

2009 ASSEMBLY BILL 91

February 27, 2009 – Introduced by Representatives MURTHA, DAVIS, HUEBSCH, GUNDERSON, PETERSEN, M. WILLIAMS, TOWNSEND, LEMAHIEU, SPANBAUER, STRACHOTA, BROOKS, KAUFERT, MEYER, A. OTT, ZIPPERER, KNODL, KRAMER, LOTHIAN, ROTH, HONADEL, TAUCHEN, SUDER, RIPP, VOS, VAN ROY, GOTTLIEB, NYGREN and NERISON, cosponsored by Senators HOPPER, ERPENBACH, OLSEN, LAZICH, DARLING, SCHULTZ, LEIBHAM, KEDZIE and KAPANKE. Referred to Committee on Jobs, the Economy and Small Business.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
 2 (2) (a) 10. and 77.92 (4); and *to create* 71.07 (5n), 71.10 (4) (cs), 71.28 (5n), 71.30
 3 (3) (dn), 71.47 (5n), 71.49 (1) (dn) and 560.208 of the statutes; **relating to:** an
 4 income and franchise tax credit for workplace wellness programs, granting
 5 rule-making authority, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This bill creates an income and franchise tax credit for workplace wellness programs. The amount of the credit is equal to 30 percent of the amount that an employer pays in the taxable year to provide a workplace wellness program to any of the employer's employees who are employed in this state. A workplace wellness program is a health or fitness program, as defined by administrative rule by the Department of Commerce, that is provided with health risk assessments.

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:

6 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

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

7 **SECTION 2.** 71.07 (5n) of the statutes is created to read:

8 71.07 **(5n)** WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this
9 subsection:

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

11 2. "Health risk assessment" means a computer-based health-promotion tool
12 consisting of a questionnaire; a biometric health screening to measure vital health
13 statistics, including blood pressure, cholesterol, glucose, weight, and height; a
14 formula for estimating health risks; an advice database; and a means to generate
15 reports.

16 3. "Workplace wellness program" means a health or fitness program, as defined
17 by rule under s. 560.208 (4), that is provided with health risk assessments and may
18 include any of the following programs or services:

19 a. Smoking cessation.

20 b. Weight management.

21 c. Stress management.

22 d. Worker injury prevention programs.

23 e. Health screenings.

24 f. Nutrition education.

25 g. Health or fitness incentive programs.

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1 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
2 560.208, a claimant may claim as a credit against the taxes imposed under s. 71.02,
3 up to the amount of those taxes, an amount that is equal to the following:

4 1. For a workplace wellness program that the claimant first provides after
5 December 31, 2009, 30 percent of the amount that the claimant paid in the taxable
6 year to provide the workplace wellness program to the claimant's employees who are
7 employed in this state, not including any amount paid to acquire, construct,
8 rehabilitate, remodel, or repair real property.

9 2. For a workplace wellness program that the claimant provided prior to
10 January 1, 2010, to the claimant's employees who are employed in this state, 30
11 percent of any increase in the claimant's expenditures related to expanding the
12 workplace wellness program, not including any amount paid to acquire, construct,
13 rehabilitate, remodel, or repair real property.

14 (c) *Limitations.* 1. The maximum amount of the credits that may be claimed
15 under this subsection and ss. 71.28 (5n) and 71.47 (5n) in any taxable year is
16 \$2,500,000 for all claimants who employ 50 or fewer employees in the taxable year
17 and \$2,500,000 for all claimants who employ more than 50 employees in the taxable
18 year.

19 2. No claimant may claim the credit under this subsection for more than 3
20 taxable years.

21 3. For purposes of par. (b) 2., the amount of a claimant's increased expenditures
22 related to expanding a workplace wellness program is the amount the claimant paid
23 to provide the workplace wellness program in the taxable year for which the claimant
24 claims a credit under par. (b) 2., less the amount that the claimant paid to provide

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1 the workplace wellness program in the taxable year immediately preceding the
2 taxable year for which the claimant first claimed a credit under par. (b) 2.

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

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

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

14 71.10 (4) (cs) Workplace wellness program credit under s. 71.07 (5n).

15 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

16 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
17 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e), (5f), (5g),
18 (5h), (5i), (5j), ~~and (5k), and (5n)~~ and passed through to partners shall be added to
19 the partnership's income.

20 **SECTION 5.** 71.26 (2) (a) 4. of the statutes is amended to read:

21 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
22 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3g), (3h), (3n), (3p), (3t), (3w), (5e), (5f),
23 (5g), (5h), (5i), (5j), ~~and (5k), and (5n)~~ and not passed through by a partnership,
24 limited liability company, or tax-option corporation that has added that amount to

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1 the partnership's, limited liability company's, or tax-option corporation's income
2 under s. 71.21 (4) or 71.34 (1k) (g).

3 **SECTION 6.** 71.28 (5n) of the statutes is created to read:

4 **71.28 (5n) WORKPLACE WELLNESS PROGRAM CREDIT.** (a) *Definitions.* In this
5 subsection:

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

7 2. "Health risk assessment" means a computer-based health-promotion tool
8 consisting of a questionnaire; a biometric health screening to measure vital health
9 statistics, including blood pressure, cholesterol, glucose, weight, and height; a
10 formula for estimating health risks; an advice database; and a means to generate
11 reports.

12 3. "Workplace wellness program" means a health or fitness program, as defined
13 by rule under s. 560.208 (4), that is provided with health risk assessments and may
14 include any of the following programs or services:

15 a. Smoking cessation.

16 b. Weight management.

17 c. Stress management.

18 d. Worker injury prevention programs.

19 e. Health screenings.

20 f. Nutrition education.

21 g. Health or fitness incentive programs.

22 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
23 560.208, a claimant may claim as a credit against the taxes imposed under s. 71.23,
24 up to the amount of those taxes, an amount that is equal to the following:

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1 1. For a workplace wellness program that the claimant first provides after
2 December 31, 2009, 30 percent of the amount that the claimant paid in the taxable
3 year to provide the workplace wellness program to the claimant's employees who are
4 employed in this state, not including any amount paid to acquire, construct,
5 rehabilitate, remodel, or repair real property.

6 2. For a workplace wellness program that the claimant provided prior to
7 January 1, 2010, to the claimant's employees who are employed in this state, 30
8 percent of any increase in the claimant's expenditures related to expanding the
9 workplace wellness program, not including any amount paid to acquire, construct,
10 rehabilitate, remodel, or repair real property.

11 (c) *Limitations.* 1. The maximum amount of the credits that may be claimed
12 under this subsection and ss. 71.07 (5n) and 71.47 (5n) in any taxable year is
13 \$2,500,000 for all claimants who employ 50 or fewer employees in the taxable year
14 and \$2,500,000 for all claimants who employ more than 50 employees in the taxable
15 year.

16 2. No claimant may claim the credit under this subsection for more than 3
17 taxable years.

18 3. For purposes of par. (b) 2., the amount of a claimant's increased expenditures
19 related to expanding a workplace wellness program is the amount the claimant paid
20 to provide the workplace wellness program in the taxable year for which the claimant
21 claims a credit under par. (b) 2., less the amount that the claimant paid to provide
22 the workplace wellness program in the taxable year immediately preceding the
23 taxable year for which the claimant first claimed a credit under par. (b) 2.

24 4. Partnerships, limited liability companies, and tax-option corporations may
25 not claim the credit under this subsection, but the eligibility for, and the amount of,

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1 the credit are based on their payment of amounts under par. (b). A partnership,
2 limited liability company, or tax-option corporation shall compute the amount of
3 credit that each of its partners, members, or shareholders may claim and shall
4 provide that information to each of them. Partners, members of limited liability
5 companies, and shareholders of tax-option corporations may claim the credit in
6 proportion to their ownership interests.

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

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

10 71.30 (3) (dn) Workplace wellness program credit under s. 71.28 (5n).

11 **SECTION 8.** 71.34 (1k) (g) of the statutes is amended to read:

12 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
13 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
14 (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k),~~ and (5n) and passed
15 through to shareholders.

16 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

17 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
18 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
19 (5j), ~~and (5k),~~ and (5n) and not passed through by a partnership, limited liability
20 company, or tax-option corporation that has added that amount to the partnership's,
21 limited liability company's, or tax-option corporation's income under s. 71.21 (4) or
22 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and
23 (5).

24 **SECTION 10.** 71.47 (5n) of the statutes is created to read:

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1 71.47 (5n) WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this
2 subsection:

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

4 2. “Health risk assessment” means a computer-based health-promotion tool
5 consisting of a questionnaire; a biometric health screening to measure vital health
6 statistics, including blood pressure, cholesterol, glucose, weight, and height; a
7 formula for estimating health risks; an advice database; and a means to generate
8 reports.

9 3. “Workplace wellness program” means a health or fitness program, as defined
10 by rule under s. 560.208 (4), and includes health risk assessments and may include
11 any of the following programs or services:

12 a. Smoking cessation.

13 b. Weight management.

14 c. Stress management.

15 d. Worker injury prevention programs.

16 e. Health screenings.

17 f. Nutrition education.

18 g. Health or fitness incentive programs.

19 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
20 560.208, a claimant may claim as a credit against the taxes imposed under s. 71.43,
21 up to the amount of those taxes, an amount that is equal to the following:

22 1. For a workplace wellness program that the claimant first provides after
23 December 31, 2009, 30 percent of the amount that the claimant paid in the taxable
24 year to provide the workplace wellness program to the claimant’s employees who are

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1 employed in this state, not including any amount paid to acquire, construct,
2 rehabilitate, remodel, or repair real property.

3 2. For a workplace wellness program that the claimant provided prior to
4 January 1, 2010, to the claimant's employees who are employed in this state, 30
5 percent of any increase in the claimant's expenditures related to expanding the
6 workplace wellness program, not including any amount paid to acquire, construct,
7 rehabilitate, remodel, or repair real property.

8 (c) *Limitations.* 1. The maximum amount of the credits that may be claimed
9 under this subsection and ss. 71.07 (5n) and 71.28 (5n) in any taxable year is
10 \$2,500,000 for all claimants who employ 50 or fewer employees in the taxable year
11 and \$2,500,000 for all claimants who employ more than 50 employees in the taxable
12 year.

13 2. No claimant may claim the credit under this subsection for more than 3
14 taxable years.

15 3. For purposes of par. (b) 2., the amount of a claimant's increased expenditures
16 related to expanding a workplace wellness program is the amount the claimant paid
17 to provide the workplace wellness program in the taxable year for which the claimant
18 claims a credit under par. (b) 2., less the amount that the claimant paid to provide
19 the workplace wellness program in the taxable year immediately preceding the
20 taxable year for which the claimant first claimed a credit under par. (b) 2.

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

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1 provide that information to each of them. Partners, members of limited liability
2 companies, and shareholders of tax-option corporations may claim the credit in
3 proportion to their ownership interests.

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

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

7 71.49 (1) (dn) Workplace wellness program credit under s. 71.47 (5n).

8 **SECTION 12.** 77.92 (4) of the statutes is amended to read:

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

25 **SECTION 13.** 560.208 of the statutes is created to read:

