



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-3831/1
JK:amn

2023 ASSEMBLY BILL 793

December 8, 2023 - Introduced by Representatives BINSFELD, JOERS, ALLEN, BEHNKE, BRANDTJEN, CALLAHAN, CONLEY, DITTRICH, GOEBEN, GOYKE, KITCHENS, MACCO, MAXEY, MELOTIK, MURSAU, OHNSTAD, ORTIZ-VELEZ, PENTERMAN, RATCLIFF and RETTINGER, cosponsored by Senators CABRAL-GUEVARA, HESSELBEIN, L. JOHNSON, LARSON, NASS, SPREITZER and WIRCH. Referred to Committee on Ways and Means.

1 **AN ACT to amend** 71.05 (6) (a) 26. a., 71.05 (6) (a) 26. b., 71.05 (6) (a) 26. c., 71.05
2 (6) (b) 32. a., 71.05 (6) (b) 32. ae., 71.05 (6) (b) 32. am., 71.07 (10) (a) 1., 71.07
3 (10) (a) 3., 71.07 (10) (b), 71.07 (10) (c) 2., 71.28 (10) (c) 2., 71.47 (10) (c) 2. and
4 224.50 (2) (a); and **to create** 71.05 (6) (b) 32. ap., 71.07 (10) (c) 3., 71.28 (10) (c)
5 3., 71.47 (10) (c) 3. and 71.98 (11) of the statutes; **relating to:** modifying the tax
6 treatment of college savings accounts and the employee college savings account
7 contribution credit.

Analysis by the Legislative Reference Bureau

This bill modifies the individual income tax treatment for contributions to and withdrawals from college savings accounts and the employee college savings account contribution credit.

Under current law, the College Savings Program Board, which is attached to the Department of Financial Institutions, administers the state's college savings programs. These programs, known as "Edvest" and "Tomorrow's Scholar," are qualified tuition programs authorized under federal law. Under the programs, anyone may contribute to an account, commonly called a "529 account," for the benefit of a prospective student. For state income tax purposes, individuals may deduct their contributions to accounts established under the Wisconsin qualified tuition programs. Withdrawals from an account are tax-free if used for qualified

ASSEMBLY BILL 793

educational expenses but subject to negative federal and state tax consequences if used for nonqualified expenses.

The bill makes the following changes to the state individual income tax treatment for contributions to and withdrawals from 529 accounts:

1. Increases the maximum amount that may be deducted. Under current law, the maximum amount that a contributor may deduct is annually indexed for inflation and, in 2022 is \$3,560, which is reduced to \$1,780 for a married individual filing a separate return or, in the case of divorced parents, each former spouse. The maximum amount in 2023 is \$3,860, reduced to \$1,930. The bill increases these amounts to \$5,000 and \$2,500, which are indexed annually for inflation, and repeals the limitation for divorced parents.

2. Requires the use of a first in, first out method of accounting for purposes of provisions in current law requiring that account withdrawals be added to income for state tax purposes and restricting carry-overs of contributions in excess of the maximum deduction threshold if the carry-over amount was withdrawn from the account within 365 days of being contributed.

3. Conforms the definition of “qualified higher education expense” to federal law. In recent years, the federal definition of “qualified higher education expense” has been expanded to include tuition expenses for elementary and secondary schools, expenses for apprenticeship programs, and qualified education loan repayments. The bill conforms state law to the federal definition.

Additionally, the bill modifies the tax credit that may be claimed by an employer for contributions to an employee’s 529 account. Under current law, the maximum credit per employee is 25 percent of the amount the employer contributes to the 529 account, up to a maximum contribution that is 25 percent of the maximum amount that an individual contributor may deduct under state law. The maximum credit is \$222.50 for 2022 and \$241.25 for 2023. Under the bill, the maximum credit per employee is 50 percent of the amount the employer contributes to the 529 account, not exceeding a maximum credit of \$800, adjusted annually for inflation. The bill also specifies that sole proprietors may claim the credit and that the credit may only be claimed for a contribution to an employee’s 529 account if the employee’s compensation is reported, or required to be reported, on a W-2 form issued by the employer.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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) 26. a. of the statutes is amended to read:

ASSEMBLY BILL 793**SECTION 1**

1 71.05 (6) (a) 26. a. To the extent that the receipt of such ~~the~~ amounts by the
2 owner or beneficiary of the account results in a penalty as provided in 26 USC 529
3 (c) (6), any amount that was not used for qualified higher education expenses, as ~~that~~
4 ~~term is~~ defined in 26 USC 529 (c) (7), (8), and (9) and (e) (3), and was contributed to
5 the account after ~~December 31, 2013~~, except that this subd. 26. a. applies only to
6 amounts for which a subtraction was made under par. (b) 32. or 32m. For purposes
7 of this subd. 26. a., a first in, first out method of accounting shall apply to the account.

8 **SECTION 2.** 71.05 (6) (a) 26. b. of the statutes is amended to read:

9 71.05 (6) (a) 26. b. Any amount rolled over by an owner into another state's
10 qualified tuition program, as described in 26 USC 529 (c) (3) (C) (i), to the extent that
11 the amount was previously claimed as a deduction under par. (b) 32. or 32m. For
12 purposes of this subd. 26. b., a first in, first out method of accounting shall apply to
13 the account.

14 **SECTION 3.** 71.05 (6) (a) 26. c. of the statutes is amended to read:

15 71.05 (6) (a) 26. c. To the extent that an amount is not otherwise added back
16 under this subdivision, any amount withdrawn from ~~a college savings~~ the account,
17 as described in s. 224.50, for any purpose if the withdrawn amount was contributed
18 to the account within 365 days of the day on which the amount was withdrawn from
19 ~~such an~~ the account and if the withdrawn amount was previously subtracted under
20 par. (b) 32. For purposes of this subd. 26. c., a first in, first out method of accounting
21 shall apply to the account.

22 **SECTION 4.** 71.05 (6) (b) 32. a. of the statutes is amended to read:

23 71.05 (6) (b) 32. a. Except as otherwise provided in this subdivision, an amount
24 equal to not more than ~~\$3,000~~ \$5,000 per beneficiary, by each contributor, or ~~\$1,500~~
25 \$2,500 by each contributor who is married and files separately, to an account for each

ASSEMBLY BILL 793**SECTION 4**

1 year to which the claim relates, except that the total amount for which a deduction
2 may be claimed under this subdivision and under subd. 33., per beneficiary by any
3 claimant may not exceed ~~\$3,000~~ \$5,000 each year, or ~~\$1,500~~ \$2,500 each year by any
4 claimant who is married and files separately. In the case of a married couple, the
5 total deduction under this subdivision and under subd. 33., per beneficiary by the
6 married couple may not exceed ~~\$3,000~~ \$5,000 each year. ~~In the case of divorced~~
7 ~~parents, the total deduction under this subdivision and under subd. 33., per~~
8 ~~beneficiary by the formerly married couple, may not exceed \$3,000, and the~~
9 ~~maximum amount that may be deducted by each former spouse is \$1,500, unless the~~
10 ~~divorce judgment specifies a different division of the \$3,000 maximum that may be~~
11 ~~claimed by each former spouse. For taxable years beginning after December 31, 2013~~
12 2024, the dollar amounts in this subd. 32. a., and the dollar amounts in subd. 33. a.,
13 shall be increased each year by a percentage equal to the percentage change between
14 the U.S. consumer price index for all urban consumers, U.S. city average, for the
15 month of August of the previous year and the U.S. consumer price index for all urban
16 consumers, U.S. city average, for the month of August ~~2012~~ 2023, as determined by
17 the federal department of labor, except that the adjustment may occur only if the
18 resulting amount is greater than the corresponding amount that was calculated for
19 the previous year. Each amount that is revised under this subd. 32. a. and under
20 subd. 33. a. shall be rounded to the nearest multiple of \$10 if the revised amount is
21 not a multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount
22 shall be increased to the next higher multiple of \$10. The department of revenue
23 shall annually adjust the changes in dollar amounts required under this subd. 32.
24 a. and incorporate the changes into the income tax forms and instructions. Any
25 amount that is paid into an account under this subdivision that exceeds the

ASSEMBLY BILL 793**SECTION 4**

1 maximum amount that may be subtracted under this subdivision may be carried
2 forward to the next taxable year, and thereafter, subject to the limitations in this
3 subdivision.

4 **SECTION 5.** 71.05 (6) (b) 32. ae. of the statutes is amended to read:

5 71.05 (6) (b) 32. ae. No ~~carryover~~ carry-over that would otherwise be
6 authorized under this subdivision may be allowed if the ~~carryover~~ carry-over
7 amount was withdrawn from an account for any purpose and the withdrawal
8 occurred within 365 days of the day on which the amount was contributed to the
9 account. For purposes of this subd. 32. ae., a first in, first out method of accounting
10 shall apply to the account.

11 **SECTION 6.** 71.05 (6) (b) 32. am. of the statutes is amended to read:

12 71.05 (6) (b) 32. am. Any ~~carryover~~ carry-over amount that is otherwise eligible
13 for a subtraction under this subdivision shall be reduced by an amount equal to the
14 amount of a withdrawal from an account that was not used for qualified higher
15 education expenses, as that term is defined in 26 USC 529 (c) (7), (8), and (9) and (e)
16 (3), to the extent that the withdrawn amount exceeds the amount that is added to
17 income under par. (a) 26.

18 **SECTION 7.** 71.05 (6) (b) 32. ap. of the statutes is created to read:

19 71.05 (6) (b) 32. ap. No subtraction may be allowed under this subdivision for
20 any amount contributed to an account for which a credit is claimed under s. 71.07
21 (10), 71.28 (10), or 71.47 (10).

22 **SECTION 8.** 71.07 (10) (a) 1. of the statutes is amended to read:

23 71.07 (10) (a) 1. "Claimant" means an individual who files a claim under this
24 subsection and who is a sole proprietor and an employer and contributes to an
25 employee's college savings account under par. (b). or who is a partner of a

ASSEMBLY BILL 793**SECTION 8**

1 partnership, member of a limited liability company, or shareholder of a tax-option
2 corporation that is an employer and that contributes to an employee's college savings
3 account under par. (b).

4 **SECTION 9.** 71.07 (10) (a) 3. of the statutes is amended to read:

5 71.07 (10) (a) 3. "Employer" means ~~an employer that is a partnership, as~~
6 ~~defined in s. 71.195, or a tax-option corporation, as defined in s. 71.34 (2)~~ a person
7 for whom an individual performs or performed any service as an employee of that
8 person and who is required to furnish a W-2 form to the employee for federal income
9 tax purposes.

10 **SECTION 10.** 71.07 (10) (b) of the statutes is amended to read:

11 71.07 (10) (b) *Filing claims.* Subject to the limitations provided in this
12 subsection, a claimant may claim as a credit against the tax imposed under s. 71.02,
13 up to the amount of those taxes, for each employee of an employer, ~~the claimant's~~
14 ~~proportionate share, as computed under par. (c) 1.,~~ of an amount equal to the amount
15 the employer paid into a college savings account owned by the employee in the
16 taxable year in which the contribution is made.

17 **SECTION 11.** 71.07 (10) (c) 2. of the statutes is amended to read:

18 71.07 (10) (c) 2. The maximum amount of the credit per employee that a
19 claimant may claim under this subsection is ~~the claimant's proportionate share of an~~
20 ~~amount equal to 25~~ 50 percent of the amount the employee's employer contributed
21 to the employee's college savings account ~~up to a maximum contribution equal to 25~~
22 ~~percent of the maximum amount that an individual contributor may deduct under~~
23 ~~s. 71.05 (6) (b) 32. a. per beneficiary, not to exceed a maximum credit of \$800. For~~
24 ~~taxable years beginning after December 31, 2024, the dollar amount in this~~
25 ~~subdivision shall be increased each year by a percentage equal to the percentage~~

ASSEMBLY BILL 793**SECTION 11**

1 change between the U.S. consumer price index for all urban consumers, U.S. city
2 average, for the month of August of the previous year and the U.S. consumer price
3 index for all urban consumers, U.S. city average, for the month of August 2023, as
4 determined by the federal department of labor, except that the adjustment may occur
5 only if the resulting amount is greater than the corresponding amount that was
6 calculated for the previous year. The amount that is revised under this subdivision
7 shall be rounded to the nearest multiple of \$10 if the revised amount is not a multiple
8 of \$10 or, if the revised amount is a multiple of \$5, such an amount shall be increased
9 to the next higher multiple of \$10. The department of revenue shall annually adjust
10 the change in the dollar amount required under this subdivision and incorporate the
11 change into the income tax forms and instructions.

12 **SECTION 12.** 71.07 (10) (c) 3. of the statutes is created to read:

13 71.07 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income
14 tax purposes, the compensation of the employee described in par. (b) is reported, or
15 required to be reported, on a W-2 form issued by the claimant.

16 **SECTION 13.** 71.28 (10) (c) 2. of the statutes is amended to read:

17 71.28 (10) (c) 2. The maximum amount of the credit per employee that a
18 claimant may claim under this subsection is an amount equal to ~~25~~ 50 percent of the
19 amount the claimant contributed to the employee's college savings account ~~up to a~~
20 ~~maximum contribution equal to 25 percent of the maximum amount that an~~
21 ~~individual contributor may deduct under s. 71.05 (6) (b) 32. a. per beneficiary, not to~~
22 exceed a maximum credit of \$800. For taxable years beginning after December 31,
23 2024, the dollar amount in this subdivision shall be increased each year by a
24 percentage equal to the percentage change between the U.S. consumer price index
25 for all urban consumers, U.S. city average, for the month of August of the previous

ASSEMBLY BILL 793**SECTION 13**

1 year and the U.S. consumer price index for all urban consumers, U.S. city average,
2 for the month of August 2023, as determined by the federal department of labor,
3 except that the adjustment may occur only if the resulting amount is greater than
4 the corresponding amount that was calculated for the previous year. The amount
5 that is revised under this subdivision shall be rounded to the nearest multiple of \$10
6 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple
7 of \$5, such an amount shall be increased to the next higher multiple of \$10. The
8 department of revenue shall annually adjust the change in the dollar amount
9 required under this subdivision and incorporate the change into the income tax
10 forms and instructions.

11 **SECTION 14.** 71.28 (10) (c) 3. of the statutes is created to read:

12 71.28 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income
13 tax purposes, the compensation of the employee described in par. (b) is reported, or
14 required to be reported, on a W-2 form issued by the claimant.

15 **SECTION 15.** 71.47 (10) (c) 2. of the statutes is amended to read:

16 71.47 (10) (c) 2. The maximum amount of the credit per employee that a
17 claimant may claim under this subsection is an amount equal to ~~25~~ 50 percent of the
18 amount the claimant contributed to the employee's college savings account ~~up to a~~
19 ~~maximum contribution equal to 25 percent of the maximum amount that an~~
20 ~~individual contributor may deduct under s. 71.05 (6) (b) 32. a. per beneficiary, not to~~
21 exceed a maximum credit of \$800. For taxable years beginning after December 31,
22 2024, the dollar amount in this subdivision shall be increased each year by a
23 percentage equal to the percentage change between the U.S. consumer price index
24 for all urban consumers, U.S. city average, for the month of August of the previous
25 year and the U.S. consumer price index for all urban consumers, U.S. city average,

ASSEMBLY BILL 793**SECTION 15**

1 for the month of August 2023, as determined by the federal department of labor,
2 except that the adjustment may occur only if the resulting amount is greater than
3 the corresponding amount that was calculated for the previous year. The amount
4 that is revised under this subdivision shall be rounded to the nearest multiple of \$10
5 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple
6 of \$5, such an amount shall be increased to the next higher multiple of \$10. The
7 department of revenue shall annually adjust the change in the dollar amount
8 required under this subdivision and incorporate the change into the income tax
9 forms and instructions.

10 **SECTION 16.** 71.47 (10) (c) 3. of the statutes is created to read:

11 71.47 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income
12 tax purposes, the compensation of the employee described in par. (b) is reported, or
13 required to be reported, on a W-2 form issued by the claimant.

14 **SECTION 17.** 71.98 (11) of the statutes is created to read:

15 71.98 (11) QUALIFIED TUITION PROGRAMS. For taxable years beginning after
16 December 31, 2021, sections 221 (e) (1) and 529 of the Internal Revenue Code as in
17 effect for federal purposes, relating to qualified tuition programs.

18 **SECTION 18.** 224.50 (2) (a) of the statutes is amended to read:

19 224.50 (2) (a) Except as provided in s. 224.51, establish and administer a
20 college savings program that allows an individual, trust, legal guardian, or entity
21 described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover
22 tuition, fees, and the costs of room and board, books, supplies, and equipment
23 required for the enrollment or attendance of a beneficiary at an eligible educational
24 institution, as defined under 26 USC 529, and to cover tuition expenses in connection
25 with enrollment or attendance at an elementary or secondary public, private, or

ASSEMBLY BILL 793**SECTION 18**

1 religious school, as described in section 11032 of P.L. 115-97, related to qualified
2 tuition programs under 26 USC 529, to cover the expenses for fees, books, supplies,
3 and equipment required for the participation of a beneficiary in an apprenticeship
4 program described in 26 USC 529 (c) (8), and to cover the amounts paid as principal
5 or interest on a qualified education loan, as defined in 26 USC 221 (d) (1), of the
6 beneficiary or a sibling of the beneficiary.

7 **SECTION 19. Initial applicability.**

8 (1) ADDITION TO TAX FOR NONQUALIFIED WITHDRAWALS PREVIOUSLY DEDUCTED. The
9 treatment of s. 71.05 (6) (a) 26. a. that amends the definition of qualified higher
10 education expenses to include a cross-reference to 26 USC 529 (c) (7) first applies
11 retroactively to taxable years beginning after December 31, 2017. The treatment of
12 s. 71.05 (6) (a) 26. a. that amends the definition of qualified higher education
13 expenses to include a cross-reference to 26 USC 529 (c) (8) and (9) first applies
14 retroactively to taxable years beginning after December 31, 2018. The treatment of
15 s. 71.05 (6) (a) 26. a. to require the use of a first in, first out method of accounting and
16 to include a cross-reference to s. 71.05 (6) (b) 32m. first applies to taxable years
17 beginning on January 1 of the year in which this subsection takes effect, except that
18 if this subsection takes effect after July 31, the treatment first applies to taxable
19 years beginning on January 1 of the year following the year in which this subsection
20 takes effect.

21 (2) DEFINITION OF QUALIFIED HIGHER EDUCATION EXPENSES. The treatment of s.
22 71.05 (6) (b) 32. am. that amends the definition of qualified higher education
23 expenses to include a cross-reference to 26 USC 529 (c) (7) first applies retroactively
24 to taxable years beginning after December 31, 2017. The treatment of s. 71.05 (6)
25 (b) 32. am. that amends the definition of qualified higher education expenses to

ASSEMBLY BILL 793**SECTION 19**

1 include a cross-reference to 26 USC 529 (c) (8) and (9) and the treatment of s. 224.50
2 (2) (a) first apply retroactively to taxable years beginning after December 31, 2018.

3 (3) TAX TREATMENT FOR CONTRIBUTIONS AND WITHDRAWALS; EMPLOYEE COLLEGE
4 SAVINGS ACCOUNT CONTRIBUTION CREDIT. The treatment of ss. 71.05 (6) (a) 26. b. and
5 c. and (b) 32. a., ae., and ap., 71.07 (10) (a) 1. and 3., (b), and (c) 2. and 3., 71.28 (10)
6 (c) 2. and 3., and 71.47 (10) (c) 2. and 3. first applies to taxable years beginning on
7 January 1, 2024.

8 (END)