

State of Wisconsin



2009 Assembly Bill 757

Date of enactment: **May 12, 2010**
Date of publication*: **May 26, 2010**

2009 WISCONSIN ACT 295

(Vetoed in Part)

AN ACT *to amend* 71.05 (6) (a) 15., 71.08 (1) (intro.), 71.10 (4) (i), 71.21 (4), 71.26 (2) (a) 4., 71.30 (3) (f), 71.34 (1k) (g), 71.45 (2) (a) 10., 71.49 (1) (f) and 77.92 (4); and *to create* 20.835 (2) (bc), 71.07 (3rm), 71.28 (3rm), 71.47 (3rm) and 560.2056 of the statutes; **relating to**: a food processing plant and food warehouse investment tax credit, requiring the exercise of rule-making authority, and making an appropriation.

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

SECTION 1. 20.835 (2) (bc) of the statutes is created to read:

20.835 (2) (bc) *Food processing plant and food warehouse investment credit.* A sum sufficient to make the payments under ss. 71.07 (3rm), 71.28 (3rm), and 71.47 (3rm).

SECTION 2. 71.05 (6) (a) 15. of the statutes, as affected by [2009 Wisconsin Act 28](#), is amended to read:

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

SECTION 3. 71.07 (3rm) of the statutes is created to read:

71.07 (3rm) **FOOD PROCESSING PLANT AND FOOD WAREHOUSE INVESTMENT CREDIT.** (a) *Definitions.* In this subsection:

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

2. "Food processing plant" has the meaning given in s. 97.29 (1) (h), except that it does not include dairy plants licensed under s. 97.20 or meat establishments licensed under s. 97.42.

3. "Food warehouse" has the meaning given in s. 97.27 (1) (b).

4. "Food processing plant or food warehouse modernization or expansion" means constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for food processing or food warehousing, including the following, if used exclusively for food processing or food warehousing and if acquired and placed in service in this state during taxable years that begin after December 31, 2009, and before January 1, 2017:

a. Food intake, handling, storage, and warehouse facilities.

b. Building additions.

c. Upgrades to utilities, including water, electric, heat, refrigeration, freezing, and waste facilities.

d. Installing energy savings equipment or equipment that converts waste to energy.

e. Food or raw material intake and storage equipment.

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

f. Processing and manufacturing equipment, including vats, cookers, freezers, pipes, motors, pumps, and valves.

g. Packaging and handling equipment, including cleaning, sealing, bagging, boxing, labeling, conveying, and product movement equipment.

h. Warehouse equipment, including storage racks and loading and unloading equipment.

i. Waste treatment and waste management equipment, including tanks, blowers, separators, dryers, digesters, and equipment to produce energy, fuel, or industrial products.

j. Computer software or hardware for managing the claimant's food processing or food warehousing operation, including software and hardware related to logistics, inventory management, production plant controls, and temperature monitoring controls.

5. "Used exclusively" means used to the exclusion of all other uses except for use not exceeding 5 percent of total use.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 506.2056, for taxable years beginning after December 31, 2009, and before January 1, 2017, a claimant may claim as a credit against the tax imposed under ss. 71.02 and 71.08, up to the amount of the tax, an amount equal to 10 percent of the amount the claimant paid in the taxable year for food processing or food warehousing modernization or expansion related to the operation of the claimant's food processing plant or food warehouse.

(c) *Limitations.* 1. No credit may be allowed under this subsection for any amount that the claimant paid for expenses described under par. (b) that the claimant also claimed as a deduction under section 162 of the Internal Revenue Code.

2. The aggregate amount of credits that a claimant may claim under this subsection is \$200,000.

3. a. The maximum amount of the credits that may be allocated under this subsection and ss. 71.28 (3rm) and 71.47 (3rm) in fiscal year 2009–10 is \$1,000,000, as allocated under s. 560.2056.

b. The maximum amount of the credits that may be allocated under this subsection and ss. 71.28 (3rm) and 71.47 (3rm) in fiscal year 2010–11 is \$1,200,000, as allocated under s. 560.2056.

c. The maximum amount of the credits that may be allocated under this subsection and ss. 71.28 (3rm) and 71.47 (3rm) in fiscal year 2011–12, and in each year thereafter, is \$700,000, as allocated under s. 560.2056.

4. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of expenses under par. (b), except that the aggregate amount of credits that the entity may compute shall not exceed \$200,000. A partnership, limited liability company, or tax-option corpo-

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

5. If 2 or more persons own and operate the food processing plant or food warehouse, each person may claim a credit under par. (b) in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the food processing operation shall not exceed \$200,000.

6. No credit may be allowed under this subsection unless the claimant submits with the claimant's return a copy of the claimant's credit certification and allocation under s. 560.2056.

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

2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise due under s. 71.02 or 71.08, the amount of the claim not used to offset the tax due shall be certified by the department of revenue to the department of administration for payment by check, share draft, or other draft drawn from the appropriation account under s. 20.835 (2) (bc).

SECTION 4. 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

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

SECTION 5. 71.10 (4) (i) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland preservation credit under ss. 71.57 to 71.61, farmland preservation credit, 2010 and beyond under s. 71.613, homestead credit under subch. VIII, farmland tax relief credit under s. 71.07 (3m), dairy manufacturing facility investment credit under s. 71.07 (3p), jobs tax credit under s. 71.07 (3q), meat processing facility investment credit under s. 71.07 (3r), food processing plant and food warehouse investment credit under s. 71.07 (3rm), film production services credit under s. 71.07 (5f), film production company investment credit

under s. 71.07 (5h), veterans and surviving spouses property tax credit under s. 71.07 (6e), enterprise zone jobs credit under s. 71.07 (3w), beginning farmer and farm asset owner tax credit under s. 71.07 (8r), earned income tax credit under s. 71.07 (9e), estimated tax payments under s. 71.09, and taxes withheld under subch. X.

SECTION 6. 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

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

SECTION 7. 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

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

SECTION 8. 71.28 (3rm) of the statutes is created to read:

71.28 (3rm) FOOD PROCESSING PLANT AND FOOD WAREHOUSE INVESTMENT CREDIT. (a) *Definitions.* In this subsection:

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

2. "Food processing plant" has the meaning given in s. 97.29 (1) (h), except that it does not include dairy plants licensed under s. 97.20 or meat establishments licensed under s. 97.42.

3. "Food warehouse" has the meaning given in s. 97.27 (1) (b).

4. "Food processing plant or food warehouse modernization or expansion" means constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for food processing or food warehousing, including the following, if used exclusively for food processing or food warehousing and if acquired and placed in service in this state during taxable years that begin after December 31, 2009, and before January 1, 2017:

a. Food intake, handling, storage, and warehouse facilities.

b. Building additions.

c. Upgrades to utilities, including water, electric, heat, refrigeration, freezing, and waste facilities.

d. Installing energy savings equipment or equipment that converts waste to energy.

e. Food or raw material intake and storage equipment.

f. Processing and manufacturing equipment, including vats, cookers, freezers, pipes, motors, pumps, and valves.

g. Packaging and handling equipment, including cleaning, sealing, bagging, boxing, labeling, conveying, and product movement equipment.

h. Warehouse equipment, including storage racks and loading and unloading equipment.

i. Waste treatment and waste management equipment, including tanks, blowers, separators, dryers, digesters, and equipment to produce energy, fuel, or industrial products.

j. Computer software or hardware for managing the claimant's food processing or food warehousing operation, including software and hardware related to logistics, inventory management, production plant controls, and temperature monitoring controls.

5. "Used exclusively" means used to the exclusion of all other uses except for use not exceeding 5 percent of total use.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 506.2056, for taxable years beginning after December 31, 2009, and before January 1, 2017, a claimant may claim as a credit against the tax imposed under s. 71.23, up to the amount of the tax, an amount equal to 10 percent of the amount the claimant paid in the taxable year for food processing or food warehousing modernization or expansion related to the operation of the claimant's food processing plant or food warehouse.

(c) *Limitations.* 1. No credit may be allowed under this subsection for any amount that the claimant paid for expenses described under par. (b) that the claimant also claimed as a deduction under section 162 of the Internal Revenue Code.

2. The aggregate amount of credits that a claimant may claim under this subsection is \$200,000.

3. a. The maximum amount of the credits that may be allocated under this subsection and ss. 71.07 (3rm) and 71.47 (3rm) in fiscal year 2009-10 is \$1,000,000, as allocated under s. 560.2056.

b. The maximum amount of the credits that may be allocated under this subsection and ss. 71.07 (3rm) and 71.47 (3rm) in fiscal year 2010-11 is \$1,200,000, as allocated under s. 560.2056.

c. The maximum amount of the credits that may be allocated under this subsection and ss. 71.07 (3rm) and 71.47 (3rm) in fiscal year 2011-12, and in each year thereafter, is \$700,000, as allocated under s. 560.2056.

4. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of expenses under par. (b), except that the aggregate amount of credits that the entity may compute shall not exceed \$200,000. A part-

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

5. If 2 or more persons own and operate the food processing plant or food warehouse, each person may claim a credit under par. (b) in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the food processing operation shall not exceed \$200,000.

6. No credit may be allowed under this subsection unless the claimant submits with the claimant's return a copy of the claimant's credit certification and allocation under s. 560.2056.

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

2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise due under s. 71.23, the amount of the claim not used to offset the tax due shall be certified by the department of revenue to the department of administration for payment by check, share draft, or other draft drawn from the appropriation account under s. 20.835 (2) (bc).

SECTION 9. 71.30 (3) (f) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.30 (3) (f) The total of farmland preservation credit under subch. IX, farmland tax relief credit under s. 71.28 (2m), dairy manufacturing facility investment credit under s. 71.28 (3p), jobs credit under s. 71.28 (3q), meat processing facility investment credit under s. 71.28 (3r), food processing plant and food warehouse investment credit under s. 71.28 (3rm), enterprise zone jobs credit under s. 71.28 (3w), film production services credit under s. 71.28 (5f), film production company investment credit under s. 71.28 (5h), beginning farmer and farm asset owner tax credit under s. 71.28 (8r), and estimated tax payments under s. 71.29.

SECTION 10. 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

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

SECTION 11. 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3rm), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), and (8r) and not passed through by a partnership, limited liability company, or

tax-option corporation that has added that amount to the partnership's, limited liability company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), (4m), and (5).

SECTION 12. 71.47 (3rm) of the statutes is created to read:

71.47 (3rm) **FOOD PROCESSING PLANT AND FOOD WAREHOUSE INVESTMENT CREDIT.** (a) *Definitions.* In this subsection:

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

2. "Food processing plant" has the meaning given in s. 97.29 (1) (h), except that it does not include dairy plants licensed under s. 97.20 or meat establishments licensed under s. 97.42.

3. "Food warehouse" has the meaning given in s. 97.27 (1) (b).

4. "Food processing plant or food warehouse modernization or expansion" means constructing, improving, or acquiring buildings or facilities, or acquiring equipment, for food processing or food warehousing, including the following, if used exclusively for food processing or food warehousing and if acquired and placed in service in this state during taxable years that begin after December 31, 2009, and before January 1, 2017:

a. Food intake, handling, storage, and warehouse facilities.

b. Building additions.

c. Upgrades to utilities, including water, electric, heat, refrigeration, freezing, and waste facilities.

d. Installing energy savings equipment or equipment that converts waste to energy.

e. Food or raw material intake and storage equipment.

f. Processing and manufacturing equipment, including vats, cookers, freezers, pipes, motors, pumps, and valves.

g. Packaging and handling equipment, including cleaning, sealing, bagging, boxing, labeling, conveying, and product movement equipment.

h. Warehouse equipment, including storage racks and loading and unloading equipment.

i. Waste treatment and waste management equipment, including tanks, blowers, separators, dryers, digesters, and equipment to produce energy, fuel, or industrial products.

j. Computer software or hardware for managing the claimant's food processing or food warehousing operation, including software and hardware related to logistics, inventory management, production plant controls, and temperature monitoring controls.

5. "Used exclusively" means used to the exclusion of all other uses except for use not exceeding 5 percent of total use.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 506.2056, for taxable years beginning after December 31, 2009, and before January 1, 2017, a claimant may claim as a credit against the tax imposed under s. 71.43, up to the amount of the tax, an amount equal to 10 percent of the amount the claimant paid in the taxable year for food processing or food warehousing modernization or expansion related to the operation of the claimant's food processing plant or food warehouse.

(c) *Limitations.* 1. No credit may be allowed under this subsection for any amount that the claimant paid for expenses described under par. (b) that the claimant also claimed as a deduction under section 162 of the Internal Revenue Code.

2. The aggregate amount of credits that a claimant may claim under this subsection is \$200,000.

3. a. The maximum amount of the credits that may be allocated under this subsection and ss. 71.07 (3rm) and 71.28 (3rm) in fiscal year 2009–10 is \$1,000,000, as allocated under s. 560.2056.

b. The maximum amount of the credits that may be allocated under this subsection and ss. 71.07 (3rm) and 71.28 (3rm) in fiscal year 2010–11 is \$1,200,000, as allocated under s. 560.2056.

c. The maximum amount of the credits that may be allocated under this subsection and ss. 71.07 (3rm) and 71.28 (3rm) in fiscal year 2011–12, and in each year thereafter, is \$700,000, as allocated under s. 560.2056.

4. Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of expenses under par. (b), except that the aggregate amount of credits that the entity may compute shall not exceed \$200,000. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

5. If 2 or more persons own and operate the food processing plant or food warehouse, each person may claim a credit under par. (b) in proportion to his or her ownership interest, except that the aggregate amount of the credits claimed by all persons who own and operate the food processing operation shall not exceed \$200,000.

6. No credit may be allowed under this subsection unless the claimant submits with the claimant's return a copy of the claimant's credit certification and allocation under s. 560.2056.

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

2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise due under s. 71.43, the amount of the claim not used to offset the tax due shall be certified by the department of revenue to the department of administration for payment by check, share draft, or other draft drawn from the appropriation account under s. 20.835 (2) (bc).

SECTION 13. 71.49 (1) (f) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

71.49 (1) (f) The total of farmland preservation credit under subch. IX, farmland tax relief credit under s. 71.47 (2m), dairy manufacturing facility investment credit under s. 71.47 (3p), jobs credit under s. 71.47 (3q), meat processing facility investment credit under s. 71.47 (3r), food processing plant and food warehouse investment credit under s. 71.47 (3rm), enterprise zone jobs credit under s. 71.47 (3w), film production services credit under s. 71.47 (5f), film production company investment credit under s. 71.47 (5h), beginning farmer and farm asset owner tax credit under s. 71.47 (8r), and estimated tax payments under s. 71.48.

SECTION 14. 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is amended to read:

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

SECTION 15. 560.2056 of the statutes is created to read:

560.2056 Food processing plant and food warehouse investment credit. (1) The department of commerce shall implement a program to certify taxpayers as eligible for the food processing plant and food warehouse investment credit under ss. 71.07 (3rm), 71.28 (3rm), and 71.47 (3rm).

(2) If the department of commerce certifies a taxpayer under sub. (1), the department of commerce shall determine the amount of credits to allocate to that taxpayer. The total amount of food processing plant and food warehouse investment credits allocated to taxpayers in fiscal year 2009–10 may not exceed \$600,000 and the total amount of food processing plant and food warehouse investment credits allocated to taxpayers in fiscal year 2010–11, and in each fiscal year thereafter, may not exceed \$700,000.

**Vetoed
In Part**

(2m) No taxpayer may be certified under sub. (1) if the taxpayer has hired an alien, as defined in 8 USC 1101 (a) (3), and has been found to have violated 8 USC 1324a (a) in the year in which the taxpayer makes an investment for which the taxpayer could claim a credit under s. 71.07 (3rm), 71.28 (3rm), or 71.47 (3rm), or in any of the 5 years immediately preceding the year in which the taxpayer makes such an investment. A taxpayer certified under sub. (1) may not claim a credit

under s. 71.07 (3rm), 71.28 (3rm), or 71.47 (3rm) for any year in which the taxpayer hires an alien and has been found to have violated 8 USC 1324a (a). For purposes of administering this subsection, the department of commerce shall promulgate rules for determining whether a taxpayer has been found to have violated 8 USC 1324a (a).

**Vetoed
In Part**

(3) The department of commerce shall inform the department of revenue of every taxpayer certified under sub. (1) and the amount of credits allocated to the taxpayer.

(4) The department of commerce, in consultation with the department of revenue, shall promulgate rules to administer this section.

SECTION 15m. Nonstatutory provisions.

(1) REQUIRED GENERAL FUND BALANCE. Section 20.003 (4) of the statutes does not apply to the action of the legislature in enacting this act.