



2009 ASSEMBLY BILL 726

February 11, 2010 - Introduced by Representatives FIELDS, TOWNSEND, GUNDERSON, TOLES and SINICKI, cosponsored by Senators TAYLOR, HOPPER and DARLING. Referred to Committee on Ways and Means.

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 (6g), 71.10 (4) (cg), 71.28 (6g), 71.30
3 (3) (cg), 71.47 (6g) and 71.49 (1) (cg) of the statutes; **relating to:** creating a
4 nonrefundable individual income and corporate income and franchise tax
5 credit for contributions to certain public school programs and to private school
6 scholarship funds.

Analysis by the Legislative Reference Bureau

This bill creates a nonrefundable individual income and corporate income and franchise tax credit for contributions to academic and curricular physical education programs in public elementary and secondary schools (public contribution), and to scholarship funds that are operated and controlled by private schools, kindergarten or grades 1 to 12, and that are used to pay for the tuition and fees of individuals who are enrolled in the private school (private contribution).

The maximum credit that may be claimed for a contribution by a single individual or a head of household is \$1,000 for a public contribution and \$1,000 for a private contribution, each year. The maximum credit that may be claimed for a contribution by a married couple who files a joint return is \$1,500 for a public contribution and \$1,500 for a private contribution, each year. The maximum credit that may be claimed for a contribution by each spouse of a married couple who files a separate return is \$750 for a public contribution and \$750 for a private

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contribution, each year. Finally, the maximum credit that may be claimed for a contribution by a business entity is \$150,000 for a public contribution and \$150,000 for a private contribution, each year.

Because the credit is nonrefundable, it may be claimed only up to the amount of a claimant's income tax liability; however, an unused credit may be carried forward for use in a future taxable year. The credit may not be claimed by nonresidents or part-year residents of this state.

Under current federal law, contributions for which a credit may be claimed under this bill may be deductible on an individual claimant's federal tax return and, if so claimed, may also be claimed under this state's nonrefundable itemized deductions credit. Also, under current federal law, contributions for which a credit may be claimed under this bill may be deductible on a business entity's federal tax return and, if so claimed, may also be claimed as a deduction for state income and federal tax purposes.

This bill first applies to taxable years beginning on January 1, 2011, except that, if the bill takes effect after July 31, 2011, it first applies to taxable years beginning on January 1, 2012.

For further information see the *state and local* 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, as affected by 2009 Wisconsin Act
2 28, is amended to read:

3 71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),
5 (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (6g), and (8r) and not passed through by a
6 partnership, limited liability company, or tax-option corporation that has added that
7 amount to the partnership's, company's, or tax-option corporation's income under s.
8 71.21 (4) or 71.34 (1k) (g).

9 **SECTION 2.** 71.07 (6g) of the statutes is created to read:

10 71.07 (6g) PUBLIC AND PRIVATE SCHOOL CREDITS. (a) *Definitions.* In this
11 subsection:

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1 1. “Claimant” means an individual who makes a contribution and files a claim
2 under this subsection.

3 2. “Private school contribution” means a contribution to a scholarship fund that
4 is operated by, and is under the control of, a private school, as defined in s. 115.001
5 (3r), that operates any grade from kindergarten to grade 12, that meets all of the
6 criteria under s. 118.165 (1), and that is used to pay the tuition and fees of a pupil
7 who is enrolled in the private school.

8 3. “Public school contribution” means a contribution to a public school, as that
9 term is used in s. 115.01 (1), that is used for academic and curricular physical
10 education programs, but does not include a contribution that is used for
11 extracurricular or organized competitive athletic programs.

12 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
13 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
14 amount of those taxes, the amount of a private school contribution, or the amount of
15 a public school contribution, or both, in the year to which the claim relates.

16 (c) *Limitations.* 1. The maximum credit that may be claimed under this
17 subsection by a claimant who files as a single individual or head of household is
18 \$1,000 for a private school contribution, and \$1,000 for a public school contribution,
19 in each year to which the claim relates.

20 2. The maximum credit that may be claimed under this subsection by claimants
21 who are a married couple and file a joint return is \$1,500 for a private school
22 contribution, and \$1,500 for a public school contribution, in each year to which the
23 claim relates.

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1 3. The maximum credit that may be claimed by each spouse of a married couple
2 that files separately is 50 percent of each of the amounts specified in subd. 2., in each
3 year to which the claim relates.

4 4. If a credit computed under this subsection is not entirely offset against
5 Wisconsin income taxes otherwise due, the unused balance may be carried forward
6 and credited against Wisconsin income taxes otherwise due for the following 5
7 taxable years to the extent not offset by these taxes otherwise due in all intervening
8 years between the year in which the credit was first claimed and the year in which
9 the carry-forward credit is claimed.

10 5. A credit under this subsection may not be claimed by a nonresident or
11 part-year resident of this state.

12 6. No credit may be allowed under this subsection unless it is claimed within
13 the time period under s. 71.75 (2).

14 7. No credit may be allowed under this subsection for a taxable year covering
15 a period of less than 12 months, except for a taxable year closed by reason of the death
16 of the taxpayer.

17 (d) *Administration.* Subsection (9e) (d), to the extent that it applies to the credit
18 under that subsection, applies to the credit under this subsection.

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

20 71.10 (4) (cg) The public and private school credits under s. 71.07 (6g).

21 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
22 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), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w),

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1 (5e), (5f), (5g), (5h), (5i), (5j), (5k), (6g), and (8r) and passed through to partners shall
2 be added to the partnership's income.

3 **SECTION 5.** 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act 28,
4 is amended to read:

5 71.26 **(2)** (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),
6 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3t),
7 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (6g), and (8r) and not passed through by a
8 partnership, limited liability company, or tax-option corporation that has added that
9 amount to the partnership's, limited liability company's, or tax-option corporation's
10 income under s. 71.21 (4) or 71.34 (1k) (g).

11 **SECTION 6.** 71.28 (6g) of the statutes is created to read:

12 71.28 **(6g)** PUBLIC AND PRIVATE SCHOOL CREDITS. (a) *Definitions.* In this
13 subsection:

14 1. "Claimant" means a person who files a claim under this subsection.

15 2. "Private school contribution" means a contribution to a scholarship fund that
16 is operated by, and is under the control of, a private school, as defined in s. 115.001
17 (3r), that operates any grade from kindergarten to grade 12, that meets all of the
18 criteria under s. 118.165 (1), and that is used to pay the tuition and fees of a pupil
19 who is enrolled in the private school.

20 3. "Public school contribution" means a contribution to a public school, as that
21 term is used in s. 115.01 (1), that is used for academic and curricular physical
22 education programs, but does not include a contribution that is used for
23 extracurricular or organized competitive athletic programs.

24 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
25 claimant may claim as a credit against the tax imposed under s. 71.23, up to the

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1 amount of those taxes, the amount of a private school contribution, or the amount of
2 a public school contribution, or both, that the claimant paid in the taxable year.

3 (c) *Limitations.* 1. The maximum amount of the credit that a claimant may
4 claim under this subsection in a taxable year is \$150,000.

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 amounts under par. (b). A partnership,
8 limited liability company, or tax-option corporation shall compute the amount of
9 credit that each of its partners, members, or shareholders may claim and shall
10 provide that information to each of them. Partners, members of limited liability
11 companies, and shareholders of tax-option corporations may claim the credit in
12 proportion to their ownership interests.

13 (d) *Administration.* 1. Subsection (4) (e), (g), and (h), as it applies to the credit
14 under sub. (4), applies to the credit under this subsection.

15 2. If a credit computed under this subsection is not entirely offset against
16 Wisconsin income or franchise taxes otherwise due, the unused balance may be
17 carried forward and credited against Wisconsin income or franchise taxes otherwise
18 due for the following 5 taxable years to the extent not offset by these taxes otherwise
19 due in all intervening years between the year in which the expense was incurred and
20 the year in which the carry-forward credit is claimed.

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

22 71.30 (3) (cg) The public and private school credits under s. 71.28 (6g).

23 **SECTION 8.** 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Act 28,
24 is amended to read:

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1 71.34 **(1k)** (g) An addition shall be made for credits computed by a tax-option
2 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),
3 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (6g),
4 and (8r) and passed through to shareholders.

5 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act
6 28, is amended to read:

7 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
8 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f),
9 (5g), (5h), (5i), (5j), (5k), (6g), and (8r) 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) and the amount of credit computed under s. 71.47
13 (1), (3), (3t), (4), (4m), and (5).

14 **SECTION 10.** 71.47 (6g) of the statutes is created to read:

15 71.47 **(6g)** PUBLIC AND PRIVATE SCHOOL CREDITS. (a) *Definitions.* In this
16 subsection:

17 1. "Claimant" means a person who files a claim under this subsection.

18 2. "Private school contribution" means a contribution to a scholarship fund that
19 is operated by, and is under the control of, a private school, as defined in s. 115.001
20 (3r), that operates any grade from kindergarten to grade 12, that meets all of the
21 criteria under s. 118.165 (1), and that is used to pay the tuition and fees of a pupil
22 who is enrolled in the private school.

23 3. "Public school contribution" means a contribution to a public school, as that
24 term is used in s. 115.01 (1), that is used for academic and curricular physical

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1 education programs, but does not include a contribution that is used for
2 extracurricular or organized competitive athletic programs.

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. 71.43, up to the
5 amount of those taxes, the amount of a private school contribution, or the amount of
6 a public school contribution, or both, that the claimant paid in the taxable year.

7 (c) *Limitations.* 1. The maximum amount of the credit that a claimant may
8 claim under this subsection in a taxable year is \$150,000.

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

17 (d) *Administration.* 1. Subsection (4) (e), (g), and (h), as it applies to the credit
18 under sub. (4), applies to the credit under this subsection.

19 2. If a credit computed under this subsection is not entirely offset against
20 Wisconsin income or franchise taxes otherwise due, the unused balance may be
21 carried forward and credited against Wisconsin income or franchise taxes otherwise
22 due for the following 5 taxable years to the extent not offset by these taxes otherwise
23 due in all intervening years between the year in which the expense was incurred and
24 the year in which the carry-forward credit is claimed.

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

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1 71.49 (1) (cg) The public and private school credits under s. 71.47 (6g).

2 **SECTION 12.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is
3 amended to read:

4 77.92 (4) "Net business income," with respect to a partnership, means taxable
5 income as calculated under section 703 of the Internal Revenue Code; plus the items
6 of income and gain under section 702 of the Internal Revenue Code, including taxable
7 state and municipal bond interest and excluding nontaxable interest income or
8 dividend income from federal government obligations; minus the items of loss and
9 deduction under section 702 of the Internal Revenue Code, except items that are not
10 deductible under s. 71.21; plus guaranteed payments to partners under section 707
11 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
12 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),
13 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (6g), and (8r); and plus or minus, as
14 appropriate, transitional adjustments, depreciation differences, and basis
15 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
16 loss, and deductions from farming. "Net business income," with respect to a natural
17 person, estate, or trust, means profit from a trade or business for federal income tax
18 purposes and includes net income derived as an employee as defined in section 3121
19 (d) (3) of the Internal Revenue Code.

20 **SECTION 13. Initial applicability.**

21 (1) This act first applies to taxable years beginning on January 1, 2011, except
22 that, if this subsection takes effect on or after August 1, 2011, this act first applies
23 to taxable years beginning on January 1, 2012.

24

(END)