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

Analysis by the Legislative Reference Bureau

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

Under current law, as created by 2011 Wisconsin Act 32, an individual taxpayer may claim a state income tax credit equal to the taxpayer’s qualified production activities income.
activities income derived from manufacturing property or agricultural property located in this state, multiplied by a certain percentage. A corporation may claim a state income and franchise tax credit equal to the lesser of its taxable income apportioned to this state or its qualified production activities income derived from manufacturing property or agricultural property located in this state, multiplied by a certain percentage. The percentage of qualified production activities income that a taxpayer may claim as a credit is 1.875 percent for 2013, 3.75 percent for 2014, 5.526 percent for 2015, and 7.5 percent for 2016 and for each year thereafter. Under current law, “qualified production activities income” means qualified production activities income as determined under the federal Internal Revenue Code for purposes of claiming a federal tax deduction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Income from film production.

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

c. Income from constructing real property.

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

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

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

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

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

b. Tangible personal property produced, grown, or extracted in whole or in part by the claimant on or from property assessed as agricultural property under s. 70.32 (2) (a) 4.
SECTION 5. 71.07 (5n) (d) of the statutes, as created by 2011 Wisconsin Act 32, is renumbered 71.07 (5n) (d) 1.

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

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

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

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

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

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

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

71.21 (4) (b) Amounts computed by a partnership under s. 71.07 (5n) in the previous taxable year and not included in federal ordinary business income shall be added to the partnership’s income.
**SECTION 10.** 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 32, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Income from film production.

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

c. Income from constructing real property.

d. Income from engineering or architectural services performed with respect
to constructing real property.
e. Income from the sale of food and beverages prepared by the claimant at a retail establishment.

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

9. “Qualified production property” means either of the following:
   a. Tangible personal property manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under s. 70.995.
   b. Tangible personal property produced, grown, or extracted in whole or in part by the claimant on or from property assessed as agricultural property under s. 70.32 (2) (a) 4.

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

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

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

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

71.28 (5n) (d) 3. The amount of the eligible qualified production activities income that a claimant may claim in computing the credit under par. (b) is the lesser of the following:
   a. The eligible qualified production activities income determined under subd. 2.
b. Income apportioned to this state under s. 71.25 (5), (6), and (6m).

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

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

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

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

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

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

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

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

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (8r), and (9s) and not passed through by a partnership, limited liability company, or tax−option corporation that has added that amount to the partnership’s, limited liability company’s, or tax−option corporation’s income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).
SECTION 21. 71.47 (5n) of the statutes, as created by 2011 Wisconsin Act 32, is repealed.

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

(END)