

## 2007 SENATE BILL 538

February 27, 2008 – Introduced by Senators HANSEN and LASSA, cosponsored by Representatives PETROWSKI, A. OTT, MOLEPSKE, MONTGOMERY, SINICKI, BIES, BERCEAU, MUSSER and TAUCHEN. Referred to Committee on Tax Fairness and Family Prosperity.

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., 77.92 (4) and 560.7995 (3) (b); and *to create* 71.07 (3x), 71.10 (4) (cs),  
3           71.28 (3x), 71.30 (3) (cs), 71.47 (3x) and 71.49 (1) (cs) of the statutes; **relating**  
4           **to:** an income and franchise tax credit for diesel engines that are used in  
5           commercial motor vehicles and that emit lower levels of nitrogen oxide.

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

This bill creates an income and franchise tax credit for the purchase of diesel engines that emit reduced levels of nitrogen oxide and are used in commercial motor vehicles that transport property or passengers and that, generally, weigh more than 26,000 pounds. The amount that a person may claim as a credit in the taxable year depends on how many commercial motor vehicles the person owns in the 12 months preceding the purchase of the diesel engine for which the credit is claimed. A person who wishes to claim the credit must first apply to the Department of Revenue. The total credit amount that all taxpayers may claim is \$1,000,000 in fiscal year 2008–09. This bill also reduces the total amount of credits that may be claimed under the airport development zone program for all taxable years from \$9,000,000 to \$8,000,000.

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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:***

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), (3x),  
5           (5e), (5f), (5h), (5i), (5j), and (5k) and not passed through by a partnership, limited  
6           liability company, or tax-option corporation that has added that amount to the  
7           partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or  
8           71.34 (1) (g).

9           **SECTION 2.** 71.07 (3x) of the statutes is created to read:

10          71.07 **(3x)** TRUCK ENGINE CREDIT. (a) *Definitions.* In this subsection:

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

12          2. "Qualified diesel engine" means a diesel engine that is purchased in this  
13          state and certified by the federal environmental protection agency as emitting  
14          nitrogen oxides at a rate that does not exceed 1.1 grams per brake horsepower-hour  
15          for diesel engines purchased after December 31, 2007, and before January 1, 2010,  
16          and 0.2 grams per brake horsepower-hour for diesel engines purchased after  
17          December 31, 2010, and before January 1, 2013.

18          3. "Qualified truck" means a commercial motor vehicle, as defined in s. 340.01  
19          (8) (a) or (b), that is used exclusively in the claimant's business, if that business has  
20          its headquarters in this state.

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1           4. “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, for  
4 taxable years beginning after December 31, 2007, and before January 1, 2013, a  
5 claimant may claim as a credit against the tax imposed under s. 71.02, up to the  
6 amount of those taxes, the following amounts for each qualified diesel engine  
7 purchased by the claimant in the taxable year for use in a qualified truck owned by  
8 the claimant:

9           1. If the claimant owns at least one qualified truck, but no more than 10  
10 qualified trucks, in the 12 months immediately preceding the purchase of the  
11 qualified engine for which a credit is claimed, \$1,500.

12           2. If the claimant owns no less than 11 qualified trucks, but no more than 100  
13 qualified trucks, in the 12 months immediately preceding the purchase of the  
14 qualified engine for which a credit is claimed, \$1,300.

15           3. If the claimant owns more than 100 qualified trucks in the 12 months  
16 immediately preceding the purchase of the qualified engine for which a credit is  
17 claimed, \$1,200.

18           (c) *Limitations.* 1. The amount of the credit claimed by any one claimant may  
19 not exceed \$125,000 in the taxable year for which the credit is claimed.

20           2. The maximum amount of all credits that may be claimed under par. (b) 1. and  
21 2. and ss. 71.28 (3x) (b) 1. and 2. and 71.47 (3x) (b) 1. and 2. is \$500,000 in fiscal year  
22 2008–09.

23           3. The maximum amount of all credits that may be claimed under par. (b) 3. and  
24 ss. 71.28 (3x) (b) 3. and 71.47 (3x) (b) 3. is \$500,000 in fiscal year 2008–09.

**SENATE BILL 538****SECTION 2**

1           4. No person may claim a credit under this subsection unless the person first  
2 applies for the credit with the department, in the manner prescribed by the  
3 department. The department shall allocate the credits to all eligible applicants in  
4 the order in which the applications are received and may adjust the amount of any  
5 credit if the total amount allocated would exceed any limit under subds. 1. to 3.

6           5. No credit may be allowed under this subsection unless the claimant includes  
7 with the claimant's return a copy of the verification from the department that the  
8 claimant may claim a credit under this subsection.

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

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

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

20           71.10 (4) (cs) Truck engine credit under s. 71.07 (3x).

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

23           71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
24 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), ~~(3x)~~, (5e), (5f), (5g),

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1 (5h), (5i), (5j), and (5k) and passed through to partners shall be added to the  
2 partnership's income.

3 **SECTION 5.** 71.26 (2) (a) of the statutes, as affected by 2007 Wisconsin Act 20,  
4 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), (3h), (3n), (3p), (3t), (3w), ~~(3x)~~, (5e), (5f), (5g), (5h), (5i), (5j), and (5k)  
13 and not passed through by a partnership, limited liability company, or tax-option  
14 corporation that has added that amount to the partnership's, limited liability  
15 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus  
16 the amount of losses from the sale or other disposition of assets the gain from which  
17 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or  
18 otherwise disposed of at a gain and minus deductions, as computed under the  
19 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an  
20 amount equal to the difference between the federal basis and Wisconsin basis of any  
21 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction  
22 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

23 **SECTION 6.** 71.28 (3x) of the statutes is created to read:

24 71.28 (3x) TRUCK ENGINE CREDIT. (a) *Definitions.* In this subsection:

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

**SENATE BILL 538****SECTION 6**

1           2. “Qualified diesel engine” means a diesel engine that is purchased in this  
2 state and certified by the federal environmental protection agency as emitting  
3 nitrogen oxides at a rate that does not exceed 1.1 grams per brake horsepower–hour  
4 for diesel engines purchased after December 31, 2007, and before January 1, 2010,  
5 and 0.2 grams per brake horsepower–hour for diesel engines purchased after  
6 December 31, 2010, and before January 1, 2013.

7           3. “Qualified truck” means a commercial motor vehicle, as defined in s. 340.01  
8 (8) (a) or (b), that is used exclusively in the claimant’s business, if that business has  
9 its headquarters in this state.

10          4. “Used exclusively” means used to the exclusion of all other uses except for  
11 use not exceeding 5 percent of total use.

12          (b) *Filing claims.* Subject to the limitations provided in this subsection, for  
13 taxable years beginning after December 31, 2007, and before January 1, 2013, a  
14 claimant may claim as a credit against the tax imposed under s. 71.23, up to the  
15 amount of those taxes, the following amounts for each qualified diesel engine  
16 purchased by the claimant in the taxable year for use in a qualified truck owned by  
17 the claimant:

18           1. If the claimant owns at least one qualified truck, but no more than 10  
19 qualified trucks, in the 12 months immediately preceding the purchase of the  
20 qualified engine for which a credit is claimed, \$1,500.

21           2. If the claimant owns no less than 11 qualified trucks, but no more than 100  
22 qualified trucks, in the 12 months immediately preceding the purchase of the  
23 qualified engine for which a credit is claimed, \$1,300.

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1           3. If the claimant owns more than 100 qualified trucks in the 12 months  
2 immediately preceding the purchase of the qualified engine for which a credit is  
3 claimed, \$1,200.

4           (c) *Limitations.* 1. The amount of the credit claimed by any one claimant may  
5 not exceed \$125,000 in the taxable year for which the credit is claimed.

6           2. The maximum amount of all credits that may be claimed under par. (b) 1. and  
7 2. and ss. 71.07 (3x) (b) 1. and 2. and 71.47 (3x) (b) 1. and 2. is \$500,000 in fiscal year  
8 2008–09.

9           3. The maximum amount of all credits that may be claimed under par. (b) 3. and  
10 ss. 71.07 (3x) (b) 3. and 71.47 (3x) (b) 3. is \$500,000 in fiscal year 2008–09.

11           4. No person may claim a credit under this subsection unless the person first  
12 applies for the credit with the department, in the manner prescribed by the  
13 department. The department shall allocate the credits to all eligible applicants in  
14 the order in which the applications are received and may adjust the amount of any  
15 credit if the total amount allocated would exceed any limit under subsds. 1. to 3.

16           5. No credit may be allowed under this subsection unless the claimant includes  
17 with the claimant's return a copy of the verification from the department that the  
18 claimant may claim a credit under this subsection.

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

**SENATE BILL 538****SECTION 6**

1 companies, and shareholders of tax-option corporations may claim the credit in  
2 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) (cs) of the statutes is created to read:

6 71.30 (3) (cs) Truck engine credit under s. 71.28 (3x).

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

9 71.34 (1) (g) An addition shall be made for credits computed by a tax-option  
10 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),  
11 (3h), (3n), (3p), (3t), (3w), (3x), (5e), (5f), (5g), (5h), (5i), (5j), and (5k) and passed  
12 through to shareholders.

13 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Act  
14 20, is amended to read:

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

21 **SECTION 10.** 71.47 (3x) of the statutes is created to read:

22 71.47 (3x) TRUCK ENGINE CREDIT. (a) *Definitions.* In this subsection:

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

24 2. "Qualified diesel engine" means a diesel engine that is purchased in this  
25 state and certified by the federal environmental protection agency as emitting



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1 nitrogen oxides at a rate that does not exceed 1.1 grams per brake horsepower-hour  
2 for diesel engines purchased after December 31, 2007, and before January 1, 2010,  
3 and 0.2 grams per brake horsepower-hour for diesel engines purchased after  
4 December 31, 2010, and before January 1, 2013.

5 3. “Qualified truck” means a commercial motor vehicle, as defined in s. 340.01  
6 (8) (a) or (b), that is used exclusively in the claimant’s business, if that business has  
7 its headquarters in this state.

8 4. “Used exclusively” means used to the exclusion of all other uses except for  
9 use not exceeding 5 percent of total use.

10 (b) *Filing claims.* Subject to the limitations provided in this subsection, for  
11 taxable years beginning after December 31, 2007, and before January 1, 2013, a  
12 claimant may claim as a credit against the tax imposed under s. 71.43, up to the  
13 amount of those taxes, the following amounts for each qualified diesel engine  
14 purchased by the claimant in the taxable year for use in a qualified truck owned by  
15 the claimant:

16 1. If the claimant owns at least one qualified truck, but no more than 10  
17 qualified trucks, in the 12 months immediately preceding the purchase of the  
18 qualified engine for which a credit is claimed, \$1,500.

19 2. If the claimant owns no less than 11 qualified trucks, but no more than 100  
20 qualified trucks, in the 12 months immediately preceding the purchase of the  
21 qualified engine for which a credit is claimed, \$1,300.

22 3. If the claimant owns more than 100 qualified trucks in the 12 months  
23 immediately preceding the purchase of the qualified engine for which a credit is  
24 claimed, \$1,200.

**SENATE BILL 538****SECTION 10**

1           (c) *Limitations.* 1. The amount of the credit claimed by any one claimant may  
2 not exceed \$125,000 in the taxable year for which the credit is claimed.

3           2. The maximum amount of all credits that may be claimed under par. (b) 1. and  
4 2. and ss. 71.28 (3x) (b) 1. and 2. and 71.47 (3x) (b) 1. and 2. is \$500,000 in fiscal year  
5 2008–09.

6           3. The maximum amount of all credits that may be claimed under par. (b) 3. and  
7 ss. 71.28 (3x) (b) 3. and 71.47 (3x) (b) 3. is \$500,000 in fiscal year 2008–09.

8           4. No person may claim a credit under this subsection unless the person first  
9 applies for the credit with the department, in the manner prescribed by the  
10 department. The department shall allocate the credits to all eligible applicants in  
11 the order in which the applications are received and may adjust the amount of any  
12 credit if the total amount allocated would exceed any limit under subds. 1. to 3.

13           5. No credit may be allowed under this subsection unless the claimant includes  
14 with the claimant's return a copy of the verification from the department that the  
15 claimant may claim a credit under this subsection.

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

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

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

2           71.49 (1) (cs) Truck engine credit under s. 71.47 (3x).

3           **SECTION 12.** 77.92 (4) of the statutes, as affected by 2007 Wisconsin Act 20, is  
4 amended to read:

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

21           **SECTION 13.** 560.7995 (3) (b) of the statutes is amended to read:

22           560.7995 (3) (b) When the department designates an area as an airport  
23 development zone, the department shall establish a limit, not to exceed \$3,000,000,  
24 for tax benefits applicable to the airport development zone. The total tax benefits  
25 applicable to all airport development zones may not exceed ~~\$9,000,000~~ \$8,000,000.

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**SECTION 13**

1 The department may, after 48 months from the month of any designation under this  
2 section, evaluate the area designated as an airport development zone and reallocate  
3 the amount of available tax benefits.

4 (END)