



2007 ASSEMBLY BILL 614

December 6, 2007 – Introduced by Representatives STRACHOTA, HAHN, PETROWSKI, PRIDEMORE, KLEEFISCH and GUNDERSON, cosponsored by Senators KANAVAS, DARLING and LEIBHAM. Referred to Committee on Ways and Means.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)
2 (a) 10. and 77.92 (4); and *to create* 71.07 (5m), 71.10 (4) (er), 71.28 (5m), 71.30
3 (3) (er), 71.47 (5m) and 71.49 (1) (er) of the statutes; **relating to:** creating an
4 income and franchise tax credit for constructing and operating a data center
5 that is designed for maximum energy efficiency and minimum environmental
6 impact and providing an exemption from rule-making procedures.

Analysis by the Legislative Reference Bureau

This bill creates an income and franchise tax credit in an amount equal to the amount a person paid in the taxable year for items that are either energy efficient or have a minimal environmental impact and that are used to construct or operate a “green data center.” Under the bill, a green data center is a repository for the storage, management, and dissemination of data, if the mechanical, lighting, electrical, and computer systems of the real property in which the repository is located are designed for maximum energy efficiency and minimum environmental impact.

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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:

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2007 Wisconsin Act
2 20, is amended to read:

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

9 **SECTION 2.** 71.07 (5m) of the statutes is created to read:

10 71.07 (5m) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

11 1. "Claimant" means a person who files a claim under this subsection.

12 2. "Green data center" means a repository for the storage, management, and
13 dissemination of data, if the mechanical, lighting, electrical, and computer systems
14 of the real property in which the repository is located are designed for maximum
15 energy efficiency and minimum environmental impact.

16 3. "Reduced amount" means an amount that is at least 25 percent less than the
17 maximum amount allowed under federal law.

18 (b) *Filing claims.* Subject to the limitations provided in this subsection and
19 2007 Wisconsin Act (this act), section 13, for taxable years beginning after June
20 30, 2008, and before July 1, 2010, a claimant may claim as a credit against the taxes
21 imposed under s. 71.02, up to the amount of the taxes, the amount that the claimant

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1 paid in the taxable year for the following items that are used to construct and operate
2 a green data center:

3 1. At least 2 of the following:

4 a. Low-emission building materials, including carpets and paints.

5 b. Sustainable landscaping.

6 c. An electronic waste recycling program, as defined by the department.

7 2. At least 2 of the following:

8 a. Catalytic converters on back-up generators.

9 b. Photovoltaics.

10 c. Heat pumps.

11 d. Evaporative cooling.

12 3. Equipment or equipment components that have a reduced amount, or none,
13 of at least 4 of the following:

14 a. Mercury.

15 b. Cadmium.

16 c. Lead.

17 d. Chromium VI.

18 e. Polybrominated biphenyls.

19 f. Polybrominated diphenyl ether.

20 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
21 under this subsection and ss. 71.28 (5m) and 71.47 (5m) is \$2,000,000. No claimant
22 may claim a credit under this subsection unless the claimant submits with the
23 claimant's return a copy of the claimant's certification for credits under 2007
24 Wisconsin Act (this act), section 13.

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

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

11 **SECTION 3.** 71.10 (4) (er) of the statutes is created to read:

12 71.10 (4) (er) Green data center credit under s. 71.07 (5m).

13 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2007 Wisconsin Act 20, is
14 amended to read:

15 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
16 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e), (5f), (5g),
17 (5h), (5i), (5j), ~~and (5k)~~, and (5m) and passed through to partners shall be added to
18 the partnership's income.

19 **SECTION 5.** 71.26 (2) (a) of the statutes, as affected by 2007 Wisconsin Act 20,
20 is amended to read:

21 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
22 the gross income as computed under the Internal Revenue Code as modified under
23 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
24 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
25 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income

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1 under this paragraph at the time that the taxpayer first claimed the credit plus the
2 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
3 (1ds), (1dx), (3g), (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k), and~~
4 (5m) and not passed through by a partnership, limited liability company, or
5 tax-option corporation that has added that amount to the partnership's, limited
6 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1)
7 (g) plus the amount of losses from the sale or other disposition of assets the gain from
8 which would be wholly exempt income, as defined in sub. (3) (L), if the assets were
9 sold or otherwise disposed of at a gain and minus deductions, as computed under the
10 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
11 amount equal to the difference between the federal basis and Wisconsin basis of any
12 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
13 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

14 **SECTION 6.** 71.28 (5m) of the statutes is created to read:

15 71.28 **(5m)** GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

16 1. "Claimant" means a person who files a claim under this subsection.

17 2. "Green data center" means a repository for the storage, management, and
18 dissemination of data, if the mechanical, lighting, electrical, and computer systems
19 of the real property in which the repository is located are designed for maximum
20 energy efficiency and minimum environmental impact.

21 3. "Reduced amount" means an amount that is at least 25 percent less than the
22 maximum amount allowed under federal law.

23 (b) *Filing claims.* Subject to the limitations provided in this subsection and
24 2007 Wisconsin Act (this act), section 13, for taxable years beginning after June
25 30, 2008, and before July 1, 2010, a claimant may claim as a credit against the taxes

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1 imposed under s. 71.23, up to the amount of the taxes, the amount that the claimant
2 paid in the taxable year for the following items that are used to construct and operate
3 a green data center:

4 1. At least 2 of the following:

5 a. Low-emission building materials, including carpets and paints.

6 b. Sustainable landscaping.

7 c. An electronic waste recycling program, as defined by the department.

8 2. At least 2 of the following:

9 a. Catalytic converters on back-up generators.

10 b. Photovoltaics.

11 c. Heat pumps.

12 d. Evaporative cooling.

13 3. Equipment or equipment components that have a reduced amount, or none,

14 of at least 4 of the following:

15 a. Mercury.

16 b. Cadmium.

17 c. Lead.

18 d. Chromium VI.

19 e. Polybrominated biphenyls.

20 f. Polybrominated diphenyl ether.

21 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
22 under this subsection and ss. 71.07 (5m) and 71.47 (5m) is \$2,000,000. No claimant
23 may claim a credit under this subsection unless the claimant submits with the
24 claimant's return a copy of the claimant's certification for credits under 2007
25 Wisconsin Act (this act), section 13.

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

9 (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under
10 sub. (4), applies to the credit under this subsection.

11 **SECTION 7.** 71.30 (3) (er) of the statutes is created to read:

12 71.30 (3) (er) Green data center credit under s. 71.28 (5m).

13 **SECTION 8.** 71.34 (1) (g) of the statutes, as affected by 2007 Wisconsin Act 20,
14 is amended to read:

15 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
16 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
17 (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and (5m) and passed
18 through to shareholders.

19 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2007 Wisconsin Act
20 20, is amended to read:

21 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
22 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
23 (5j), ~~and (5k)~~, and (5m) and not passed through by a partnership, limited liability
24 company, or tax-option corporation that has added that amount to the partnership's,
25 limited liability company's, or tax-option corporation's income under s. 71.21 (4) or

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1 71.34 (1) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and
2 (5).

3 **SECTION 10.** 71.47 (5m) of the statutes is created to read:

4 71.47 (5m) GREEN DATA CENTER CREDIT. (a) *Definitions.* In this subsection:

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

6 2. “Green data center” means a repository for the storage, management, and
7 dissemination of data, if the mechanical, lighting, electrical, and computer systems
8 of the real property in which the repository is located are designed for maximum
9 energy efficiency and minimum environmental impact.

10 3. “Reduced amount” means an amount that is at least 25 percent less than the
11 maximum amount allowed under federal law.

12 (b) *Filing claims.* Subject to the limitations provided in this subsection and
13 2007 Wisconsin Act (this act), section 13, for taxable years beginning after June
14 30, 2008, and before July 1, 2010, a claimant may claim as a credit against the taxes
15 imposed under s. 71.43, up to the amount of the taxes, the amount that the claimant
16 paid in the taxable year for the following items that are used to construct and operate
17 a green data center:

18 1. At least 2 of the following:

19 a. Low-emission building materials, including carpets and paints.

20 b. Sustainable landscaping.

21 c. An electronic waste recycling program, as defined by the department.

22 2. At least 2 of the following:

23 a. Catalytic converters on back-up generators.

24 b. Photovoltaics.

25 c. Heat pumps.

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1 d. Evaporative cooling.

2 3. Equipment or equipment components that have a reduced amount, or none,
3 of at least 4 of the following:

4 a. Mercury.

5 b. Cadmium.

6 c. Lead.

7 d. Chromium VI.

8 e. Polybrominated biphenyls.

9 f. Polybrominated diphenyl ether.

10 (c) *Limitations.* 1. The maximum amount of all credits that may be claimed
11 under this subsection and ss. 71.07 (5m) and 71.28 (5m) is \$2,000,000. No claimant
12 may claim a credit under this subsection unless the claimant submits with the
13 claimant's return a copy of the claimant's certification for credits under 2007
14 Wisconsin Act (this act), section 13.

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

23 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under
24 s. 71.28 (4), applies to the credit under this subsection.

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

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1 71.49 (1) (er) Green data center credit under s. 71.47 (5m).

2 **SECTION 12.** 77.92 (4) of the statutes, as affected by 2007 Wisconsin Act 20, is
3 amended to read:

4 77.92 (4) “Net business income,” with respect to a partnership, means taxable
5 income as calculated under section 703 of the Internal Revenue Code; plus the items
6 of income and gain under section 702 of the Internal Revenue Code, including taxable
7 state and municipal bond interest and excluding nontaxable interest income or
8 dividend income from federal government obligations; minus the items of loss and
9 deduction under section 702 of the Internal Revenue Code, except items that are not
10 deductible under s. 71.21; plus guaranteed payments to partners under section 707
11 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
12 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3s), (3n), (3p), (3t), (3w), (5e),
13 (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and (5m); and plus or minus, as appropriate,
14 transitional adjustments, depreciation differences, and basis differences under s.
15 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions
16 from farming. “Net business income,” with respect to a natural person, estate, or
17 trust, means profit from a trade or business for federal income tax purposes and
18 includes net income derived as an employee as defined in section 3121 (d) (3) of the
19 Internal Revenue Code.

20 **SECTION 13. Nonstatutory provisions.**

21 (1) GREEN DATA CENTER CREDIT PROGRAM.

22 (a) Not later than 30 days after the effective date of this subsection, the
23 department of commerce shall implement a program for certifying businesses as
24 eligible for tax credits under sections 71.07 (5m), 71.28 (5m), and 71.47 (5m) of the
25 statutes.

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1 (b) If the department of commerce certifies a business as eligible under
2 paragraph (a), the department shall determine the maximum amount of tax credits
3 the business may claim. The total amount of tax credits allocated to all eligible
4 businesses may not exceed \$2,000,000.

5 (c) Notwithstanding section 227.24 of the statutes, the department of
6 commerce may promulgate emergency rules necessary to administer this subsection.
7 Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules
8 promulgated under this subsection remain in effect until the effective date of
9 permanent rules promulgated under this subsection, or the first day of the 13th
10 month after the effective date of this subsection, whichever is sooner.
11 Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of
12 commerce is not required to provide evidence that promulgating a rule under this
13 subsection as an emergency rule is necessary for the preservation of the public peace,
14 health, safety, or welfare and is not required to provide a finding of emergency for a
15 rule promulgated under this subsection.

16 (d) This subsection does not apply after June 30, 2009.

17 (END)