

2015 DRAFTING REQUEST

Bill

Received: **9/25/2014** Received By: **jkreye**
Wanted: **As time permits** Same as LRB:
For: **Administration-Budget** By/Representing: **Quinn**
May Contact: Drafter: **jkreye**
Subject: **Tax, Business - credits** Addl. Drafters:
Extra Copies:

Submit via email: **YES**
Requester's email:
Carbon copy (CC) to: **joseph.kreye@legis.wisconsin.gov**
sbostatlanguage@webapps.wi.gov

Pre Topic:

DOA:.....Quinn, BB0050 -

Topic:

Technical modifications to manufacturing and agriculture credit

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 9/29/2014			_____			
/P1		jdyer 9/29/2014	jfrantze 9/29/2014	_____	srose 9/29/2014		State

FE Sent For:

<END>

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/?	jkreye			_____			

FE Sent For:

<END>

Kreye, Joseph

0281

From: Hanaman, Cathlene
Sent: Thursday, September 25, 2014 12:06 PM
To: Kreye, Joseph; Shovers, Marc
Subject: FW: Statutory Language Drafting Request - BB0050
Attachments: Inocme Tax - Manu Ag Credit Technical Changes.pdf

From: brian.quinn@wisconsin.gov [mailto:brian.quinn@wisconsin.gov]
Sent: Thursday, September 25, 2014 12:06 PM
To: Hanaman, Cathlene
Cc: Ziegler, Paul - DOA; Quinn, Brian D - DOA; Connor, Christopher B - DOA
Subject: Statutory Language Drafting Request - BB0050

Biennial Budget: 2015-17

Topic: Technical modifications to Manufacturing and Agriculture Credit

Tracking Code: BB0050

SBO Team: TLGED

SBO Analyst: Quinn, Brian D - DOA
Phone: (608) 266-1923
E-mail: brian.quinn@wisconsin.gov

Agency Acronym: DOR

Agency Number: 566

Priority: High

Intent:

Make three technical changes to the Manufacturing and Agriculture Credit:

1. Amend the property factor to include land and improvements.
2. Allow taxpayers to claim the credit when they receive their manufacturing classification in the subsequent tax year.
3. Provide a more inclusive definition of ordinary and necessary expenses for a business's direct and indirect costs.

Attachments: True

Please send completed drafts to SBOStatlanguage@webapps.wi.gov

TITLE: Manufacturing and Agriculture Credit – Technical Updates

DESCRIPTION OF CURRENT LAW AND PROBLEM

Problem #1 – Incorrect reference in the agricultural property factor

Sections 71.07(5n)(a)1.a. and 71.28(5n)(a)1.a., Wis. Stats., provide that the agriculture property factor means a fraction, the numerator of which is the average value of the claimant's real property and improvements assessed under sec. 70.32(2)(a)4., Wis. Stats., owned or rented and used in Wisconsin by the claimant during the taxable year to produce, grow, or extract qualified production property, and the denominator 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.

The agricultural property factor states that the numerator and denominator shall include the average value of the claimant's real property and improvements under sec. 70.32(2)(a)4., Wis. Stats.; however, sec. 70.32(2)(a)4., Wis. Stats., only includes agricultural land that is exclusive of improvements, so it is not possible to administer the law properly without including additional subdivisions of sec. 70.32(2)(a), Wis. Stats.

Problem #2 – Clarification on eligibility for start-up and relocated businesses

Under secs. 71.07(5n)(a)5.a. and 71.28(5n)(a)5.a., Wis. Stats., the real and personal property must be assessed as manufacturing under sec. 70.995, Wis. Stats. In order to be assessed by the department as manufacturing, taxpayers must be engaged in manufacturing on January 1 and are required to request manufacturing certification by March 1 of each year. The department will make the manufacturing determination during the current year; however, the taxpayer will not be classified as a manufacturer until the manufacturing roll is posted as of January 1 of the following year. Start-up companies and companies that relocate to Wisconsin after January 1 are at a disadvantage because under the current law, they would not be able to compute the manufacturing credit until the year after the year in which they relocate to Wisconsin.

Problem #3 – Clarification on what is "ordinary and necessary business expenses"

The credit is calculated by multiplying the credit rate (e.g., 7.5% for corporations in 2015) by the amount of qualified production activities income. Qualified production activities income is calculated by subtracting direct and indirect expenses incurred in making the product from the gross receipts derived from the sale of the product.

Sections 71.07(5n)(a)3., 71.07(5n)(a)4., 71.28(5n)(a)3., and 71.28(5n)(a)4., Wis. Stats., provide that direct and indirect costs subtracted in the computation of qualified production activities income includes "ordinary and necessary expenses that are deductible under section 162 of the Internal Revenue Code."

There is some ambiguity in this language since some taxpayers have asked whether other expenses (such as depreciation) are deductible under section 162 of the Internal Revenue Code. The department's published position is as follows:

Yes, depreciation is included as either a direct or indirect cost when computing the credit. Although depreciation is detailed under sec. 167, IRC, depreciation is considered an ordinary and necessary business expense under sec. 162, IRC, and is therefore included as a cost of generating production gross receipts.

This ambiguity is not limited to deductions for depreciation. There are other sections of the IRC that detail the amount or extent upon which a deduction may be claimed and could have a similar effect on the computation of the Manufacturing and Agriculture Credit. For example:

Sec. 163.	Interest
Sec. 164.	Taxes
Sec. 165.	Losses
Sec. 166.	Bad debts
Sec. 167.	Depreciation
Sec. 168.	Accelerated cost recovery system
Sec. 169.	Amortization of pollution control facilities
Sec. 178.	Amortization of cost of acquiring a lease
Sec. 179.	Election to expense certain depreciable business assets
Sec. 180.	Expenditures by farmers for fertilizer, etc.
Sec. 194.	Treatment of reforestation expenditures
Sec. 195.	Start-up expenditures
Sec. 197.	Amortization of goodwill and certain other intangibles

The department's position is that the deductions in these sections are still required to be an ordinary and necessary business expense under section 162 of the IRC; these sections simply provide the amount or extent upon which such deductions are allowed.

If the department is challenged on this interpretation, the result could be a significant fiscal loss to the state. There would also be increased confusion for having a different deductions allowed for purposes of computing 1) net income subject to tax and 2) net income eligible for the credit.

RECOMMENDATION FOR ACTION

1. Amend the agriculture property factor under secs. 71.07(5n)(a)1.a., and 71.28(5n)(a)1.a., Wis. Stats., to include land and improvements.
2. Allow taxpayers to claim the manufacturing credit when they receive their manufacturing classification in the subsequent tax year by amending secs. 71.07(5n)(a)5.a. and 71.28(5n)(a)5.a., Wis. Stats.
3. Provide a more inclusive definition of ordinary and necessary expenses for a business's direct and indirect costs in secs. 71.07(5n)(a)3., 71.07(5n)(a)4., 71.28(5n)(a)3., and 71.28(5n)(a)4., Wis. Stats.

IMPACT ON JOBS CREATION

This proposal is not expected to have an impact on job creation.

FISCAL EFFECT

The provisions of the proposal relating to changes to the agriculture property factor are largely technical in nature and assumed to have a minimal fiscal effect.

The provision of the proposal relating to allowing businesses newly listed on the manufacturing and agriculture rolls to claim the credit is assumed to have a minimal fiscal impact.

The provisions of the proposal relating to ordinary and necessary business expenses are technical in nature and assumed to have a minimal fiscal effect.

DRAFTING INSTRUCTIONS

1. Amend secs. 71.07(5n)(a)1.a., and 71.28(5n)(a)1.a., Wis. Stats., to read:

"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. through 7., 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. Create secs. 71.07(5n)(a)5.d. and 71.28(5n)(a)5.d., Wis. Stats., to read:

For purposes of subd. 5.a., a claimant that is approved to be classified by the department as a manufacturer but is not eligible to be listed on the department's manufacturing roll until January 1 of the following year, may claim the credit in the year in which manufacturing classification is approved.

3. Amend secs. 71.07(5n)(a)3. and 71.28(5n)(a)3., Wis. Stats. to read:

"Direct costs" includes 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 as business expenses under section 162 of the Internal Revenue Code and identified as direct costs in the claimant's managerial or cost accounting records.

Amend secs. 71.07(5n)(a)4. and 71.28(5n)(a)4., Wis. Stats., to read:

"Indirect costs" includes 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 as business expenses 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.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

For taxable years beginning after December 31, 2012.

INTERESTED/AFFECTED PARTIES

All taxpayers eligible to compute the manufacturing and agriculture credit.

DOR CONTACT PERSON

Diane Hardt, Division Administrator
(608) 266-6798

PREPARED BY

Craig Kvammen



State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-0281/P1

JK:.....

JL

DOA:.....Quinn, BB0050 - Technical modifications to manufacturing and agriculture credits

FOR 2015-2017 BUDGET — NOT READY FOR INTRODUCTION

in 9-29-14

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do not gen

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

TAXATION ✓

INCOME TAXATION ✓

This bill makes technical changes to the manufacturing and agriculture tax credit. ✓

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:

2
3
4
5

SECTION 1. 71.07 (5n) (a) 1. a. of the statutes is amended to read:
71.07 (5n) (a) 1. a. "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. to 7., ✓ owned or rented and used in

1 this state by the claimant during the taxable year to produce, grow, or extract
 2 qualified production property, and the denominator of which is the average value of
 3 all of the claimant's real property and improvements owned or rented during the
 4 taxable year and used by the claimant to produce, grow, or extract qualified
 5 production property.

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, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145; 2013 a. 166 s. 77; s. 35.17 correction in (3q) (b) (intro.), (5n) (a) (intro.).

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

7 71.07 (5n) (a) 3. "Direct costs" includes all of the claimant's ordinary and
 8 necessary expenses paid or incurred during the taxable year in carrying on the trade
 9 or business that are deductible as business expenses under section 162 of the
 10 Internal Revenue Code and identified as direct costs in the claimant's managerial or
 11 cost accounting records.

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, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145; 2013 a. 166 s. 77; s. 35.17 correction in (3q) (b) (intro.), (5n) (a) (intro.).

12 **SECTION 3.** 71.07 (5n) (a) 4. of the statutes is amended to read:

13 71.07 (5n) (a) 4. "Indirect costs" includes all of the claimant's ordinary and
 14 necessary expenses paid or incurred during the taxable year in carrying on the trade
 15 or business that are deductible as business expenses under section 162 of the
 16 Internal Revenue Code, other than cost of goods sold and direct costs, and identified
 17 as indirect costs in the claimant's managerial or cost accounting records.

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, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145; 2013 a. 166 s. 77; s. 35.17 correction in (3q) (b) (intro.), (5n) (a) (intro.).

18 **SECTION 4.** 71.07 (5n) (a) 5. d. of the statutes is created to read:

19 71.07 (5n) (a) 5. d. For purposes of subd. 5^o a claimant who the department
 20 approves to be classified as a manufacturer for purposes of s. 70.995, but who is not
 21 eligible to be listed on the department's manufacturing roll until January 1 of the

1 following year, may claim the credit in the year in which the manufacturing
2 classification is approved. ✓

3 **SECTION 5.** 71.28 (5n) (a) 1. a. ✓ of the statutes is amended to read:

4 71.28 (5n) (a) 1. a. "Agriculture property factor" means a fraction, the
5 numerator of which is the average value of the claimant's real property and
6 improvements assessed under s. 70.32 (2) (a) 4. to 7. ✓ owned or rented and used in
7 this state by the claimant during the taxable year to produce, grow, or extract
8 qualified production property, and the denominator of which is the average value of
9 all of the claimant's real property and improvements owned or rented during the
10 taxable year and used by the claimant to produce, grow, or extract qualified
11 production property.

History: 1987 a. 312; 1987 a. 411 ss. 88, 130 to 139; 1987 a. 422; 1989 a. 31, 44, 56, 100, 336, 359; 1991 a. 39, 292; 1993 a. 16, 112, 232, 491; 1995 a. 2; 1995 a. 27 ss. 3399r to 3404c, 9116 (5); 1995 a. 209, 227; 1997 a. 27, 41, 237, 299; 1999 a. 5, 9; 2001 a. 16; 2003 a. 72, 99, 135, 255, 267, 326; 2005 a. 25, 74, 97, 361, 387, 452, 479, 483, 487; 2007 a. 20, 96, 97, 100; 2009 a. 2, 11, 28, 180, 185, 265, 267, 269, 276, 294, 295, 332, 401; 2011 a. 3, 15, 32, 67, 212, 213, 232, 237; 2011 a. 260 s. 80; 2013 a. 20, 54, 62, 116, 145, 165; 2013 a. 166 ss. 26, 77.

12 **SECTION 6.** 71.28 (5n) (a) 3. ✓ of the statutes is amended to read:

13 71.28 (5n) (a) 3. "Direct costs" includes all of the claimant's ordinary and
14 necessary expenses paid or incurred during the taxable year in carrying on the trade
15 or business that are deductible as business expenses ✓ under ~~section 162~~ of the
16 Internal Revenue Code and identified as direct costs in the claimant's managerial or
17 cost accounting records.

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18 **SECTION 7.** 71.28 (5n) (a) 4. of the statutes is amended to read:

19 71.28 (5n) (a) 4. "Indirect costs" includes all of the claimant's ordinary and
20 necessary expenses paid or incurred during the taxable year in carrying on the trade
21 or business that are deductible as business expenses ✓ under ~~section 162~~ of the

1 Internal Revenue Code, other than cost of goods sold and direct costs, and identified
2 as indirect costs in the claimant's managerial or cost accounting records.

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3 **SECTION 8. 71.28 (5n) (a) 5. d.** of the statutes is created to read:

4 **71.28 (5n) (a) 5. d.** For purposes of subd. 5, a claimant who the department
5 approves to be classified as a manufacturer for purposes of s. 70.995, but who is not
6 eligible to be listed on the department's manufacturing roll until January 1 of the
7 following year, may claim the credit in the year in which the manufacturing
8 classification is approved.

9 **SECTION 9337. Initial applicability; Revenue.**

10 (1) MANUFACTURING AND AGRICULTURE CREDIT. The treatment of sections 71.07
11 (5n) (a) 1. a., 3., 4., and 5. d. and 71.28 (5n) (a) 1. a., 3., 4., and 5. d. and of the statutes
12 first applies retroactively to taxable years beginning on January 1, 2013.

13 **SECTION 9437. Effective dates; Revenue.**

14 (1) MANUFACTURING AND AGRICULTURE CREDIT. The treatment of sections 71.07
15 (5n) (a) 1. a., 3., 4., and 5. d. and 71.28 (5n) (a) 1. a., 3., 4., and 5. d. of the statutes takes
16 effect retroactively on January 1, 2013.

17 (END)



State of Wisconsin
2015 - 2016 LEGISLATURE



LRB-0281/P1
JK;jld:jf

DOA:.....Quinn, BB0050 – Technical modifications to manufacturing and agriculture credit

FOR 2015-2017 BUDGET – NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

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

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2 qualified production property, and the denominator of which is the average value of
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18 **SECTION 4.** 71.07 (5n) (a) 5. d. of the statutes is created to read:

19 71.07 (5n) (a) 5. d. For purposes of subd. 5. a., a claimant who the department
20 approves to be classified as a manufacturer for purposes of s. 70.995, but who is not
21 eligible to be listed on the department's manufacturing roll until January 1 of the
22 following year, may claim the credit in the year in which the manufacturing
23 classification is approved.

24 **SECTION 5.** 71.28 (5n) (a) 1. a. of the statutes is amended to read:

1 71.28 (5n) (a) 1. a. “Agriculture property factor” means a fraction, the
2 numerator of which is the average value of the claimant’s real property and
3 improvements assessed under s. 70.32 (2) (a) 4. to 7., owned or rented and used in
4 this state by the claimant during the taxable year to produce, grow, or extract
5 qualified production property, and the denominator of which is the average value of
6 all of the claimant’s real property and improvements owned or rented during the
7 taxable year and used by the claimant to produce, grow, or extract qualified
8 production property.

9 **SECTION 6.** 71.28 (5n) (a) 3. of the statutes is amended to read:

10 71.28 (5n) (a) 3. “Direct costs” includes all of the claimant’s ordinary and
11 necessary expenses paid or incurred during the taxable year in carrying on the trade
12 or business that are deductible as business expenses under ~~section 162~~ of the
13 Internal Revenue Code and identified as direct costs in the claimant’s managerial or
14 cost accounting records.

15 **SECTION 7.** 71.28 (5n) (a) 4. of the statutes is amended to read:

16 71.28 (5n) (a) 4. “Indirect costs” includes all of the claimant’s ordinary and
17 necessary expenses paid or incurred during the taxable year in carrying on the trade
18 or business that are deductible as business expenses under ~~section 162~~ of the
19 Internal Revenue Code, other than cost of goods sold and direct costs, and identified
20 as indirect costs in the claimant’s managerial or cost accounting records.

21 **SECTION 8.** 71.28 (5n) (a) 5. d. of the statutes is created to read:

22 71.28 (5n) (a) 5. d. For purposes of subd. 5. a., a claimant who the department
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6 first applies retroactively to taxable years beginning on January 1, 2013.

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8 (1) MANUFACTURING AND AGRICULTURE CREDIT. The treatment of sections 71.07
9 (5n) (a) 1. a., 3., 4., and 5. d. and 71.28 (5n) (a) 1. a., 3., 4., and 5. d. of the statutes
10 takes effect retroactively to January 1, 2013.

11 (END)