

2009 SENATE BILL 52

February 11, 2009 – Introduced by Senators DARLING, KANAVAS, HARSDORF, HOPPER, KEDZIE, LAZICH, LEIBHAM and SCHULTZ, cosponsored by Representatives ZIPPERER, HONADEL, BALLWEG, BROOKS, DAVIS, KAUFERT, KLEEFISCH, KNODL, KRAMER, LEMAHIEU, MURTHA, NASS, NYGREN, A. OTT, PETERSEN, RIPP, ROTH, SPANBAUER, STRACHOTA, SUDER, TOWNSEND and VOS. Referred to Committee on Economic Development.

1 **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45
2 (2) (a) 10. and 77.92 (4); and *to create* 71.07 (5r), 71.10 (4) (cd), 71.28 (5r), 71.30
3 (3) (cd), 71.47 (5r) and 71.49 (1) (cd) of the statutes; **relating to:** an education
4 tax credit for businesses.

Analysis by the Legislative Reference Bureau

This bill creates an income tax and franchise tax credit for businesses that pay tuition for an individual to attend a university, college, or technical college. Sole proprietorships, corporations, and insurers may claim the credit. Partnerships, limited liability companies, and tax-option corporations compute the credit but pass it on to the partners, members, and shareholders in proportion to their ownership interests. The credit is an amount equal to: 1) 50 percent of the tuition paid by a business for an individual to attend school in a taxable year, if the individual is enrolled in a degree-granting program; and 2) 75 percent of the tuition paid by a business for an individual to attend school in a taxable year, if the individual is enrolled in a degree-granting program and if the individual's taxable income is not more than 185 percent of the federal poverty line. If the credit claimed by a business exceeds the business's tax liability, the state will not issue a refund check, but the business may carry forward any remaining credit to subsequent taxable years.

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

2 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e),
4 (5f), (5h), (5i), (5j), and (5k), and (5r) and not passed through by a partnership, limited
5 liability company, or tax–option corporation that has added that amount to the
6 partnership’s, company’s, or tax–option corporation’s income under s. 71.21 (4) or
7 71.34 (1k) (g).

8 **SECTION 2.** 71.07 (5r) of the statutes is created to read:

9 71.07 **(5r)** EDUCATION CREDIT. (a) *Definitions.* In this subsection:

10 1. “Claimant” means a sole proprietor, a partner, a member of a limited liability
11 company, or a shareholder of a tax–option corporation who files a claim under this
12 subsection.

13 2. “Degree–granting program” means an educational program for which an
14 associate, a bachelor’s, or a graduate degree is awarded upon successful completion.

15 3. “Family member” has the meaning given in s. 157.061 (7).

16 4. “Managing employee” means an individual who wholly or partially exercises
17 operational or managerial control over, or who directly or indirectly conducts, the
18 operation of the claimant’s business.

19 5. “Paid or incurred” includes any amount paid by the claimant to reimburse
20 an individual for the tuition that the individual paid or incurred.

21 6. “Poverty line” has the meaning given in s. 49.001 (5).

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1 7. “Qualified postsecondary institution” means all of the following:

2 a. A University of Wisconsin System institution, a technical college system
3 institution, or a regionally accredited 4-year nonprofit college or university having
4 its regional headquarters and principal place of business in this state.

5 b. A school approved under s. 38.50, if the delivery of education occurs in this
6 state.

7 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
8 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
9 amount of the tax, an amount equal to the following:

10 1. Fifty percent of the tuition that the claimant paid or incurred during the
11 taxable year for an individual to participate in an education program of a qualified
12 postsecondary institution, if the individual was enrolled in a degree-granting
13 program.

14 2. Seventy-five percent of the tuition that the claimant paid or incurred during
15 the taxable year for an individual to participate in an education program of a
16 qualified postsecondary institution, if the individual was enrolled in a
17 degree-granting program and if the individual’s taxable income in the year prior to
18 commencing participation in the education program in connection with which a
19 credit is claimed is not more than 185 percent of the poverty line.

20 (c) *Limitations.* 1. No credit may be allowed under par. (b) unless the claimant
21 obtains written certification from a qualified postsecondary institution concerning
22 the amount of tuition paid or incurred during the taxable year for which the claimant
23 is claiming a credit under this subsection and includes a copy of the certification with
24 the claimant’s return.

SENATE BILL 52**SECTION 2**

1 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
2 written certification from a qualified postsecondary institution that the taxable
3 income of the individual for whom the claimant has paid or incurred tuition during
4 the taxable year for the individual to participate in an education program of the
5 qualified postsecondary institution is not more than 185 percent of the poverty line
6 and includes a copy of the certification with the claimant's return. For purposes of
7 this subdivision and par. (b) 2., if an individual for whom the claimant has paid or
8 incurred tuition is claimed as a dependent on another person's tax return, the
9 individual's taxable income shall be the taxable income of the person on whose return
10 the individual is claimed as a dependent.

11 3. No credit may be allowed under par. (b) unless the claimant certifies to the
12 department of revenue that the claimant will not be reimbursed for any amount of
13 tuition for which the claimant claims a credit under par. (b).

14 4. A claimant may not claim the credit under par. (b) for any tuition amounts
15 that the claimant excluded under s. 71.05 (6) (b) 28. or under section 127 of the
16 Internal Revenue Code.

17 5. A claimant may not claim the credit under par. (b) for any tuition amounts
18 that the claimant paid or incurred for a family member of the claimant or for a family
19 member of a managing employee unless all of the following apply:

20 a. The family member was employed an average of at least 20 hours per week
21 as an employee of the claimant, or the claimant's business, during the one-year
22 period prior to commencing participation in the education program in connection
23 with which the claimant claims a credit under par. (b).

24 b. The family member is enrolled in a degree-granting program that is
25 substantially related to the claimant's business.

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1 c. The family member is making satisfactory progress towards completing the
2 degree-granting program under subd. 5. b.

3 (d) *Administration.* 1. The carry-over provisions of s. 71.28 (4) (e) and (f), as
4 they apply to the credit under s. 71.28 (4), apply to the credit under this subsection.

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

13 3. Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
14 applies to the credit under this subsection.

15 4. The department of revenue shall biennially submit a report to the legislature
16 under s. 13.172 (2) that identifies each qualified postsecondary institution for which
17 it has received written certification from a claimant under par. (c). The report shall
18 specify the total amount of the tuition for each such institution that is claimed as a
19 credit under this subsection in the previous biennium.

20 **SECTION 3.** 71.10 (4) (cd) of the statutes is created to read:

21 71.10 (4) (cd) The education credit under s. 71.07 (5r).

22 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

23 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
24 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3h), (3n), (3p), (3s), (3t), (3w), (5e), (5f), (5g),

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1 (5h), (5i), (5j), ~~and (5k)~~, and (5r) and passed through to partners shall be added to the
2 partnership's income.

3 **SECTION 5.** 71.26 (2) (a) 4. of the statutes is amended to read:

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

10 **SECTION 6.** 71.28 (5r) of the statutes is created to read:

11 71.28 **(5r)** EDUCATION CREDIT. (a) *Definitions.* In this subsection:

12 1. "Claimant" means a corporation that files a claim under this subsection.

13 2. "Degree-granting program" means an education program for which an
14 associate, a bachelor's, or a graduate degree is awarded upon successful completion.

15 3. "Family member" has the meaning given in s. 157.061 (7).

16 4. "Managing employee" means an individual who wholly or partially exercises
17 operational or managerial control over, or who directly or indirectly conducts, the
18 operation of the claimant's business.

19 5. "Paid or incurred" includes any amount paid by the claimant to reimburse
20 an individual for the tuition that the individual paid or incurred.

21 6. "Poverty line" has the meaning given in s. 49.001 (5).

22 7. "Qualified postsecondary institution" means all of the following:

23 a. A University of Wisconsin System institution, a technical college system
24 institution, or a regionally accredited 4-year nonprofit college or university having
25 its regional headquarters and principal place of business in this state.

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1 b. A school approved under s. 38.50, if the delivery of education occurs in this
2 state.

3 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
4 claimant may claim as a credit against the tax imposed under s. 71.23, up to the
5 amount of the tax, an amount equal to the following:

6 1. Fifty percent of the tuition that the claimant paid or incurred during the
7 taxable year for an individual to participate in an education program of a qualified
8 postsecondary institution, if the individual was enrolled in a degree-granting
9 program.

10 2. Seventy-five percent of the tuition that the claimant paid or incurred during
11 the taxable year for an individual to participate in an education program of a
12 qualified postsecondary institution, if the individual was enrolled in a
13 degree-granting program and if the individual's taxable income in the year prior to
14 commencing participation in the education program in connection with which a
15 credit is claimed is not more than 185 percent of the poverty line.

16 (c) *Limitations.* 1. No credit may be allowed under par. (b) unless the claimant
17 obtains written certification from a qualified postsecondary institution concerning
18 the amount of tuition paid or incurred during the taxable year for which the claimant
19 is claiming a credit under this subsection and includes a copy of the certification with
20 the claimant's return.

21 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
22 written certification from a qualified postsecondary institution that the taxable
23 income of the individual for whom the claimant has paid or incurred tuition during
24 the taxable year for the individual to participate in an education program of the
25 qualified postsecondary institution is not more than 185 percent of the poverty line

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1 and includes a copy of the certification with the claimant's return. For purposes of
2 this subdivision and par. (b) 2., if an individual for whom the claimant has paid or
3 incurred tuition is claimed as a dependent on another person's tax return, the
4 individual's taxable income shall be the taxable income of the person on whose return
5 the individual is claimed as a dependent.

6 3. No credit may be allowed under par. (b) unless the claimant certifies to the
7 department of revenue that the claimant will not be reimbursed for any amount of
8 tuition for which the claimant claims a credit under par. (b).

9 4. A claimant may not claim the credit under par. (b) for any tuition amounts
10 that the claimant has excluded under section 127 of the Internal Revenue Code.

11 5. A claimant may not claim the credit under par. (b) for any tuition amounts
12 that the claimant paid or incurred for a family member of a managing employee
13 unless all of the following apply:

14 a. The family member was employed an average of at least 20 hours per week
15 as an employee of the claimant, or the claimant's business, during the one-year
16 period prior to commencing participation in the education program in connection
17 with which the claimant claims a credit under par. (b).

18 b. The family member is enrolled in a degree-granting program that is
19 substantially related to the claimant's business.

20 c. The family member is making satisfactory progress towards completing the
21 degree-granting program under subd. 5. b.

22 (d) *Administration.* 1. The carry-over provisions of sub. (4) (e) and (f), as they
23 apply to the credit under sub. (4), apply to the credit under this subsection.

24 2. Partnerships, limited liability companies, and tax-option corporations may
25 not claim the credit under this subsection, but the eligibility for, and the amount of,

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1 the credit are based on their payment of tuition under par. (b). A partnership, limited
2 liability company, or tax-option corporation shall compute the amount of credit that
3 each of its partners, members, or shareholders may claim and shall provide that
4 information to each of them. Partners, members of limited liability companies, and
5 shareholders of tax-option corporations may claim the credit in proportion to their
6 ownership interest.

7 3. Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
8 to the credit under this subsection.

9 4. The department of revenue shall biennially submit a report to the legislature
10 under s. 13.172 (2) that identifies each qualified postsecondary institution for which
11 it has received written certification from a claimant under par. (c). The report shall
12 specify the total amount of the tuition for each such institution that is claimed as a
13 credit under this subsection in the previous biennium.

14 **SECTION 7.** 71.30 (3) (cd) of the statutes is created to read:

15 71.30 **(3)** (cd) The education credit under s. 71.28 (5r).

16 **SECTION 8.** 71.34 (1k) (g) of the statutes is amended to read:

17 71.34 **(1k)** (g) An addition shall be made for credits computed by a tax-option
18 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
19 (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and (5k), and (5r)~~ and passed
20 through to shareholders.

21 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

22 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
23 computed under s. 71.47 (1dd) to (1dx), (3h), (3n), (3p), (3w), (5e), (5f), (5g), (5h), (5i),
24 (5j), ~~and (5k), and (5r)~~ and not passed through by a partnership, limited liability
25 company, or tax-option corporation that has added that amount to the partnership's,

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1 limited liability company's, or tax-option corporation's income under s. 71.21 (4) or
2 71.34 (1k) (g) and the amount of credit computed under s. 71.47 (1), (3), (3t), (4), and
3 (5).

4 **SECTION 10.** 71.47 (5r) of the statutes is created to read:

5 71.47 (5r) EDUCATION CREDIT. (a) *Definitions.* In this subsection:

6 1. "Claimant" means a corporation that files a claim under this subsection.

7 2. "Degree-granting program" means an educational program for which an
8 associate, a bachelor's, or a graduate degree is awarded upon successful completion.

9 3. "Family member" has the meaning given in s. 157.061 (7).

10 4. "Managing employee" means an individual who wholly or partially exercises
11 operational or managerial control over, or who directly or indirectly conducts, the
12 operation of the claimant's business.

13 5. "Paid or incurred" includes any amount paid by the claimant to reimburse
14 an individual for the tuition that the individual paid or incurred.

15 6. "Poverty line" has the meaning given in s. 49.001 (5).

16 7. "Qualified postsecondary institution" means all of the following:

17 a. A University of Wisconsin System institution, a technical college system
18 institution, or a regionally accredited 4-year nonprofit college or university having
19 its regional headquarters and principal place of business in this state.

20 b. A school approved under s. 38.50, if the delivery of education occurs in this
21 state.

22 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
23 claimant may claim as a credit against the tax imposed under s. 71.43, up to the
24 amount of the tax, an amount equal to the following:

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1 1. Fifty percent of the tuition that the claimant paid or incurred during the
2 taxable year for an individual to participate in an education program of a qualified
3 postsecondary institution, if the individual was enrolled in a degree-granting
4 program.

5 2. Seventy-five percent of the tuition that the claimant paid or incurred during
6 the taxable year for an individual to participate in an education program of a
7 qualified postsecondary institution, if the individual was enrolled in a
8 degree-granting program and if the individual's taxable income in the year prior to
9 commencing participation in the education program in connection with which a
10 credit is claimed is not more than 185 percent of the poverty line.

11 (c) *Limitations.* 1. No credit may be allowed under par. (b) unless the claimant
12 obtains written certification from a qualified postsecondary institution concerning
13 the amount of tuition paid or incurred during the taxable year for which the claimant
14 is claiming a credit under this subsection and includes a copy of the certification with
15 the claimant's return.

16 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
17 written certification from a qualified postsecondary institution that the taxable
18 income of the individual for whom the claimant has paid or incurred tuition during
19 the taxable year for the individual to participate in an education program of the
20 qualified postsecondary institution is not more than 185 percent of the poverty line
21 and includes a copy of the certification with the claimant's return. For purposes of
22 this subdivision and par. (b) 2., if an individual for whom the claimant has paid or
23 incurred tuition is claimed as a dependent on another person's tax return, the
24 individual's taxable income shall be the taxable income of the person on whose return
25 the individual is claimed as a dependent.

SENATE BILL 52**SECTION 10**

1 3. No credit may be allowed under par. (b) unless the claimant certifies to the
2 department of revenue that the claimant will not be reimbursed for any amount of
3 tuition for which the claimant claims a credit under par. (b).

4 4. A claimant may not claim the credit under par. (b) for any tuition amounts
5 that the claimant excluded under section 127 of the Internal Revenue Code.

6 5. A claimant may not claim the credit under par. (b) for any tuition amounts
7 that the claimant paid or incurred for a family member of a managing employee
8 unless all of the following apply:

9 a. The family member was employed an average of at least 20 hours per week
10 as an employee of the claimant, or the claimant's business, during the one-year
11 period prior to commencing participation in the education program in connection
12 with which the claimant claims a credit under par. (b).

13 b. The family member is enrolled in a degree-granting program that is
14 substantially related to the claimant's business.

15 c. The family member is making satisfactory progress towards completing the
16 degree-granting program under subd. 5. b.

17 (d) *Administration.* 1. The carry-over provisions of s. 71.28 (4) (e) and (f), as
18 they apply to the credit under s. 71.28 (4), apply to the credit under this subsection.

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

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1 shareholders of tax-option corporations may claim the credit in proportion to their
2 ownership interest.

3 3. Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
4 applies to the credit under this subsection.

5 4. The department of revenue shall biennially submit a report to the legislature
6 under s. 13.172 (2) that identifies each qualified postsecondary institution for which
7 it has received written certification from a claimant under par. (c). The report shall
8 specify the total amount of the tuition for each such institution that is claimed as a
9 credit under this subsection in the previous biennium.

10 **SECTION 11.** 71.49 (1) (cd) of the statutes is created to read:

11 71.49 (1) (cd) The education credit under s. 71.47 (5r).

12 **SECTION 12.** 77.92 (4) of the statutes is amended to read:

13 77.92 (4) “Net business income,” with respect to a partnership, means taxable
14 income as calculated under section 703 of the Internal Revenue Code; plus the items
15 of income and gain under section 702 of the Internal Revenue Code, including taxable
16 state and municipal bond interest and excluding nontaxable interest income or
17 dividend income from federal government obligations; minus the items of loss and
18 deduction under section 702 of the Internal Revenue Code, except items that are not
19 deductible under s. 71.21; plus guaranteed payments to partners under section 707
20 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
21 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3s), (3n), (3p), (3t), (3w), (5e),
22 (5f), (5g), (5h), (5i), (5j), ~~and (5k)~~, and (5r); and plus or minus, as appropriate,
23 transitional adjustments, depreciation differences, and basis differences under s.
24 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions
25 from farming. “Net business income,” with respect to a natural person, estate, or

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SECTION 12

1 trust, means profit from a trade or business for federal income tax purposes and
2 includes net income derived as an employee as defined in section 3121 (d) (3) of the
3 Internal Revenue Code.

4 **SECTION 13. Initial applicability.**

5 (1) EDUCATION CREDIT. This act first applies to taxable years beginning on July
6 1, 2009.

7 (END)