

## 2009 ASSEMBLY BILL 18

February 5, 2009 – Introduced by Representatives SHILLING, RICHARDS, DAVIS, ROYS, STRACHOTA, MOLEPSKE JR., BALLWEG, ROTH, BARCA, PETROWSKI, VRUWINK, NYGREN, SPANBAUER, BERCEAU, STONE, SUDER, GUNDERSON and A. OTT, cosponsored by Senators LASSA, LEHMAN, HOPPER, RISSER, HARSDORF, COGGS, ERPENBACH, SCHULTZ, HANSEN, KEDZIE and PLALE. Referred to Committee on Jobs, the Economy and Small Business.

1     **AN ACT** *to amend* 44.02 (24), 71.07 (9m) (c), 71.07 (9m) (f), 71.28 (6) (c), 71.28 (6)  
2           (f), 71.47 (6) (c) and 71.47 (6) (f); and *to create* 71.07 (9m) (cm), 71.07 (9m) (g),  
3           71.28 (6) (cm), 71.28 (6) (g), 71.47 (6) (cm) and 71.47 (6) (g) of the statutes;  
4           **relating to:** the income and franchise tax credit that supplements the federal  
5           historic rehabilitation tax credit.

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

Under current law, a person who owns an income-producing historic building may claim a federal income tax credit that is equal to 20 percent of certain costs to rehabilitate the historic building. To claim the credit, the building must be listed, or be eligible for listing, on the national register of historic places or located in certain national, state, or local historic districts, and the rehabilitation work must comply with standards established by the secretary of the interior.

Under current law, a person who may claim the federal income tax credit for rehabilitating an income-producing historic building may also claim a state income tax or franchise tax credit that is equal to 5 percent of certain costs to rehabilitate the historic building. To claim the credit, the person must include with the person's tax return evidence that the secretary of the interior approved the rehabilitation work before the rehabilitation work began.

Under this bill, a person may claim the state income and franchise tax credit for rehabilitating an income-producing historic building if the person includes with the person's tax return evidence that the state historic preservation officer

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recommended the rehabilitation work for approval by the secretary of the interior before the rehabilitation work began and that the rehabilitation was approved by the secretary of the interior.

Under current law, each partner in a partnership or member of a limited liability company is allocated a portion of any tax credit that the partnership or limited liability company may claim, including the credit for rehabilitating a historic building, based on each partner's or member's ownership interest. Under this bill, a partner or member is allocated a portion of the tax credit for rehabilitating a historic building in a manner specified in an agreement with the other partners or members.

For further information see the *state and local* 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.** 44.02 (24) of the statutes is amended to read:

2           44.02 **(24)** Promulgate by rule procedures, standards and forms necessary to  
3 certify, and shall certify, expenditures for preservation or rehabilitation of historic  
4 property for the purposes of ~~s. ss.~~ 71.07 (9m) and (9r), 71.28 (6), and 71.47 (6). These  
5 standards shall be substantially similar to the standards used by the secretary of the  
6 interior to certify rehabilitations under 26 USC 47 (c) (2).

7           **SECTION 2.** 71.07 (9m) (c) of the statutes is amended to read:

8           71.07 **(9m)** (c) No person may claim the credit under this subsection unless the  
9 claimant includes with the claimant's return evidence that the rehabilitation was  
10 approved recommended by the state historic preservation officer for approval by the  
11 secretary of the interior under 36 CFR 67.6 before the physical work of construction,  
12 or destruction in preparation for construction, began and that the rehabilitation was  
13 approved by the secretary of the interior under 36 CFR 67.6.

14           **SECTION 3.** 71.07 (9m) (cm) of the statutes is created to read:

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1           71.07 **(9m)** (cm) Any credit claimed under this subsection for Wisconsin  
2 purposes shall be claimed at the same time as for federal purposes.

3           **SECTION 4.** 71.07 (9m) (f) of the statutes is amended to read:

4           71.07 **(9m)** (f) A partnership, limited liability company, or tax-option  
5 corporation may not claim the credit under this subsection. The individual partners  
6 of a partnership, members in of a limited liability company, or shareholders in a  
7 tax-option corporation may claim the credit under this subsection based on eligible  
8 costs incurred by the partnership, company, or tax-option corporation, in proportion  
9 to the ownership interest of each partner, member or shareholder. The partnership,  
10 limited liability company, or tax-option corporation shall calculate the amount of the  
11 credit which may be claimed by each partner, member, or shareholder and shall  
12 provide that information to the partner, member, or shareholder. For shareholders  
13 of a tax-option corporation, the credit may be allocated in proportion to the  
14 ownership interest of each shareholder. Credits computed by a partnership or  
15 limited liability company shall be allocated to partners or members as provided in  
16 a written agreement among the partners or members that is entered into no later  
17 than the last day of the taxable year of the partnership or limited liability company,  
18 for which the credit is claimed. Any partner or member who claims the credit as  
19 provided under this paragraph, for which the credit is claimed shall attach a copy of  
20 the agreement to the tax return on which the credit is claimed. A person claiming  
21 the credit as provided under this paragraph is solely responsible for any tax liability  
22 arising from a dispute with the department of revenue related to claiming the credit.

23           **SECTION 5.** 71.07 (9m) (g) of the statutes is created to read:

24           71.07 **(9m)** (g) 1. If a person who claims the credit under this subsection elects  
25 to claim the credit based on claiming amounts for expenditures as the expenditures

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1 are paid, rather than when the rehabilitation work is completed, the person shall file  
2 an election form with the department, in the manner prescribed by the department.

3 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit  
4 claimed under this subsection within 4 years after the date that the state historical  
5 society notifies the department that the expenditures for which the credit was  
6 claimed do not comply with the standards for certification promulgated under s.  
7 44.02 (24).

8 **SECTION 6.** 71.28 (6) (c) of the statutes is amended to read:

9 71.28 (6) (c) No person may claim the credit under this subsection unless the  
10 claimant includes with the claimant's return evidence that the rehabilitation was  
11 approved recommended by the state historic preservation officer for approval by the  
12 secretary of the interior under 36 CFR 67.6 before the physical work of construction,  
13 or destruction in preparation for construction, began and that the rehabilitation was  
14 approved by the secretary of the interior under 36 CFR 67.6.

15 **SECTION 7.** 71.28 (6) (cm) of the statutes is created to read:

16 71.28 (6) (cm) Any credit claimed under this subsection for Wisconsin purposes  
17 shall be claimed at the same time as for federal purposes.

18 **SECTION 8.** 71.28 (6) (f) of the statutes is amended to read:

19 71.28 (6) (f) A partnership, limited liability company, or tax-option corporation  
20 may not claim the credit under this section subsection. The ~~individual partners of~~  
21 a partnership, members of a limited liability company, or shareholders in a  
22 tax-option corporation may claim the credit under this subsection based on eligible  
23 costs incurred by the partnership, limited liability company, or tax-option  
24 corporation, ~~in proportion to the ownership interest of each partner, member or~~  
25 shareholder. The partnership, limited liability company, or tax-option corporation

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1 shall calculate the amount of the credit which may be claimed by each partner,  
2 member, or shareholder and shall provide that information to the partner, member,  
3 or shareholder. For shareholders of a tax-option corporation, the credit may be  
4 allocated in proportion to the ownership interest of each shareholder. Credits  
5 computed by a partnership or limited liability company shall be allocated to partners  
6 or members as provided in a written agreement among the partners or members that  
7 is entered into no later than the last day of the taxable year of the partnership or  
8 limited liability company, for which the credit is claimed. Any partner or member  
9 who claims the credit as provided under this paragraph shall attach a copy of the  
10 agreement to the tax return on which the credit is claimed. A person claiming the  
11 credit as provided under this paragraph is solely responsible for any tax liability  
12 arising from a dispute with the department of revenue related to claiming the credit.

13 **SECTION 9.** 71.28 (6) (g) of the statutes is created to read:

14 71.28 (6) (g) 1. If a person who claims the credit under this subsection elects  
15 to claim the credit based on claiming amounts for expenditures as the expenditures  
16 are paid, rather than when the rehabilitation work is completed, the person shall file  
17 an election form with the department, in the manner prescribed by the department.

18 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit  
19 claimed under this subsection within 4 years after the date that the state historical  
20 society notifies the department that the expenditures for which the credit was  
21 claimed do not comply with the standards for certification promulgated under s.  
22 44.02 (24).

23 **SECTION 10.** 71.47 (6) (c) of the statutes is amended to read:

24 71.47 (6) (c) No person may claim the credit under this subsection unless the  
25 claimant includes with the claimant's return evidence that the rehabilitation was

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1 approved recommended by the state historic preservation officer for approval by the  
2 secretary of the interior under 36 CFR 67.6 before the physical work of construction,  
3 or destruction in preparation for construction, began and that the rehabilitation was  
4 approved by the secretary of the interior under 36 CFR 67.6.

5 **SECTION 11.** 71.47 (6) (cm) of the statutes is created to read:

6 71.47 **(6)** (cm) Any credit claimed under this subsection for Wisconsin purposes  
7 shall be claimed at the same time as for federal purposes.

8 **SECTION 12.** 71.47 (6) (f) of the statutes is amended to read:

9 71.47 **(6)** (f) A partnership, limited liability company, or tax-option corporation  
10 may not claim the credit under this subsection. The individual partners of a  
11 partnership, members of a limited liability company, or shareholders in a tax-option  
12 corporation may claim the credit under this subsection based on eligible costs  
13 incurred by the partnership, limited liability company, or tax-option corporation, in  
14 proportion to the ownership interest of each partner, member or shareholder. The  
15 partnership, limited liability company, or tax-option corporation shall calculate the  
16 amount of the credit which may be claimed by each partner, member, or shareholder  
17 and shall provide that information to the partner, member, or shareholder. For  
18 shareholders of a tax-option corporation, the credit may be allocated in proportion  
19 to the ownership interest of each shareholder. Credits computed by a partnership  
20 or limited liability company shall be allocated to partners or members as provided  
21 in a written agreement among the partners or members that is entered into no later  
22 than the last day of the taxable year of the partnership or limited liability company,  
23 for which the credit is claimed. Any partner or member who claims the credit as  
24 provided under this paragraph shall attach a copy of the agreement to the tax return  
25 on which the credit is claimed. A person claiming the credit as provided under this

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1 paragraph is solely responsible for any tax liability arising from a dispute with the  
2 department of revenue related to claiming the credit.

3 **SECTION 13.** 71.47 (6) (g) of the statutes is created to read:

4 71.47 (6) (g) 1. If a person who claims the credit under this subsection elects  
5 to claim the credit based on claiming amounts for expenditures as the expenditures  
6 are paid, rather than when the rehabilitation work is completed, the person shall file  
7 an election form with the department, in the manner prescribed by the department.

8 2. Notwithstanding s. 71.77, the department may adjust or disallow the credit  
9 claimed under this subsection within 4 years after the date that the state historical  
10 society notifies the department that the expenditures for which the credit was  
11 claimed do not comply with the standards for certification promulgated under s.  
12 44.02 (24).

13 **SECTION 14. Initial applicability.**

14 (1) SUPPLEMENT TO FEDERAL HISTORIC REHABILITATION CREDIT. This act first  
15 applies to property placed in service on or after June 30, 2008.

16 (END)