State of Wisconsin
2011 - 2012 LEGISLATURE

LRBs0184/1
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SENATE SUBSTITUTE AMENDMENT ,

TO 2011 SENATE BILL 164

AN ACT ***to amend*** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45 (2) (a) 10. and 77.92 (4); and ***to create*** 71.07 (8s), 71.10 (4) (cf), 71.28 (8s), 71.30 (3) (cf), 71.47 (8s), 71.49 (1) (cf) and 73.15 of the statutes; **relating to:** an income and franchise tax credit for workplace wellness programs, granting rule-making authority, and requiring the exercise of rule-making authority.

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

SECTION 1. 71.05 (6) (a) 15. of the statutes, as affected by 2011 Wisconsin Act 32, 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), (3p), (3q), (3r), (3rm), (3rn), (3s), (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), ~~and~~ (8r), and (8s) 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 2. 71.07 (8s) of the statutes is created to read:

71.07 **(8s)** WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this subsection:

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

2. "Health risk assessment" means a computer-based health-promotion tool consisting of a questionnaire; a biometric health screening to measure vital health statistics, including blood pressure, cholesterol, glucose, weight, and height; a formula for estimating health risks; an advice database; and a means to generate reports.

3. "Small business" means a business that has 50 or fewer employees.

4. "Workplace wellness program" means a health or fitness program certified under s. 73.15 (3), and includes health risk assessments and one or more of the following programs or services:

a. Smoking cessation.

b. Weight management.

c. Stress management.

d. Worker injury prevention programs.

e. Health screenings.

f. Nutrition education.

g. Health or fitness incentive programs.

h. Vaccinations.

i. Employee physical examinations.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 73.15, a claimant may claim as a credit against the taxes imposed under s. 71.02, up to the amount of those taxes, in each taxable year for 3 years, an amount that is equal to 30 percent of the amount that the claimant paid in the taxable year to provide a workplace wellness program to any of the claimant's employees who are employed as a small business located in this state, not including any amount paid to acquire, construct, rehabilitate, remodel, or repair real property.

(c) *Limitations.* 1. Except as provided in s. 73.15 (2), the maximum amount of the credits that may be claimed by all claimants under this subsection and ss. 71.28 (8s) and 71.47 (8s) in any fiscal year is $3,000,000.

2. No person may claim a credit under this subsection for a workplace wellness program in existence before the effective date of this subdivision .... [LRB inserts date].

3. 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 amounts under par. (b). 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 interests.

(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 a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be

carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 5 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

SECTION 3. 71.10 (4) (cf) of the statutes is created to read:

71.10 **(4)** (cf) Workplace wellness program credit under s. 71.07 (8s).

SECTION 4. 71.21 (4) of the statutes, as affected by 2011 Wisconsin Act .... (Assembly Bill 40), 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), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), ~~and~~ (8r), and (8s) and passed through to partners shall be added to the partnership's income.

SECTION 5. 71.26 (2) (a) 4. of the statutes, as affected by 2011 Wisconsin Act 32, 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), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (8r), (8s), and (9s) 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 6. 71.28 (8s) of the statutes is created to read:

71.28 **(8s)** WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this subsection:

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

2. "Health risk assessment" means a computer-based health-promotion tool consisting of a questionnaire; a biometric health screening to measure vital health statistics, including blood pressure, cholesterol, glucose, weight, and height; a formula for estimating health risks; an advice database; and a means to generate reports.

3. "Small business" means a business that has 50 or fewer employees.

4. "Workplace wellness program" means a health or fitness program certified under s. 73.15 (3), and includes health risk assessments and one or more of the following programs or services:

a. Smoking cessation.

b. Weight management.

c. Stress management.

d. Worker injury prevention programs.

e. Health screenings.

f. Nutrition education.

g. Health or fitness incentive programs.

h. Vaccinations.

i. Employee physical examinations.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 73.15, a claimant may claim as a credit against the taxes imposed under s. 71.23, up to the amount of those taxes, in each taxable year for 3 years, an amount that is equal to 30 percent of the amount that the claimant paid in the taxable year to provide a workplace wellness program to any of the claimant's employees who are employed at a small business located in this state, not including any amount paid to acquire, construct, rehabilitate, remodel, or repair real property.

(c) *Limitations.* 1. Except as provided in s. 73.15 (2), the maximum amount of the credits that may be claimed by all claimants under this subsection and ss. 71.07 (8s) and 71.47 (8s) in any fiscal year is $3,000,000.

2. No person may claim a credit under this subsection for a workplace wellness program in existence before the effective date of this subdivision .... [LRB inserts date].

3. 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 amounts under par. (b). 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 interests.

(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 a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 5 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

SECTION 7. 71.30 (3) (cf) of the statutes is created to read:

71.30 **(3)** (cf) Workplace wellness program credit under s. 71.28 (8s).

SECTION 8. 71.34 (1k) (g) of the statutes, as affected by 2011 Wisconsin Act 32, 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), (3rn), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), ~~and~~ (8r), and (8s) and passed through to shareholders.

SECTION 9. 71.45 (2) (a) 10. of the statutes, as affected by 2011 Wisconsin Act 32, 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), (3rn), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), (8r), (8s), and (9s) 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 10. 71.47 (8s) of the statutes is created to read:

71.47 **(8s)** WORKPLACE WELLNESS PROGRAM CREDIT. (a) *Definitions.* In this subsection:

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

2. "Health risk assessment" means a computer-based health-promotion tool consisting of a questionnaire; a biometric health screening to measure vital health statistics, including blood pressure, cholesterol, glucose, weight, and height; a formula for estimating health risks; an advice database; and a means to generate reports.

3. "Small business" means a business that has 50 or fewer employees.

4. "Workplace wellness program" means a health or fitness program certified under s. 73.15 (3), and includes health risk assessments and one or more of the following programs or services:

a. Smoking cessation.

b. Weight management.

c. Stress management.

d. Worker injury prevention programs.

e. Health screenings.

f. Nutrition education.

g. Health or fitness incentive programs.

h. Vaccinations.

i. Employee physical examinations.

(b) *Filing claims.* Subject to the limitations provided in this subsection and s. 73.15, a claimant may claim as a credit against the taxes imposed under s. 71.43, up to the amount of those taxes, in each taxable year for 3 years, an amount that is equal to 30 percent of the amount that the claimant paid in the taxable year to provide a workplace wellness program to any of the claimant's employees who are employed at a small business located in this state, not including any amount paid to acquire, construct, rehabilitate, remodel, or repair real property.

(c) *Limitations.* 1. Except as provided in s. 73.15 (2), the maximum amount of the credits that may be claimed by all claimants under this subsection and ss. 71.07 (5i) and 71.28 (5i) in any fiscal year is $3,000,000.

2. No person may claim a credit under this subsection for a workplace wellness program in existence before the effective date of this subdivision .... [LRB inserts date].

3. 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 amounts under par. (b). 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 interests.

(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 a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 5 taxable years to the extent not offset by these taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

SECTION 11. 71.49 (1) (cf) of the statutes is created to read:

71.49 **(1)** (cf) Workplace wellness program credit under s. 71.47 (8s).

SECTION 12. 73.15 of the statutes is created to read:

73.15 Workplace wellness programs. (1) In consultation with the department of revenue, the department of health services shall certify workplace wellness programs developed by a business or independent provider as described under ss. 71.07 (8s), 71.28 (8s), and 71.47 (8s).

(2) If the department of health services certifies a workplace wellness program under sub. (1), the department of revenue shall determine the amount of workplace

wellness program credits to allocate to the business providing the workplace wellness program. The total amount of workplace wellness program credits allocated to businesses in any fiscal year may not exceed $3,000,000.

(3) The department of revenue, in consultation with the department of health services, shall promulgate rules to administer this section.

SECTION 13. 77.92 (4) of the statutes, as affected by 2011 Wisconsin Act 32, 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), (3rn), (3s), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), (5r), (5rm), ~~and~~ (8r), and (8s); 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 14. Initial applicability.

(1) This act first applies to taxable years beginning on January 1, 2012.

(END)