



## 2009 ASSEMBLY BILL 80

February 24, 2009 – Introduced 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, cosponsored by Senators DARLING, KANAVAS, HARSDORF, HOPPER, KEDZIE, LAZICH, LEIBHAM and SCHULTZ. Referred to Committee on Jobs, the Economy and Small Business.

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.

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### *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.

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*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.

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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 an amount  
5 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 an amount  
24 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.

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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)