



## 2011 ASSEMBLY BILL 638

February 27, 2012 – Introduced by Representative KOOYENGA, cosponsored by Senator GROTHMAN. Referred to Committee on Ways and Means.

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

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

Under the federal Internal Revenue Code, a taxpayer may claim a deduction equal to 9 percent of the taxpayer's qualified production activities income in the taxable year or 9 percent of the taxpayer's total taxable income, whichever is less. For federal tax purposes, qualified production activities income is, generally, the amount of the taxpayer's domestic production gross receipts that exceed the sum of the cost of goods sold and other expenses, losses, or deductions. Domestic production gross receipts are, generally, gross receipts derived from property that was manufactured, produced, grown, or extracted in the United States.

Under current law, as created by 2011 Wisconsin Act 32, an individual taxpayer may claim a state income tax credit equal to the taxpayer's qualified production

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activities income derived from manufacturing property or agricultural property located in this state, multiplied by a certain percentage. A corporation may claim a state income and franchise tax credit equal to the lesser of its taxable income apportioned to this state or its qualified production activities income derived from manufacturing property or agricultural property located in this state, multiplied by a certain percentage. The percentage of qualified production activities income that a taxpayer may claim as a credit is 1.875 percent for 2013, 3.75 percent for 2014, 5.526 percent for 2015, and 7.5 percent for 2016 and for each year thereafter. Under current law, “qualified production activities income” means qualified production activities income as determined under the federal Internal Revenue Code for purposes of claiming a federal tax deduction.

This bill makes technical changes to the state tax credits for qualified production activities income derived from manufacturing property or agricultural property located in this state in order to facilitate the Department of Revenue’s administration of the credits. Specifically, the bill provides a method for determining the qualified production activities income derived from manufacturing property or agricultural property located in this state rather than rely on the federal definition of “qualified production activities income,” which includes income from economic activities in all states.

For further information see the *state* 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.** 71.05 (6) (a) 15. of the statutes, as affected by 2011 Wisconsin Act  
2 32, is amended to read:

3           71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r),  
5 (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), ~~(5n)~~, (5r), (5rm), and (8r) and  
6 not passed through by a partnership, limited liability company, or tax-option  
7 corporation that has added that amount to the partnership’s, company’s, or  
8 tax-option corporation’s income under s. 71.21 (4) or 71.34 (1k) (g).

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

10           71.05 **(6)** (a) 25. The amount computed under s. 71.07 (5n) in the previous  
11 taxable year and not passed through by a partnership, limited liability company, or

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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) (a) or 71.34 (1k) (m) and not  
3 included in federal adjusted gross income.

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

6 71.07 **(5n)** (title) ~~QUALIFIED PRODUCTION ACTIVITIES~~ MANUFACTURING AND  
7 AGRICULTURE CREDIT.

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

10 71.07 **(5n)** (a) *Definitions.* In this subsection:

11 1. "Agriculture property factor" means a fraction, the numerator of which is the  
12 average value of the claimant's real property and improvements assessed under s.  
13 70.32 (2) (a) 4., owned or rented and used in this state by the claimant during the  
14 taxable year to produce, grow, or extract qualified production property, and the  
15 denominator of which is the average value of all of the claimant's real property and  
16 improvements owned or rented during the taxable year and used by the claimant to  
17 produce, grow, or extract qualified production property.

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

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

23 4. "Indirect costs" include all of the claimant's ordinary and necessary expenses  
24 paid or incurred during the taxable year in carrying on the trade or business that are  
25 deductible under section 162 of the Internal Revenue Code, other than cost of goods

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1 sold and direct costs, and identified as indirect costs in the claimant's managerial or  
2 cost accounting records.

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

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

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

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

21 7. "Production gross receipts factor" means a fraction, the numerator of which  
22 is production gross receipts and the denominator of which is all gross income from  
23 whatever source, except for those items specifically excluded under the Internal  
24 Revenue Code as adopted by this state and otherwise excluded under Wisconsin law.  
25 For purposes of the denominator, income includes gross sales, gross dividends, gross

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1 interest income, gross rents, gross royalties, the gross sales price from the disposition  
2 of capital assets and business assets, gross income from pass-through entities, and  
3 all other gross receipts that are included in income, before apportionment for  
4 Wisconsin tax purposes under s. 71.04 (4).

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

9 “Qualified production activities income” does not include any of the following:

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

20 9. “Qualified production property” means either of the following:

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

23 b. Tangible personal property produced, grown, or extracted in whole or in part  
24 by the claimant on or from property assessed as agricultural property under s. 70.32

25 (2) (a) 4.

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

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

4           71.07 **(5n)** (d) 2. For purposes of determining a claimant's eligible qualified  
5 production activities income under this subsection, the claimant shall multiply the  
6 claimant's qualified production activities income from property manufactured by the  
7 claimant by the manufacturing property factor and qualified production activities  
8 income from property produced, grown, or extracted by the claimant by the  
9 agriculture property factor.

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

12           71.10 **(4)** (cr) ~~Qualified production activities~~ Manufacturing and agriculture  
13 credit under s. 71.07 (5n).

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

16           71.21 **(4)** (a) ~~Credits~~ The amount of the credits computed by a partnership  
17 under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n),  
18 (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), ~~(5n)~~, (5r),  
19 (5rm), and (8r) and passed through to partners shall be added to the partnership's  
20 income.

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

22           71.21 **(4)** (b) Amounts computed by a partnership under s. 71.07 (5n) in the  
23 previous taxable year and not included in federal ordinary business income shall be  
24 added to the partnership's income.

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

3           71.26 **(2)** (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),  
4 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),  
5 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), ~~(5n)~~, (5r), (5rm), (8r), and  
6 (9s) and not passed through by a partnership, limited liability company, or  
7 tax-option corporation that has added that amount to the partnership's, limited  
8 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)  
9 (g).

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

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

13           **SECTION 12.** 71.28 (5n) (title) of the statutes, as created by 2011 Wisconsin Act  
14 32, is amended to read:

15           71.28 **(5n)** (title) ~~QUALIFIED PRODUCTION ACTIVITIES~~ MANUFACTURING AND  
16 AGRICULTURE CREDIT.

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

19           71.28 **(5n)** (a) *Definitions.* In this subsection:

20           1. "Agriculture property factor" means a fraction, the numerator of which is the  
21 average value of the claimant's real property and improvements assessed under s.  
22 70.32 (2) (a) 4., owned or rented and used in this state by the claimant during the  
23 taxable year to produce, grow, or extract qualified production property, and the  
24 denominator of which is the average value of all of the claimant's real property and

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1 improvements owned or rented during the taxable year and used by the claimant to  
2 produce, grow, or extract qualified production property.

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

4 3. “Direct costs” include all of the claimant’s ordinary and necessary expenses  
5 paid or incurred during the taxable year in carrying on the trade or business that are  
6 deductible under section 162 of the Internal Revenue Code and identified as direct  
7 costs in the claimant’s managerial or cost accounting records.

8 4. “Indirect costs” include all of the claimant’s ordinary and necessary expenses  
9 paid or incurred during the taxable year in carrying on the trade or business that are  
10 deductible under section 162 of the Internal Revenue Code, other than cost of goods  
11 sold and direct costs, and identified as indirect costs in the claimant’s managerial or  
12 cost accounting records.

13 5. a. “Manufacturing property factor” means a fraction, the numerator of which  
14 is the average value of the claimant’s real and personal property assessed under s.  
15 70.995, owned or rented and used in this state by the claimant during the taxable  
16 year to manufacture qualified production property, and the denominator of which is  
17 the average value of all the claimant’s real and personal property owned or rented  
18 during the taxable year and used by the claimant to manufacture qualified  
19 production property.

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

24 c. For purposes of subd. 6. a., the average value of property is determined by  
25 averaging the values at the beginning and ending of the taxable year, except that the



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1 secretary of revenue may require the averaging of monthly values during the taxable  
2 year, if such averaging is reasonably required to properly reflect the average value  
3 of the claimant's property.

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

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

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

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

20 a. Income from film production.

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

23 c. Income from constructing real property.

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

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

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

5 9. “Qualified production property” means either of the following:

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

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

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

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

14 71.28 (5n) (d) 2. Except as provided in subd. 3., for purposes of determining a  
15 claimant’s eligible qualified production activities income under this subsection, the  
16 claimant shall multiply the claimant’s qualified production activities income from  
17 property manufactured by the claimant by the manufacturing property factor and  
18 qualified production activities income from property produced, grown, or extracted  
19 by the claimant by the agriculture property factor.

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

21 71.28 (5n) (d) 3. The amount of the eligible qualified production activities  
22 income that a claimant may claim in computing the credit under par. (b) is the lesser  
23 of the following:

24 a. The eligible qualified production activities income determined under subd.

25 2.

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1           b. Income apportioned to this state under s. 71.25 (5), (6), and (6m).

2           c. Income determined to be taxable under s. 71.255 (2).

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

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

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

9           71.34 (1k) (g) An addition shall be made for credits computed by a tax-option  
10 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),  
11 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j),  
12 (5k), ~~(5n)~~, (5r), (5rm), and (8r) and passed through to shareholders.

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

14           71.34 (1k) (m) An addition shall be made for the amount computed under s.  
15 71.28 (5n) in the previous taxable year that is not included in federal ordinary  
16 business income.

17           **SECTION 20.** 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act  
18 32, is amended to read:

19           71.45 (2) (a) 10. By adding to federal taxable income the amount of credit  
20 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn),  
21 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), ~~(5n)~~, (5r), (5rm), (8r), and (9s) and not passed  
22 through by a partnership, limited liability company, or tax-option corporation that  
23 has added that amount to the partnership's, limited liability company's, or  
24 tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount  
25 of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

