2011 ASSEMBLY BILL 358


AN ACT to amend 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45 (2) (a) 10. and 77.92 (4); and to create 71.07 (6f), 71.10 (4) (cf), 71.28 (6f), 71.30 (3) (af), 71.47 (6f) and 71.49 (1) (af) of the statutes; relating to: creating a nonrefundable individual and corporate income and franchise tax credit for purchasing and installing a thermal biomass heating system.

Analysis by the Legislative Reference Bureau

This bill creates a nonrefundable individual income tax credit, and a corporate income and franchise tax credit, for the purchase and installation of a thermal biomass heating system. Under the bill, for taxable years 2011 to 2016, a claimant may claim a certain percentage of the amount the claimant pays for the purchase and installation of a system in the claimant’s primary residence or place of business.

Under the bill, a system is defined as a stove, furnace, or boiler that generates heat from biomass and provides an energy efficiency conversion of at least 75 percent. Subject to a number of exceptions, such as an exception for garbage and for certain nonvegetation–based waste, biomass is defined under the bill as a resource that derives energy from wood or plant material or residue, biological waste, crops grown for use as such a resource, or landfill gases.

The bill limits the total amount of credits that may be claimed. The Department of Revenue may prorate the amount of credits claimed to ensure these limitations are not exceeded, and may allocate unused credits from one year to another year. A business that is not able to totally offset the credit it is due against income or
franchise taxes otherwise owed may carry forward the credit for the following three taxable years. A business that has more than $5,000,000 in gross receipts in the taxable year may not claim the credit.

No new credits may be claimed for taxable years beginning after December 31, 2016.

To be eligible for the credit, the system must comply with all state requirements related to emissions of air contaminants, and the provisions of the federal Clean Air Act, that apply to the system on the day it is purchased. The credit related to purchasing a system for an individual’s primary residence may not be claimed by a nonresident or part-year resident of the state. Because the credit is nonrefundable, it may be claimed only up to the amount of a taxpayer’s income or franchise tax liability.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 71.05 (6) (a) 15. of the statutes is amended to read:

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

SECTION 2. 71.07 (6f) of the statutes is created to read:

71.07 (6f) THERMAL BIOMASS HEATING SYSTEMS CREDIT. (a) Definitions. In this subsection:

1. “Air quality standards” means all requirements under ch. 285 and 42 USC 7401 to 7671q.

2. “Biomass” has the meaning given in s. 196.378 (1) (ar).

3. “Claimant” means a person who files a claim under this subsection.
4. “Stove” means a stove that is part of a system that generates heat from biomass and is not integrated into any other heating or cooling system or into duct work.

(b) **Filing claims.** Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.02, up to the amount of those taxes, one of the following amounts that the claimant paid in the taxable year to purchase and install in the claimant’s primary residence in this state or in the claimant’s place of business in this state a stove, furnace, or boiler that generates heat from biomass by providing an energy efficiency conversion of at least 75 percent and meets any air quality standards that apply to the stove, furnace, or boiler on the day on which the stove, furnace, or boiler is purchased:

1. With regard to amounts paid to purchase and install a stove:
   a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $1,200, whichever is less.
   b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $1,050, whichever is less.
   c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $1,000, whichever is less.

2. With regard to amounts paid to purchase and install a furnace or boiler with an output that is less than or equal to 200,000 British thermal units:
   a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $4,800, whichever is less.
   b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $3,900, whichever is less.
c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $3,500, whichever is less.

3. With regard to amounts paid to purchase and install a furnace or boiler with an output that is greater than 200,000 British thermal units:
   a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $12,000, whichever is less.
   b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $10,500, whichever is less.
   c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $10,000, whichever is less.

(c) Limitations. 1. No credit may be claimed under this subsection by a part-year resident or a nonresident of this state for amounts paid to install a furnace, boiler, or stove in the claimant’s primary residence in this state.

2. No credit may be claimed under this subsection for an item installed in the claimant’s place of business if the claimant’s business had more than $5,000,000 in gross receipts in the taxable year in which the item is installed.

3. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of amounts under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.
4. a. The maximum amount of the credits that may be claimed under this subsection and ss. 71.28 (6f) and 71.47 (6f) for the purchase and installation of stoves and the purchase and installation of furnaces and boilers with outputs less than or equal to 200,000 British thermal units is $2,500,000 in 2011, $3,500,000 in 2012, $3,000,000 in 2013, $3,000,000 in 2014, $2,500,000 in 2015, and $2,500,000 in 2016.

b. The maximum amount of the credits that may be claimed under this subsection and ss. 71.28 (6f) and 71.47 (6f) for the purchase and installation of stoves or furnaces and boilers with outputs greater than 200,000 British thermal units is $1,500,000 in 2011, $2,500,000 in 2012, $2,000,000 in 2013, $2,000,000 in 2014, $1,500,000 in 2015, and $1,500,000 in 2016.

5. The department may prorate the amount of the credits claimed under this subsection and ss. 71.28 (6f) and 71.47 (6f) so that the limitations under subd. 4. are not exceeded.

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

2. If a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 3 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry−forward credit is claimed.

(e) Sunset. No new claim may be filed under this subsection for taxable years beginning after December 31, 2016.

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

71.10 (4) (cf) The thermal biomass heating systems credit under s. 71.07 (6f).
SECTION 4. 71.21 (4) of the statutes is amended to read:

71.21 (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), (5r), (5rm), (6f), and (8r) and passed
through to partners shall be added to the partnership’s income.

SECTION 5. 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 3,
is amended to read:

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

SECTION 6. 71.28 (6f) of the statutes is created to read:

71.28 (6f) THERMAL BIOMASS HEATING SYSTEMS CREDIT. (a) Definitions. In this
subsection:

1. “Air quality standards” means all requirements under ch. 285 and 42 USC
7401 to 7671q.

2. “Biomass” has the meaning given in s. 196.378 (1) (ar).

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

4. “Stove” means a stove that is part of a system that generates heat from
biomass and is not integrated into any other heating or cooling system or into duct
work.
(b) **Filing claims.** Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.23, up to the amount of those taxes, one of the following amounts that the claimant paid in the taxable year to purchase and install in the claimant’s place of business in this state a stove, furnace, or boiler that generates heat from biomass by providing an energy efficiency conversion of at least 75 percent and meets any air quality standards that apply to the stove, furnace, or boiler on the day on which the stove, furnace, or boiler is purchased:

1. With regard to amounts paid to purchase and install a stove:
   a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $1,200, whichever is less.
   b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $1,050, whichever is less.
   c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $1,000, whichever is less.

2. With regard to amounts paid to purchase and install a furnace or boiler with an output that is less than or equal to 200,000 British thermal units:
   a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $4,800, whichever is less.
   b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $3,900, whichever is less.
   c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $3,500, whichever is less.

3. With regard to amounts paid to purchase and install a furnace or boiler with an output that is greater than 200,000 British thermal units:
a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $12,000, whichever is less.

b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $10,500, whichever is less.

c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $10,000, whichever is less.

(c) Limitations.

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

2. No credit may be claimed under this subsection for an item installed in the claimant’s place of business if the claimant’s business had more than $5,000,000 in gross receipts in the taxable year in which the item is installed.

3. a. The maximum amount of the credits that may be claimed under this subsection and ss. 71.07 (6f) and 71.47 (6f) for the purchase and installation of stoves and the purchase and installation of furnaces and boilers with outputs less than or equal to 200,000 British thermal units is $2,500,000 in 2011, $3,500,000 in 2012, $3,000,000 in 2013, $3,000,000 in 2014, $2,500,000 in 2015, and $2,500,000 in 2016.

b. The maximum amount of the credits that may be claimed under this subsection and ss. 71.07 (6f) and 71.47 (6f) for the purchase and installation of stoves or furnaces and boilers with outputs greater than 200,000 British thermal units is
$1,500,000 in 2011, $2,500,000 in 2012, $2,000,000 in 2013, $2,000,000 in 2014, $1,500,000 in 2015, and $1,500,000 in 2016.

4. The department may prorate the amount of the credits claimed under this subsection and ss. 71.07 (6f) and 71.47 (6f) so that the limitations under subd. 3. are not exceeded.

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

2. If a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 3 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

(e) Sunset. No new claim may be filed under this subsection for taxable years beginning after December 31, 2016.

SECTION 7. 71.30 (3) (af) of the statutes is created to read:

71.30 (3) (af) The thermal biomass heating systems credit under s. 71.28 (6f).

SECTION 8. 71.34 (1k) (g) of the statutes is amended to read:

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

SECTION 9. 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act 3, is amended to read:
71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3n), (3p), (3q), (3r), (3rm), (3rn), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5r), (5rm), (6f), (8r), and (9s) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership’s, limited liability company’s, or tax-option corporation’s income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

SECTION 10. 71.47 (6f) of the statutes is created to read:

71.47 (6f) THERMAL BIOMASS HEATING SYSTEMS CREDIT. (a) Definitions. In this subsection:

1. “Air quality standards” means all requirements under ch. 285 and 42 USC 7401 to 7671q.

2. “Biomass” has the meaning given in s. 196.378 (1) (ar).

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

4. “Stove” means a stove that is part of a system that generates heat from biomass and is not integrated into any other heating or cooling system or into duct work.

(b) Filing claims. Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.43, up to the amount of those taxes, one of the following amounts that the claimant paid in the taxable year to purchase and install in the claimant’s place of business in this state a stove, furnace, or boiler that generates heat from biomass by providing an energy efficiency conversion of at least 75 percent and meets any air quality standards that apply to the stove, furnace, or boiler on the day on which the stove, furnace, or boiler is purchased:
1. With regard to amounts paid to purchase and install a stove:
   a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $1,200, whichever is less.
   b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $1,050, whichever is less.
   c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $1,000, whichever is less.

2. With regard to amounts paid to purchase and install a furnace or boiler with an output that is less than or equal to 200,000 British thermal units:
   a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $4,800, whichever is less.
   b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $3,900, whichever is less.
   c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $3,500, whichever is less.

3. With regard to amounts paid to purchase and install a furnace or boiler with an output that is greater than 200,000 British thermal units:
   a. For taxable years beginning after December 31, 2010, and before January 1, 2013, either 40 percent of such amounts or $12,000, whichever is less.
   b. For taxable years beginning after December 31, 2012, and before January 1, 2015, either 30 percent of such amounts or $10,500, whichever is less.
   c. For taxable years beginning after December 31, 2014, and before January 1, 2017, either 25 percent of such amounts or $10,000, whichever is less.

(c) Limitations. 1. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for,
and the amount of, the credit are based on their payment of amounts under par. (b).

A partnership, limited liability company, or tax–option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax–option corporations may claim the credit in proportion to their ownership interests.

2. No credit may be claimed under this subsection for an item installed in the claimant’s place of business if the claimant’s business had more than $5,000,000 in gross receipts in the taxable year in which the item is installed.

3. a. The maximum amount of the credits that may be claimed under this subsection and ss. 71.07 (6f) and 71.28 (6f) for the purchase and installation of stoves and the purchase and installation of furnaces and boilers with outputs less than or equal to 200,000 British thermal units is $2,500,000 in 2011, $3,500,000 in 2012, $3,000,000 in 2013, $3,000,000 in 2014, $2,500,000 in 2015, and $2,500,000 in 2016.

b. The maximum amount of the credits that may be claimed under this subsection and ss. 71.07 (6f) and 71.28 (6f) for the purchase and installation of stoves or furnaces and boilers with outputs greater than 200,000 British thermal units is $1,500,000 in 2011, $2,500,000 in 2012, $2,000,000 in 2013, $2,000,000 in 2014, $1,500,000 in 2015, and $1,500,000 in 2016.

4. The department may prorate the amount of the credits claimed under this subsection and ss. 71.07 (6f) and 71.28 (6f) so that the limitations under subd. 3. are not exceeded.

(d) Administration. 1. Section 71.28 (4) (e), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.
2. If a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 3 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

(e) Sunset. No new claim may be filed under this subsection for taxable years beginning after December 31, 2016.

SECTION 11. 71.49 (1) (af) of the statutes is created to read:

71.49 (1) (af) The thermal biomass heating systems credit under s. 71.47 (6f).

SECTION 12. 77.92 (4) of the statutes is amended to read:

77.92 (4) “Net business income,” with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), (6f), and (8r); and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions from farming. “Net business income,” with respect to a natural person, estate, or trust, means profit from a trade or
business for federal income tax purposes and includes net income derived as an employee as defined in section 3121 (d) (3) of the Internal Revenue Code.