



State of Wisconsin
2023 - 2024 LEGISLATURE

LRBs0302/1
KP:cdc

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 970**

February 15, 2024 - Offered by Senator TESTIN.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.10 (4) (i), 71.21 (4) (a), 71.21 (6) (d) 3., 71.26
2 (2) (a) 4., 71.30 (3) (f), 71.34 (1k) (g), 71.365 (4m) (d) 2., 71.45 (2) (a) 10. and 71.49
3 (1) (f); and **to create** 20.835 (2) (de), 71.07 (11), 71.28 (11), 71.47 (11) and 73.03
4 (78) of the statutes; **relating to:** creating a video game production credit and
5 making an appropriation.

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

6 **SECTION 1.** 20.835 (2) (de) of the statutes is created to read:
7 20.835 (2) (de) *Video game production credit.* A sum sufficient to make the
8 payments under ss. 71.07 (11), 71.28 (11), and 71.47 (11).

9 **SECTION 2.** 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 (2dm),
11 (2dx), (2dy), (3g), (3h), (3n), (3q), (3s), (3t), (3w), (3wm), (3y), (4k), (4n), (5e), (5i), (5j),

1 (5k), (5r), (5rm), (6n), ~~and (10)~~, and (11) and not passed through by a partnership,
2 limited liability company, or tax-option corporation that has added that amount to
3 the partnership's, company's, or tax-option corporation's income under s. 71.21 (4)
4 or 71.34 (1k) (g).

5 **SECTION 3.** 71.07 (11) of the statutes is created to read:

6 71.07 (11) VIDEO GAME PRODUCTION CREDIT. (a) *Definitions.* In this subsection:

7 1. "Claimant" means a person certified under s. 73.03 (78).

8 2. "Eligible expenditures" means amounts paid by the claimant directly
9 relating to qualifying activities in this state, excluding any of the following:

10 a. Wages.

11 b. Expenditures used to claim another credit under this chapter.

12 c. Amounts paid to a person certified to receive a credit under this subsection
13 or s. 71.28 (11) or 71.47 (11).

14 d. Amounts paid to persons as a result of their participation in profits from
15 video game production, such as commissions, royalties, or profit-sharing
16 agreements.

17 e. Amounts paid for capital expenditures, such as buildings and equipment.

18 f. Amounts paid to purchase a copyright, trademark, or tradename.

19 g. Amounts paid for management or other administrative activities.

20 h. Amounts paid for marketing, promotion, or distribution.

21 i. Amounts paid for food or entertainment.

22 j. Interest paid on loans or other credit arrangements.

23 3. "Eligible wages" means wages paid by the claimant directly relating to
24 qualifying activities in this state.

1 4. “Qualifying activities” means developing, producing, or creating a video
2 game product or platform.

3 5. “Video game product or platform” means an electronic game developed for
4 commercial distribution and entertainment that involves interaction with a user
5 interface to generate visual feedback on a video device. “Video game product or
6 platform” does not include any of the following:

7 a. A product or platform that contains content in violation of s. 944.21.

8 b. A product or platform designed for political, religious, or educational
9 purposes.

10 c. A product or platform regulated under chs. 562 to 569.

11 d. A product or platform designed to provide information about one or more
12 individuals or businesses, such as marketing and promotional websites or
13 microsites.

14 e. A product or platform designed for social media or interpersonal
15 communications, such as podcasting, interactive advertising, journalism, video
16 conferencing, wireless telecommunications, text-based channels, chat rooms, or
17 broadcast or streamed viewing enhancements.

18 f. A product or platform designed to stream linear media such as audio, video,
19 or pictures.

20 g. Small-scale electronic games embedded and used exclusively in advertising.

21 6. “Wages” means wages, as defined in s. 71.63 (6), that are subject to
22 withholding under subch. X and for which a statement under s. 71.65 (1) is furnished.

23 (b) *Filing claims.* Subject to the limitations provided in this subsection, for
24 taxable years beginning after December 31, 2023, a claimant may claim as a credit
25 against the tax imposed under s. 71.02 any of the following amounts:

1 1. An amount equal to 30 percent of the eligible wages paid by the person in the
2 taxable year.

3 2. An amount equal to 30 percent of the eligible expenditures incurred by the
4 claimant in the taxable year.

5 (c) *Limitations.* 1. No credit may be allowed under this subsection unless the
6 claimant files an application with the department, at the time and in the manner
7 prescribed by the department, and the department approves the application. The
8 claimant shall submit a copy of the approved application with the claimant's return.

9 2. No credit may be allowed under this subsection unless the claimant retains
10 at the claimant's sole expense a certified public accountant licensed under ch. 442 to
11 review and certify to the department the total eligible expenditures incurred and
12 total eligible wages paid in the taxable and to conduct the audit required under s.
13 73.03 (78) (c). No audit of a claimant required under s. 73.03 (78) (c) may be
14 performed by a certified public accountant that is part of an accounting entity that
15 is not determined by the department to be independent of the claimant, consistent
16 with s. 442.10 and as provided in the code of professional conduct of the American
17 Institute of Certified Public Accountants, or its successor organization, or as
18 otherwise determined by the department. The certified public accountant shall do
19 all of the following:

20 a. Conduct the audit required under s. 73.03 (78) (c) according to any rules
21 promulgated by the department.

22 b. Verify each reported expenditure that is included in the audit and identify
23 and exclude each expenditure that does not satisfy this subsection.

24 3. Eligible expenditures incurred and eligible wages paid by a tax-option
25 corporation, partnership, or limited liability company that is treated as a

1 partnership may be claimed as a credit under this subsection by that corporation's
2 shareholders, that partnership's partners, or that limited liability company's
3 members who are residents of this state and who otherwise qualify under this
4 subsection, unless the tax-option corporation, partnership, or limited liability
5 company has made an election under s. 71.21 (6) (a) or 71.365 (4m) (a).

6 4. If a tax-option corporation, partnership, or limited liability company makes
7 an election under s. 71.21 (6) (a) or 71.365 (4m) (a), that tax-option corporation,
8 partnership, or limited liability company may claim the credit under this subsection.

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

11 2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise
12 due under this chapter or no tax is due under this chapter, the amount of the claim
13 not used to offset the tax due shall be certified by the department of revenue to the
14 department of administration for payment by check, share draft, or other draft
15 drawn from the appropriation account under s. 20.835 (2) (de). Notwithstanding s.
16 71.82 (1) (b), no interest shall be added to amounts certified under this subdivision.

17 **SECTION 4.** 71.10 (4) (i) of the statutes is amended to read:

18 71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland
19 preservation credit under ss. 71.57 to 71.61, farmland preservation credit, 2010 and
20 beyond under s. 71.613, homestead credit under subch. VIII, jobs tax credit under s.
21 71.07 (3q), business development credit under s. 71.07 (3y), research credit under s.
22 71.07 (4k) (e) 2. a., veterans and surviving spouses property tax credit under s. 71.07
23 (6e), enterprise zone jobs credit under s. 71.07 (3w), electronics and information
24 technology manufacturing zone credit under s. 71.07 (3wm), earned income tax

1 credit under s. 71.07 (9e), video game production credit under s. 71.07 (11), estimated
2 tax payments under s. 71.09, and taxes withheld under subch. X.

3 **SECTION 5.** 71.21 (4) (a) of the statutes is amended to read:

4 71.21 (4) (a) The amount of the credits computed by a partnership under s.
5 71.07 (2dm), (2dx), (2dy), (3g), (3h), (3n), (3q), (3s), (3t), (3w), (3wm), (3y), (4k), (4n),
6 (5e), (5g), (5i), (5j), (5k), (5r), (5rm), (6n), ~~and (10)~~, and (11) and passed through to
7 partners shall be added to the partnership's income.

8 **SECTION 6.** 71.21 (6) (d) 3. of the statutes is amended to read:

9 71.21 (6) (d) 3. Except as provided in s. 71.07 (7) (b) 3. and (11) (c) 4., the tax
10 credits under this chapter may not be claimed by the partnership.

11 **SECTION 7.** 71.26 (2) (a) 4. of the statutes is amended to read:

12 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dm),
13 (1dx), (1dy), (3g), (3h), (3n), (3q), (3t), (3w), (3wm), (3y), (5e), (5g), (5i), (5j), (5k), (5r),
14 (5rm), (6n), ~~and (10)~~, and (11) and not passed through by a partnership, limited
15 liability company, or tax-option corporation that has added that amount to the
16 partnership's, limited liability company's, or tax-option corporation's income under
17 s. 71.21 (4) or 71.34 (1k) (g).

18 **SECTION 8.** 71.28 (11) of the statutes is created to read:

19 71.28 (11) VIDEO GAME PRODUCTION CREDIT. (a) *Definitions.* In this subsection:

20 1. "Claimant" means a person certified under s. 73.03 (78).

21 2. "Eligible expenditures" means amounts paid by the claimant directly
22 relating to qualifying activities in this state, excluding any of the following:

23 a. Wages.

24 b. Expenditures used to claim another credit under this chapter.

1 c. Amounts paid to a person certified to receive a credit under this subsection
2 or s. 71.07 (11) or 71.47 (11).

3 d. Amounts paid to persons as a result of their participation in profits from
4 video game production, such as commissions, royalties, or profit-sharing
5 agreements.

6 e. Amounts paid for capital expenditures, such as buildings and equipment.

7 f. Amounts paid to purchase a copyright, trademark, or tradename.

8 g. Amounts paid for management or other administrative activities.

9 h. Amounts paid for marketing, promotion, or distribution.

10 i. Amounts paid for food or entertainment.

11 j. Interest paid on loans or other credit arrangements.

12 3. “Eligible wages” means wages paid by the claimant directly relating to
13 qualifying activities in this state.

14 4. “Qualifying activities” means developing, producing, or creating a video
15 game product or platform.

16 5. “Video game product or platform” means an electronic game developed for
17 commercial distribution and entertainment that involves interaction with a user
18 interface to generate visual feedback on a video device. “Video game product or
19 platform” does not include any of the following:

20 a. A product or platform that contains content in violation of s. 944.21.

21 b. A product or platform designed for political, religious, or educational
22 purposes.

23 c. A product or platform regulated under chs. 562 to 569.

1 d. A product or platform designed to provide information about one or more
2 individuals or businesses, such as marketing and promotional websites or
3 microsites.

4 e. A product or platform designed for social media or interpersonal
5 communications, such as podcasting, interactive advertising, journalism, video
6 conferencing, wireless telecommunications, text-based channels, chat rooms, or
7 broadcast or streamed viewing enhancements.

8 f. A product or platform designed to stream linear media such as audio, video,
9 or pictures.

10 g. Small-scale electronic games embedded and used exclusively in advertising.

11 6. “Wages” means wages, as defined in s. 71.63 (6), that are subject to
12 withholding under subch. X and for which a statement under s. 71.65 (1) is furnished.

13 (b) *Filing claims.* Subject to the limitations provided in this subsection, for
14 taxable years beginning after December 31, 2023, a claimant may claim as a credit
15 against the tax imposed under s. 71.23 any of the following amounts:

16 1. An amount equal to 30 percent of the eligible wages paid by the person in the
17 taxable year.

18 2. An amount equal to 30 percent of the eligible expenditures incurred by the
19 claimant in the taxable year.

20 (c) *Limitations.* 1. No credit may be allowed under this subsection unless the
21 claimant files an application with the department, at the time and in the manner
22 prescribed by the department, and the department approves the application. The
23 claimant shall submit a copy of the approved application with the claimant’s return.

24 2. No credit may be allowed under this subsection unless the claimant retains
25 at the claimant’s sole expense a certified public accountant licensed under ch. 442 to

1 review and certify to the department the total eligible expenditures incurred and
2 total eligible wages paid in the taxable and to conduct the audit required under s.
3 73.03 (78) (c). No audit of a claimant required under s. 73.03 (78) (c) may be
4 performed by a certified public accountant that is part of an accounting entity that
5 is not determined by the department to be independent of the claimant, consistent
6 with s. 442.10 and as provided in the code of professional conduct of the American
7 Institute of Certified Public Accountants, or its successor organization, or as
8 otherwise determined by the department. The certified public accountant shall do
9 all of the following:

10 a. Conduct the audit required under s. 73.03 (78) (c) according to any rules
11 promulgated by the department.

12 b. Verify each reported expenditure that is included in the audit and identify
13 and exclude each expenditure that does not satisfy this subsection.

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

16 2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise
17 due under this chapter or no tax is due under this chapter, the amount of the claim
18 not used to offset the tax due shall be certified by the department of revenue to the
19 department of administration for payment by check, share draft, or other draft
20 drawn from the appropriation account under s. 20.835 (2) (de). Notwithstanding s.
21 71.82 (1) (b), no interest shall be added to amounts certified under this subdivision.

22 **SECTION 9.** 71.30 (3) (f) of the statutes is amended to read:

23 71.30 (3) (f) The total of farmland preservation credit under subch. IX, jobs
24 credit under s. 71.28 (3q), enterprise zone jobs credit under s. 71.28 (3w), electronics
25 and information technology manufacturing zone credit under s. 71.28 (3wm),

1 business development credit under s. 71.28 (3y), research credit under s. 71.28 (4) (k)
2 1., video game production credit under s. 71.28 (11), and estimated tax payments
3 under s. 71.29.

4 **SECTION 10.** 71.34 (1k) (g) of the statutes is amended to read:

5 71.34 **(1k)** (g) An addition shall be made for credits computed by a tax-option
6 corporation under s. 71.28 (1dm), (1dx), (1dy), (3), (3g), (3h), (3n), (3q), (3t), (3w),
7 (3wm), (3y), (4), (5), (5e), (5g), (5i), (5j), (5k), (5r), (5rm), (6n), ~~and (10)~~, and (11) and
8 passed through to shareholders.

9 **SECTION 11.** 71.365 (4m) (d) 2. of the statutes is amended to read:

10 71.365 **(4m)** (d) 2. Except as provided in s. 71.07 (7) (b) 3. and (11) (c) 4., the tax
11 credits under this chapter may not be claimed by the tax-option corporation.

12 **SECTION 12.** 71.45 (2) (a) 10. of the statutes is amended to read:

13 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
14 computed under s. 71.47 (1dm) to (1dy), (3g), (3h), (3n), (3q), (3w), (3y), (5e), (5g), (5i),
15 (5j), (5k), (5r), (5rm), (6n), ~~and (10)~~, and (11) and not passed through by a partnership,
16 limited liability company, or tax-option corporation that has added that amount to
17 the partnership's, limited liability company's, or tax-option corporation's income
18 under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47
19 (3), (3t), (4), (4m), and (5).

20 **SECTION 13.** 71.47 (11) of the statutes is created to read:

21 71.47 **(11)** VIDEO GAME PRODUCTION CREDIT. (a) *Definitions.* In this subsection:

22 1. "Claimant" means a person certified under s. 73.03 (78).

23 2. "Eligible expenditures" means amounts paid by the claimant directly
24 relating to qualifying activities in this state, excluding any of the following:

25 a. Wages.

- 1 b. Expenditures used to claim another credit under this chapter.
- 2 c. Amounts paid to a person certified to receive a credit under this subsection
3 or s. 71.07 (11) or 71.28 (11).
- 4 d. Amounts paid to persons as a result of their participation in profits from
5 video game production, such as commissions, royalties, or profit-sharing
6 agreements.
- 7 e. Amounts paid for capital expenditures, such as buildings and equipment.
- 8 f. Amounts paid to purchase a copyright, trademark, or tradename.
- 9 g. Amounts paid for management or other administrative activities.
- 10 h. Amounts paid for marketing, promotion, or distribution.
- 11 i. Amounts paid for food or entertainment.
- 12 j. Interest paid on loans or other credit arrangements.
- 13 3. “Eligible wages” means wages paid by the claimant directly relating to
14 qualifying activities in this state.
- 15 4. “Qualifying activities” means developing, producing, or creating a video
16 game product or platform.
- 17 5. “Video game product or platform” means an electronic game developed for
18 commercial distribution and entertainment that involves interaction with a user
19 interface to generate visual feedback on a video device. “Video game product or
20 platform” does not include any of the following:
- 21 a. A product or platform that contains content in violation of s. 944.21.
- 22 b. A product or platform designed for political, religious, or educational
23 purposes.
- 24 c. A product or platform regulated under chs. 562 to 569.

1 d. A product or platform designed to provide information about one or more
2 individuals or businesses, such as marketing and promotional websites or
3 microsites.

4 e. A product or platform designed for social media or interpersonal
5 communications, such as podcasting, interactive advertising, journalism, video
6 conferencing, wireless telecommunications, text-based channels, chat rooms, or
7 broadcast or streamed viewing enhancements.

8 f. A product or platform designed to stream linear media such as audio, video,
9 or pictures.

10 g. Small-scale electronic games embedded and used exclusively in advertising.

11 6. “Wages” means wages, as defined in s. 71.63 (6), that are subject to
12 withholding under subch. X and for which a statement under s. 71.65 (1) is furnished.

13 (b) *Filing claims.* Subject to the limitations provided in this subsection, for
14 taxable years beginning after December 31, 2023, a claimant may claim as a credit
15 against the tax imposed under s. 71.43 any of the following amounts:

16 1. An amount equal to 30 percent of the eligible wages paid by the person in the
17 taxable year.

18 2. An amount equal to 30 percent of the eligible expenditures incurred by the
19 claimant in the taxable year.

20 (c) *Limitations.* 1. No credit may be allowed under this subsection unless the
21 claimant files an application with the department, at the time and in the manner
22 prescribed by the department, and the department approves the application. The
23 claimant shall submit a copy of the approved application with the claimant’s return.

24 2. No credit may be allowed under this subsection unless the claimant retains
25 at the claimant’s sole expense a certified public accountant licensed under ch. 442 to

1 review and certify to the department the total eligible expenditures incurred and
2 total eligible wages paid in the taxable and to conduct the audit required under s.
3 73.03 (78) (c). No audit of a claimant required under s. 73.03 (78) (c) may be
4 performed by a certified public accountant that is part of an accounting entity that
5 is not determined by the department to be independent of the claimant, consistent
6 with s. 442.10 and as provided in the code of professional conduct of the American
7 Institute of Certified Public Accountants, or its successor organization, or as
8 otherwise determined by the department. The certified public accountant shall do
9 all of the following:

10 a. Conduct the audit required under s. 73.03 (78) (c) according to any rules
11 promulgated by the department.

12 b. Verify each reported expenditure that is included in the audit and identify
13 and exclude each expenditure that does not satisfy this subsection.

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

16 2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise
17 due under this chapter or no tax is due under this chapter, the amount of the claim
18 not used to offset the tax due shall be certified by the department of revenue to the
19 department of administration for payment by check, share draft, or other draft
20 drawn from the appropriation account under s. 20.835 (2) (de). Notwithstanding s.
21 71.82 (1) (b), no interest shall be added to amounts certified under this subdivision.

22 **SECTION 14.** 71.49 (1) (f) of the statutes is amended to read:

23 71.49 (1) (f) The total of farmland preservation credit under subch. IX, jobs
24 credit under s. 71.47 (3q), enterprise zone jobs credit under s. 71.47 (3w), business
25 development credit under s. 71.47 (3y), research credit under s. 71.47 (4) (k) 1., video

1 game production credit under s. 71.47 (11), and estimated tax payments under s.
2 71.48.

3 **SECTION 15.** 73.03 (78) of the statutes is created to read:

4 73.03 (78) To implement a program to approve applications for a certificate for
5 purposes of ss. 71.07 (11), 71.28 (11), and 71.47 (11). Application shall be made to the
6 department in each taxable year for which a certificate is desired. The department
7 may not approve an application unless all of the following apply:

8 (a) The applicant operates a business in this state and maintains a physical
9 business location in this state.

10 (b) The applicant owns a copyright in a video game production or platform, as
11 defined in s. 71.07 (11) (a) 5., or is actively seeking a copyright in a video game
12 production or platform.

13 (c) The applicant provides verification of eligible expenditures incurred and
14 eligible wages paid to claim the credit under s. 71.07 (11), 71.28 (11), or 71.47 (11) and
15 submits an audit of such eligible expenditures and eligible wages.

16 (d) The applicant certifies that the applicant will comply with the requirements
17 under s. 71.07 (11), 71.28 (11), or 71.47 (11).

18 (END)