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. and 77.92 (4); and to create 71.07 (5n), 71.10 (4) (cr), 71.28 (5n), 71.30
(3) (dr), 71.47 (5n), 71.49 (1) (dr), 73.03 (64) and 180.0121 (3) of the statutes;
relating to: an income and franchise tax credit for providing health care
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:
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), (5e), (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 (5n) of the statutes is created to read:

71.07 (5n) Cafeteria plan credit. (a) Definitions. In this subsection:

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

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

(b) Filing claims. Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of the taxes, $200 for the taxable year in which the claimant establishes a cafeteria plan for the claimant’s employees.

(c) Limitations. 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 providing the cafeteria plan as described 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) (cr) of the statutes is created to read:

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

**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), (5e), (5f), (5g), (5h), (5i), (5j), and (5n) 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), (5e), (5f), (5g), (5h), (5i), (5j), and (5k), and (5n) 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 (5n) of the statutes is created to read:

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

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

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

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

(c) **Limitations.** 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 providing the cafeteria plan as described 
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) (dr) of the statutes is created to read:
71.30 (3) (dr) Cafeteria plan credit under s. 71.28 (5n).

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), (1dL), (1dm), (1dx), (3), (3g), (3h), (3n), (3p), (3t), (3w), (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), (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 (5n) of the statutes is created to read:

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

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

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

(b) Filing claims. Subject to the limitations provided in this subsection, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of the taxes, $200 for the taxable year in which the claimant establishes a cafeteria plan for the claimant’s employees.
(c) **Limitations.** 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 providing the cafeteria plan as described 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) (dr) of the statutes is created to read:

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

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

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

**SECTION 13.** 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), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3s), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), and (5k), and (5n); 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 14. 180.0121 (3) of the statutes is created to read:

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

SECTION 15. Initial applicability.

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