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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

in wled 1-25
due Friday 1-27
D-N

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Gen

1 AN ACT ...; **relating to:** technical changes to the qualified production activities
2 income and franchise tax credit.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 71.05 (6) (a) 15. of the statutes, as affected by 2011 Wisconsin Act
4 32, is amended to read:

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

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

History: 1987 a. 312; 1987 a. 411 ss. 42, 43, 45, 47 to 49, 51 to 53; 1989 a. 31, 46; 1991 a. 2, 37, 39, 269; 1993 a. 16, 112, 204, 263, 437; 1995 a. 27, 56, 209, 227, 261, 371, 403, 453; 1997 a. 27, 35, 39, 237; 1999 a. 9, 32, 44, 54, 65, 167; 2001 a. 16, 104, 105, 109; 2003 a. 85, 99, 119, 135, 183, 255, 289, 321, 326; 2005 a. 22, 25, 216, 254, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 205, 265, 269, 276, 295, 332, 344; 2011 a. 3, 5, 10, 32; s. 13.92 (1) (bm) 2.

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

4 71.05 (6) (a) 25. The amount computed under s. 71.07 (5n)[✓] in the previous
5 taxable year and not passed through by a partnership, limited liability company, or
6 tax-option corporation that has added that amount to the partnership's, company's,
7 or tax-option corporation's income under s. 71.21 (4) (a)[✓] or 71.34 (1k) (m)[✓] and not
8 included in federal adjusted gross income.

9 **SECTION 3.** 71.07 (5n) (title) of the statutes,[✓] as created by 2011 Wisconsin Act
10 32, is amended to read:

11 71.07 (5n) (title) ~~QUALIFIED PRODUCTION~~ MANUFACTURING AND AGRICULTURAL
12 ACTIVITIES CREDIT.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 15, 32, 67; s. 13.92 (1) (bm) 2; s. 35.17 correction in (2dr) (a), (5n).[✓]

13 **SECTION 4.** 71.07 (5n) (a) 2. of the statutes, as created by 2011 Wisconsin Act
14 32, is repealed.

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

16 71.07 (5n) (a) 2m. "Production gross receipts"[✓] means receipts from the lease,
17 rental, license, sale, exchange, or other disposition of qualified production property.[✓]

18 **SECTION 6.** 71.07 (5n) (a) 3.[✓] of the statutes, as created by 2011 Wisconsin Act
19 32, is repealed.

20 **SECTION 7.** 71.07 (5n) (a) 3m. of the statutes is created to read:

21 71.07 (5n) (a) 3m. "Qualified production activities income"[✓] means the amount
22 of the claimant's production gross receipts for the taxable year that exceeds the sum
23 of the cost of goods sold that are allocable to such receipts, as determined under par.

1 (d) 2.,[✓] and the direct and indirect expenses, losses, and deductions that are allocable
2 to such receipts, as determined under par. (d) 2.[✓] “Qualified production activities
3 income” does not include any of the following:

4 a. Income from film production.

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

7 c. Income from constructing real property.[✓]

8 d. Income from engineering or architectural services performed with respect
9 to constructing real property.[✓]

10 e. Income from the sale of food and beverages prepared by the claimant at a
11 retail establishment.[✓]

12 f. Income from the lease, rental, license, sale, exchange, or other disposition of
13 land.[✓]

14 **SECTION 8.** 71.07 (5n) (a) 4.[✓] of the statutes is created to read:

15 71.07 (5n) (a) 4. “Qualified production property”[✓] means tangible personal
16 property manufactured by the claimant on property that is assessed as
17 manufacturing property under s. 70.995[✓] or tangible personal property produced,
18 grown, or extracted by the claimant on or from property assessed as agricultural
19 property under s. 70.32 (2) (a) 4.[✓]

20 **SECTION 9.** 71.07 (5n) (b) (intro.)[✓] of the statutes, as created by 2011 Wisconsin
21 Act 32, is amended to read:

22 71.07 (5n) (b) *Filing claims.* (intro.) Subject to the limitations provided in this
23 subsection, a claimant may claim as a credit against the tax imposed under s. 71.02,

1 up to the amount of the tax, an amount equal to one of the following percentages of
 2 the claimant's eligible[✓] qualified production activities income in the taxable year:

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 15, 32, 67; s. 13.92 (1) (bm) 2; s. 35.17 correction in (2dr) (a), (5n).[✓]

3 **SECTION 10.** 71.07 (5n) (d) of the statutes, as created by 2011 Wisconsin Act 32,
 4 is renumbered 71.07 (5n) (d) 1.

5 **SECTION 11.** 71.07 (5n) (d) 2. of the statutes is created to read:

6 71.07 (5n) (d) 2. a. For purposes of determining a claimant's[✓] qualified
 7 production activities income under this subsection, the claimant shall multiply the
 8 claimant's production gross receipts by a fraction consisting of a numerator that is
 9 the average value of the claimant's real and tangible personal manufacturing
 10 property assessed under s. 70.995[✓] or agricultural property assessed under s. ~~70.32~~^{70.32}
 11 (2) (a) 4.[✓] that is owned or rented by the claimant during the taxable year and used
 12 by the claimant to produce qualified production property;[✓] and a denominator that is
 13 the average value of all the claimant's real property and tangible personal property
 14 that is owned or rented by the claimant during the taxable year.[✓]

15 b. For purposes of subd. 2. a.,[✓] property owned by the claimant is valued at its
 16 original cost and property rented by the claimant is valued at an amount equal to the
 17 annual rental paid by the claimant, less any annual rental received by the claimant
 18 from sub-rentals, multiplied by 8.[✓]

19 c. For purposes of subd. 2. a.,[✓] if property is acquired and disposed of during the
 20 taxable year, the average value of property is determined by averaging the values at
 21 the beginning and ending of the taxable year, except that the secretary of revenue
 22 may require the averaging of monthly values during the taxable year, if such

1 averaging is reasonably required to properly reflect the average value of the
2 claimant's property.

3 **SECTION 12.** 71.10 (4) [✓](cr) of the statutes, as created by 2011 Wisconsin Act 32,
4 is repealed.

5 **SECTION 13.** 71.21 (4) [✓] of the statutes, as affected by 2011 Wisconsin Act 32, is
6 renumbered 71.21 (4) (a) and amended to read:

7 71.21 (4) (a) [✓] Credits computed by a partnership under s. 71.07 (2dd), (2de),
8 (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm),
9 (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), ~~(5n)~~ [✓](5r), (5rm), and (8r) and
10 passed through to partners shall be added to the partnership's income.

History: 1987 a. 312, 411; 1989 a. 31; 1993 a. 112; 1995 a. 27, 400; 1997 a. 27; 2001 a. 16; 2003 a. 99, 135, 255, 326; 2005 a. 74, 361, 479, 483; 2007 a. 20, 96; 2009 a. 2, 28, 265, 269, 295, 332; 2011 a. 32.

11 **SECTION 14.** 71.21 (4) (b) of the statutes is created to read:

12 71.21 (4) (b) Credits computed by a partnership under s. [✓]71.07 (5n) in the
13 previous year and not included in federal ordinary business income shall be added
14 to the partnership's income.

15 **SECTION 15.** 71.26 (2) (a) [✓]4. of the statutes, as affected by 2011 Wisconsin Act
16 32, is amended to read:

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

History: 1987 a. 312; 1987 a. 411 ss. 22, 124 to 129; 1989 a. 31, 336; 1991 a. 37, 39, 221, 269; 1993 a. 16, 112, 246, 263, 399, 437, 491; 1995 a. 27, 56, 351, 371, 380, 428; 1997 a. 27, 37, 184, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 106, 109; 2003 a. 33, 85, 99, 135, 255, 326; 2005 a. 25, 74, 335, 361, 362, 479, 483; 2007 a. 20, 96, 97, 151, 226; 2009 a. 2, 28, 161, 165, 180, 183, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 7, 10, 32; s. 35.17 correction in (2) (a) 10.

1 **SECTION 16.** 71.26 (2) (a) 11. of the statutes is created to read:

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

4 **SECTION 17.** 71.28 (5n) (title) of the statutes, as created by 2011 Wisconsin Act
5 32, is amended to read:

6 71.28 (5n) (title) ~~QUALIFIED PRODUCTION~~ MANUFACTURING AND AGRICULTURAL
7 ACTIVITIES CREDIT.

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27 ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135, 183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 15, 32, 67; s. 13.92 (1) (bm) 2; s. 35.17 correction in (2dr) (a), (5n).

8 **SECTION 18.** 71.28 (5n) (a) 2. of the statutes, as created by 2011 Wisconsin Act

9 32, is repealed.

10 **SECTION 19.** 71.28 (5n) (a) 2m. of the statutes is created to read:

11 71.28 (5n) (a) 2m. "Production gross receipts" means receipts from the lease,
12 rental, license, sale, exchange, or other disposition of qualified production property.

13 **SECTION 20.** 71.28 (5n) (a) 3. of the statutes, as created by 2011 Wisconsin Act

14 32, is repealed.

15 **SECTION 21.** 71.28 (5n) (a) 3m. of the statutes is created to read:

16 71.28 (5n) (a) 3m. "Qualified production activities income" means the amount
17 of the claimant's production gross receipts for the taxable year that exceeds the sum
18 of the cost of goods sold that are allocable to such receipts, as determined under par.

19 (d) 2., and the direct and indirect expenses, losses, and deductions that are allocable
20 to such receipts, as determined under par. (d) 2. "Qualified production activities
21 income" does not include any of the following:

22 a. Income from film production.

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

10 **SECTION 22.** 71.28 (5n) (a) 4. of the statutes is created to read:

11 71.28 (5n) (a) 4. "Qualified production property" means tangible personal
12 property manufactured by the claimant in whole or in significant part on property
13 that is assessed as manufacturing property under s. 70.995 or tangible personal
14 property produced, grown, or extracted on or from property assessed as agricultural
15 property under s. 70.32 (2) (a) 4.

16 **SECTION 23.** 71.28 (5n) (b) (intro.) of the statutes, as created by 2011 Wisconsin
17 Act 32, is amended to read:

18 71.28 (5n) (b) *Filing claims.* (intro.) Subject to the limitations provided in this
19 subsection, a claimant may claim as a credit against the tax imposed under s. 71.02,
20 up to the amount of the tax, an amount equal to one of the following percentages of
21 the claimant's eligible qualified production activities income in the taxable year:

History: 1987 a. 312; 1987 a. 411 ss. 63, 79 to 82, 85, 86; 1987 a. 419, 422; 1989 a. 31, 44, 56, 100, 359; 1991 a. 39, 269, 292; 1993 a. 16, 112, 204, 471, 491; 1995 a. 27
ss. 3377m to 3393m, 9116 (5); 1995 a. 209, 227, 400, 453; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9, 10, 32; 1999 a. 150 s. 672; 1999 a. 198; 2001 a. 16, 109; 2003 a. 72, 99, 135,
183, 255, 267, 326; 2005 a. 25, 49, 72, 74, 97, 177, 254, 361, 387, 479, 483, 487; 2007 a. 11, 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401;
2011 a. 15, 32, 67; s. 13.92 (1) (bm) 2; s. 35.17 correction in (2dr) (a), (5n).

22 **SECTION 24.** 71.28 (5n) (d) of the statutes, as created by 2011 Wisconsin Act 32,
23 is renumbered 71.28 (5n) (d) 1.

1 **SECTION 25.** 71.28 (5n) (d) 2. of the statutes is created to read:

2 71.28 (5n) (d) 2. a. For purposes of determining a claimant's qualified
3 production activities income under this subsection[✓], the claimant shall multiply the
4 claimant's production gross receipts by a fraction consisting of a numerator that is
5 the average value of the claimant's real and tangible personal manufacturing
6 (6) property assessed under s. 70.995 or agricultural property assessed under s. ^{or}70.32
7 (2) (a) 4. that is owned or rented by the claimant during the taxable year and used
8 by the claimant to produce qualified production property; and a denominator that is
9 the average value of all the claimant's real property and tangible personal property
10 that is owned or rented by the claimant during the taxable year.

11 b. For purposes of subd. 2. a.[✓], property owned by the claimant is valued at its
12 original cost and property rented by the claimant is valued at an amount equal to the
13 annual rental paid by the claimant, less any annual rental received by the claimant
14 from sub-rentals, multiplied by 8.[✓]

15 c. For purposes of subd. 2. a.[✓], if property is acquired and disposed of during the
16 taxable year, the average value of property is determined by averaging the values at
17 the beginning and ending of the taxable year, except that the secretary of revenue
18 may require the averaging of monthly values during the taxable year, if such
19 averaging is reasonably required to properly reflect the average value of the
20 claimant's property.

21 **SECTION 26.** 71.30 (3) (dn)[✓] of the statutes, as created by 2011 Wisconsin Act 32,
22 is repealed.

23 **SECTION 27.** 71.34 (1k) (g)[✓] of the statutes, as affected by 2011 Wisconsin Act 32,
24 is amended to read:

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

History: 1987 a. 312; 1987 a. 411 ss. 18, 23, 146; 1989 a. 31, 336; 1991 a. 39, 269; 1993 a. 16, 437; 1995 a. 27, 380, 428; 1997 a. 27, 37, 237; 1999 a. 9, 194; 2001 a. 16, 109; 2003 a. 33, 99, 135, 255, 326; 2005 a. 25, 49, 74, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 161, 183, 265, 269, 295, 332; 2011 a. 32.

5 **SECTION 28.** 71.34 (1k) (m) of the statutes is created to read:

6 71.34 (1k) (m) An addition shall be made for the amount computed under s.
7 71.28 (5n) [✓] in the previous taxable year that is not included in federal ordinary
8 business income.

9 **SECTION 29.** 71.45 (2) (a) 10. of the statutes, [✓] as affected by 2011 Wisconsin Act
10 32, is amended to read:

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

History: 1987 a. 312; 1989 a. 31, 336, 359; 1991 a. 37, 39, 269; 1993 a. 16, 112, 263, 437; 1995 a. 27, 56, 371, 380; 1997 a. 27, 37, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 1999 a. 167, 194; 2001 a. 16, 38, 109; 2003 a. 37, 85, 99, 135, 255, 326; 2005 a. 74, 297, 335, 361, 479, 483; 2007 a. 20, 96, 226; 2009 a. 2, 28, 165, 205, 265, 269, 295, 332, 344; 2011 a. 3, 5, 32.

18 **SECTION 30.** 71.47 (5n) of the statutes, as created by 2011 Wisconsin Act 32, is
19 repealed.

20 **SECTION 31.** 71.49 (1) (dn) of the statutes, [✓] as created by 2011 Wisconsin Act 32,
21 is repealed.

22 (END)

DN Note
↓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3906/P1dn

JK:.....

date

JK

Diane,

Please review this draft carefully to ensure that it is consistent with your intent. ✓ I included the provisions related to allocating production gross receipts, even though those provisions are still being worked on, so that you could see the general format and placement of those provisions in the statutes.

Joseph T. Kreye
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3906/P1dn
JK:jld:rs

January 25, 2012

Diane,

Please review this draft carefully to ensure that it is consistent with your intent. I included the provisions related to allocating production gross receipts, even though those provisions are still being worked on, so that you could see the general format and placement of those provisions in the statutes.

Joseph T. Kreye
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Manufacturing and Agriculture Tax Credit

<u>100% Wisconsin Manufacturer</u>	<u>Multi-State Manufacturer</u>
Production Gross Receipts — Cost of Goods Sold — Direct Costs (e.g., labor, depreciation) — Indirect Costs (administrative overhead)	Production Gross Receipts — Cost of Goods Sold — Direct Costs (e.g., labor, depreciation) — Indirect Costs (administrative overhead)
Qualified Production Activities Income x 7.5%	Qualified Production Activities Income x Modified Property Factor* = x 7.5%
Manufacturing Credit	Manufacturing Credit

*Modified Property Factor = $\frac{\text{WI TPP and real property used in manufacturing}}{\text{Total TPP and real property}}$

"Qualified Production Property" - means tangible personal property manufactured by the claimant 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.

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

"Production Gross Receipts Factor" - is a fraction, the numerator of which is production gross receipts and the denominator of which is all income from whatever source, except for those items specifically excluded under the Internal Revenue Code as adopted by Wisconsin 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 receipts that are included in income, before apportionment for Wisconsin tax purposes under s. 71.04(4).

"Manufacturing Property Factor" - The "manufacturing property factor" is 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 produce Wisconsin 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.

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.

"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 costs, 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, transmission or distribution 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. 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.

"Agriculture Property Factor" - The "agriculture property factor" is 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 year.

Kreye, Joseph

From: Hardt, Diane L - DOR [Diane.Hardt@revenue.wi.gov]
Sent: Thursday, February 02, 2012 12:14 PM
To: Kreye, Joseph
Cc: Erlandsen, Dana J - DOR; Crane, Lili B - DOR
Subject: Manufacturing and Agriculture Credit

Attachments: Manufacturing and Agriculture Tax Credit01312012.docx

Hi Joe:

Here is everything I was going to submit to you. If you are available for a teleconference this afternoon (not 3:00 - 4:00), Dana and I will walk through it with you and help you with any language.

Here is a summary of needed drafting changes.

Corrections to earlier draft:

71.24(4)(a) The amount of the cCredits computed by the partnership under . . .

71.21(4)(b) Amounts credits 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.

Definitions:

Direct costs: include all costs of the claimant which are deductible under section 162 of the Internal Revenue Code, other than cost of goods sold, and that are direct costs in the claimant's cost accounting records.

Indirect costs: include all costs deductible under section 162 of the Internal Revenue Code, other than cost of goods sold and direct costs.

Additional Definitions, see page 2 of attachment:



Manufacturing
and Argiculture ...

Filing Claims and Credit Computation:

Subject to the limitations provided in this subsection, a claimant may claim a credit against the tax imposed under s. 71.02, up to the amount of the tax, an amount equal to the claimant's qualified production activities income in the taxable year, multiplied by a percentage as follows: (then phase in the percentages)

Qualified production activities income is computed by determining production gross receipts from qualified production property and then subtracting cost of goods sold and direct and indirect costs related to the production gross receipts.

Claimants who manufacture or produce, grow or extract qualified production property and engage in business within and without the state may claim a credit against the tax imposed under s. 71.02, up to the amount of tax, an amount equal to the claimant's qualified production activities income in the taxable year, computed as follows, with the result multiplied by the percentages above.

Production gross receipts are gross receipts from all property manufactured by the claimant multiplied by the manufacturing property factor or gross receipts from all tangible personal property produced, grown or extracted by the claimant multiplied by the agriculture property factor.

Total cost of goods sold and direct costs, losses or deductions for property manufactured by the claimant are multiplied by the manufacturing property factor. Total cost of goods sold and direct costs, losses or deductions related to the claimant's agricultural production, growth or extraction are multiplied by the agriculture property factor.

Total indirect costs of the claimant in manufacturing property or agricultural production, growth or extraction are multiplied by the production gross receipts factor.

Qualified production activities income is computed by determining the apportioned production gross receipts and subtracting the apportioned cost of goods sold, direct costs and indirect costs.

Limitation in s. 71.28(5n)2.a., b. and c.

We'll retain for corporations only.

Diane Hardt

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Kreye, Joseph

From: Hardt, Diane L - DOR [Diane.Hardt@revenue.wi.gov]
Sent: Thursday, February 02, 2012 11:27 AM
To: Kreye, Joseph
Subject: FW: Differing Treatment of Corporations v passthroughs.docx

Attachments: Differing Treatment of Corporations v passthroughs.docx

I thought I would share this with you. I agree with the corporation limitation as explained in the paper and currently in the law. We will keep the corporation limitation but not add any other limit for individuals or partnerships.

From: Koskinen, John B - DOR
Sent: Wednesday, February 01, 2012 5:03 PM
To: Hardt, Diane L - DOR
Cc: Oakleaf, Michael P - DOR
Subject: FW: Differing Treatment of Corporations v passthroughs.docx

Dianne,

This is Mike's write-up. He makes a good case for retaining the current limiter on policy intent and on fiscal effect.



Differing
Treatment of Corpor.

John K

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*Keep 71.28(5n)(a) 2. — amend
leave " eligible qual. prod. activities inc." def
and merge under (b) (rule)*

Differing Treatment of Corporations vs. Pass-throughs in the QPAI Credit

Problem:

Under current law (s. 71.28(5n)(a)2.), corporations that are eligible for the qualified production activities income have the amount of the credit limited to the lesser of:

- a. Qualified production activities income that derives from property located in this state that is assessed as manufacturing property under s. 70.995 or as agricultural property under s. 70.32 (2) (a) 4.
- b. Income that is apportioned to this state under s. 71.25 (5), (6), and (6m).
- c. Income that is determined to be taxable in this state under s. 71.255 (2).

Partnerships, LLCs, and sole proprietors do not have a similar limitation in s. 71.07(5n).

Policy Options:

1. Add similar limiters for pass-throughs and sole proprietors
2. Remove the limiters for corporations
3. Leave the limiters in place for corporations only

Discussion:

Legislative intent – Based on comments made by the author, it appears that the legislative intent of the proposal was to primarily help smaller manufacturers and farmers. On the assumption that smaller manufacturers and farmers are more likely to be organized as pass-throughs or sole proprietors, not having a limit on the credit for these entities would accomplish the author's intent.

Administrative burden – As we saw in the drafting of the Job Creation Deduction, limiting a credit or deduction to business income can create large administrative burdens for the department and taxpayers because business income gets mingled with other income sources once the income makes it to an individual's return.

Fiscal effect - It is not hard to envision scenarios where a corporation with manufacturing operations in Wisconsin could have greater qualified production activities income resulting from those operations than they have apportioned or taxable income (for example, if a majority of their sales are outside of Wisconsin). Therefore, removing the limiters in s. 71.28(5n)(a)2. would have a fiscal effect. A preliminary estimate is that removing the limiters in s. 71.28(5n)(a)2. would increase the fiscal effect of the credit approximately \$16 million per year once the credit is fully phased in.

Recommendation:

Retain the limiters in s. 71.28(5n)(a)2. for corporations, and do not add additional limiters for pass-throughs and sole proprietors. This recommendation would require fixing the circular calculation that the limiters create.

Because credits must be added to income, using income in the calculation of a credit (as is done in the limiters in s. 71.28(5n)(a)2.) results in a circular calculation – you can't

know your income until you know the amount of the credit, and you can't know the amount of the credit until you know your income.

Requiring the credit to be added back to income in the year following the year it is computed will fix this. This is how the Farmland Tax Relief Credit, which also used income in calculating the credit, was handled. Since corporations are already being treated differently in the law, requiring only corporations to add back the credit in the following year will not create differential treatment. However, if it is determined that equity considerations warrant having the credit added back at the same time for all taxpayers, we could require all taxpayers to add the credit back in the following year.

Manufacturing and Agriculture Tax Credit
(ss. 71.07(5n) & 71.28(5n), Wis. Stats.)

<u>100% Wisconsin Manufacturer</u>	<u>Multi-State Manufacturer</u>
Production Gross Receipts — Cost of Goods Sold — Direct Costs (e.g., labor, depreciation) — Indirect Costs (administrative overhead) Qualified Production Activities Income x 7.5%	Production Gross Receipts — Cost of Goods Sold — Direct Costs (e.g., labor, depreciation) — Indirect Costs (administrative overhead) Qualified Production Activities Income x Modified Property Factor* = x 7.5%
Manufacturing Credit	Manufacturing Credit

*Modified Property Factor = $\frac{\text{WI TPP and real property used in manufacturing}}{\text{Total TPP and real property}}$

"Qualified Production Property" - means tangible personal property manufactured by the claimant 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.

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

"Production Gross Receipts Factor" - is a fraction, the numerator of which is production gross receipts and the denominator of which is all income from whatever source, except for those items specifically excluded under the Internal Revenue Code as adopted by Wisconsin 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 receipts that are included in income, before apportionment for Wisconsin tax purposes under s. 71.04(4).

"Manufacturing Property Factor" - The "manufacturing property factor" is 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 produce Wisconsin 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.

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.

"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, transmission or distribution 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. 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.

"Agriculture Property Factor" - The "agriculture property factor" is 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

y.

2m

2p

2d

3m

1d.

2d

property and improvements owned or rented during the year.

January 30, 2012

Manufacturing and Agriculture Tax Credit
 (ss. 71.07(5n) & 71.28(5n), Wis. Stats.)

Manufacturing or Agriculture production or processing

<u>100% Wisconsin Manufacturer</u>	<u>Multi-State Manufacturer</u>
Production Gross Receipts — Cost of Goods Sold — Direct Costs (e.g., labor, depreciation) — Indirect Costs (administrative overhead) Qualified Production Activities Income	Production Gross Receipts — Cost of Goods Sold — Direct Costs (e.g., labor, depreciation) — Indirect Costs (administrative overhead) Qualified Production Activities Income
$\times 7.5\%$ Manufacturing Credit	\times Modified Property Factor* = $\times 7.5\%$
Manufacturing Credit	Manufacturing Credit

*Production cost
 Direct costs
 Indirect costs
 (Manufacturing or Agriculture production or processing)*

*\$102
 other than
 cost of goods
 sold*

*\$102
 cost of goods
 sold and direct
 costs*

*ratio of gross receipts
 total production*

*Modified Property Factor = $\frac{\text{WI TPP and real property used in manufacturing}}{\text{Total TPP and real property}}$

will change to go back to cost

was "discovered" instead?

"Qualified Production Property" - means tangible personal property manufactured by the claimant 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.

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

"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, transmission or distribution 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. 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.

using
state
income

Modified Property Factor - The "modified property factor" is a fraction, the numerator of which is the assessed value of the claimant's real property and tangible personal property assessed under s.70.32(2)(a)4 or agricultural real property and tangible personal 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. For purposes of the denominator and for purposes of the numerator when there is no assessed value available, property owned by the claimant is valued at its original cost.

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. For purposes of calculating the average value of the property, 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.

is a farm's personal property assessed under s. 70.32(2)(a)4? - no?
probably - needs to be reflected in draft of 9/05

need separate
letter for ag & income?

Direct costs include all costs deductible

under IRC § 162, other than COGS,
that are directly ~~not~~ related to the claimant's
manufacturing process, including but not limited to,
~~energy~~ labor, depreciation, utilities,

Indirect costs are all of the deductible costs

deductible under § 162, other than COGS + ~~indirect~~ direct
costs ~~to be~~ multiplied by the de ROR to the
deductible final receipt.