

2013 DRAFTING REQUEST

Bill

Received: 10/10/2012 Received By: mshovers
Wanted: As time permits Companion to LRB:
For: Administration-Budget 6-1923 By/Representing: Quinn
May Contact: Drafter: mshovers
Subject: Tax, Individual - income credit Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email:
Carbon copy (CC) to:

Pre Topic:

DOA:.....Quinn, BB0023 -

Topic:

Ineligibility for homestead and earned income tax credits based on fraudulent or reckless refund claims

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 10/25/2012			_____			
/P1		evinz 10/27/2012	10/29/2012	_____	srose 10/29/2012		State

FE Sent For:

<END>

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1? mshovers

Pl MES 10/25/12 pleev 10/26/12
pl ev 10/27/12
<END>

[Handwritten signature]
TCZ 10/27/12

Shovers, Marc

From: Hanaman, Cathlene
Sent: Wednesday, October 10, 2012 4:46 PM
To: Shovers, Marc; Kreye, Joseph
Subject: FW: [Possible SPAM] Statutory Language Drafting Request
Attachments: Bogus Claims Ineligibility Drafting Instructions.docx

Importance: Low

From: brian.quinn@wisconsin.gov [mailto:brian.quinn@wisconsin.gov]
Sent: Thursday, September 27, 2012 4:46 PM
To: Hanaman, Cathlene
Cc: Thornton, Scott - DOA; Frederick, Caitlin - DOA; Quinn, Brian D - DOA
Subject: [Possible SPAM] Statutory Language Drafting Request
Importance: Low

Biennial Budget:2013-15

Topic: Ineligibility for Homestead and Earned Income Credits Based on Previous Fraudulent or Reckless Refund Claims

Tracking Code: 

SBO Team: TLGED

SBO Analyst: Quinn, Brian D - DOA
Phone: (608) 266-1923
E-mail: brian.quinn@wisconsin.gov

Agency Acronym: SRTR

Agency Number: 835

Priority: Medium

Intent:

If a taxpayer is determined to have made a fraudulent credit claim for either the homestead credit or the earned income credit in the most recent taxable year, that taxpayer may not claim that credit for the next ten taxable years.

If a taxpayer is determined to have made a reckless credit claim for either the homestead credit or the earned income credit in the most recent taxable year, that taxpayer may not claim that credit for the next two taxable years.

Attachments: True

Please send completed drafts to statlanguage@wisapps.wi.gov

TITLE: INELIGIBILITY FOR CREDITS BASED ON PREVIOUS FRAUDULENT OR RECKLESS REFUND CLAIMS

DRAFTING INSTRUCTIONS

Create sec. 71.83(5), Stats., as follows:

(5) RESTRICTIONS ON PERSONS WHO IMPROPERLY CLAIMED CREDIT IN PRIOR YEAR. (a) *Persons making prior fraudulent or reckless claims.* No earned income credit or homestead credit shall be allowed under this chapter for any taxable year the claimant is in a disallowance period. For purposes of this paragraph a disallowance period is one of the following:

1. The period of 10 taxable years after the most recent taxable year for which the department determined that the person's improper claim of the credit under this chapter was due to fraud, or

2. The period of 2 taxable years after the most recent taxable year for which the department determined that the person's improper claim of the credit under this chapter was due to reckless or intentional disregard of rules and regulations.

(b) *Reinstatement of eligibility.* For a person who is denied a credit under this subsection, no credit shall be allowed for any subsequent taxable year until the disallowance period expires and the taxpayer provides such information as the department may require to demonstrate eligibility for the credit.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Day after publication.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0305/P1

MES...

Leav MR

DOA:.....Quinn, BB0023 - Ineligibility for homestead and earned income tax credits based on fraudulent or reckless refund claims

FOR 2013-2015 BUDGET - NOT READY FOR INTRODUCTION

*SAV
xref NA*

D - Note

do not open

① AN ACT ...; relating to: the budget

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

This bill prohibits an individual who files a fraudulent claim for an earned income tax credit or homestead tax credit (credit) from filing a claim for either credit for 10 years. The bill also prohibits an individual who files a reckless claim for a credit from filing a claim for either credit for two years.

Under the bill, a claim is fraudulent if it is false or excessive and filed with fraudulent intent, as determined by DOR, and a claim is reckless if it is improper, due to reckless or intentional disregard of the provisions, the income tax statutes or of rules and regulations of DOR, as determined by the department.

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:

SECTION 1. 71.83 (5) of the statutes is created to read:

1 71.83 (5) INELIGIBILITY TO CLAIM CERTAIN CREDITS. (a) *Definitions* In this
2 subsection:

3 1. "Credit" means the earned income tax credit under s. 71.07 (9e) or the
4 homestead credit under subch. VIII.

5 2. "Fraudulent claim" means a claim for a credit, filed by an individual, *that*
6 is false or excessive and filed with fraudulent intent, as determined by the
7 department.

8 3. "Reckless claim" means a claim for a credit, filed by an individual, *that*
9 improper, due to reckless or intentional disregard of the provisions in this chapter
10 or of rules and regulations of the department, as determined by the department.

tr ****NOTE: Your instructions do not contain any definitions for "fraudulent" or
"reckless" and the description of these terms in the instructions seems vague and subject
to a great deal of interpretation by DOR. I'm not sure what *that* the legal standard is for
"fraudulent" or "reckless" claims, under this paragraph, or on what basis DOR could
determine that a claim was "fraudulent" or "reckless." I based the definition of
"fraudulent claim" on the description of "fraudulent claim for credit" under s. 71.83 (2)
(b) 4., although the use of the term in that subdivision seems to be predicated on a judicial
finding. I could not find a definition of "reckless" in the statutes.

Your instructions seem to indicate that DOR may determine what's fraudulent or
reckless, without any particular standards that a taxpayer could look to in an attempt
to determine whether his or her actions would violate this provision. Do these definitions
meet your intent, or would you like to provide more precise definitions?

11 (b) *Disallowance period.* 1. An individual who files a fraudulent claim may not
12 file a claim for a credit for 10 successive taxable years, beginning with the taxable
13 year that begins immediately after the taxable year for which the department
14 determined that the individual filed a fraudulent claim.

15 2. An individual who files a reckless claim may not file a claim for a credit for
16 *two* successive taxable years, beginning with the taxable year that begins
17 immediately after the taxable year for which the department determined that the
18 individual filed a reckless claim.

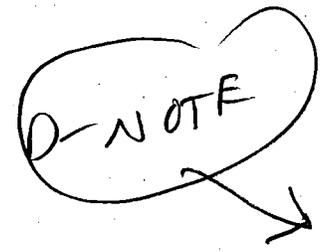
1 (c) *Reinstatement*. After the period described under par. (b) during which an
 2 individual may not file a claim for a credit, he or she may file a claim for credit, subject
 3 to any requirements that the department may impose on the individual to
 4 demonstrate that he or she is eligible to claim the credit.

****NOTE: I believe that par. (c) is drafted according to your instructions, but it
 seems a little vague.

5 **SECTION 9337. Initial applicability; Revenue**

6 (1) FRAUDULENT OR RECKLESS CLAIMS FOR TAX CREDITS. The treatment of section
 7 71.83 (5) of the statutes first applies to a fraudulent or reckless claim that is filed with
 8 the department of revenue on the effective date of this subsection.

9 (END)

D-NOTE


**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0305/P1dn

MES...s...

eev

date

Brian Quinn:

s (CS)

As I described in the **** NOTES in the text of this bill, the standards for determining whether a claim for a credit is "fraudulent" or "reckless" seem a little vague to me and don't seem to give much guidance to a taxpayer. Please let me know if you'd like any changes made to the bill.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0305/P1dn

MES:eev:rs

October 29, 2012

Brian Quinn:

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0305/P1
MES:eev:rs

DOA:.....Quinn, BB0023 – Ineligibility for homestead and earned income tax credits based on fraudulent or reckless refund claims

FOR 2013-2015 BUDGET – NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

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17 after the taxable year for which the department determined that the individual filed
18 a reckless claim.

