



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-5712/1
KP:amn

2023 ASSEMBLY BILL 1033

January 30, 2024 - Introduced by Representatives MOSES, SUMMERFIELD, ALLEN, O'CONNOR, RETTINGER, SCHMIDT, SCHRAA and TITTL, cosponsored by Senator TESTIN. Referred to Committee on Ways and Means.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.10 (4) (i), 71.21 (4) (a), 71.26 (2) (a) 4., 71.30
2 (3) (f), 71.34 (1k) (g), 71.45 (2) (a) 10. and 71.49 (1) (f); and **to create** 20.835 (2)
3 (de), 71.07 (11), 71.28 (11), 71.47 (11), 71.748 and 73.03 (78) of the statutes;
4 **relating to:** creating a digital interactive media tax credit, granting
5 rule-making authority, and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill creates a refundable digital interactive media income and franchise tax credit. The credit is equal to the sum of the following 1) 30 percent of the salary or wages paid by a claimant to employees residing in this state for producing digital interactive media or entertainment; and 2) 30 percent of the eligible expenditures. Under the bill, “digital interactive media or entertainment” is generally a product or platform intended for commercial use that uses text, sound, fixed images, animated images, video, or three-dimensional geometry and that uses a system in which users are able to input information or data in response to the information or data provided through the system. “Digital interactive media or entertainment” does not include largely static Internet sites, social media, and gambling products or services. The bill also defines “eligible expenditures” as expenditures related to creating digital interactive media or entertainment, such as testing, source code development, and leases of facilities and equipment. The credit under the bill is refundable, which means that if the credit exceeds the claimant’s tax liability, the claimant will receive the difference as a refund check.

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To claim the credit for a taxable year, a person must file an application with the Department of Revenue and receive a certificate of eligibility for the credit. To grant a certificate, DOR must determine that the applicant will have at least \$25,000 in eligible expenditures in the taxable year, and DOR, or an auditor certified by DOR, must conduct an audit of the applicant. The bill requires auditors to comply with various requirements in conducting the audits, including using sampling methods adopted by DOR and verifying each expenditure covered by the audit. Applicants must reimburse DOR for its costs related to the audits. DOR must also certify as eligible to conduct those audits certified public accountants who submit an application and satisfy various requirements under the bill. Every two years, DOR must submit a report to the governor and standing committees of the legislature related to taxation that includes the number of applications approved for the credit, the amount of credits claimed, the number of people employed in the state in the industries eligible for the credit, the economic impact of the credit, and the community impact of the industries eligible for the credit.

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.** 20.835 (2) (de) of the statutes is created to read:

2 20.835 (2) (de) *Digital interactive media credit.* A sum sufficient to make the
3 payments under ss. 71.07 (11), 71.28 (11), and 71.47 (11).

4 **SECTION 2.** 71.05 (6) (a) 15. of the statutes is amended to read:

5 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dm),
6 (2dx), (2dy), (3g), (3h), (3n), (3q), (3s), (3t), (3w), (3wm), (3y), (4k), (4n), (5e), (5i), (5j),
7 (5k), (5r), (5rm), (6n), ~~and (10)~~, and (11) and not passed through by a partnership,
8 limited liability company, or tax-option corporation that has added that amount to
9 the partnership's, company's, or tax-option corporation's income under s. 71.21 (4)
10 or 71.34 (1k) (g).

11 **SECTION 3.** 71.07 (11) of the statutes is created to read:

12 71.07 (11) **DIGITAL INTERACTIVE MEDIA CREDIT.** (a) *Definitions.* In this
13 subsection:

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1 1. “Claimant” means a person who engages in qualified activities, owns a
2 copyright in digital interactive media or entertainment or has contracted directly
3 with the copyright owner or a person acting on behalf of the copyright owner, has a
4 viable plan for the commercial distribution of the digital interactive media or
5 entertainment, as determined by the department, and files a claim under this
6 subsection.

7 2. “Digital interactive media or entertainment” means a product or platform
8 intended for commercial production, use, or distribution, that has primarily an
9 entertainment purpose, and that satisfies all of the following:

10 a. Contains at least 2 of the following types of data: text, sound, fixed images,
11 animated images, video, or 3-dimensional geometry.

12 b. Uses discrete values that are ordinarily symbolized numerically to represent
13 information for input, processing, transmission, and storage, including information
14 input, processed, transmitted, and stored via the Internet.

15 c. Uses a system for inputting, processing, transmitting, or storing information
16 or data in which users of the system are able to respond to the system by inputting,
17 processing, transmitting, or storing information or data in response to the
18 information or data provided to them through the system.

19 d. Uses communication tools to store, transmit, distribute, and deliver
20 information and data, including distributed networks such as the Internet and
21 physical media such as compact discs, CD-ROM, DVD, and other removable storage
22 drives or devices.

23 3. “Digital interactive media or entertainment” does not include any of the
24 following:

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1 a. Software designed and developed primarily for the internal or operational
2 purposes of an entity.

3 b. Largely static Internet sites designed primarily to provide information about
4 a person, business, company, or firm, including Internet sites that are primarily
5 social media, user generated videos, podcasting, interactive advertising, or
6 journalism.

7 c. Products or services regulated under chs. 562 to 569 or any software or
8 application primarily involving gambling or wagering.

9 d. Software or applications that contain content in violation of s. 944.21.

10 4. "Eligible expenditures" means expenditures in this state directly related to
11 qualified activities and that have economic substance and a business purpose,
12 including all of the following:

13 a. Testing software, source code development, patches, updates, sprites,
14 3-dimensional models, engine development and other back-end programming
15 activities, performance and motion capture, audio production, tool development,
16 original scoring, and level design.

17 b. Photography, sound synchronization, lighting, and related services.

18 c. Information technology support, data analysis, and activities related to a
19 community of users of digital interactive media or entertainment.

20 d. Leases of facilities and equipment.

21 e. Prepackaged audio files, video files, photographic files, or libraries.

22 f. Licenses to use prerecorded audio files, video files, or photographic files.

23 g. Development associated with producing audio files and video files used in
24 the production of end products of digital interactive media or entertainment.

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1 h. Accountants and lawyers whose work is directly related to qualified
2 activities and who are licensed or otherwise authorized to practice in this state.

3 5. "Eligible expenditures" does not include any of the following:

4 a. Expenditures related to marketing, promotion, or distribution.

5 b. Administrative, payroll, or management services that are not directly
6 related to management of qualified activities.

7 c. Any expenditure that is later reimbursed by the state.

8 d. Costs related to the transfer of tax credits.

9 e. Amounts that are paid to persons as a result of their participation in profits
10 from a digital interactive media or entertainment production.

11 f. Any reimbursement required under s. 71.748 (2).

12 g. Interest expenses for loans.

13 h. Any expenditure incurred solely to increase the amount of the credit under
14 this subsection and that involves self-dealing or the claimant inflating prices.

15 i. Costs incurred for food or entertainment expenses not involved in qualified
16 activities.

17 6. "Qualified activities" means creating digital interactive media or
18 entertainment, including updates, subsequent editions, new seasons, and sequels.

19 (b) *Filing claims.* Subject to the limitations provided in this subsection, for
20 taxable years beginning after December 31, 2023, a claimant may claim as a credit
21 against the tax imposed under s. 71.02 any of the following amounts:

22 1. An amount equal to 30 percent of the salary or wages paid by the claimant
23 in the taxable year to the claimant's employees who were residents of this state at
24 the time that they were paid for services rendered in this state to produce digital
25 interactive media or entertainment.

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1 2. An amount equal to 30 percent of the eligible expenditures, other than salary
2 or wages described in subd. 1., paid by the claimant in the taxable year.

3 (c) *Limitations.* 1. No credit may be allowed under this subsection unless the
4 claimant files an application with the department, at the time and in the manner
5 prescribed by the department, and the department approves the application. The
6 claimant shall submit a copy of the approved application with the claimant's return.

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

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

17 2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise
18 due under this chapter or no tax is due under this chapter, the amount of the claim
19 not used to offset the tax due shall be certified by the department of revenue to the
20 department of administration for payment by check, share draft, or other draft
21 drawn from the appropriation account under s. 20.835 (2) (de).

22 **SECTION 4.** 71.10 (4) (i) of the statutes is amended to read:

23 71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland
24 preservation credit under ss. 71.57 to 71.61, farmland preservation credit, 2010 and
25 beyond under s. 71.613, homestead credit under subch. VIII, jobs tax credit under s.

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1 71.07 (3q), business development credit under s. 71.07 (3y), research credit under s.
2 71.07 (4k) (e) 2. a., veterans and surviving spouses property tax credit under s. 71.07
3 (6e), enterprise zone jobs credit under s. 71.07 (3w), electronics and information
4 technology manufacturing zone credit under s. 71.07 (3wm), earned income tax
5 credit under s. 71.07 (9e), digital interactive media credit under s. 71.07 (11),
6 estimated tax payments under s. 71.09, and taxes withheld under subch. X.

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

8 71.21 (4) (a) The amount of the credits computed by a partnership under s.
9 71.07 (2dm), (2dx), (2dy), (3g), (3h), (3n), (3q), (3s), (3t), (3w), (3wm), (3y), (4k), (4n),
10 (5e), (5g), (5i), (5j), (5k), (5r), (5rm), (6n), ~~and (10)~~, and (11) and passed through to
11 partners shall be added to the partnership's income.

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

13 71.26 (2) (a) 4. Plus the amount of the credit computed under s. 71.28 (1dm),
14 (1dx), (1dy), (3g), (3h), (3n), (3q), (3t), (3w), (3wm), (3y), (5e), (5g), (5i), (5j), (5k), (5r),
15 (5rm), (6n), ~~and (10)~~, and (11) and not passed through by a partnership, limited
16 liability company, or tax-option corporation that has added that amount to the
17 partnership's, limited liability company's, or tax-option corporation's income under
18 s. 71.21 (4) or 71.34 (1k) (g).

19 **SECTION 7.** 71.28 (11) of the statutes is created to read:

20 71.28 (11) DIGITAL INTERACTIVE MEDIA CREDIT. (a) *Definitions.* In this
21 subsection:

22 1. "Claimant" means a person who engages in qualified activities, owns a
23 copyright in digital interactive media or entertainment or has contracted directly
24 with the copyright owner or a person acting on behalf of the copyright owner, has a
25 viable plan for the commercial distribution of the digital interactive media or

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1 entertainment, as determined by the department, and files a claim under this
2 subsection.

3 2. “Digital interactive media or entertainment” means a product or platform
4 intended for commercial production, use, or distribution, that has primarily an
5 entertainment purpose, and that satisfies all of the following:

6 a. Contains at least 2 of the following types of data: text, sound, fixed images,
7 animated images, video, or 3-dimensional geometry.

8 b. Uses discrete values that are ordinarily symbolized numerically to represent
9 information for input, processing, transmission, and storage, including information
10 input, processed, transmitted, and stored via the Internet.

11 c. Uses a system for inputting, processing, transmitting, or storing information
12 or data in which users of the system are able to respond to the system by inputting,
13 processing, transmitting, or storing information or data in response to the
14 information or data provided to them through the system.

15 d. Uses communication tools to store, transmit, distribute, and deliver
16 information and data, including distributed networks such as the Internet and
17 physical media such as compact discs, CD-ROM, DVD, and other removable storage
18 drives or devices.

19 3. “Digital interactive media or entertainment” does not include any of the
20 following:

21 a. Software designed and developed primarily for the internal or operational
22 purposes of an entity.

23 b. Largely static Internet sites designed primarily to provide information about
24 a person, business, company, or firm, including Internet sites that are primarily

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1 social media, user generated videos, podcasting, interactive advertising, or
2 journalism.

3 c. Products or services regulated under chs. 562 to 569 or any software or
4 application primarily involving gambling or wagering.

5 d. Software or applications that contain content in violation of s. 944.21.

6 4. "Eligible expenditures" means expenditures in this state directly related to
7 qualified activities and that have economic substance and a business purpose,
8 including all of the following:

9 a. Testing software, source code development, patches, updates, sprites,
10 3-dimensional models, engine development and other back-end programming
11 activities, performance and motion capture, audio production, tool development,
12 original scoring, and level design.

13 b. Photography, sound synchronization, lighting, and related services.

14 c. Information technology support, data analysis, and activities related to a
15 community of users of digital interactive media or entertainment.

16 d. Leases of facilities and equipment.

17 e. Prepackaged audio files, video files, photographic files, or libraries.

18 f. Licenses to use prerecorded audio files, video files, or photographic files.

19 g. Development associated with producing audio files and video files used in
20 the production of end products of digital interactive media or entertainment.

21 h. Accountants and lawyers whose work is directly related to qualified
22 activities and who are licensed or otherwise authorized to practice in this state.

23 5. "Eligible expenditures" does not include any of the following:

24 a. Expenditures related to marketing, promotion, or distribution.

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1 b. Administrative, payroll, or management services that are not directly
2 related to management of qualified activities.

3 c. Any expenditure that is later reimbursed by the state.

4 d. Costs related to the transfer of tax credits.

5 e. Amounts that are paid to persons as a result of their participation in profits
6 from a digital interactive media or entertainment production.

7 f. Any reimbursement required under s. 71.748 (2).

8 g. Interest expenses for loans.

9 h. Any expenditure incurred solely to increase the amount of the credit under
10 this subsection and that involves self-dealing or the claimant inflating prices.

11 i. Costs incurred for food or entertainment expenses not involved in qualified
12 activities.

13 6. “Qualified activities” means creating digital interactive media or
14 entertainment, including updates, subsequent editions, new seasons, and sequels.

15 (b) *Filing claims.* Subject to the limitations provided in this subsection, for
16 taxable years beginning after December 31, 2023, a claimant may claim as a credit
17 against the tax imposed under s. 71.23 any of the following amounts:

18 1. An amount equal to 30 percent of the salary or wages paid by the claimant
19 in the taxable year to the claimant’s employees who were residents of this state at
20 the time that they were paid for services rendered in this state to produce digital
21 interactive media or entertainment.

22 2. An amount equal to 30 percent of the eligible expenditures, other than salary
23 or wages described in subd. 1., paid by the claimant in the taxable year.

24 (c) *Limitations.* 1. No credit may be allowed under this subsection unless the
25 claimant files an application with the department, at the time and in the manner

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1 prescribed by the department, and the department approves the application. The
2 claimant shall submit a copy of the approved application with the claimant's return.

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

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

13 2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise
14 due under this chapter or no tax is due under this chapter, the amount of the claim
15 not used to offset the tax due shall be certified by the department of revenue to the
16 department of administration for payment by check, share draft, or other draft
17 drawn from the appropriation account under s. 20.835 (2) (de).

18 **SECTION 8.** 71.30 (3) (f) of the statutes is amended to read:

19 71.30 (3) (f) The total of farmland preservation credit under subch. IX, jobs
20 credit under s. 71.28 (3q), enterprise zone jobs credit under s. 71.28 (3w), electronics
21 and information technology manufacturing zone credit under s. 71.28 (3wm),
22 business development credit under s. 71.28 (3y), research credit under s. 71.28 (4) (k)
23 1., digital interactive media credit under s. 71.28 (11), and estimated tax payments
24 under s. 71.29.

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

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1 71.34 **(1k)** (g) An addition shall be made for credits computed by a tax-option
2 corporation under s. 71.28 (1dm), (1dx), (1dy), (3), (3g), (3h), (3n), (3q), (3t), (3w),
3 (3wm), (3y), (4), (5), (5e), (5g), (5i), (5j), (5k), (5r), (5rm), (6n), ~~and (10)~~, and (11) and
4 passed through to shareholders.

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

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

13 **SECTION 11.** 71.47 (11) of the statutes is created to read:

14 71.47 **(11)** DIGITAL INTERACTIVE MEDIA CREDIT. (a) *Definitions.* In this
15 subsection:

16 1. "Claimant" means a person who engages in qualified activities, owns a
17 copyright in digital interactive media or entertainment or has contracted directly
18 with the copyright owner or a person acting on behalf of the copyright owner, has a
19 viable plan for the commercial distribution of the digital interactive media or
20 entertainment, as determined by the department, and files a claim under this
21 subsection.

22 2. "Digital interactive media or entertainment" means a product or platform
23 intended for commercial production, use, or distribution, that has primarily an
24 entertainment purpose, and that satisfies all of the following:

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- 1 a. Contains at least 2 of the following types of data: text, sound, fixed images,
2 animated images, video, or 3-dimensional geometry.
- 3 b. Uses discrete values that are ordinarily symbolized numerically to represent
4 information for input, processing, transmission, and storage, including information
5 input, processed, transmitted, and stored via the Internet.
- 6 c. Uses a system for inputting, processing, transmitting, or storing information
7 or data in which users of the system are able to respond to the system by inputting,
8 processing, transmitting, or storing information or data in response to the
9 information or data provided to them through the system.
- 10 d. Uses communication tools to store, transmit, distribute, and deliver
11 information and data, including distributed networks such as the Internet and
12 physical media such as compact discs, CD-ROM, DVD, and other removable storage
13 drives or devices.
- 14 3. “Digital interactive media or entertainment” does not include any of the
15 following:
- 16 a. Software designed and developed primarily for the internal or operational
17 purposes of an entity.
- 18 b. Largely static Internet sites designed primarily to provide information about
19 a person, business, company, or firm, including Internet sites that are primarily
20 social media, user generated videos, podcasting, interactive advertising, or
21 journalism.
- 22 c. Products or services regulated under chs. 562 to 569 or any software or
23 application primarily involving gambling or wagering.
- 24 d. Software or applications that contain content in violation of s. 944.21.

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1 4. “Eligible expenditures” means expenditures in this state directly related to
2 qualified activities and that have economic substance and a business purpose,
3 including all of the following:

4 a. Testing software, source code development, patches, updates, sprites,
5 3-dimensional models, engine development and other back-end programming
6 activities, performance and motion capture, audio production, tool development,
7 original scoring, and level design.

8 b. Photography, sound synchronization, lighting, and related services.

9 c. Information technology support, data analysis, and activities related to a
10 community of users of digital interactive media or entertainment.

11 d. Leases of facilities and equipment.

12 e. Prepackaged audio files, video files, photographic files, or libraries.

13 f. Licenses to use prerecorded audio files, video files, or photographic files.

14 g. Development associated with producing audio files and video files used in
15 the production of end products of digital interactive media or entertainment.

16 h. Accountants and lawyers whose work is directly related to qualified
17 activities and who are licensed or otherwise authorized to practice in this state.

18 5. “Eligible expenditures” does not include any of the following:

19 a. Expenditures related to marketing, promotion, or distribution.

20 b. Administrative, payroll, or management services that are not directly
21 related to management of qualified activities.

22 c. Any expenditure that is later reimbursed by the state.

23 d. Costs related to the transfer of tax credits.

24 e. Amounts that are paid to persons as a result of their participation in profits
25 from a digital interactive media or entertainment production.

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1 f. Any reimbursement required under s. 71.748 (2).

2 g. Interest expenses for loans.

3 h. Any expenditure incurred solely to increase the amount of the credit under
4 this subsection and that involves self-dealing or the claimant inflating prices.

5 i. Costs incurred for food or entertainment expenses not involved in qualified
6 activities.

7 6. “Qualified activities” means creating digital interactive media or
8 entertainment, including updates, subsequent editions, new seasons, and sequels.

9 (b) *Filing claims.* Subject to the limitations provided in this subsection, for
10 taxable years beginning after December 31, 2023, a claimant may claim as a credit
11 against the tax imposed under s. 71.43 any of the following amounts:

12 1. An amount equal to 30 percent of the salary or wages paid by the claimant
13 in the taxable year to the claimant’s employees who were residents of this state at
14 the time that they were paid for services rendered in this state to produce digital
15 interactive media or entertainment.

16 2. An amount equal to 30 percent of the eligible expenditures, other than salary
17 or wages described in subd. 1., paid by the claimant in the taxable year.

18 (c) *Limitations.* 1. No credit may be allowed under this subsection unless the
19 claimant files an application with the department, at the time and in the manner
20 prescribed by the department, and the department approves the application. The
21 claimant shall submit a copy of the approved application with the claimant’s return.

22 2. Partnerships, limited liability companies, and tax-option corporations may
23 not claim the credit under this subsection, but the eligibility for, and the amount of,
24 the credit are based on their payment of amounts under par. (b). A partnership,
25 limited liability company, or tax-option corporation shall compute the amount of

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

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

7 2. If the allowable amount of the claim under par. (b) exceeds the tax otherwise
8 due under this chapter or no tax is due under this chapter, the amount of the claim
9 not used to offset the tax due shall be certified by the department of revenue to the
10 department of administration for payment by check, share draft, or other draft
11 drawn from the appropriation account under s. 20.835 (2) (de).

12 **SECTION 12.** 71.49 (1) (f) of the statutes is amended to read:

13 71.49 (1) (f) The total of farmland preservation credit under subch. IX, jobs
14 credit under s. 71.47 (3q), enterprise zone jobs credit under s. 71.47 (3w), business
15 development credit under s. 71.47 (3y), research credit under s. 71.47 (4) (k) 1., digital
16 interactive media credit under s. 71.47 (11), and estimated tax payments under s.
17 71.48.

18 **SECTION 13.** 71.748 of the statutes is created to read:

19 **71.748 Digital interactive media credit audits.** (1) In this section,
20 “claimant” has the meaning given in s. 71.07 (11) (a) 1., 71.28 (11) (a) 1., or 71.47 (11)
21 (a) 1., as the context requires.

22 (2) A claimant shall reimburse the department for any audit initiated by the
23 department, and for all costs incurred by the department in reviewing an audit
24 conducted by an auditor certified under sub. (3) (a), relating to the credits under s.
25 71.07 (11), 71.28 (11), or 71.47 (11), including audits required under s. 73.03 (78) (a)

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1 2. This subsection does not apply to routine audits of a claimant's entire return that
2 include review of credits claimed under s. 71.07 (11), 71.28 (11), or 71.47 (11).

3 **(3)** (a) The department shall certify as eligible to conduct an audit required
4 under s. 73.03 (78) (a) 2. a certified public accountant that submits an application to
5 the department in the form and manner prescribed by the department and satisfies
6 all of the following:

7 1. The applicant is licensed as a certified public accountant under ch. 442.

8 2. The applicant is capable of conducting audits required under s. 73.03 (78) (a)
9 2. according to the requirements under s. 73.03 (78) (b) and any rules promulgated
10 related to the conduct of those audits and agrees to comply with those rules.

11 3. The applicant successfully completes any training required by the
12 department.

13 4. The applicant pays to the department the fee established under par. (c).

14 5. The applicant posts and maintains any bond or insurance required by the
15 department.

16 (b) The department shall revoke the certification of an auditor certified under
17 par. (a) if any of the following apply:

18 1. The auditor no longer satisfies a requirement under par. (a) 1. or 5.

19 2. The auditor violates s. 73.03 (78) (b) or any rules related to the conduct of
20 audits required under s. 73.03 (78) (a) 2.

21 (c) The department shall do all of the following:

22 1. Establish a fee for granting certifications under par. (a).

23 2. Publish and regularly update a list of all auditors certified under par. (a).

24 3. Publish on its website all of the following:

25 a. The application for certification under par. (a).

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1 b. The requirements for certification under par. (a).

2 c. The requirements for audits under s. 73.03 (78) (b).

3 d. The amount of the fee established under subd. 1.

4 **SECTION 14.** 73.03 (78) of the statutes is created to read:

5 73.03 (78) (a) To implement a program to approve applications for a certificate
6 for purposes of ss. 71.07 (11), 71.28 (11), and 71.47 (11). Application shall be made
7 to the department in each taxable year for which a certificate is desired. The
8 department may not approve an application unless all of the following apply:

9 1. The department determines that the applicant's qualified activities, as
10 defined in s. 71.47 (11) (a) 6., will result in eligible expenditures, as defined in s. 71.47
11 (11) (a) 4., in excess of \$25,000 for the taxable year.

12 2. The department, or an auditor certified by the department under s. 71.748,
13 conducts an audit of the applicant. The department shall review an audit conducted
14 by an auditor certified under s. 71.748 and shall conduct any additional audit
15 necessary and make necessary adjustments.

16 3. The applicant reimburses the department for the cost of the audit conducted
17 under subd. 2.

18 (b) 1. In conducting an audit required under par. (a) 2., the department or
19 auditor certified by the department under s. 71.748 shall do all of the following:

20 a. Comply with any rules promulgated under par. (d).

21 b. Use any sampling methods adopted by the department.

22 c. Verify each reported expenditure that is included in the audit and identify
23 and exclude each expenditure that does not satisfy the requirements under s. 71.07
24 (11), 71.28 (11), or 71.47 (11).

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1 2. No audit of an applicant required under par. (a) 2. may be performed by an
2 auditor that is part of an accounting entity that is not determined by the department
3 to be independent of the applicant, consistent with s. 442.10 and as provided in the
4 code of professional conduct of the American Institute of Certified Public
5 Accountants, or its successor organization, or as otherwise determined by the
6 department.

7 3. The department shall determine whether a sampling method is required for
8 audits required under par. (a) 2., and if a sampling method is required, an
9 appropriate sample method and size that accurately captures a truly representative
10 sample of all expenditures for which a credit is claimed under s. 71.07 (11), 71.28 (11),
11 or 71.47 (11).

12 4. The department shall conduct an audit required under par. (a) 2. when no
13 eligible auditor is able to access information necessary to conduct the audit because
14 the information is confidential and the department is able to access the confidential
15 information.

16 (c) At least once every 2 years, beginning not later than December 31, 2025, the
17 department shall submit a report to the governor and the standing committees of the
18 legislature with jurisdiction over taxation under s. 13.172 (3) that includes all of the
19 following:

20 1. The number of applications approved under this subsection.

21 2. The amount of the credits claimed under ss. 71.07 (11), 71.28 (11), and 71.47
22 (11).

23 3. The number of people employed in this state in the industries eligible for the
24 credits under ss. 71.07 (11), 71.28 (11), and 71.47 (11).

