

# State of Wisconsin



2011 Assembly Bill 638

Date of enactment: April 6, 2012  
Date of publication\*: April 19, 2012

## 2011 WISCONSIN ACT 232

AN ACT *to repeal* 71.47 (5n) and 71.49 (1) (dn); *to renumber* 71.07 (5n) (d) and 71.28 (5n) (d); *to renumber and amend* 71.21 (4); *to amend* 71.05 (6) (a) 15., 71.07 (5n) (title), 71.10 (4) (cr), 71.26 (2) (a) 4., 71.28 (5n) (title), 71.30 (3) (dn), 71.34 (1k) (g) and 71.45 (2) (a) 10.; *to repeal and recreate* 71.07 (5n) (a) and 71.28 (5n) (a); and *to create* 71.05 (6) (a) 25., 71.07 (5n) (d) 2., 71.21 (4) (b), 71.26 (2) (a) 11., 71.28 (5n) (d) 2., 71.28 (5n) (d) 3. and 71.34 (1k) (m) of the statutes; **relating to**: technical changes to the qualified production activities income and franchise tax credit.

*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 2011 Wisconsin Act 32, 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), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), ~~(5n)~~, (5r), (5rm), and (8r) 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 (1k) (g).

**SECTION 2.** 71.05 (6) (a) 25. of the statutes is created to read:

71.05 (6) (a) 25. The amount computed under s. 71.07 (5n) in the previous taxable year 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) (a) or 71.34 (1k) (m) and not included in federal adjusted gross income.

**SECTION 3.** 71.07 (5n) (title) of the statutes, as created by 2011 Wisconsin Act 32, is amended to read:

71.07 (5n) (title) QUALIFIED PRODUCTION ACTIVITIES MANUFACTURING AND AGRICULTURE CREDIT.

**SECTION 4.** 71.07 (5n) (a) of the statutes, as created by 2011 Wisconsin Act 32, is repealed and recreated to read:

71.07 (5n) (a) *Definitions.* In this subsection:

1. "Agriculture property factor" means a fraction, the numerator of which is the average value of the claimant's real property and improvements assessed under s. 70.32 (2) (a) 4., owned or rented and used in this state by the claimant during the taxable year to produce, grow, or extract qualified production property, and the denominator of which is the average value of all of the claimant's real property and improvements owned or rented during the taxable year and used by the claimant to produce, grow, or extract qualified production property.

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

3. "Direct costs" includes all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in carrying on the trade or business that are

\* Section 991.11, WISCONSIN STATUTES 2009-10: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

deductible under section 162 of the Internal Revenue Code and identified as direct costs in the claimant's managerial or cost accounting records.

4. "Indirect costs" includes all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in carrying on the trade or business that are deductible under section 162 of the Internal Revenue Code, other than cost of goods sold and direct costs, and identified as indirect costs in the claimant's managerial or cost accounting records.

5. a. "Manufacturing property factor" means a fraction, the numerator of which is the average value of the claimant's real and personal property assessed under s. 70.995, owned or rented and used in this state by the claimant during the taxable year to manufacture qualified production property, and the denominator of which is the average value of all the claimant's real and personal property owned or rented during the taxable year and used by the claimant to manufacture qualified production property.

b. For purposes of subd. 5. a., property owned by the claimant is valued at its original cost and property rented by the claimant is valued at an amount equal to the annual rental paid by the claimant, less any annual rental received by the claimant from sub-rentals, multiplied by 8.

c. For purposes of subd. 5. a., the average value of property is determined by averaging the values at the beginning and ending of the taxable year, except that the secretary of revenue may require the averaging of monthly values during the taxable year, if such averaging is reasonably required to properly reflect the average value of the claimant's property.

6. "Production gross receipts" means gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property.

7. "Production gross receipts factor" means a fraction, the numerator of which is production gross receipts and the denominator of which is all gross income from whatever source, except for those items specifically excluded under the Internal Revenue Code as adopted by this state and otherwise excluded under Wisconsin law. For purposes of the denominator, income includes gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross income from pass-through entities, and all other gross receipts that are included in income, before apportionment for Wisconsin tax purposes under s. 71.04 (4).

8. "Qualified production activities income" means the amount of the claimant's production gross receipts for the taxable year that exceeds the sum of the cost of goods sold that are allocable to such receipts, the direct costs that are allocable to such receipts, and the indirect costs multiplied by the production gross receipts factor.

"Qualified production activities income" does not include any of the following:

- a. Income from film production.
- b. Income from producing, transmitting, or distributing electricity, natural gas, or potable water.
- c. Income from constructing real property.
- d. Income from engineering or architectural services performed with respect to constructing real property.
- e. Income from the sale of food and beverages prepared by the claimant at a retail establishment.
- f. Income from the lease, rental, license, sale, exchange, or other disposition of land.

9. "Qualified production property" means either of the following:

- a. Tangible personal property manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under s. 70.995.
- b. Tangible personal property produced, grown, or extracted in whole or in part by the claimant on or from property assessed as agricultural property under s. 70.32 (2) (a) 4.

**SECTION 5.** 71.07 (5n) (d) of the statutes, as created by 2011 Wisconsin Act 32, is renumbered 71.07 (5n) (d) 1.

**SECTION 6.** 71.07 (5n) (d) 2. of the statutes is created to read:

71.07 (5n) (d) 2. For purposes of determining a claimant's eligible qualified production activities income under this subsection, the claimant shall multiply the claimant's qualified production activities income from property manufactured by the claimant by the manufacturing property factor and qualified production activities income from property produced, grown, or extracted by the claimant by the agriculture property factor.

**SECTION 7.** 71.10 (4) (cr) of the statutes, as created by 2011 Wisconsin Act 32, is amended to read:

71.10 (4) (cr) ~~Qualified production activities~~ Manufacturing and agriculture credit under s. 71.07 (5n).

**SECTION 8.** 71.21 (4) of the statutes, as affected by 2011 Wisconsin Act 32, is renumbered 71.21 (4) (a) and amended to read:

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

**SECTION 9.** 71.21 (4) (b) of the statutes is created to read:

71.21 (4) (b) Amounts computed by a partnership under s. 71.07 (5n) in the previous taxable year and not included in federal ordinary business income shall be added to the partnership's income.

**SECTION 10.** 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), ~~(5n)~~, (5r), (5rm), (8r), and (9s) 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 (1k) (g).

**SECTION 11.** 71.26 (2) (a) 11. of the statutes is created to read:

71.26 (2) (a) 11. Plus the amount computed under s. 71.28 (5n) in the previous taxable year that is not included in federal taxable income.

**SECTION 12.** 71.28 (5n) (title) of the statutes, as created by 2011 Wisconsin Act 32, is amended to read:

71.28 (5n) (title) QUALIFIED PRODUCTION ACTIVITIES MANUFACTURING AND AGRICULTURE CREDIT.

**SECTION 13.** 71.28 (5n) (a) of the statutes, as created by 2011 Wisconsin Act 32, is repealed and recreated to read:

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

1. "Agriculture property factor" means a fraction, the numerator of which is the average value of the claimant's real property and improvements assessed under s. 70.32 (2) (a) 4., owned or rented and used in this state by the claimant during the taxable year to produce, grow, or extract qualified production property, and the denominator of which is the average value of all of the claimant's real property and improvements owned or rented during the taxable year and used by the claimant to produce, grow, or extract qualified production property.

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

3. "Direct costs" includes all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in carrying on the trade or business that are deductible under section 162 of the Internal Revenue Code and identified as direct costs in the claimant's managerial or cost accounting records.

4. "Indirect costs" includes all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in carrying on the trade or business that are deductible under section 162 of the Internal Revenue Code, other than cost of goods sold and direct costs, and identified as indirect costs in the claimant's managerial or cost accounting records.

5. a. "Manufacturing property factor" means a fraction, the numerator of which is the average value of the claimant's real and personal property assessed under s. 70.995, owned or rented and used in this state by the claimant during the taxable year to manufacture qualified production property, and the denominator of which is the average value of all the claimant's real and personal prop-

erty owned or rented during the taxable year and used by the claimant to manufacture qualified production property.

b. For purposes of subd. 6. a., property owned by the claimant is valued at its original cost and property rented by the claimant is valued at an amount equal to the annual rental paid by the claimant, less any annual rental received by the claimant from sub-rentals, multiplied by 8.

c. For purposes of subd. 6. a., the average value of property is determined by averaging the values at the beginning and ending of the taxable year, except that the secretary of revenue may require the averaging of monthly values during the taxable year, if such averaging is reasonably required to properly reflect the average value of the claimant's property.

6. "Production gross receipts" means gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property.

7. "Production gross receipts factor" means a fraction, the numerator of which is production gross receipts and the denominator of which is all gross income from whatever source, except for those items specifically excluded under the Internal Revenue Code as adopted by this state and otherwise excluded under Wisconsin law. For purposes of the denominator, income includes gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital assets and business assets, gross income from pass-through entities, and all other gross receipts that are included in income, before apportionment for Wisconsin tax purposes under s. 71.25 (6).

8. "Qualified production activities income" means the amount of the claimant's production gross receipts for the taxable year that exceeds the sum of the cost of goods sold that are allocable to such receipts, the direct costs that are allocable to such receipts, and the indirect costs multiplied by the production gross receipts factor. "Qualified production activities income" does not include any of the following:

a. Income from film production.

b. Income from producing, transmitting, or distributing electricity, natural gas, or potable water.

c. Income from constructing real property.

d. Income from engineering or architectural services performed with respect to constructing real property.

e. Income from the sale of food and beverages prepared by the claimant at a retail establishment.

f. Income from the lease, rental, license, sale, exchange, or other disposition of land.

9. "Qualified production property" means either of the following:

a. Tangible personal property manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under s. 70.995.

b. Tangible personal property produced, grown, or extracted in whole or in part by the claimant on or from property assessed as agricultural property under s. 70.32 (2) (a) 4.

**SECTION 14.** 71.28 (5n) (d) of the statutes, as created by 2011 Wisconsin Act 32, is renumbered 71.28 (5n) (d) 1.

**SECTION 15.** 71.28 (5n) (d) 2. of the statutes is created to read:

71.28 (5n) (d) 2. Except as provided in subd. 3., for purposes of determining a claimant's eligible qualified production activities income under this subsection, the claimant shall multiply the claimant's qualified production activities income from property manufactured by the claimant by the manufacturing property factor and qualified production activities income from property produced, grown, or extracted by the claimant by the agriculture property factor.

**SECTION 16.** 71.28 (5n) (d) 3. of the statutes is created to read:

71.28 (5n) (d) 3. The amount of the eligible qualified production activities income that a claimant may claim in computing the credit under par. (b) is the lesser of the following:

- a. The eligible qualified production activities income determined under subd. 2.
- b. Income apportioned to this state under s. 71.25 (5), (6), and (6m).
- c. Income determined to be taxable under s. 71.255 (2).

**SECTION 17.** 71.30 (3) (dn) of the statutes, as created by 2011 Wisconsin Act 32, is amended to read:

71.30 (3) (dn) ~~Qualified production activities Manufacturing and agriculture~~ credit under s. 71.28 (5n).

**SECTION 18.** 71.34 (1k) (g) of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

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

**SECTION 19.** 71.34 (1k) (m) of the statutes is created to read:

71.34 (1k) (m) An addition shall be made for the amount computed under s. 71.28 (5n) in the previous taxable year that is not included in federal ordinary business income.

**SECTION 20.** 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act 32, 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 (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), ~~(5n)~~, (5r), (5rm), (8r), and (9s) 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 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

**SECTION 21.** 71.47 (5n) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

**SECTION 22.** 71.49 (1) (dn) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.