



2019 SENATE BILL 191

April 30, 2019 - Introduced by Senators BERNIER, CARPENTER, JACQUE, JOHNSON, LEMAHIEU, NASS, OLSEN, STROEBEL and WANGGAARD, cosponsored by Representatives ROHRKASTE, DOYLE, ALLEN, ANDERSON, DITTRICH, DUCHOW, HORLACHER, KNODL, KULP, MURSAU, MYERS, NEYLON, NOVAK, OHNSTAD, PLUMER, PRONSCHINSKE, QUINN, SCHRAA, SHANKLAND, SINICKI, SKOWRONSKI, SNYDER, SPIROS, SPREITZER, THIESFELDT, TITTL, TUSLER, VANDERMEER, VINING, WICHGERS and ZIMMERMAN. Referred to Committee on Agriculture, Revenue and Financial Institutions.

1 **AN ACT** *to amend* 71.05 (6) (b) 22.; and *to create* 71.07 (6s) and 71.10 (4) (cs) of
2 the statutes; **relating to:** creating a nonrefundable individual income tax
3 credit for certain adoption expenses and modifying eligibility for the adoption
4 expenses tax deduction.

Analysis by the Legislative Reference Bureau

This bill creates a nonrefundable individual income tax credit for adoption expenses incurred by an individual who is eligible for, and claims, the federal adoption expenses credit under section 23 of the Internal Revenue Code. The credit may be claimed for an amount of qualified adoption expenses, up to \$5,000, to the extent that the expenses exceed the amount that the claimant is eligible for, and claims, under the federal credit. For claimants who are nonresidents or part-year residents of Wisconsin, the credit that may be claimed is prorated based on the ratio of the claimant's Wisconsin adjusted gross income (AGI) to federal AGI. The maximum credit that may be claimed each fiscal year by all claimants is \$500,000. If the total amount of eligible claims exceed this amount, the Department of Revenue must prorate the amount of credit that each claimant may receive.

If the credit amount that the claimant is eligible for exceeds the claimant's taxes due, the claimant may carry forward the unused credit for up to five years. Generally, under the bill, the provisions of the federal credit, including the definitions of qualified adoption expenses and eligible child, the maximum income phaseout provisions, the determination of the years in which the credit may be claimed for expenses paid or incurred, and the provisions relating to foreign adoptions apply to

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the credit created in the bill. Under the federal credit, which is nonrefundable also, the available credit begins to phase out for 2018 for taxpayers with modified AGI in excess of \$207,140, and is completely phased out for taxpayers with MAGI of \$247,140.

Also under this bill, the current law \$5,000 deduction from Wisconsin AGI for adoption expenses may be claimed only to the extent that the adoption expenses are not claimed under the federal credit or the credit created in this bill.

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) (b) 22. of the statutes is amended to read:

2 71.05 **(6)** (b) 22. For taxable years beginning after December 31, 1995, an
3 amount up to \$5,000 that is expended during the period that consists of the year to
4 which the claim relates and the prior 2 taxable years, by a full-year resident of this
5 state who is an adoptive parent, for adoption fees, court costs or legal fees relating
6 to the adoption of a child, for whom a final order of adoption has been entered under
7 s. 48.91 (3) or by an order of a court of any other state, or upon registration of a foreign
8 adoption under s. 48.97 (2), during the taxable year, to the extent that such expenses
9 are not claimed under section 23 of the Internal Revenue Code or under s. 71.07 (6s).

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

11 71.07 **(6s)** ADOPTION EXPENSES CREDIT. (a) *Definitions.* In this subsection:

12 1. "Claimant" means an individual who is eligible for, and claims, the federal
13 credit.

14 2. "Federal credit" means the federal tax credit for adoption expenses under
15 section 23 of the Internal Revenue Code.

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1 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
2 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
3 amount of those taxes, an amount of up to \$5,000 of qualified adoption expenses, to
4 the extent that those expenses exceed the amount of the credit that a claimant is
5 eligible for, and claims, under the federal credit in the year to which the claim relates.

6 (c) *Limitations.* 1. No credit may be allowed under this subsection unless it
7 is claimed within the time period under s. 71.75 (2).

8 2. For a claimant who is a nonresident or part-year resident of this state and
9 who is a single person or a married person filing a separate return, multiply the
10 credit for which the claimant is eligible under par. (b) by a fraction the numerator of
11 which is the individual's Wisconsin adjusted gross income and the denominator of
12 which is the individual's federal adjusted gross income. If a claimant is married and
13 files a joint return, and if the claimant or the claimant's spouse, or both, are
14 nonresidents or part-year residents of this state, multiply the credit for which the
15 claimant is eligible under par. (b) by a fraction the numerator of which is the couple's
16 joint Wisconsin adjusted gross income and the denominator of which is the couple's
17 joint federal adjusted gross income.

18 3. The provisions contained in section 23 of the Internal Revenue Code, to the
19 extent that they apply to the credit under that section, apply to the credit under this
20 subsection, unless this subsection explicitly provides otherwise.

21 4. The maximum amount of credit that may be allocated under this subsection,
22 each fiscal year, is \$500,000. If the amount of eligible claims under this subsection
23 exceed \$500,000 in any fiscal year, the department shall prorate the amount of credit
24 that each eligible claimant may receive.

