



2003 ASSEMBLY BILL 816

February 5, 2004 - Introduced by Representatives UNDERHEIM, KAUFERT, J. WOOD, KRAWCZYK, JENSEN and GROTHMAN, cosponsored by Senators ROESSLER, A. LASEE and LEIBHAM. Referred to Committee on Ways and Means.

1 **AN ACT to amend** 71.08 (1) (intro.) and 71.10 (4) (i); and **to create** 20.835 (2) (em)
2 and 71.07 (8r) of the statutes; **relating to:** creating a refundable individual
3 income tax credit for parents whose dependent children attend private
4 elementary and secondary schools and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill creates a refundable individual income tax credit if a claimant's dependent child is enrolled in a private school and the child is in kindergarten or grades 1 to 12. Currently, to be considered a private school, an educational institution must be determined to be a private school by the state superintendent of public instruction or the institution must meet a number of criteria, including the following:

1. The primary purpose of the institution's program is to provide private or religious-based education.
2. The institution's program is privately controlled and provides at least 875 hours of instruction each school year.
3. The institution's program provides a sequentially progressive curriculum of fundamental instruction in certain specified academic subjects.

The credit that may be claimed under the bill is \$500 per child per year, up to a maximum annual claim by a claimant of \$1,500. The amount of credit that may be claimed by a nonresident or part-year resident of this state is modified based on the ratio of the claimant's Wisconsin adjusted gross income (AGI) to his or her federal AGI.

ASSEMBLY BILL 816

Because this individual income tax credit is refundable, if the amount of the credit exceeds the taxpayer's income tax liability, the difference will be refunded to the taxpayer by check.

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.** 20.835 (2) (em) of the statutes is created to read:

2 20.835 (2) (em) *Private school tax credit.* A sum sufficient to pay the claims
3 approved under s. 71.07 (8r).

4 **SECTION 2.** 71.07 (8r) of the statutes is created to read:

5 71.07 (8r) PRIVATE SCHOOL TAX CREDIT. (a) *Definitions.* In this subsection:

6 1. "Claimant" means an individual who claims a pupil as a dependent under
7 section 151 (c) of the Internal Revenue Code on his or her tax return.

8 2. "Eligible institution" means a private school, as defined in s. 115.001 (3r).

9 3. "Pupil" means an individual who is enrolled in kindergarten or grades 1 to
10 12 at an eligible institution and who is a dependent of the claimant under section 151
11 (c) of the Internal Revenue Code.

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, for each pupil,
14 \$500. If the allowable amount of the claim exceeds the income taxes otherwise due
15 on the claimant's income, the amount of the claim not used as an offset against those
16 taxes shall be certified by the department of revenue to the department of
17 administration for payment to the claimant by check, share draft, or other draft from
18 the appropriation under s. 20.835 (2) (em).

ASSEMBLY BILL 816

1 (c) *Limitations.* 1. Except as provided in subds. 2. and 3., the maximum credit
2 that may be claimed under this subsection by a claimant is \$1,500 in each year to
3 which the claim relates.

4 2. If a married couple files separately, except for a spouse who files as head of
5 household, each spouse may claim a credit for 1 or 2 of the spouse's pupils, but the
6 total amount claimed by both spouses may not exceed the amount specified in subd.
7 1.

8 3. If a part-year resident or a nonresident of this state files a claim under this
9 subsection, the maximum credit amounts in subd. 1. or 2. shall be multiplied by a
10 fraction, the numerator of which is the individual's and his or her spouse's Wisconsin
11 adjusted gross income and the denominator of which is the individual's and his or her
12 spouse's federal adjusted gross income. In this subdivision, for married persons
13 filing separately "adjusted gross income" means the separate adjusted gross income
14 of each spouse, and for married persons filing jointly "adjusted gross income" means
15 the total adjusted gross income of both spouses.

16 4. No credit may be allowed under this subsection unless it is claimed within
17 the time period under s. 71.75 (2).

18 5. No credit may be allowed under this subsection for a taxable year covering
19 a period of less than 12 months, except for a taxable year closed by reason of the death
20 of the taxpayer.

21 (d) *Administration.* The department may enforce the credit under this
22 subsection and may take any action, conduct any proceeding, and proceed as it is
23 authorized in respect to taxes under this chapter. The income tax provisions in this
24 chapter relating to assessments, refunds, appeals, collection, interest, and penalties
25 apply to the credit under this subsection.

ASSEMBLY BILL 816

1 **SECTION 3.** 71.08 (1) (intro.) of the statutes, as affected by 2003 Wisconsin Act
2 99, is amended to read:

3 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married
4 couple filing jointly, trust or estate under s. 71.02, not considering the credits under
5 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2fd), (3m), (3s), (3t),
6 (6), (8r), and (9e), 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3),
7 and (3t) and 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1fd), (2m), (3), and (3t)
8 and subchs. VIII and IX and payments to other states under s. 71.07 (7), is less than
9 the tax under this section, there is imposed on that natural person, married couple
10 filing jointly, trust or estate, instead of the tax under s. 71.02, an alternative
11 minimum tax computed as follows:

12 **SECTION 4.** 71.10 (4) (i) of the statutes is amended to read:

13 71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland
14 preservation credit under subch. IX, homestead credit under subch. VIII, farmland
15 tax relief credit under s. 71.07 (3m), farmers' drought property tax credit under s.
16 71.07 (2fd), private school tax credit under s. 71.07 (8r), earned income tax credit
17 under s. 71.07 (9e), estimated tax payments under s. 71.09, and taxes withheld under
18 subch. X.

19 **SECTION 5. Initial applicability.**

20 (1) This act first applies to taxable years beginning on January 1 of the year
21 in which this subsection takes effect, except that if this subsection takes effect on or
22 after August 1 this act first applies to taxable years beginning on January 1 of the
23 year following the year in which this subsection takes effect.

24

(END)