



2013 ASSEMBLY BILL 16

February 15, 2013 - Introduced by Representatives BIES, BALLWEG, BERNIER, KLEEFISCH and T. LARSON, cosponsored by Senator KEDZIE. Referred to Committee on Tourism.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.05 (6) (b) 47. b., 71.21 (4) (a), 71.26 (2) (a)
2 4., 71.34 (1k) (g), 71.45 (2) (a) 10. and 77.92 (4); and **to create** 71.07 (5p), 71.10
3 (4) (cs), 71.28 (5p), 71.30 (3) (dr), 71.47 (5p) and 71.49 (1) (dn) of the statutes;
4 **relating to:** a tax credit for hospitality business advertising.

Analysis by the Legislative Reference Bureau

This bill creates an income and franchise tax credit equal to 10 percent of the amount that a taxpayer spends in the taxable year on advertising outside of this state to promote the taxpayer's hospitality business located in this state. If the credit claimed by a taxpayer exceeds the taxpayer's tax liability, the state will not issue a refund check, but the taxpayer may carry forward any remaining credit to subsequent taxable years.

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:

5 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:
6 71.05 (6) (a) 15. Except as provided under s. 71.07 (3p) (c) 5., the amount of the
7 credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds),

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1 (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h),
2 (5i), (5j), (5k), (5p), (5r), (5rm), (6n), and (8r) and not passed through by a partnership,
3 limited liability company, or tax-option corporation that has added that amount to
4 the partnership's, company's, or tax-option corporation's income under s. 71.21 (4)
5 or 71.34 (1k) (g).

6 **SECTION 2.** 71.05 (6) (b) 47. b. of the statutes is amended to read:

7 71.05 (6) (b) 47. b. With respect to partners and members of limited liability
8 companies, for taxable years beginning after December 31, 2010, for 2 consecutive
9 taxable years beginning with the taxable year in which the partnership's or limited
10 liability company's business locates to this state from another state or another
11 country and begins doing business in this state, as defined in s. 71.22 (1r), and subject
12 to the limitations provided under subd. 47. d. and e., the partner's or member's
13 distributive share of taxable income as calculated under section 703 of the Internal
14 Revenue Code; plus the items of income and gain under section 702 of the Internal
15 Revenue Code, including taxable state and municipal bond interest and excluding
16 nontaxable interest income or dividend income from federal government obligations;
17 minus the items of loss and deduction under section 702 of the Internal Revenue
18 Code, except items that are not deductible under s. 71.21; plus guaranteed payments
19 to partners under section 707 (c) of the Internal Revenue Code; plus the credits
20 claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy),
21 (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i),
22 (5j), (5k), (5p), (5r), (5rm), and (8r); and plus or minus, as appropriate, transitional
23 adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15),
24 (16), (17), and (19), multiplied by the apportionment fraction determined in s. 71.04

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1 (4) and subject to s. 71.04 (7) or by separate accounting. No amounts subtracted
2 under this subd. 47. b. may be included in the modification under par. (b) 9. or 9m.

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

4 71.07 (5p) HOSPITALITY BUSINESS ADVERTISING CREDIT. (a) *Definitions.* In this
5 subsection:

6 1. "Advertising" means radio and television commercials and advertising that
7 appears in printed form, including billboards and advertisements in newspapers and
8 magazines.

9 2. "Claimant" means a person who files a claim under this subsection.

10 3. "Hospitality business" means a hospitality business located in this state,
11 including a business that is classified in the standard industrial classification
12 manual, 1987 edition, published by the U.S. office of management and budget, under
13 any of the following industry numbers:

14 a. 5812 — Eating places.

15 b. 5813 — Drinking places.

16 c. 7011 — Hotels and motels.

17 d. 7032 — Sporting and recreational camps.

18 e. 7033 — Recreational vehicle parks and campsites.

19 f. 7922 — Theatrical producers and miscellaneous theatrical services.

20 g. 7929 — Bands, orchestras, actors, and other entertainers and entertainment
21 groups.

22 h. 7948 — Racing, including track operation.

23 i. 7992 — Public golf courses.

24 j. 7996 — Amusement parks.

25 k. 7997 — Membership sports and recreation clubs.

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1 L. 7999 — Amusement and recreational services, not elsewhere classified.

2 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
3 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
4 amount of the tax, an amount equal to 10 percent of the amount the claimant spent
5 in the taxable year on advertising outside of this state to promote the claimant's
6 hospitality business, if the cost of the advertising was directly incurred by the
7 claimant's business operations in this state.

8 (c) *Limitations.* Partnerships, limited liability companies, and tax-option
9 corporations may not claim the credit under this subsection, but the eligibility for,
10 and the amount of, the credit are based on their payment of amounts under par. (b).
11 A partnership, limited liability company, or tax-option corporation shall compute
12 the amount of credit that each of its partners, members, or shareholders may claim
13 and shall provide that information to each of them. Partners, members of limited
14 liability companies, and shareholders of tax-option corporations may claim the
15 credit in proportion to their ownership interests.

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

18 **SECTION 4.** 71.10 (4) (cs) of the statutes is created to read:

19 71.10 (4) (cs) Hospitality business advertising credit under s. 71.07 (5p).

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

21 71.21 (4) (a) The amount of the credits computed by a partnership under s.
22 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p),
23 (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), (5r),
24 (5rm), (6n), and (8r) and passed through to partners shall be added to the
25 partnership's income.

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1 **SECTION 6.** 71.26 (2) (a) 4. of the statutes is amended to read:

2 71.26 **(2)** (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
3 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r),
4 (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5p), (5r), (5rm), (6n), (8r),
5 and (9s) and not passed through by a partnership, limited liability company, or
6 tax-option corporation that has added that amount to the partnership's, limited
7 liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k)
8 (g).

9 **SECTION 7.** 71.28 (5p) of the statutes is created to read:

10 71.28 **(5p)** HOSPITALITY BUSINESS ADVERTISING CREDIT. (a) *Definitions.* In this
11 subsection:

12 1. "Advertising" means radio and television commercials and advertising that
13 appears in printed form, including billboards and advertisements in newspapers and
14 magazines.

15 2. "Claimant" means a person who files a claim under this subsection.

16 3. "Hospitality business" means a hospitality business located in this state,
17 including a business that is classified in the standard industrial classification
18 manual, 1987 edition, published by the U.S. office of management and budget, under
19 any of the following industry numbers:

20 a. 5812 — Eating places.

21 b. 5813 — Drinking places.

22 c. 7011 — Hotels and motels.

23 d. 7032 — Sporting and recreational camps.

24 e. 7033 — Recreational vehicle parks and campsites.

25 f. 7922 — Theatrical producers and miscellaneous theatrical services.

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1 g. 7929 — Bands, orchestras, actors, and other entertainers and entertainment
2 groups.

3 h. 7948 — Racing, including track operation.

4 i. 7992 — Public golf courses.

5 j. 7996 — Amusement parks.

6 k. 7997 — Membership sports and recreation clubs.

7 L. 7999 — Amusement and recreational services, not elsewhere classified.

8 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
9 claimant may claim as a credit against the tax imposed under s. 71.23, up to the
10 amount of the tax, an amount equal to 10 percent of the amount the claimant spent
11 in the taxable year on advertising outside of this state to promote the claimant's
12 hospitality business, if the cost of the advertising was directly incurred by the
13 claimant's business operations in this state.

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

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

24 **SECTION 8.** 71.30 (3) (dr) of the statutes is created to read:

25 71.30 (3) (dr) Hospitality business advertising credit under s. 71.28 (5p).

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1 **SECTION 9.** 71.34 (1k) (g) of the statutes is amended to read:

2 71.34 **(1k)** (g) An addition shall be made for credits computed by a tax-option
3 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
4 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j),
5 (5k), ~~(5p)~~, (5r), (5rm), (6n), and (8r) and passed through to shareholders.

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

7 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
8 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3rn),
9 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), ~~(5p)~~, (5r), (5rm), (6n), (8r), and (9s) and not
10 passed through by a partnership, limited liability company, or tax-option
11 corporation that has added that amount to the partnership's, limited liability
12 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and
13 the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

14 **SECTION 11.** 71.47 (5p) of the statutes is created to read:

15 71.47 **(5p)** HOSPITALITY BUSINESS ADVERTISING CREDIT. (a) *Definitions.* In this
16 subsection:

17 1. "Advertising" means radio and television commercials and advertising that
18 appears in printed form, including billboards and advertisements in newspapers and
19 magazines.

20 2. "Claimant" means a person who files a claim under this subsection.

21 3. "Hospitality business" means a hospitality business located in this state,
22 including a business that is classified in the standard industrial classification
23 manual, 1987 edition, published by the U.S. office of management and budget, under
24 any of the following industry numbers:

25 a. 5812 — Eating places.

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1 b. 5813 — Drinking places.

2 c. 7011 — Hotels and motels.

3 d. 7032 — Sporting and recreational camps.

4 e. 7033 — Recreational vehicle parks and campsites.

5 f. 7922 — Theatrical producers and miscellaneous theatrical services.

6 g. 7929 — Bands, orchestras, actors, and other entertainers and entertainment
7 groups.

8 h. 7948 — Racing, including track operation.

9 i. 7992 — Public golf courses.

10 j. 7996 — Amusement parks.

11 k. 7997 — Membership sports and recreation clubs.

12 L. 7999 — Amusement and recreational services, not elsewhere classified.

13 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
14 claimant may claim as a credit against the tax imposed under s. 71.43, up to the
15 amount of the tax, an amount equal to 10 percent of the amount the claimant spent
16 in the taxable year on advertising outside of this state to promote the claimant's
17 hospitality business, if the cost of the advertising was directly incurred by the
18 claimant's business operations in this state.

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

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1 liability companies, and shareholders of tax-option corporations may claim the
2 credit in proportion to their ownership interests.

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

5 **SECTION 12.** 71.49 (1) (dn) of the statutes is created to read:

6 71.49 (1) (dn) Hospitality business advertising credit under s. 71.47 (5p).

7 **SECTION 13.** 77.92 (4) of the statutes is amended to read:

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

24 **SECTION 14. Initial applicability.**

