February 26, 2008 – Introduced by Representatives Petrowski, Berceau, Bies, Molepske, Montgomery, Musser, A Ott, Sinicki and Tauchen, cosponsored by Senators Hansen and Lassa. Referred to Committee on Transportation.

AN ACT to amend 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2) (a) 10., 77.92 (4) and 560.7995 (3) (b); and to create 71.07 (3x), 71.10 (4) (cs), 71.28 (3x), 71.30 (3) (cs), 71.47 (3x) and 71.49 (1) (cs) of the statutes; relating to: an income and franchise tax credit for diesel engines that are used in commercial motor vehicles and that emit lower levels of nitrogen oxide.

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.
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:

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

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

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

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

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

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

3. “Qualified truck” means a commercial motor vehicle, as defined in s. 340.01 (8) (a) or (b), that is used exclusively in the claimant’s business, if that business has its headquarters in this state.
4. “Used exclusively” means used to the exclusion of all other uses except for
use not exceeding 5 percent of total use.

(b) Filing claims. Subject to the limitations provided in this subsection, for
taxable years beginning after December 31, 2007, and before January 1, 2013, a
claimant may claim as a credit against the tax imposed under s. 71.02, up to the
amount of those taxes, the following amounts for each qualified diesel engine
purchased by the claimant in the taxable year for use in a qualified truck owned by
the claimant:

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

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

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

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

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

3. The maximum amount of all credits that may be claimed under par. (b) 3. and
ss. 71.28 (3x) (b) 3. and 71.47 (3x) (b) 3. is $500,000 in fiscal year 2008–09.
4. No person may claim a credit under this subsection unless the person first applies for the credit with the department, in the manner prescribed by the department. The department shall allocate the credits to all eligible applicants in the order in which the applications are received and may adjust the amount of any credit if the total amount allocated would exceed any limit under subds. 1. to 3.

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

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

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

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

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

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

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

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

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

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

71.28 (3x) *Truck engine credit.* (a) *Definitions.* In this subsection:

1. “Claimant” means a person who files a claim under this subsection.
2. “Qualified diesel engine” means a diesel engine that is purchased in this state and certified by the federal environmental protection agency as emitting nitrogen oxides at a rate that does not exceed 1.1 grams per brake horsepower-hour for diesel engines purchased after December 31, 2007, and before January 1, 2010, and 0.2 grams per brake horsepower-hour for diesel engines purchased after December 31, 2010, and before January 1, 2013.

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

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

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

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

2. If the claimant owns no less than 11 qualified trucks, but no more than 100 qualified trucks, in the 12 months immediately preceding the purchase of the qualified engine for which a credit is claimed, $1,300.
3. If the claimant owns more than 100 qualified trucks in the 12 months immediately preceding the purchase of the qualified engine for which a credit is claimed, $1,200.

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

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

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

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

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

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

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

SECTION 7. 71.30 (3) (cs) of the statutes is created to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. If the claimant owns more than 100 qualified trucks in the 12 months immediately preceding the purchase of the qualified engine for which a credit is claimed, $1,200.
(c) Limitations. 1. The amount of the credit claimed by any one claimant may not exceed $125,000 in the taxable year for which the credit is claimed.

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

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

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

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

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

(d) Administration. Section 71.28 (4) (e) to (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.
SECTION 11. 71.49 (1) (cs) of the statutes is created to read:

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

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

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

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

560.7995 (3) (b) When the department designates an area as an airport development zone, the department shall establish a limit, not to exceed $3,000,000, for tax benefits applicable to the airport development zone. The total tax benefits applicable to all airport development zones may not exceed $8,000,000.
The department may, after 48 months from the month of any designation under this section, evaluate the area designated as an airport development zone and reallocate the amount of available tax benefits.