

2009 SENATE BILL 63

February 18, 2009 – Introduced by Senators LASSA, DARLING, KREITLOW, COGGS, TAYLOR, PLALE, HARSDORF, LAZICH, HOPPER and SCHULTZ, cosponsored by Representatives FIELDS, ZIPPERER, HEBL, STRACHOTA, SINICKI, BALLWEG, DAVIS, A. OTT and NASS. 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:** a
4 postsecondary education 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) 25 percent of the tuition paid by a business for an individual to attend school, if the individual is enrolled in a course of instruction approved by the Educational Approval Board; and 2) 30 percent of the tuition paid by a business for an individual to attend school, if the individual is enrolled in a course of instruction that relates to a projected worker shortage in this state. The taxpayer claims the total amount of the tuition paid for the individual for the taxable year in which the individual graduates from the course of instruction. 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,
5 limited liability company, or tax-option corporation that has added that amount to
6 the partnership's, company's, or tax-option corporation's income under s. 71.21 (4)
7 or 71.34 (1k) (g).

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

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

11 1. "Claimant" means a sole proprietor, a partner, a member of a limited liability
12 company, or a shareholder of a tax-option corporation who files a claim under this
13 subsection.

14 2. "Course of instruction" means a course of instruction, as defined in s. 38.50
15 (1) (c), that is approved by the educational approval board under s. 38.50.

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

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

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

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1 6. “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 an amount
9 equal to the following:

10 1. Twenty-five percent of the tuition that the claimant paid or incurred for an
11 individual to participate in an education program of a qualified postsecondary
12 institution, if the individual was enrolled in a course of instruction.

13 2. Thirty percent of the tuition that the claimant paid or incurred for an
14 individual to participate in an education program of a qualified postsecondary
15 institution, if the individual was enrolled in a course of instruction that relates to a
16 projected worker shortage in this state, as determined by the local workforce
17 development boards established under 29 USC 2832.

18 (c) *Limitations.* 1. No credit may be allowed under par. (b) unless the claimant
19 certifies to the department of revenue that the claimant will not be reimbursed for
20 any amount of tuition for which the claimant claims a credit under par. (b).

21 2. A claimant may not claim the credit under par. (b) for any tuition amounts
22 that the claimant excluded under s. 71.05 (6) (b) 28. or under section 127 of the
23 Internal Revenue Code.

SENATE BILL 63**SECTION 2**

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

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

8 b. The family member is enrolled in a course of instruction that is substantially
9 related to the claimant's business.

10 4. The claimant shall claim the credit for the taxable year in which the
11 individual graduates from a course of instruction in an amount equal to the total
12 amount the claimant paid or incurred under par. (b) for all taxable years in which
13 the claimant paid or incurred such amounts related to that individual.

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

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

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

25 71.10 (4) (cd) Postsecondary education credit under s. 71.07 (5r).

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

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

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

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

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

14 71.28 **(5r)** POSTSECONDARY EDUCATION CREDIT. (a) *Definitions.* In this
15 subsection:

- 16 1. "Claimant" means a corporation that files a claim under this subsection.
- 17 2. "Course of instruction" means a course of instruction, as defined in s. 38.50
18 (1) (c), that is approved by the educational approval board under s. 38.50.
- 19 3. "Family member" has the meaning given in s. 157.061 (7).
- 20 4. "Managing employee" means an individual who wholly or partially exercises
21 operational or managerial control over, or who directly or indirectly conducts, the
22 operation of the claimant's business.
- 23 5. "Paid or incurred" includes any amount paid by the claimant to reimburse
24 an individual for the tuition that the individual paid or incurred.
- 25 6. "Qualified postsecondary institution" means all of the following:

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

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

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

9 1. Twenty-five percent of the tuition that the claimant paid or incurred for an
10 individual to participate in an education program of a qualified postsecondary
11 institution, if the individual was enrolled in a course of instruction.

12 2. Thirty percent of the tuition that the claimant paid or incurred for an
13 individual to participate in an education program of a qualified postsecondary
14 institution, if the individual was enrolled in a course of instruction that relates to a
15 projected worker shortage in this state, as determined by the local workforce
16 development boards established under 29 USC 2832.

17 (c) *Limitations.* 1. No credit may be allowed under par. (b) unless the claimant
18 certifies to the department of revenue that the claimant will not be reimbursed for
19 any amount of tuition for which the claimant claims a credit under par. (b).

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

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

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

5 b. The family member is enrolled in a course of instruction that is substantially
6 related to the claimant's business.

7 4. The claimant shall claim the credit for the taxable year in which the
8 individual graduates from a course of instruction in an amount equal to the total
9 amount the claimant paid or incurred under par. (b) for all taxable years in which
10 the claimant paid or incurred such amounts related to that individual.

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

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

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

22 71.30 (3) (cd) Postsecondary education credit under s. 71.28 (5r).

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

24 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option
25 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),

SENATE BILL 63**SECTION 8**

1 (3h), (3n), (3p), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), ~~and~~, (5k), and (5r) and passed
2 through to shareholders.

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

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

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

12 71.47 **(5r)** POSTSECONDARY EDUCATION CREDIT. (a) *Definitions.* In this
13 subsection:

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

15 2. "Course of instruction" means a course of instruction, as defined in s. 38.50
16 (1) (c), that is approved by the educational approval board under s. 38.50.

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

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

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

23 6. "Qualified postsecondary institution" means all of the following:

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

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

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

9 1. Twenty-five percent of the tuition that the claimant paid or incurred for an
10 individual to participate in an education program of a qualified postsecondary
11 institution, if the individual was enrolled in a course of instruction.

12 2. Thirty percent of the tuition that the claimant paid or incurred for an
13 individual to participate in an education program of a qualified postsecondary
14 institution, if the individual was enrolled in a course of instruction that relates to a
15 projected worker shortage in this state, as determined by the local workforce
16 development boards established under 29 USC 2832.

17 (c) *Limitations.* 1. No credit may be allowed under par. (b) unless the claimant
18 certifies to the department of revenue that the claimant will not be reimbursed for
19 any amount of tuition for which the claimant claims a credit under par. (b).

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

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

SENATE BILL 63**SECTION 10**

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

5 b. The family member is enrolled in a course of instruction that is substantially
6 related to the claimant's business.

7 4. The claimant shall claim the credit for the taxable year in which the
8 individual graduates from a course of instruction in an amount equal to the total
9 amount the claimant paid or incurred under par. (b) for all taxable years in which
10 the claimant paid or incurred such amounts related to that individual.

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

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

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

22 71.49 (1) (cd) Postsecondary education credit under s. 71.47 (5r).

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

24 77.92 (4) "Net business income," with respect to a partnership, means taxable
25 income as calculated under section 703 of the Internal Revenue Code; plus the items

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1 of income and gain under section 702 of the Internal Revenue Code, including taxable
2 state and municipal bond interest and excluding nontaxable interest income or
3 dividend income from federal government obligations; minus the items of loss and
4 deduction under section 702 of the Internal Revenue Code, except items that are not
5 deductible under s. 71.21; plus guaranteed payments to partners under section 707
6 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
7 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3h), (3s), (3n), (3p), (3t), (3w), (5e),
8 (5f), (5g), (5h), (5i), (5j), ~~and~~ (5k), and (5r); and plus or minus, as appropriate,
9 transitional adjustments, depreciation differences, and basis differences under s.
10 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions
11 from farming. “Net business income,” with respect to a natural person, estate, or
12 trust, means profit from a trade or business for federal income tax purposes and
13 includes net income derived as an employee as defined in section 3121 (d) (3) of the
14 Internal Revenue Code.

15 **SECTION 13. Initial applicability.**

16 (1) This act first applies to taxable years beginning on January 1, 2009.

17 (END)