



State of Wisconsin
2003 - 2004 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2003 ASSEMBLY BILL 507**

November 4, 2003 – Offered by Representatives WIECKERT and KAUFERT.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.07 (3s) (c) 1., 71.08 (1) (intro.), 71.21 (4),
2 71.26 (2) (a), 71.28 (3) (c) 1., 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (3) (c) 1., 77.54
3 (2) and 77.92 (4); and *to create* 71.05 (6) (b) 3m., 71.07 (3s) (c) 7., 71.07 (3t),
4 71.10 (4) (gbb), 71.28 (3) (c) 7., 71.28 (3t), 71.30 (3) (bb), 71.45 (2) (a) 10b., 71.47
5 (3) (c) 7., 71.47 (3t), 71.49 (1) (bb), 77.54 (30) (a) 6. and 560.28 of the statutes;
6 **relating to:** the income and franchise tax credit for sales tax and use tax paid
7 on fuel and electricity consumed in manufacturing and granting rule-making
8 authority.

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

9 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:
10 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
11 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s)~~, and (3t) and not passed

1 through by a partnership, limited liability company, or tax-option corporation that
2 has added that amount to the partnership's, company's, or tax-option corporation's
3 income under s. 71.21 (4) or 71.34 (1) (g).

4 **SECTION 2.** 71.05 (6) (b) 3m. of the statutes is created to read:

5 71.05 (6) (b) 3m. As provided under s. 71.07 (3s) (c) 7., the amount of the credit
6 under s. 71.07 (3s) that the taxpayer added back to income under s. 71.05 (6) (a) at
7 the time that the taxpayer first claimed the credit.

8 **SECTION 3.** 71.07 (3s) (c) 1. of the statutes is amended to read:

9 71.07 (3s) (c) 1. The credit under par. (b), including any credits carried over,
10 may be offset only against the amount of the tax imposed upon or measured by the
11 business operations of the claimant in which the fuel and electricity are consumed.
12 If Except as provided in subd. 7., if the credit computed is not entirely offset against
13 taxes otherwise due, the unused balance shall be carried forward and credited
14 against taxes otherwise due for the following 15 taxable years to the extent not offset
15 by taxes otherwise due in all intervening years between the year in which the
16 expense was incurred and the year in which the carry-forward credit is claimed.

17 **SECTION 4.** 71.07 (3s) (c) 7. of the statutes is created to read:

18 71.07 (3s) (c) 7. No credit may be claimed under this subsection for taxable
19 years that begin after December 31, 2005. For credits that are claimed but unused
20 under this subsection for taxable years that begin before January 1, 2006, up to 50
21 percent may be used in each of the following 2 taxable years if the taxpayer has
22 \$25,000 or less in unused credits as of January 1, 2006. For taxable years beginning
23 after December 31, 2005, and before January 1, 2008, a taxpayer who has more than
24 \$25,000 in unused credits as of January 1, 2006, may deduct an amount in each year
25 that is equal to 50 percent of the amount the taxpayer added back to income under

1 s. 71.05 (6) (a) at the time that the taxpayer first claimed the credit or, with regard
2 to credits passed through from a partnership, limited liability company, or
3 tax-option corporation, 50 percent of the amount that the entity added back to its
4 income and was included in the partner's, member's, or shareholder's Wisconsin net
5 income at the time that the credit was first claimed.

6 **SECTION 5.** 71.07 (3t) of the statutes is created to read:

7 71.07 (3t) MANUFACTURING INVESTMENT CREDIT. (a) *Definition.* In this
8 subsection, "claimant" means a person who files a claim under this subsection.

9 (b) *Credit.* Subject to the limitations provided in this subsection and in s.
10 560.28, for taxable years beginning after December 31, 2007, a claimant may claim
11 as a credit, amortized over 15 taxable years starting with the taxable year beginning
12 after December 31, 2007, against the tax imposed under s. 71.02 and 71.08, up to the
13 amount of the tax, an amount equal to the claimant's unused credits under s. 71.07
14 (3s).

15 (c) *Limitations.* 1. No credit may be claimed under this subsection unless the
16 claimant submits with the claimant's return a copy of the claimant's certification by
17 the department of commerce under s. 560.28, except that, with regard to credits
18 claimed by partners of a partnership, members of a limited liability company, or
19 shareholders of a tax-option corporation, the entity shall provide a copy of its
20 certification under s. 560.28 to the partner, member, or shareholder to submit with
21 his or her return.

22 2. Partnerships, limited liability companies, and tax-option corporations may
23 not claim the credit under this subsection, but the eligibility for, and the amount of,
24 the credit are based on the amount of their unused credits under s. 71.07 (3s). A
25 partnership, limited liability company, or tax-option corporation shall compute the

1 amount of credit that each of its partners, members, or shareholders may claim and
2 shall provide that information to each of them. Partners, members of limited liability
3 companies, and shareholders of tax-option corporations may claim the credit in
4 proportion to their ownership interest.

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

7 2. The amount of any unused credit under this subsection in any taxable year
8 may be carried forward to subsequent taxable years.

9 **SECTION 6.** 71.08 (1) (intro.) of the statutes is amended to read:

10 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
11 couple filing jointly, trust or estate under s. 71.02, not considering the credits under
12 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (3t),
13 (6), ~~(6s)~~, and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) ~~and~~,
14 (3), ~~and (3t)~~ and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m) ~~and~~, (3),
15 ~~and (3t)~~ and subchs. VIII and IX and payments to other states under s. 71.07 (7), is
16 less than the tax under this section, there is imposed on that natural person, married
17 couple filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative
18 minimum tax computed as follows:

19 **SECTION 7.** 71.10 (4) (gbb) of the statutes is created to read:

20 71.10 (4) (gbb) Manufacturing investment credit under s. 71.07 (3t).

21 **SECTION 8.** 71.21 (4) of the statutes is amended to read:

22 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
23 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and~~, (3s), ~~and (3t)~~ and passed through to
24 partners shall be added to the partnership's income.

25 **SECTION 9.** 71.26 (2) (a) of the statutes is amended to read:

1 71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means
2 the gross income as computed under the Internal Revenue Code as modified under
3 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
4 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
5 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
6 under this paragraph at the time that the taxpayer first claimed the credit plus the
7 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
8 (1ds), (1dx), ~~and (3g), and (3t)~~ and not passed through by a partnership, limited
9 liability company, or tax-option corporation that has added that amount to the
10 partnership’s, limited liability company’s, or tax-option corporation’s income under
11 s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or other disposition
12 of assets the gain from which would be wholly exempt income, as defined in sub. (3)
13 (L), if the assets were sold or otherwise disposed of at a gain and minus deductions,
14 as computed under the Internal Revenue Code as modified under sub. (3), plus or
15 minus, as appropriate, an amount equal to the difference between the federal basis
16 and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed
17 of in a taxable transaction during the taxable year, except as provided in par. (b) and
18 s. 71.45 (2) and (5).

19 **SECTION 10.** 71.28 (3) (c) 1. of the statutes is amended to read:

20 71.28 (3) (c) 1. If Except as provided in subd. 7., if the credit computed under
21 par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise
22 due, the unused balance shall be carried forward and credited against Wisconsin
23 income or franchise taxes otherwise due for the following 15 taxable years to the
24 extent not offset by these taxes otherwise due in all intervening years between the

1 year in which the expense was incurred and the year in which the carry-forward
2 credit is claimed.

3 **SECTION 11.** 71.28 (3) (c) 7. of the statutes is created to read:

4 71.28 (3) (c) 7. No credit may be claimed under this subsection for taxable years
5 that begin after December 31, 2005. For credits that are claimed but unused under
6 this subsection for taxable years that begin before January 1, 2006, up to 50 percent
7 may be used in each of the following 2 taxable years if the taxpayer has \$25,000 or
8 less in unused credits as of January 1, 2006. For taxable years beginning after
9 December 31, 2005, and before January 1, 2008, a taxpayer who has more than
10 \$25,000 in unused credits as of January 1, 2006, may deduct an amount in each year
11 that is equal to 50 percent of the amount the taxpayer added back to income under
12 s. 71.26 (2) (a) at the time that the taxpayer first claimed the credit or, with regard
13 to credits passed through from a partnership, limited liability company, or
14 tax-option corporation, 50 percent of the amount that the entity added back to its
15 income and was included in the partner's, member's, or shareholder's Wisconsin net
16 income at the time that the credit was first claimed.

17 **SECTION 12.** 71.28 (3t) of the statutes is created to read:

18 71.28 (3t) MANUFACTURING INVESTMENT CREDIT. (a) *Definition.* In this
19 subsection, "claimant" means a person who files a claim under this subsection.

20 (b) *Credit.* Subject to the limitations provided in this subsection and in s.
21 560.28, for taxable years beginning after December 31, 2007, a claimant may claim
22 as a credit, amortized over 15 taxable years starting with the taxable year beginning
23 after December 31, 2007, against the tax imposed under s. 71.23, up to the amount
24 of the tax, an amount equal to the claimant's unused credits under s. 71.28 (3).

1 (c) *Limitations.* 1. No credit may be claimed under this subsection unless the
2 claimant submits with the claimant's return a copy of the claimant's certification by
3 the department of commerce under s. 560.28, except that, with regard to credits
4 claimed by partners of a partnership, members of a limited liability company, or
5 shareholders of a tax-option corporation, the entity shall provide a copy of its
6 certification under s. 560.28 to the partner, member, or shareholder to submit with
7 his or her return.

8 2. Partnerships, limited liability companies, and tax-option corporations may
9 not claim the credit under this subsection, but the eligibility for, and the amount of,
10 the credit are based on the amount of their unused credits under s. 71.28 (3). A
11 partnership, limited liability company, or tax-option corporation shall compute the
12 amount of credit that each of its partners, members, or shareholders may claim and
13 shall provide that information to each of them. Partners, members of limited liability
14 companies, and shareholders of tax-option corporations may claim the credit in
15 proportion to their ownership interest.

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

18 2. The amount of any unused credit under this subsection in any taxable year
19 may be carried forward to subsequent taxable years.

20 **SECTION 13.** 71.30 (3) (bb) of the statutes is created to read:

21 71.30 (3) (bb) Manufacturing investment credit under s. 71.28 (3t).

22 **SECTION 14.** 71.34 (1) (g) of the statutes is amended to read:

23 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
24 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
25 (3g), and (3t) and passed through to shareholders.

1 **SECTION 15.** 71.45 (2) (a) 10. of the statutes is amended to read:

2 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
3 computed under s. 71.47 (1dd) to (1dx) and not passed through by a partnership,
4 limited liability company or tax-option corporation that has added that amount to
5 the partnership's, limited liability company's or tax-option corporation's income
6 under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under s. 71.47
7 (1), (3), ~~(3t)~~, (4) and (5).

8 **SECTION 16.** 71.45 (2) (a) 10b. of the statutes is created to read:

9 71.45 (2) (a) 10b. By subtracting from federal taxable income, as provided
10 under s. 71.47 (3) (c) 7., the amount of the credit under s. 71.47 (3) that the taxpayer
11 added to income under subd. 10. at the time that the taxpayer first claimed the credit.

12 **SECTION 17.** 71.47 (3) (c) 1. of the statutes is amended to read:

13 71.47 (3) (c) 1. If Except as provided in subd. 7., if the credit computed under
14 par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise
15 due, the unused balance shall be carried forward and credited against Wisconsin
16 income or franchise taxes otherwise due for the following 15 taxable years to the
17 extent not offset by these taxes otherwise due in all intervening years between the
18 year in which the expense was incurred and the year in which the carry-forward
19 credit is claimed.

20 **SECTION 18.** 71.47 (3) (c) 7. of the statutes is created to read:

21 71.47 (3) (c) 7. No credit may be claimed under this subsection for taxable years
22 that begin after December 31, 2005. For credits that are claimed but unused under
23 this subsection for taxable years that begin before January 1, 2005, up to 50 percent
24 may be used in each of the following 2 taxable years if the taxpayer has \$25,000 or
25 less in unused credits as of January 1, 2006. For taxable years beginning after

1 December 31, 2005, and before January 1, 2008, a taxpayer who has more than
2 \$25,000 in unused credits as of January 1, 2006, may deduct an amount in each year
3 that is equal to 50 percent of the amount the taxpayer added back to income under
4 s. 71.45 (2) (a) 10. at the time that the taxpayer first claimed the credit or, with regard
5 to credits passed through from a partnership, limited liability company, or
6 tax-option corporation, 50 percent of the amount that the entity added back to its
7 income and was included in the partner's, member's, or shareholder's Wisconsin net
8 income at the time that the credit was first claimed.

9 **SECTION 19.** 71.47 (3t) of the statutes is created to read:

10 71.47 (3t) MANUFACTURING INVESTMENT CREDIT. (a) *Definition.* In this
11 subsection, "claimant" means a person who files a claim under this subsection.

12 (b) *Credit.* Subject to the limitations provided in this subsection and in s.
13 560.28, for taxable years beginning after December 31, 2007, a claimant may claim
14 as a credit, amortized over 15 taxable years starting with the taxable year beginning
15 after December 31, 2007, against the tax imposed under s. 71.43, up to the amount
16 of the tax, an amount equal to the claimant's unused credits under s. 71.47 (3).

17 (c) *Limitations.* 1. No credit may be claimed under this subsection unless the
18 claimant submits with the claimant's return a copy of the claimant's certification by
19 the department of commerce under s. 560.28, except that, with regard to credits
20 claimed by partners of a partnership, members of a limited liability company, or
21 shareholders of a tax-option corporation, the entity shall provide a copy of its
22 certification under s. 560.28 to the partner, member, or shareholder to submit with
23 his or her return.

24 2. Partnerships, limited liability companies, and tax-option corporations may
25 not claim the credit under this subsection, but the eligibility for, and the amount of,

1 the credit are based on the amount of their unused credits under s. 71.47 (3). A
2 partnership, limited liability company, or tax-option corporation shall compute the
3 amount of credit that each of its partners, members, or shareholders may claim and
4 shall provide that information to each of them. Partners, members of limited liability
5 companies, and shareholders of tax-option corporations may claim the credit in
6 proportion to their ownership interest.

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

9 2. The amount of any unused credit under this subsection in any taxable year
10 may be carried forward to subsequent taxable years.

11 **SECTION 20.** 71.49 (1) (bb) of the statutes is created to read:

12 71.49 (1) (bb) Manufacturing investment credit under s. 71.47 (3t).

13 **SECTION 21.** 77.54 (2) of the statutes is amended to read:

14 77.54 (2) The gross receipts from sales of and the storage, use or other
15 consumption of tangible personal property becoming an ingredient or component
16 part of an article of tangible personal property or which is consumed or destroyed or
17 loses its identity in the manufacture of tangible personal property in any form
18 destined for sale, ~~but this exemption shall not include fuel or electricity~~ except as
19 provided in sub. (30) (a) 6.

20 **SECTION 22.** 77.54 (30) (a) 6. of the statutes is created to read:

21 77.54 (30) (a) 6. Fuel and electricity sold for use in manufacturing tangible
22 personal property in this state.

23 **SECTION 23.** 77.92 (4) of the statutes is amended to read:

24 77.92 (4) “Net business income”, with respect to a partnership, means taxable
25 income as calculated under section 703 of the Internal Revenue Code; plus the items

1 of income and gain under section 702 of the Internal Revenue Code, including taxable
2 state and municipal bond interest and excluding nontaxable interest income or
3 dividend income from federal government obligations; minus the items of loss and
4 deduction under section 702 of the Internal Revenue Code, except items that are not
5 deductible under s. 71.21; plus guaranteed payments to partners under section 707
6 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
7 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s), and (3t)~~; and plus or
8 minus, as appropriate, transitional adjustments, depreciation differences, and basis
9 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
10 loss, and deductions from farming. “Net business income”, with respect to a natural
11 person, estate, or trust, means profit from a trade or business for federal income tax
12 purposes and includes net income derived as an employee as defined in section 3121
13 (d) (3) of the Internal Revenue Code.

14 **SECTION 24.** 560.28 of the statutes is created to read:

15 **560.28 Manufacturing investment credit. (1) DEFINITION.** In this section,
16 “full-time job” means a regular, nonseasonal full-time position in which an
17 individual, as a condition of employment, is required to work at least 35 hours in a
18 week.

19 **(2) CERTIFICATION.** The department shall promulgate rules for the certification
20 of businesses as eligible to claim tax credits under s. 71.07 (3t), 71.28 (3t), or 71.47
21 (3t). The rules shall permit a business to obtain a certification only if the person
22 satisfies one of the following conditions:

23 (a) The business has retained from the effective date of this paragraph
24 [revisor inserts date], 100 percent of the business’s full-time jobs in this state.

1 (b) The business's average annual investment in this state since January 1,
2 2003, is equal to no less than 2 percent of the total book value of the business's
3 depreciable assets in facilities that are based in this state.

4 (c) The business's average annual investment in this state since January 1,
5 2003, is no less than \$5,000,000.

6 (d) Any other criteria that is specific to an industry, as promulgated by rule by
7 the department of commerce, in consultation with the department of revenue.

8 **SECTION 25. Initial applicability.**

9 (1) The treatment of section 77.54 (2) and (30) (a) 6. of the statutes first applies
10 to fuel and electricity sold on January 1, 2006.

11 (END)