

2007 SENATE BILL 499

February 15, 2008 – Introduced by Senators KREITLOW, KANAVAS, SULLIVAN, OLSEN, DARLING, KAPANKE, LEIBHAM, KEDZIE and ROESSLER, cosponsored by Representatives KLEEFISCH, SMITH, JORGENSEN, A. OTT, HAHN, SEIDEL, STRACHOTA, KERKMAN, TOWNSEND, TURNER, GRONEMUS, VAN ROY and MUSSER. Referred to Joint Survey Committee on Tax Exemptions.

1 **AN ACT** *to amend* 71.21 (3), 71.26 (2) (a), 71.26 (3) (n), 71.365 (3) and 71.45 (2)
2 (a) 10.; and *to create* 70.11 (27m), 70.111 (27), 71.28 (4m), 71.30 (3) (db), 71.47
3 (4m), 71.49 (1) (db) and 77.54 (50) of the statutes; **relating to:** an income and
4 franchise tax credit for research conducted in this state by a corporation and a
5 property and sales and use tax exemption for certain tangible personal property
6 used to conduct research.

Analysis by the Legislative Reference Bureau

Under current law, a corporation may claim an income and franchise tax credit in an amount equal to 5 percent of its qualified research expenses, as defined by the Internal Revenue Code, for research conducted in this state. In addition, a corporation may claim an income and franchise tax credit equal to 5 percent of the amount that it paid in the taxable year to construct and equip new facilities or expand existing facilities used in this state for qualified research, as defined by the Internal Revenue Code.

Under this bill, a corporation may also claim an income and franchise tax credit equal to the amount of its qualified research expenses in the taxable year for research conducted in this state that exceeds the amount equal to the average amount of the corporation's qualified research expenses in the previous three taxable years multiplied by 1.25. If the credit claimed by a corporation exceeds the corporation's tax liability, the state will not issue a refund, but the corporation may carry forward any remaining credit to five subsequent taxable years.

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This bill also creates a property tax exemption and a sales and use tax exemption for machinery and other tangible personal property used for qualified research by persons engaged primarily in manufacturing or biotechnology in this state.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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.** 70.11 (27m) of the statutes is created to read:

2 70.11 **(27m)** RESEARCH MACHINERY AND EQUIPMENT. (a) In this subsection:

3 1. “Biotechnology” has the meaning given in s. 77.54 (50) (a) 1.

4 2. “Machinery” has the meaning given in sub. (27) (a) 2.

5 3. “Manufacturing” has the meaning given in sub. (27) (a) 3.

6 4. “Primarily” means more than 50 percent.

7 5. “Qualified research” means qualified research as defined under section 41
8 (d) (1) of the Internal Revenue Code.

9 6. “Used exclusively” has the meaning given in sub. (27) (a) 8.

10 (b) Machinery and equipment, including attachments, parts, and accessories,
11 used by persons who are engaged primarily in manufacturing or biotechnology in
12 this state and are used exclusively and directly in qualified research.

13 **SECTION 2.** 70.111 (27) of the statutes is created to read:

14 70.111 **(27)** RESEARCH PROPERTY. (a) In this subsection:

15 1. “Biotechnology” has the meaning given in s. 77.54 (50) (a) 1.

16 2. “Manufacturing” has the meaning given in s. 70.11 (27) (a) 3.

17 3. “Primarily” means more than 50 percent.

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1 4. “Qualified research” means qualified research as defined under section 41
2 (d) (1) of the Internal Revenue Code.

3 5. “Used exclusively” has the meaning given in s. 70.11 (27) (a) 8.

4 (b) Tangible personal property used by persons who are engaged primarily in
5 manufacturing or biotechnology in this state, if the tangible personal property is
6 consumed or destroyed or loses its identity while being used exclusively and directly
7 in qualified research.

8 **SECTION 3.** 71.21 (3) of the statutes is amended to read:

9 71.21 (3) The credits under s. 71.28 (4), (4m), and (5) may not be claimed by a
10 partnership or by partners, including partners of a publicly traded partnership.

11 **SECTION 4.** 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), (4m), and (5) minus, as provided under s. 71.28
17 (3) (c) 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 not passed through by a partnership, limited liability company, or tax-option
22 corporation that has added that amount to the partnership’s, limited liability
23 company’s, or tax-option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) plus
24 the amount of losses from the sale or other disposition of assets the gain from which
25 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or

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1 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 5.** 71.26 (3) (n) of the statutes is amended to read:

7 71.26 (3) (n) Sections 381, 382 and 383 (relating to carry-overs in certain
8 corporate acquisitions) are modified so that they apply to losses under sub. (4) and
9 credits under s. 71.28 (1di), (1dL), (1dm), (1dx), (3), (4), (4m), and (5) instead of to
10 federal credits and federal net operating losses.

11 **SECTION 6.** 71.28 (4m) of the statutes is created to read:

12 71.28 (4m) SUPER RESEARCH AND DEVELOPMENT CREDIT. (a) *Definition.* In this
13 subsection, “qualified research expenses” means qualified research expenses as
14 defined in section 41 of the Internal Revenue Code, not including section 41 (h) of the
15 Internal Revenue Code, that are paid or incurred for research conducted in this state.

16 (b) *Credit.* Subject to the limitations provided under this subsection, for
17 taxable years beginning on or after January 1, 2009, a corporation may claim as a
18 credit against the tax imposed under s. 71.23, up to the amount of those taxes, and
19 against no more than 50 percent of the claimant’s tax liability, an amount equal to
20 the amount of qualified research expenses paid or incurred by the corporation in the
21 taxable year that exceeds the amount calculated as follows:

22 1. Determine the average amount of the qualified research expenses paid or
23 incurred by the corporation in the 3 taxable years immediately preceding the taxable
24 year for which a credit is claimed under this subsection.

25 2. Multiply the amount determined under subd. 1. by 1.25.

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1 (c) *Limitations.* Subsection (4) (b) to (d) and (i), as it applies to the credit under
2 sub. (4), applies to the credit under this subsection.

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

5 2. If a credit computed under this subsection is not entirely offset against
6 Wisconsin income or franchise taxes otherwise due, the unused balance may be
7 carried forward and credited against Wisconsin income or franchise taxes otherwise
8 due for the following 5 taxable years to the extent not offset by these taxes otherwise
9 due in all intervening years between the year in which the expense was incurred and
10 the year in which the carry-forward credit is claimed.

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

12 71.30 (3) (db) Super research and development credit under s. 71.28 (4m).

13 **SECTION 8.** 71.365 (3) of the statutes is amended to read:

14 71.365 (3) CREDITS NOT ALLOWED. The credits under s. 71.28 (4), (4m), and (5)
15 may not be claimed by a tax-option corporation or shareholders of a tax-option
16 corporation.

17 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Act
18 20, is amended to read:

19 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
20 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
21 (5j), and (5k) 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) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

25 **SECTION 10.** 71.47 (4m) of the statutes is created to read:

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1 71.47 **(4m)** SUPER RESEARCH AND DEVELOPMENT CREDIT. (a) *Definition.* In this
2 subsection, “qualified research expenses” means qualified research expenses as
3 defined in section 41 of the Internal Revenue Code, not including section 41 (h) of the
4 Internal Revenue Code, that are paid or incurred for research conducted in this state.

5 (b) *Credit.* Subject to the limitations provided under this subsection, for
6 taxable years beginning on or after January 1, 2009, a corporation may claim as a
7 credit against the tax imposed under s. 71.43, up to the amount of those taxes, and
8 against no more than 50 percent of the claimant’s tax liability, an amount equal to
9 the amount of qualified research expenses paid or incurred by the corporation in the
10 taxable year that exceeds the amount calculated as follows:

11 1. Determine the average amount of the qualified research expenses paid or
12 incurred by the corporation in the 3 taxable years immediately preceding the taxable
13 year for which a credit is claimed under this subsection.

14 2. Multiply the amount determined under subd. 1. by 1.25.

15 (c) *Limitations.* Section 71.28 (4) (b) to (d) and (i), as it applies to the credit
16 under sub. (4), applies to the credit under this subsection.

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

19 2. If a credit computed under this subsection is not entirely offset against
20 Wisconsin income or franchise taxes otherwise due, the unused balance may be
21 carried forward and credited against Wisconsin income or franchise taxes otherwise
22 due for the following 5 taxable years to the extent not offset by these taxes otherwise
23 due in all intervening years between the year in which the expense was incurred and
24 the year in which the carry-forward credit is claimed.

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

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1 71.49 (1) (db) Super research and development credit under s. 71.47 (4m).

2 **SECTION 12.** 77.54 (50) of the statutes is created to read:

3 77.54 (50) (a) In this subsection:

4 1. “Biotechnology” means the application of biotechnologies; including
5 recombinant deoxyribonucleic acid techniques, biochemistry, molecular and cellular
6 biology, genetics, genetic engineering, biological cell fusion, and other bioprocesses;
7 that use living organisms or parts of an organism to produce or modify products to
8 improve plants or animals or improve animal health, develop microorganisms for
9 specific uses, identify targets for small molecule pharmaceutical development, or
10 transform biological systems into useful processes and products.

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

12 3. “Manufacturing” has the meaning given in sub. (6m).

13 4. “Primarily” means more than 50 percent.

14 5. “Qualified research” means qualified research as defined under section 41
15 (d) (1) of the Internal Revenue Code.

16 6. “Used exclusively” has the meaning given in sub. (3) (b) 3.

17 (b) The gross receipts from the sale of and the storage, use, or other
18 consumption of:

19 1. Machinery and equipment, including attachments, parts, and accessories,
20 that are sold to persons who are engaged primarily in manufacturing or
21 biotechnology in this state and are used exclusively and directly in qualified
22 research.

23 2. Tangible personal property that is sold to persons who are engaged primarily
24 in manufacturing or biotechnology in this state, if the tangible personal property is

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1 consumed or destroyed or loses its identity while being used exclusively and directly
2 in qualified research.

3 **SECTION 13. Initial applicability.**

4 (1) The treatment of sections 70.11 (27m) and 70.111 (27) of the statutes first
5 applies to the property tax assessments as of January 1, 2009.

6 **SECTION 14. Effective dates.** This act takes effect on the day after publication,
7 except as follows:

8 (1) The treatment of section 77.54 (50) of the statutes takes effect on January
9 1, 2009.

10 (END)