

## 2011 DRAFTING REQUEST

### Bill

Received: **01/23/2012**

Received By: **jkreye**

Wanted: **As time permits**

Companion to LRB: **-4183**

For: **Dale Kooyenga (608) 266-9180**

By/Representing: **neville**

May Contact:

Drafter: **jkreye**

Subject: **Tax, Business - credits**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kooyenga@legis.wi.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

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### Pre Topic:

No specific pre topic given

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### Topic:

Qualified production activities credit; technical changes

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### Instructions:

See attached

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### Drafting History:

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FE Sent For:

*At intro  
2/27/2012*

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Received: **01/23/2012**

Received By: **jkreye**

Wanted: **As time permits**

Companion to LRB:

For: **Revenue**

By/Representing: **diane hardt**

May Contact:

Drafter: **jkreye**

Subject: **Tax, Business - credits**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **diane.hardt@revenue.wi.gov**

Carbon copy (CC:) to: **joseph.kreye@legis.wisconsin.gov**

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Subject: **Tax, Business - credits**

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Drafter: **jkreye**

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Requester's email: **diane.hardt@revenue.wi.gov**

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*Handwritten notes and signatures:*  
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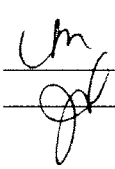
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Addl. Drafters:

Extra Copies: *LILI CRANE - DOR*  
*DANA ERLANDSEN - DOR*

Submit via email: **YES**

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jkreye

P1 1/25 jld

Typed  
1/25/12

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FE Sent For:

<END>

**Kreye, Joseph**

**From:** Hardt, Diane L - DOR [Diane.Hardt@revenue.wi.gov]  
**Sent:** Wednesday, January 25, 2012 8:06 AM  
**To:** Kreye, Joseph  
**Subject:** Manufacturing Credit

Hi Joe:

Secretary Rick Chandler is going to join us in meeting with Don Millis and Jason Culotta on Monday.

We plan to persuade Don Millis that the "modified property factor" be applied to the "qualified production activities income" (gross receipts less cost of goods sold and expenses) to simplify the computation. I believe Don wanted to only apply it to production gross receipts and then leave it to the taxpayer to use a reasonableness test for cost of goods sold and direct/indirect expenses.

If necessary, we would suggest to Don Millis that we can add a provision that if the claimant does not think the computation of qualified production activities income (production gross receipts X modified property factor) accurately reflects qualified production activities in WI, the claimant can petition the Department for an alternative computation.

Since this computation is in flux, you may want to hold up on the drafting of this part.

Also, we want to remove the words "in whole or in significant part" from the definition of "qualified production property." Those words don't matter since all it takes is for the property to be assessed as manufacturing under s. 70.995.

Diane Hardt

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**Kreye, Joseph**

**From:** Hardt, Diane L - DOR [Diane.Hardt@revenue.wi.gov]  
**Sent:** Tuesday, January 24, 2012 7:45 AM  
**To:** 'dmillis@reinhardt.com' (dmillis@reinhardt.com)  
**Cc:** Kreye, Joseph; Wagner, Michael W - DOR  
**Subject:** Manufacturing and Agriculture Credit

Here are the revised definitions. Let me know if you have any corrections.

Amend 71.07 (5n)(a) and 71.28 (5n)(a) as follows:

2. "Qualified production property" means tangible personal property manufactured by the claimant in whole or in significant part on property assessed as manufacturing property under s. 70.995 or tangible personal property produced, grown or extracted by the claimant on property assessed as agricultural property under s. 70.32(2)(a)4.

3. "Qualified production activities income" for any taxable year means an amount equal to the excess (if any) of production gross receipts of the claimant for such taxable year, over the sum of (a) the cost of goods sold that are allocable to such receipts and (b) the direct and indirect expenses, losses, or deductions which are allocable to such receipts. "Qualified production activities income" does not include:

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

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

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

Here is what I am sorting through.

#### Modified Property Factor

When a claimant is engaged in business within and without the state, the claimant's production gross receipts shall be allocated based on a modified property factor.

Create s. 71.07 (5n) and 71.28 (5n) as follows:

The "modified property factor" is a fraction, the numerator of which is the average value of the claimant's real and tangible personal manufacturing assessed under s.70.32(2)(a)4 or agricultural property assessed under s. 70.995, owned or rented and used in this state by the claimant during the taxable year to produce qualified production property, and the denominator of which is the average

value of all the claimant's real property and tangible personal property owned or rented during the taxable year.

Property owned by the claimant is valued at its original cost. Property rented by the claimant is valued at 8 times the net annual rental. Net annual rental is the annual rental paid by the claimant less any annual rental received by the claimant from sub-rentals.

The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year but the secretary of revenue may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the claimant's property.

If I understand correctly, you do not think we should prorate the cost of goods sold, direct expenses or indirect expenses, losses or deductions. Rather you think the claimant should allocate based on what is reasonable and consistent (the federal regulation says "A taxpayer must use a reasonable method that is satisfactory to the Secretary based on all of the facts and circumstances"). You kind of left the door open on prorating indirect expenses. Is this correct?

I was hoping to prorate the "qualified production activities income" (the net) by the modified property factor. That means direct and indirect expenses, losses and deductions too. I was looking for a bright line on expenses and deductions just like the bright line in the allocation of receipts. I'm not sure the "modified property factor" is any more precise or imprecise when using it to allocate receipts. If we don't have a bright line, it will definitely be the subject of audit and litigation because as you said, taxpayers will be motivated to reduce the expenses, losses and deductions to increase the credit.

Also, there will still be great confusion just like for receipts when a product is partially manufactured in one state and then finished in another. How will the costs of raw materials and goods sold be allocated to each state?

#### Filing Claims

A claimant may claim a credit against the tax imposed under 71.02 (individuals) or 71.23 (corporations), in an amount equal to the claimant's qualified production activities income in the taxable year, multiplied by 7.5 percent. When a claimant is engaged in business within and without the state, the claimant's qualified production activities receipts/income (to be determined) must be further allocated based on a modified property factor.

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**Kreye, Joseph**

**From:** Hardt, Diane L - DOR [Diane.Hardt@revenue.wi.gov]  
**Sent:** Monday, January 23, 2012 4:23 PM  
**To:** Kreye, Joseph  
**Subject:** FW: Circular Computation

Here is the response. We'll need language under 71.21(4)(b) that adds the credit from the previous year that is not in federal income of the current year.

---

**From:** Kvammen, Craig J - DOR  
**Sent:** Monday, January 23, 2012 4:18 PM  
**To:** Hardt, Diane L - DOR; Crane, Lili B - DOR; Getlinger, Marilyn - DOR; Stock, Marcella L - DOR  
**Subject:** RE: Circular Computation

Excerpts from Joe's email below, my response is in red:

I can renumber and amend 71.21 (4) to 71.21 (4) (a) and strike the reference. This is good and what we want.

I can then create s. 71.21 (4) (b) to create a new paragraph. This is what we want.

That subsection, however, does not contain a list of additions like some other parts of the statutes. I think I need more language than what I've been given to make that work. Are you saying that the amount of the credit computed under s. 71.07 (5n) in the previous taxable year and not included in federal ordinary business income should be added to the partnership's income? This section does not contain a list of credits like other sections of the statutes because the other credits get added to income in the year computed. To be consistent with the corporate tax treatment of the QPA credit, we want this credit included in the partnerships income, provided it was not already included in federal ordinary business income, in the year following the year in which the credit is computed.

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**From:** Kreye, Joseph [mailto:Joseph.Kreye@legis.wisconsin.gov]  
**Sent:** Monday, January 23, 2012 3:50 PM  
**To:** Hardt, Diane L - DOR  
**Subject:** RE: Circular Computation

Diane,

It's not clear to me what DOR wants under s. 71.21 (4). I can renumber and amend 71.21 (4) to 71.21 (4) (a) and strike the reference. I can then create s. 71.21 (4) (b) to create a new paragraph. That subsection, however, does not contain a list of additions like some other parts of the statutes. I think I need more language than what I've been given to make that work. Are you saying that the amount of the credit computed under s. 71.07 (5n) in the previous taxable year and not included in federal ordinary business income should be added to the partnership's income?

Joe

**Joseph Kreye**  
**Senior Legislative Attorney**  
Legislative Reference Bureau  
608 266-2263

**From:** Hardt, Diane L - DOR [<mailto:Diane.Hardt@revenue.wi.gov>]  
**Sent:** Monday, January 23, 2012 3:27 PM  
**To:** Kreye, Joseph  
**Subject:** Circular Computation

Joe:

This is what the staff finally settled on in the circular computations.

Diane

**MANUFACTURING/AGRICULTURE INCOME TAX CREDIT**  
**(Qualified Production Activities Credit)**  
01/23/2012

**To correct the circular calculation of the credit**

Amend s. 71.05(6)(a)15. as follows:

The amount of 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), , (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).

Create s. 71.05(6)(a)25. to read as follows:

25. Plus 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) or 71.34(1k)(m) and is not included in federal adjusted gross income.

Amend s. 71.21(4) as follows:

4. 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.

Create s. 71.21(4)(a) to read as follows:

(a) Plus the amount computed under s. 71.07(5n) in the previous taxable year that is not included in federal ordinary business income.

Amend s. 71.26 **(2)** (a) 4. as follows:

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).

Create s. 71.26 **(2)** (a)11. to read as follows:

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

Amend s. 71.34 **(1k)** (g) as follows:

(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.

Create s. 71.34 (1k)(m) to read as follows:

(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.

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**Kreye, Joseph**

**From:** Hardt, Diane L - DOR [Diane.Hardt@revenue.wi.gov]  
**Sent:** Monday, January 23, 2012 4:09 PM  
**To:** Kreye, Joseph  
**Subject:** RE: Circular Computation

I've started but need some quiet time tonight. Here is what I have. You can start and then I will get back to you tomorrow.

**To correct definitions and over-inclusion of entities in credit:**

Amend 71.07 (5n)(a) and 71.28 (5n)(a) as follows:

2. "Qualified production property" means tangible personal property manufactured by the claimant in whole or in significant part on property assessed as manufacturing property under s. 70.995 or tangible personal property produced, grown or extracted by the claimant on property assessed as agricultural property under s. 70.32(2)(a)4.

3. "Qualified production activities income" for any taxable year means an amount equal to the excess (if any) of production gross receipts of the claimant for such taxable year, over the sum of (a) the cost of goods sold that are allocable to such receipts and (b) the direct and indirect expenses, losses, or deductions which are allocable to such receipts. "Qualified production activities income" does not include:

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

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

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

**Filing Claims**

Subject to the limitations provided in this subsection, a claimant may claim a credit against the tax imposed under s. 71.02, an amount equal to the claimant's qualified production activities income in the taxable year, multiplied by 7.5 percent. When a claimant is engaged in business within and without the state, the claimant's qualified production activities income must be further allocated based on a modified property factor.

**Allocation Method**

Create s. 71.07 (5n) and 71.28 (5n) as follows:

The "modified property factor" is a fraction, the numerator of which is the average value of the claimant's real and tangible personal manufacturing assessed under s.70.32(2)(a)4 or agricultural



property assessed under s. 70.995, owned or rented and used in this state by the claimant during the taxable year to produce qualified production property, and the denominator of which is the average value of all the claimant's real property and tangible personal property owned or rented during the taxable year.

Property owned by the claimant is valued at its original cost. Property rented by the claimant is valued at 8 times the net annual rental. Net annual rental is the annual rental paid by the claimant less any annual rental received by the claimant from sub-rentals.

The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year but the secretary of revenue may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the claimant's property.

**Remove Insurance Companies**

Repeal sec. 71.47 (5n), Wis. Stats.

**EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

Day after publication

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**From:** Kreye, Joseph [<mailto:Joseph.Kreye@legis.wisconsin.gov>]  
**Sent:** Monday, January 23, 2012 3:35 PM  
**To:** Hardt, Diane L - DOR  
**Subject:** RE: Circular Computation

Thanks Diane.

I'm still waiting on changes to the allocation method or should I produce a draft with what I have so far (as a placeholder) and take it from there?

Joe

**Joseph Kreye**  
**Senior Legislative Attorney**  
Legislative Reference Bureau  
608 266-2263

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**From:** Hardt, Diane L - DOR [<mailto:Diane.Hardt@revenue.wi.gov>]  
**Sent:** Monday, January 23, 2012 3:27 PM  
**To:** Kreye, Joseph  
**Subject:** Circular Computation

Joe:

This is what the staff finally settled on in the circular computations.

Diane

**MANUFACTURING/AGRICULTURE INCOME TAX CREDIT  
(Qualified Production Activities Credit)**

01/23/2012

**To correct the circular calculation of the credit**

Amend s. 71.05(6)(a)15. as follows:

The amount of 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), (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).

Create s. 71.05(6)(a)25. to read as follows:

25. Plus 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) or 71.34(1k)(m) and is not included in federal adjusted gross income.

Amend s. 71.21(4) as follows:

4. 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.

Create s. 71.21(4)(a) to read as follows:

(a) Plus the amount computed under s. 71.07(5n) in the previous taxable year that is not included in federal ordinary business income.

Amend s. 71.26 **(2)** (a) 4. as follows:

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).

Create s. 71.26 **(2)** (a)11. to read as follows:

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

Amend s. 71.34 (1k) (g) as follows:

(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.

Create s. 71.34 (1k)(m) to read as follows:

(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.

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**MANUFACTURING/AGRICULTURE INCOME TAX CREDIT  
(Qualified Production Activities Credit)**

01/23/2012

**To correct the circular calculation of the credit**

Amend s. 71.05(6)(a)15. as follows:

The amount of 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).

Create s. 71.05(6)(a)25. to read as follows:

25. ~~Plus~~ the amount computed under s.71.07(5n) in the previous taxable year that is not included in federal adjusted gross income.

Amend s. 71.26 (2) (a) 4. as follows:

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).

Create s. 71.26 (2) (a)11. to read as follows:

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

Amend s. 71.34 (1k) (g) as follows:

(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.

Create s. 71.34 (1k)(m) to read as follows:

(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 adjusted gross income.

**To correct definitions and over-inclusion of entities in credit:**

Amend 71.07 (5n)(a) and 71.28 (5n)(a) as follows:

2. "Qualified production property" means property assessed as manufacturing property under s. 70.995 or property assessed as agricultural property under s. 70.32(2)(a)4.

*By the document  
TPP excluded from  
extended/option  
in relevant document*

*TPP manufactured in relevant document*

2. ~~delete def~~  
3. "Eligible qualified production activities income" is qualified production activities income of the claimant derived from the lease, rental, license, sale, exchange or other disposition of qualified production property. *and other expense that are directly*

4. "Qualified production activities income" for any taxable year means an amount equal to the excess (if any) of production gross receipts of the claimant for such taxable year, over the sum of (a) the cost of goods sold that are allocable to such receipts under s. \_\_\_ and (b) the expenses, losses, or deductions which are allocable to such receipts under s. \_\_\_. "Qualified production activities income" does not include:

- ~~a. the claimant's retail sales of such property at locations not assessed under ss. 70.995 and 70.32(2)(a)4.~~
- b. income from film production.
- c. income from the production of electricity, natural gas, or potable water.
- d. income from the construction of real property.
- e. income from engineering or architectural services performed with respect to the construction of real property.
- f. the sale of food and beverages prepared by the claimant at a retail establishment.
- g. the transmission or distribution of electricity, natural gas, or potable water.
- h. the lease, rental, license, sale exchange, or other disposition of land.

3. ~~5. "Production gross receipts" are receipts from property that is manufactured, produced, grown or extracted by the claimant in whole or in significant part within Wisconsin.~~ *As sale of qualified production*

6. "Claimant" means a person who manufactures, produces, grows or extracts property in whole or in significant part in Wisconsin and files a claim under this subsection. *(the sale of qualified production property)*

### Multi-state Manufacturers

Create s. 71.07(5n)(d). And 71.28(5n)(c), [taken from IRC sec. 199(c)(3)]

~~delete~~ *Special rules for allocating costs for claimant with qualified production property located in Wisconsin and engaged in business within and without the state.* For purposes of determining costs in computing qualified production activities income, any item or service brought into the state shall be treated as acquired by purchase, and cost shall be treated as not less than its value immediately after it entered the state. A similar rule shall apply in determining the adjusted basis of leased or rented property where the lease or rental gives rise to eligible qualified production activities income.

In the case of any property that has been exported by the claimant for further manufacture outside of the state and then brought back in to the state, the increase in cost or adjusted basis shall not exceed the difference between the value of the property when exported out of the state and the value of the property when brought back into the state after the further manufacture.

In the case of property that has been exported by the claimant for further manufacture outside of the state and not brought back in to the state, \_\_\_\_\_

### Allocation Method

Create s. 71.07 (5n)(e) and 71.28 (5n)(d) as follows:

*what is used by the denit to provide RPP*

The "modified property factor" is a fraction, the numerator of which is the average value of the claimant's real and tangible personal manufacturing or agricultural property assessed under ss. 70.32(2)(a)4 and 70.995, owned or rented and used in this state *why* during the tax period and the denominator of which is the average value of all the claimant's real property and tangible personal property owned or rented during the tax period.

Property owned by the claimant is valued at its original cost. Property rented by the claimant is valued at 8 times the net annual rental. Net annual rental is the annual rental paid by the claimant less any annual rental received by the claimant from sub-rentals.

*2008 71.04(5)*

The value of the property shall be the assessed value of the manufacturing or agriculture property in the year prior to the year in which the claim relates.

*what*

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the secretary of revenue may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the claimant's property.

**Remove Insurance Companies**

\* Repeal sec. 71.47 (5n), Wis. Stats.

**EFFECTIVE DATE AND/OR INITIAL APPLICABILITY**

Day after publication

*In event of property acquired and disposed of during the taxable year,*

*QPP*

**Kreye, Joseph**9 AM January 30

**From:** Don M. Millis [dmillis@reinhartlaw.com]  
**Sent:** Tuesday, January 17, 2012 9:33 AM  
**To:** Hardt, Diane L - DOR  
**Cc:** 'Jason Culotta'; Kreye, Joseph  
**Subject:** RE: Manufacturing and Agriculture Tax Credit Discussion  
 That works and Joe Kreye is available. See you at 9 am on Monday.

**From:** Hardt, Diane L - DOR [mailto:Diane.Hardt@revenue.wi.gov]  
**Sent:** Tuesday, January 17, 2012 9:22 AM  
**To:** Don M. Millis  
**Subject:** RE: Manufacturing and Agriculture Tax Credit Discussion

Shall we plan on 9:00 a.m. on January 23? I'll reserve a room here. Can you contact the drafter?

*Diane L. Hardt*  
 Administrator, Division of Income, Sales & Excise Taxes  
 Wisconsin Department of Revenue  
 P.O. Box 8933  
 Madison, WI 53708-8933  
 (608) 266-6798  
 Fax (608) 261-6240  
 E-mail: [Diane.Hardt@revenue.wi.gov](mailto:Diane.Hardt@revenue.wi.gov)

**From:** Don M. Millis [mailto:dmillis@reinhartlaw.com]  
**Sent:** Tuesday, January 17, 2012 9:00 AM  
**To:** Hardt, Diane L - DOR  
**Cc:** Erlandsen, Dana J - DOR; Crane, Lili B - DOR; Western, Jennifer N - DOR; Wagner, Michael W - DOR; jculotta@wmc.org  
**Subject:** RE: Manufacturing and Agriculture Tax Credit Discussion

Diane,

I have a trial out of town on January 24 and 25, but I am free on Monday the 23rd. I would prefer a meeting earlier in the day before I have to leave town.

Don

**From:** Hardt, Diane L - DOR [mailto:Diane.Hardt@revenue.wi.gov]  
**Sent:** Tuesday, January 17, 2012 7:55 AM  
**To:** Don M. Millis  
**Cc:** Erlandsen, Dana J - DOR; Crane, Lili B - DOR; Western, Jennifer N - DOR; Wagner, Michael W - DOR; jculotta@wmc.org  
**Subject:** RE: Manufacturing and Agriculture Tax Credit Discussion

Could we do it early next week? I still have to review what my staff is putting together on the allocation of income and expenses. I'd also want to brief the Secretary on Thursday when I meet with him. I'd have the proposed drafting changes to you by Friday.

**From:** Don M. Millis [mailto:dmillis@reinhartlaw.com]

1/17/2012

**Sent:** Monday, January 16, 2012 4:02 PM  
**To:** Hardt, Diane L - DOR  
**Cc:** Erlandsen, Dana J - DOR; Crane, Lili B - DOR; Western, Jennifer N - DOR; Wagner, Michael W - DOR; jculotta@wmc.org  
**Subject:** RE: Manufacturing and Agriculture Tax Credit Discussion

Diane,

This looks good. I think we will need to fill in the blanks for the drafter. I know Lili was going to work on that. I was wondering if it made sense to get the drafter into a meeting sometime this week to go through the changes.

Don

---

**From:** Hardt, Diane L - DOR [mailto:Diane.Hardt@revenue.wi.gov]  
**Sent:** Monday, January 09, 2012 9:55 AM  
**To:** Don M. Millis  
**Cc:** Erlandsen, Dana J - DOR; Crane, Lili B - DOR; Western, Jennifer N - DOR; Wagner, Michael W - DOR; jculotta@wmc.org  
**Subject:** Manufacturing and Agriculture Tax Credit Discussion

Don:

I'm summarizing our action plan from the meeting on January 4, 2012.

Attendees: Don Millis, Dana Erlandsen, Jennifer Western, Mike Wagner, Lili Crane, Diane Hardt

Legislation needed:

1. Correct circular computation of credit. A taxpayer must know their income to compute the credit. However, the credit is reportable as income in the same year as the credit.
2. 71.07(5n)3. Definition of "qualified production activities income". Refers to 26 USC 199(c). We need to amend to exclude parts of 199(c) including 199(c)(4)(A)(ii) and (iii) for construction trade and engineering.
3. We may want to exclude the allocation method in 199(c)(2) and (3) and refer to our own allocation method of receipts, cost of goods sold, expenses, losses or deductions. We will consider the current property factor allocation in 71.04(5). We will also consider how the federal government deals with allocations between domestic and foreign manufacturing for the QPAI deduction. See 199(c)(3) which we did not discuss in the meeting.

Note also that 199(c)(7) refers to related persons. We did not discuss this in the meeting. Gross receipts of the taxpayer derived from property leased, licensed or rented by the taxpayer for use by any related person are excluded from gross receipts. (8) defines related person. We will want to retain this in our law.

1. Exclude the credit from insurance law in s. 71.47(5n)
5. See possible legislation from B. and C. below.

Other Discussion:

By the federal definition of "domestic production gross receipts" and "qualifying production property" (the taxpayer claiming the credit must be the manufacturer of TPP, computer software or sound recordings) and the state requirement to derive income from property located in this state that is assessed under s. 70.995 or 70.32(2)(a)4, Stats., we believe the following persons/entities do not qualify for the credit: landlords; service businesses such as banks and insurance companies; shipping companies; warehouse companies; retailers who sell property to manufacturers and farmers; and service businesses of manufacturers and agriculture.

We discussed manufacturers and farmers who sell their own products from a retail outlet that is included in the property assessed under 70.995 or 70.32(2)(a)4. We believe these receipts and expenditures would be included



e credit computation. For manufacturers and farmers who sell their own products from other retail outlets, we may wish to clarify in law that those receipts are not derived from property assessed as manufacturing or agriculture to put them on a level playing field with other retailers.

We discussed multi-state manufacturing and how to deal with receipts and expenses. See 199(c)(3) which deals with imports and exports for the QPAI deduction. Is this enough or do we need more?

Diane Hardt

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