23 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
24 computed under s. 71.47 (1dd) to (1dx), (3n), (3w), (5b), (5e), (5f), (5g), ~~and (5h), and~~
25 (5i) and not passed through by a partnership, limited liability company, or tax-option

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1 corporation that has added that amount to the partnership's, limited liability
2 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) and
3 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

4 **SECTION 11.** 71.47 (5i) of the statutes is created to read:

5 71.47 (5i) NANOTECHNOLOGY CREDIT. (a) *Definitions.* In this subsection:

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

7 2. "Consortium" means 2 or more public institutions of higher education that
8 are conducting substantially similar qualified research or working on components
9 of the same qualified research.

10 3. "Manufacturing" has the meaning given in s. 77.54 (6m).

11 4. "Nanotechnology" means the science and technology that enables a person
12 to understand, measure, manipulate, and manufacture materials at the atomic,
13 molecular, and supermolecular levels.

14 5. "Nanotechnology business" means a business, as certified by the department
15 of commerce in the manner prescribed by the department of commerce, that is
16 primarily engaged in applying nanotechnologies to create new applications or
17 processes, or modify existing applications or processes, in order to make useful
18 processes and products related to health care, energy, food production,
19 manufacturing, biotechnology, information technology, or the environment.

20 6. "Qualified research" means qualified research as defined under section 41
21 (d) (1) of the Internal Revenue Code, except that research conducted by a public or
22 private institution of higher education or a consortium, or a combination thereof, is
23 "qualified research" if the research is intended to be useful in developing a new or
24 improved product or service and the research satisfies section 41 (d) (1) (B) (i) and
25 (C) of the Internal Revenue Code.

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1 7. “Used exclusively” means used to the exclusion of all other uses except for
2 use not exceeding 5 percent of total use.

3 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
4 560.207, for taxable years beginning on or after July 1, 2008, a claimant may claim
5 as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes,
6 any of the following amounts that the claimant paid in the taxable year:

7 1. The taxes imposed under subch. III of ch. 77 on the purchase of machines and
8 processing equipment, including accessories, attachments, and parts for the
9 machines or equipment, that are used exclusively and directly by the claimant in the
10 claimant’s nanotechnology business for qualified research and manufacturing, if the
11 research and manufacturing occurs in this state.

12 2. Payments to a public or private institution of higher education, or to a
13 consortium, for research, equipment, or the use of research facilities, or other
14 qualified expenses as determined by the department of commerce, that are directly
15 related to nanotechnology.

16 3. The taxes imposed under subch. III of ch. 77 on the purchase of any of the
17 following that are used by the claimant’s nanotechnology business for research and
18 development that occurs in this state:

19 a. Advanced computing devices, including computer hardware and software.

20 b. Data communications.

21 c. Information technology.

22 d. Laboratory materials used exclusively for nanotechnology research and
23 development.

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1 (c) *Limitations.* 1. The maximum amount of the credits that may be allocated
2 to all claimants under this subsection and ss. 71.07 (5i) and 71.28 (5i) in each fiscal
3 year is \$2,500,000, as determined by the department of commerce under s. 560.207.

4 2. No credit may be allowed under this subsection unless the claimant submits
5 with the claimant's return a copy of the claimant's certification for and allocation of
6 credits under s. 560.207.

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

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

17 2. If a credit computed under this subsection is not entirely offset against
18 Wisconsin income or franchise taxes otherwise due, the unused balance may be
19 carried forward and credited against Wisconsin income or franchise taxes otherwise
20 due for the following 10 taxable years to the extent not offset by these taxes otherwise
21 due in all intervening years between the year in which the expense was incurred and
22 the year in which the carry-forward credit is claimed.

23 **SECTION 12.** 71.49 (1) (dq) of the statutes is created to read:

24 71.49 (1) (dq) Nanotechnology credit under s. 71.47 (5i).

25 **SECTION 13.** 77.92 (4) of the statutes is amended to read:

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1 77.92 (4) “Net business income,” with respect to a partnership, means taxable
2 income as calculated under section 703 of the Internal Revenue Code; plus the items
3 of income and gain under section 702 of the Internal Revenue Code, including taxable
4 state and municipal bond interest and excluding nontaxable interest income or
5 dividend income from federal government obligations; minus the items of loss and
6 deduction under section 702 of the Internal Revenue Code, except items that are not
7 deductible under s. 71.21; plus guaranteed payments to partners under section 707
8 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
9 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), (3w), (5b), (5e), (5f),
10 (5g), ~~and (5h), and (5i)~~; and plus or minus, as appropriate, transitional adjustments,
11 depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and
12 (19); but excluding income, gain, loss, and deductions from farming. “Net business
13 income,” with respect to a natural person, estate, or trust, means profit from a trade
14 or business for federal income tax purposes and includes net income derived as an
15 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

16 **SECTION 14.** 560.207 of the statutes is created to read:

17 **560.207 Nanotechnology tax credits. (1)** The department shall implement
18 a program for certifying businesses as eligible for tax credits under ss. 71.07 (5i),
19 71.28 (5i), and 71.47 (5i).

20 **(2)** If the department certifies a business as eligible under sub. (1), the
21 department shall determine the amount of expenditures by the business that meet
22 the requirements of s. 71.07 (5i) (b) 1. to 3., 71.28 (5i) (b) 1. to 3., or 71.47 (5i) (b) 1.
23 to 3. and shall determine the amount of tax credits to be allocated to the business.
24 The total amount of tax credits allocated to all eligible businesses may not exceed
25 \$2,500,000 per fiscal year.

