



2013 SENATE BILL 378

October 29, 2013 - Introduced by Senator GROTHMAN, cosponsored by Representatives KOOYENGA, SANFELIPPO, BIES, HUTTON, A. OTT, NASS, LEMAHIEU, PRIDEMORE, NYGREN, KAPENGA and STROEBEL. Referred to Committee on Workforce Development, Forestry, Mining, and Revenue.

1 **AN ACT** *to renumber* 71.05 (8) (b) and 71.10 (4) (cr); *to amend* 71.05 (6) (b) 47.
2 am., 71.05 (6) (b) 47. b., 71.05 (6) (b) 47. c., 71.07 (5n) (b) (intro.), 71.08 (1)
3 (intro.), 71.28 (9s) (d) 3., 71.47 (9s) (d) 3., 71.52 (6), 77.54 (61) (intro.), (a) and
4 (b) and 238.16 (3) (intro.); and *to create* 71.05 (6) (b) 47. dm., 71.05 (8) (b) 2.,
5 71.05 (8) (c), 71.07 (5i) (c) 3., 71.28 (5i) (c) 3., 71.47 (5i) (c) 3. and 77.54 (61) (c)
6 of the statutes; **relating to:** the carry-back of net operating losses, the sales
7 and use tax exemption for commercial printing, the jobs tax credit, the
8 electronic medical records credit, the manufacturing and agriculture credit,
9 and the relocated business credit.

Analysis by the Legislative Reference Bureau

Under current law, for income tax purposes, under certain circumstances, a taxpayer may claim a Wisconsin net operating loss against Wisconsin taxable income of the two years preceding the year in which the taxpayer sustained the loss. This bill clarifies that a taxpayer need not make an offset against Wisconsin modified taxable income of the two years preceding the loss, if the taxpayer chooses not to carry back the net operating loss to the two years preceding the loss.

Under current law, a person may claim the jobs tax credit if the Wisconsin Economic Development Corporation certifies the person to receive the tax credit, the

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person increases net employment in the person's business, and the person provides certain wages or job training to its full-time employees. This bill specifies that to be eligible for the jobs tax credit a person must increase net employment in the person's business in this state. Therefore, under the bill, a person may qualify for the jobs tax credit by relocating existing jobs to this state even if the number of individuals the person's business employs nationwide does not increase. Similarly, under the bill, a person does not qualify for the jobs tax credit by increasing the number of individuals the person's business employs nationwide if the number of individuals the person's business employs in this state does not increase.

Under current law, for income and franchise tax purposes, a taxpayer may not claim a relocated business deduction or tax credit for taxable years beginning after December 31, 2013. Under this bill, a taxpayer who is first eligible to claim a relocated business deduction or tax credit for a taxable year beginning after December 31, 2012, and before January 1, 2014, may claim the deduction or credit in the following taxable year.

The bill also provides that the manufacturing and agriculture credit may be claimed against the alternative minimum tax.

Finally, the bill makes technical changes to the electronic medical records tax credit and to the sales and use tax exemption for tangible personal property used in commercial printing.

For further information see the *state and local* 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) (b) 47. am. of the statutes, as affected by 2013 Wisconsin
2 Act 20, is amended to read:

3 71.05 **(6)** (b) 47. am. For taxable years beginning after December 31, 2010, and
4 before January 1, 2014, for 2 consecutive taxable years beginning with the taxable
5 year in which the claimant's business locates to this state from another state or
6 another country and begins doing business in this state, as defined in s. 71.22 (1r),
7 and subject to the limitations provided under subd. 47. d., dm., and e., the profit or
8 loss from a trade or business as reported on federal income tax return schedules C
9 and F or their equivalents, plus ordinary gain or loss on the sale of business assets,

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1 as determined under s. 71.01 (6), but not less than zero, multiplied by the
2 apportionment fraction determined in s. 71.04 (4) and subject to s. 71.04 (7).

3 **SECTION 2.** 71.05 (6) (b) 47. b. of the statutes, as affected by 2013 Wisconsin Act
4 20, is amended to read:

5 71.05 (6) (b) 47. b. With respect to partners and members of limited liability
6 companies, for taxable years beginning after December 31, 2010, and before January
7 1, 2014, for 2 consecutive taxable years beginning with the taxable year in which the
8 partnership's or limited liability company's business locates to this state from
9 another state or another country and begins doing business in this state, as defined
10 in s. 71.22 (1r), and subject to the limitations provided under subd. 47. d., dm., and
11 e., the partner's or member's distributive share of taxable income as calculated under
12 section 703 of the Internal Revenue Code; plus the items of income and gain under
13 section 702 of the Internal Revenue Code, including taxable state and municipal
14 bond interest and excluding nontaxable interest income or dividend income from
15 federal government obligations; minus the items of loss and deduction under section
16 ~~756702~~ 702 of the Internal Revenue Code, except items that are not deductible under
17 s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal
18 Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL),
19 (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t),
20 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5r), (5rm), and (8r); and plus or minus, as
21 appropriate, transitional adjustments, depreciation differences, and basis
22 differences under s. 71.05 (13), (15), (16), (17), and (19), multiplied by the
23 apportionment fraction determined in s. 71.04 (4) and subject to s. 71.04 (7) or by
24 separate accounting. No amounts subtracted under this subd. 47. b. may be included
25 in the modification under par. (b) 9. or 9m.

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1 **SECTION 3.** 71.05 (6) (b) 47. c. of the statutes, as affected by 2013 Wisconsin Act
2 20, is amended to read:

3 71.05 **(6)** (b) 47. c. With respect to shareholders of a tax-option corporation, for
4 taxable years beginning after December 31, 2010, and before January 1, 2014, for 2
5 consecutive taxable years beginning with the taxable year in which the tax-option
6 corporation's business locates to this state from another state or another country and
7 begins doing business in this state, as defined in s. 71.22 (1r), and subject to the
8 limitations provided under subd. 47. d., dm., and e., the shareholder's distributive
9 share of the entity's net income or loss as determined under this chapter, including
10 interest income from federal, state, and municipal government obligations,
11 multiplied by the apportionment fraction determined in s. 71.25 (6m) and subject to
12 s. 71.25 (9) or by separate accounting. No amounts subtracted under this subdivision
13 may be included in the modification under par. (b) 9. or 9m.

14 **SECTION 4.** 71.05 (6) (b) 47. dm. of the statutes is created to read:

15 71.05 **(6)** (b) 47. dm. No person may claim a deduction under this subdivision
16 for taxable years beginning after December 31, 2013, except that a claimant who is
17 first eligible to claim a deduction under this subdivision for a taxable year beginning
18 after December 31, 2012, and before January 1, 2014, may claim the deduction the
19 following taxable year.

20 **SECTION 5.** 71.05 (8) (b) of the statutes, as affected by 2013 Wisconsin Act 20,
21 is renumbered 71.05 (8) (b) 1.

22 **SECTION 6.** 71.05 (8) (b) 2. of the statutes is created to read:

23 71.05 **(8)** (b) 2. The taxpayer need not make the offset against Wisconsin
24 modified taxable income of the 2 years preceding the loss, as provided under subd.

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1 1., if the taxpayer chooses not to carry back the net operating loss to the 2 years
2 preceding the loss.

3 **SECTION 7.** 71.05 (8) (c) of the statutes is created to read:

4 71.05 (8) (c) The department shall not pay interest on any overpayment that
5 results from the carry-back of a net operating loss.

6 **SECTION 8.** 71.07 (5i) (c) 3. of the statutes is created to read:

7 71.07 (5i) (c) 3. No credit may be claimed under this subsection based on an
8 amount paid under par. (b) after December 31, 2013.

9 **SECTION 9.** 71.07 (5n) (b) (intro.) of the statutes is amended to read:

10 71.07 (5n) (b) *Filing claims.* (intro.) Subject to the limitations provided in this
11 subsection, a claimant may claim as a credit against the tax imposed under s. ss.
12 71.02 and 71.08, up to the amount of the tax, an amount equal to one of the following
13 percentages of the claimant's eligible qualified production activities income in the
14 taxable year:

15 **SECTION 10.** 71.08 (1) (intro.) of the statutes is amended to read:

16 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
17 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under
18 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),
19 (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5n), (6), (6e),
20 (8r), and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n),
21 (3t), and (3w), 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n),
22 (3t), and (3w), 71.57 to 71.61, and 71.613 and subch. VIII and payments to other
23 states under s. 71.07 (7), is less than the tax under this section, there is imposed on
24 that natural person, married couple filing jointly, trust or estate, instead of the tax
25 under s. 71.02, an alternative minimum tax computed as follows:

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1 **SECTION 11.** 71.10 (4) (cr) of the statutes is renumbered 71.10 (4) (fm).

2 **SECTION 12.** 71.28 (5i) (c) 3. of the statutes is created to read:

3 71.28 **(5i)** (c) 3. No credit may be claimed under this subsection based on an
4 amount paid under par. (b) after December 31, 2013.

5 **SECTION 13.** 71.28 (9s) (d) 3. of the statutes, as created by 2013 Wisconsin Act
6 20, is amended to read:

7 71.28 **(9s)** (d) 3. No credit may be claimed under this subsection for taxable
8 years beginning after December 31, 2013.—Credits under this subsection for taxable
9 years that begin before January 1, 2014, may be carried forward to taxable years that
10 begin after December 31, 2013, except that a claimant who is first eligible to claim
11 a credit under this subsection for taxable years beginning after December 31, 2012,
12 and before January 1, 2014, may claim the credit in the following taxable year.

13 **SECTION 14.** 71.47 (5i) (c) 3. of the statutes is created to read:

14 71.47 **(5i)** (c) 3. No credit may be claimed under this subsection based on an
15 amount paid under par. (b) after December 31, 2013.

16 **SECTION 15.** 71.47 (9s) (d) 3. of the statutes, as created by 2013 Wisconsin Act
17 20, is amended to read:

18 71.47 **(9s)** (d) 3. No credit may be claimed under this subsection for taxable
19 years beginning after December 31, 2013.—Credits under this subsection for taxable
20 years that begin before January 1, 2014, may be carried forward to taxable years that
21 begin after December 31, 2013, except that a claimant who is first eligible to claim
22 a credit under this subsection for taxable years beginning after December 31, 2012,
23 and before January 1, 2014, may claim the credit in the following taxable year.

24 **SECTION 16.** 71.52 (6) of the statutes is amended to read:

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1 71.52 (6) “Income” means the sum of Wisconsin adjusted gross income and the
2 following amounts, to the extent not included in Wisconsin adjusted gross income:
3 maintenance payments (except foster care maintenance and supplementary
4 payments excludable under section 131 of the internal revenue code), support money,
5 cash public assistance (not including credit granted under this subchapter and
6 amounts under s. 46.27), cash benefits paid by counties under s. 59.53 (21), the gross
7 amount of any pension or annuity (including railroad retirement benefits, all
8 payments received under the federal social security act and veterans disability
9 pensions), nontaxable interest received from the federal government or any of its
10 instrumentalities, nontaxable interest received on state or municipal bonds,
11 worker’s compensation, unemployment insurance, the gross amount of “loss of time”
12 insurance, compensation and other cash benefits received from the United States for
13 past or present service in the armed forces, scholarship and fellowship gifts or
14 income, capital gains, gain on the sale of a personal residence excluded under section
15 121 of the internal revenue code, dividends, income of a nonresident or part-year
16 resident who is married to a full-year resident, housing allowances provided to
17 members of the clergy, the amount by which a resident manager’s rent is reduced,
18 nontaxable income of an American Indian, nontaxable income from sources outside
19 this state and nontaxable deferred compensation. Intangible drilling costs,
20 depletion allowances and depreciation, including first-year depreciation allowances
21 under section 179 of the internal revenue code, amortization, contributions to
22 individual retirement accounts under section 219 of the internal revenue code,
23 contributions to Keogh plans, net operating loss carry-backs and carry-forwards
24 and capital loss carry-forwards deducted in determining Wisconsin adjusted gross
25 income shall be added to “income”. “Income” does not include gifts from natural

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1 persons, cash reimbursement payments made under title XX of the federal social
2 security act, surplus food or other relief in kind supplied by a governmental agency,
3 the gain on the sale of a personal residence deferred under section 1034 of the
4 internal revenue code or nonrecognized gain from involuntary conversions under
5 section 1033 of the internal revenue code. Amounts not included in adjusted gross
6 income but added to "income" under this subsection in a previous year and repaid
7 may be subtracted from income for the year during which they are repaid.
8 Scholarship and fellowship gifts or income that are included in Wisconsin adjusted
9 gross income and that were added to household income for purposes of determining
10 the credit under this subchapter in a previous year may be subtracted from income
11 for the current year in determining the credit under this subchapter. A marital
12 property agreement or unilateral statement under ch. 766 has no effect in computing
13 "income" for a person whose homestead is not the same as the homestead of that
14 person's spouse.

15 **SECTION 17.** 77.54 (61) (intro.), (a) and (b) of the statutes, as created by 2013
16 Wisconsin Act 20, are amended to read:

17 77.54 (61) (intro.) The sales price from the sale of and the storage, use, or other
18 consumption of the following by a person primarily engaged, as determined by the
19 department, in commercial printing, not including screen printing or book printing,
20 without publishing, except for gray goods; printing, or printing and binding, books
21 or pamphlets without publishing the books or pamphlets; or performing prepress
22 and postpress services in support of printing activities book printing, or support
23 activities for printing described under 323111, 323117, and 323120 of the North
24 American Industry Classification System:

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1 (a) Computers and servers ~~that are used~~ primarily to store copies of the product
2 that are sent to a digital printer, a platemaking machine, or a printing press or used
3 primarily in prepress or postpress activities.

4 (b) Tangible personal property purchased from out-of-state sellers that are
5 temporarily stored, remain idle, and not used in this state ~~for not more than 180 days~~
6 and that are then delivered and used solely outside of this state.

7 **SECTION 18.** 77.54 (61) (c) of the statutes is created to read:

8 77.54 (61) (c) In this subsection:

9 1. "Postpress activities" include paper bronzing, die-cutting, edging,
10 embossing, folding, gilding, gluing, and indexing.

11 2. "Prepress activities" include making print-ready plates, typesetting, trade
12 binding, and sample mounting.

13 3. "Temporarily" means not more than 180 days.

14 **SECTION 19.** 238.16 (3) (intro.) of the statutes, as affected by 2013 Wisconsin
15 Act 20, is amended to read:

16 238.16 (3) ELIGIBILITY FOR TAX BENEFITS. (intro.) A person certified under sub.
17 (2) may receive tax benefits under this section if, in each year for which the person
18 claims tax benefits under this section, the person increases net employment in this
19 state in the person's business above the net employment in this state in the person's
20 business during the year before the person was certified under sub. (2), as
21 determined by the corporation under its policies and procedures, and one of the
22 following applies:

23 **SECTION 20. Initial applicability.**

24 (1) The treatment of section 77.54 (61) (intro.), (a), (b), and (c) of the statutes
25 first applies retroactively to sales made on October 1, 2013.

