



State of Wisconsin
2011 – 2012 LEGISLATURE



LRBs0184/1
JK:wlj:rs

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2011 SENATE BILL 164**

October 18, 2011 – Offered by Senator MOULTON.

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 (8s), 71.10 (4) (cf), 71.28 (8s), 71.30
3 (3) (cf), 71.47 (8s), 71.49 (1) (cf) and 73.15 of the statutes; **relating to:** an income
4 and franchise tax credit for workplace wellness programs, granting
5 rule-making authority, and requiring the exercise of rule-making authority.

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, as affected by 2011 Wisconsin Act
7 32, is amended to read:

8 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
9 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),
10 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), and (8r),
11 and (8s) and not passed through by a partnership, limited liability company, or

1 tax–option corporation that has added that amount to the partnership’s, company’s,
2 or tax–option corporation’s income under s. 71.21 (4) or 71.34 (1k) (g).

3 **SECTION 2.** 71.07 (8s) of the statutes is created to read:

4 **71.07 (8s) 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. “Small business” means a business that has 50 or fewer employees.

13 4. “Workplace wellness program” means a health or fitness program certified
14 under s. 73.15 (3), and includes health risk assessments and one or more of the
15 following programs or services:

16 a. Smoking cessation.

17 b. Weight management.

18 c. Stress management.

19 d. Worker injury prevention programs.

20 e. Health screenings.

21 f. Nutrition education.

22 g. Health or fitness incentive programs.

23 h. Vaccinations.

24 i. Employee physical examinations.

1 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
2 73.15, a claimant may claim as a credit against the taxes imposed under s. 71.02, up
3 to the amount of those taxes, in each taxable year for 3 years, an amount that is equal
4 to 30 percent of the amount that the claimant paid in the taxable year to provide a
5 workplace wellness program to any of the claimant’s employees who are employed
6 as a small business located in this state, not including any amount paid to acquire,
7 construct, rehabilitate, remodel, or repair real property.

8 (c) *Limitations.* 1. Except as provided in s. 73.15 (2), the maximum amount
9 of the credits that may be claimed by all claimants under this subsection and ss. 71.28
10 (8s) and 71.47 (8s) in any fiscal year is \$3,000,000.

11 2. No person may claim a credit under this subsection for a workplace wellness
12 program in existence before the effective date of this subdivision [LRB inserts
13 date].

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

22 (d) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the
23 credit under s. 71.28 (4), applies to the credit under this subsection.

24 2. If a credit computed under this subsection is not entirely offset against
25 Wisconsin income or franchise taxes otherwise due, the unused balance may be

1 carried forward and credited against Wisconsin income or franchise taxes otherwise
2 due for the following 5 taxable years to the extent not offset by these taxes otherwise
3 due in all intervening years between the year in which the expense was incurred and
4 the year in which the carry-forward credit is claimed.

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

6 71.10 (4) (cf) Workplace wellness program credit under s. 71.07 (8s).

7 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2011 Wisconsin Act ...
8 (Assembly Bill 40), is amended to read:

9 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
10 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s),
11 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), ~~and (8r), and (8s)~~ and
12 passed through to partners shall be added to the partnership's income.

13 **SECTION 5.** 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 32,
14 is amended to read:

15 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
16 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),
17 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (8r), ~~(8s)~~,
18 and (9s) and not passed through by a partnership, limited liability company, or
19 tax-option corporation that has added that amount to the partnership's, limited
20 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)
21 (g).

22 **SECTION 6.** 71.28 (8s) of the statutes is created to read:

23 71.28 (8s) WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this
24 subsection:

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

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

6 3. “Small business” means a business that has 50 or fewer employees.

7 4. “Workplace wellness program” means a health or fitness program certified
8 under s. 73.15 (3), and includes health risk assessments and one or more of the
9 following programs or services:

- 10 a. Smoking cessation.
- 11 b. Weight management.
- 12 c. Stress management.
- 13 d. Worker injury prevention programs.
- 14 e. Health screenings.
- 15 f. Nutrition education.
- 16 g. Health or fitness incentive programs.
- 17 h. Vaccinations.
- 18 i. Employee physical examinations.

19 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
20 73.15, a claimant may claim as a credit against the taxes imposed under s. 71.23, up
21 to the amount of those taxes, in each taxable year for 3 years, an amount that is equal
22 to 30 percent of the amount that the claimant paid in the taxable year to provide a
23 workplace wellness program to any of the claimant’s employees who are employed
24 at a small business located in this state, not including any amount paid to acquire,
25 construct, rehabilitate, remodel, or repair real property.

1 (c) *Limitations.* 1. Except as provided in s. 73.15 (2), the maximum amount
2 of the credits that may be claimed by all claimants under this subsection and ss. 71.07
3 (8s) and 71.47 (8s) in any fiscal year is \$3,000,000.

4 2. No person may claim a credit under this subsection for a workplace wellness
5 program in existence before the effective date of this subdivision [LRB inserts
6 date].

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

15 (d) *Administration.* 1. Subsection (4) (e), (g), and (h), as it applies to the credit
16 under sub. (4), applies to the credit under this subsection.

17 2. If a credit computed under this subsection is not entirely offset against
18 Wisconsin income or franchise taxes otherwise due, the unused balance may be
19 carried forward and credited against Wisconsin income or franchise taxes otherwise
20 due for the following 5 taxable years to the extent not offset by these taxes otherwise
21 due in all intervening years between the year in which the expense was incurred and
22 the year in which the carry–forward credit is claimed.

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

24 71.30 (3) (cf) Workplace wellness program credit under s. 71.28 (8s).

1 **SECTION 8.** 71.34 (1k) (g) of the statutes, as affected by 2011 Wisconsin Act 32,
2 is amended to read:

3 71.34 **(1k)** (g) An addition shall be made for credits computed by a tax–option
4 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
5 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j),
6 (5k), (5n), (5r), (5rm), ~~and (8r), and (8s)~~ and passed through to shareholders.

7 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act
8 32, is amended to read:

9 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
10 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn),
11 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (8r), ~~(8s)~~, and (9s) and not
12 passed through by a partnership, limited liability company, or tax–option
13 corporation that has added that amount to the partnership’s, limited liability
14 company’s, or tax–option corporation’s income under s. 71.21 (4) or 71.34 (1k) (g) and
15 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

16 **SECTION 10.** 71.47 (8s) of the statutes is created to read:

17 71.47 **(8s)** WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this
18 subsection:

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

20 2. “Health risk assessment” means a computer–based health–promotion tool
21 consisting of a questionnaire; a biometric health screening to measure vital health
22 statistics, including blood pressure, cholesterol, glucose, weight, and height; a
23 formula for estimating health risks; an advice database; and a means to generate
24 reports.

25 3. “Small business” means a business that has 50 or fewer employees.

1 4. “Workplace wellness program” means a health or fitness program certified
2 under s. 73.15 (3), and includes health risk assessments and one or more of the
3 following programs or services:

- 4 a. Smoking cessation.
- 5 b. Weight management.
- 6 c. Stress management.
- 7 d. Worker injury prevention programs.
- 8 e. Health screenings.
- 9 f. Nutrition education.
- 10 g. Health or fitness incentive programs.
- 11 h. Vaccinations.
- 12 i. Employee physical examinations.

13 (b) *Filing claims.* Subject to the limitations provided in this subsection and s.
14 73.15, a claimant may claim as a credit against the taxes imposed under s. 71.43, up
15 to the amount of those taxes, in each taxable year for 3 years, an amount that is equal
16 to 30 percent of the amount that the claimant paid in the taxable year to provide a
17 workplace wellness program to any of the claimant’s employees who are employed
18 at a small business located in this state, not including any amount paid to acquire,
19 construct, rehabilitate, remodel, or repair real property.

20 (c) *Limitations.* 1. Except as provided in s. 73.15 (2), the maximum amount
21 of the credits that may be claimed by all claimants under this subsection and ss. 71.07
22 (5i) and 71.28 (5i) in any fiscal year is \$3,000,000.

23 2. No person may claim a credit under this subsection for a workplace wellness
24 program in existence before the effective date of this subdivision [LRB inserts
25 date].

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

9 (d) *Administration.* 1. Section 71.28 (4) (e), (g), and (h), as it applies to the
10 credit under s. 71.28 (4), applies to the credit under this subsection.

11 2. If a credit computed under this subsection is not entirely offset against
12 Wisconsin income or franchise taxes otherwise due, the unused balance may be
13 carried forward and credited against Wisconsin income or franchise taxes otherwise
14 due for the following 5 taxable years to the extent not offset by these taxes otherwise
15 due in all intervening years between the year in which the expense was incurred and
16 the year in which the carry–forward credit is claimed.

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

18 71.49 (1) (cf) Workplace wellness program credit under s. 71.47 (8s).

19 **SECTION 12.** 73.15 of the statutes is created to read:

20 **73.15 Workplace wellness programs. (1)** In consultation with the
21 department of revenue, the department of health services shall certify workplace
22 wellness programs developed by a business or independent provider as described
23 under ss. 71.07 (8s), 71.28 (8s), and 71.47 (8s).

24 **(2)** If the department of health services certifies a workplace wellness program
25 under sub. (1), the department of revenue shall determine the amount of workplace

1 wellness program credits to allocate to the business providing the workplace
2 wellness program. The total amount of workplace wellness program credits
3 allocated to businesses in any fiscal year may not exceed \$3,000,000.

4 **(3)** The department of revenue, in consultation with the department of health
5 services, shall promulgate rules to administer this section.

6 **SECTION 13.** 77.92 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is
7 amended to read:

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

24 **SECTION 14. Initial applicability.**

