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STEPHEN R. MILLER
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May 23, 2013

MEMORANDUM

To: Senator Grothman

From: Marc E. Shovers, Managing Attorney, (608) 266–0129

Subject: Technical Memorandum to **2013 SB 170** (LRB–2034/1) **by DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

May 20, 2013

TO: Marc Shovers
Legislative Reference Bureau

FROM: John Koskinen
Brad Caruth
Department of Revenue

SUBJECT: Technical Memorandum on Senate Bill 170: Creating a Refundable Individual Income Tax Credit for Tuition Expenses Paid for Dependents Who Attend Certain Public and Private Elementary and Secondary Schools

The Department has the following concerns related to the bill:

The bill does not require that the eligible institution be located in Wisconsin. Section 71.07(8m)(a)3 provides that ""Eligible institution" means any public or private elementary or secondary school, including a charter school, that does not receive more than $3,000 in state aid or property tax revenue, per pupil, for the school year..." It is unclear if this means "Wisconsin state aid" or "Wisconsin property tax revenue." An out-of-state school would not be receiving Wisconsin state aid or Wisconsin property tax revenue. For example, a nonresident of Wisconsin who sends his child to a private school in California could be eligible for a credit under this bill. The school receives no state aid (either California or Wisconsin) and no property tax revenue. The nonresident would be allowed the refundable Wisconsin credit (although it may have to be prorated). It is unclear whether the California school would still qualify if it received California state aid. It should be clarified if the credit is to apply only to tuition paid to Wisconsin schools.

An eligible institution is defined as a school that does not receive more than $3,000 in state aid per pupil. If a private school has both privately funded students and voucher students, but with enough voucher students to reach the $3,000 threshold, the school would not be an eligible institution. Any parents who personally pay the full tuition would not be able to claim the credit.

An eligible institution is a school that does not receive more than $3,000 in state aid or property tax revenue, per pupil. This could be interpreted to mean that an institution could receive $3,000 in state aid and $3,000 in property tax revenue (total received $6,000) and still qualify as an eligible institution. This could be clarified to read "does not receive more than $3,000 in state aid or property tax revenue or more than $3,000 in state aid and property tax revenue combined, per pupil..."

The definition of "pupil" is inconsistent with the use of the term in sec. 71.07(8m)(a)3, defining an "eligible institution." A "pupil" is defined as an elementary pupil or secondary pupil. "Elementary pupil" and "secondary pupil" are defined as an individual enrolled in grades kindergarten to 8 (grades 9 to 12 for a secondary pupil) and who is a dependent of the claimant under section 151(c) of the Internal Revenue Code. Whether an individual is a dependent or not does not apply for sec. 71.07(8m)(a)3. Moreover, the definitions of "elementary pupil" and "secondary pupil" do not need the reference to, "who is a dependent of the claimant under section 151(c) of the Internal Revenue Code" because the definition of "claimant" is an individual who claims a pupil as a dependent under section 151(c) of the Internal Revenue Code, on his or her tax return.

The definition of "tuition" refers to "a pupil's tuition, for education expenses, to attend an eligible institution." It is unclear whether this includes any extra fees required for attendance such as book fees, laboratory fees, or athletic fees.

Section 71.07(8m)(c)1 provides that if an individual is an elementary pupil and a secondary pupil in the same taxable year, the claimant may claim the credit for only one grade for that pupil for that taxable year. The law should specify whether in this case the claimant should claim the credit for an elementary pupil or the higher credit for a secondary pupil.

Generally credits are reduced when married persons file separately to prevent each spouse from claiming the full credit and receiving a benefit in excess of the benefit for married joint filers. The education expenses credit is based on the number of dependents, which would be unaffected by the choice of filing status. For married persons filing separately, one spouse may claim two dependents and the other spouse none or each spouse may claim one dependent. but the total number of dependents would not change. As such, reducing the credit by 50% may not be necessary in this case.

If you have any questions regarding this technical memorandum, please contact Brad Caruth at (608) 261-8984 or bradley.caruth@revenue.wi.gov.

cc: Senator Grothman