

1999 DRAFTING REQUEST

Senate Amendment (SA-AB244)

Received: **02/29/2000**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Revenue**

By/Representing: **Tom Ourada**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Alt. Drafters:

Subject: **Tax - corp. inc. and fran.**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Education tax credit: family member and applicability

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>
/1	jkreye 02/29/2000	ygeller 02/29/2000	martykr 03/01/2000	_____	lrb_docadmin 03/01/2000	lrb_docadmin 03/01/2000	

FE Sent For:

<END>

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6-6466

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CONTACT TOM OURADA TO PICK-UP WHEN READY

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1/?	jkreye	1 2/29 jlg	2/29 jm	3/29 jk jk			

FE Sent For:

<END>

FACSIMILE COVER SHEET

**State of Wisconsin
Department of Revenue**
125 South Webster St.
P.O. Box 8933
Madison, WI 53708-8933

FAX Number: 608-266-5718

FAX Operator: 608-266-8085

Number of pages attached, including this cover sheet: _____

If all pages are not received or are illegible, please call:

DELIVER TO:

Joe Kreye - LRB
Addressee

264-8522
Addressee's Phone Number

FROM:

Tom Durade
Sender

6-6466
Sender's Phone Number

Additional Information:

Joe, attached is the letter concerning AB 244 and the two issues the DOR would like to address. I also include a copy of instructions on the federal education credits that talk about the Hope Credit and the ability to take account of expenses pd. for academic periods after a particular date. That is the approach we are seeking. I spoke to R.J. Pirlot to let him know we were asking you to draft this. Thanks Joe.

Tom Durade

**State of Wisconsin • DEPARTMENT OF REVENUE**125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WISCONSIN 53708-8933 • 608-266-6466 • FAX 608-266-5718 • <http://www.dor.state.wi.us>

Tommy G. Thompson
Governor

Cate Zeuske
Secretary of Revenue

February 29, 2000

Honorable Robert Wirch, Chair
Senate Committee on Economic Development,
Housing and Government Operations
310 South Capitol
Madison, WI 53702

Dear Senator Wirch:

I would like to take this opportunity to make you aware of two minor technical concerns the Department of Revenue has with ASA 1 to AB 244, which creates a tax credit for college tuition.

Currently the substitute amendment refers to a family member of a claimant. This wording is appropriate if the claimant is an individual business owner, however we would suggest that page 6, line 5 and page 8, line 17 be amended as follows to address the possibility of the claimant being a corporation or other business entity:

"that the claimant paid or incurred for a family member of an officer, director or shareholder owning 5% or greater of the outstanding stock of the claimant..."

Also, as presently drafted, this credit would first apply to taxable years beginning on July 1, 2001. As a result, not all taxpayers that pay tuition for a qualified individual to attend an education program during the fall semester of 2001 would qualify to claim the credit. Only those taxpayers having a 2001 taxable year that started on or after July 1, 2001 would qualify to claim the credit.

Example A

Company X, which has a calendar year taxable year, sends an employe to an education program at the University of Wisconsin during the fall of 2001. Company X will not qualify for a credit with respect to the tuition expense it incurred because its 2001 taxable year started before July 1, 2001.

Example B

Company Y, which has a July 1 – June 30 fiscal year taxable, year send an employe to an education program at the University of Wisconsin during the fall of 2001. Company Y will qualify for a credit with respect to the tuition expense it incurred because its 2001 taxable year started after June 30, 2001.

To provide a credit to all taxpayers for the taxable year 2001 with respect to tuition paid for the fall 2001 academic period the initial applicability language in the draft should be revised to indicate that the credit is first available for tuition expenses paid for academic periods beginning after July 1, 2001 for an eligible student.

I hope this information is helpful. Please call me if you have questions or concerns.

Thank you.

Sincerely,

Cate Zeuske
Secretary

cc: Members, Senate Committee on Economic Development

received. Include it on the "total tax" line of your return. Next to the line, enter the amount and "ECR."

Who can claim the credit. If there are higher education costs for your dependent child, either you or your child, but not both of you, can claim a credit for a particular year. If you claim an exemption for your child on your tax return, only you can claim a credit. If you do not claim an exemption for your child on your tax return, only your child can claim a credit.

Expenses paid by others. If someone other than you, your spouse, or your claimed dependent makes a payment directly to an eligible educational institution to pay for a student's qualified tuition and related expenses, the student is treated as receiving the payment from the other person. The qualified tuition and related expenses are considered paid to the institution by the student.

Example. Ms. Allen makes a payment directly to an eligible educational institution in 1999 for her grandson's qualified tuition and related expenses. For purposes of claiming an education credit, the grandson is treated as receiving the money from Ms. Allen and, in turn, paying his qualified tuition and related expenses.

Expenses paid by dependent. If you claim an exemption for your child on your tax return, treat any expenses paid by your child as if you had paid them. Include these expenses when figuring the amount of your Hope or lifetime learning credit.

TIP Qualified tuition and related expenses paid directly to an eligible educational institution for your dependent under a court-approved divorce decree are treated as paid by your dependent.

Income Phaseout

Your education credits are phased out (gradually reduced) if your modified adjusted gross income is between \$40,000 and \$50,000 (\$80,000 and \$100,000 in the case of a joint return).

CAUTION You cannot claim any higher education credits if your modified adjusted gross income is \$50,000 or more (\$100,000 or more in the case of a joint return).

Modified adjusted gross income. For most taxpayers, modified adjusted gross income will be their adjusted gross income (AGI) as figured on their federal income tax return. However, you must make adjustments to your AGI if you excluded income earned abroad or from certain U.S. territories or possessions. If this applies to you, increase your AGI by the following amounts you excluded from your income.

- 1) Foreign earned income of U.S. citizens or residents living abroad.
- 2) Housing costs of U.S. citizens or residents living abroad.
- 3) Income from sources within Puerto Rico, Guam, American Samoa, or the Northern Mariana Islands.

(reduction) works on a sliding scale. The higher your modified adjusted gross income, the more your credits are reduced. You figure the reduction, if any, in Part III of Form 8863.

Hope Credit

You may be able to claim a Hope credit of up to \$1,500 for qualified tuition and related expenses paid for each eligible student. You can take into account expenses paid in 1999 for academic periods beginning after December 31, 1998, and before April 1, 2000. The credit can be claimed for only 2 years for each eligible student.

Eligible student for the Hope credit. You can claim a Hope credit only for an eligible student who meets all of the following requirements.

- 1) Has not completed the first 2 years of postsecondary education (generally, the freshman and sophomore years of college).
- 2) Is enrolled in a program that leads to a degree, certificate, or other recognized educational credential.
- 3) Is taking at least half of the normal full-time work load for his or her course of study for at least one academic period beginning during the calendar year.
- 4) Is free of any felony conviction for possessing or distributing a controlled substance.

Completion of first 2 years. A student awarded 2 years of academic credit for postsecondary work completed prior to the beginning of the year has completed the first 2 years of postsecondary education.

Any academic credit awarded solely on the basis of the student's performance on proficiency examinations is disregarded in determining whether the student has completed 2 years of postsecondary education.

Half of normal full-time workload. The standard for what is half of the normal full-time work load is determined by each eligible educational institution. However, the standard may not be lower than standards for half-time established by the Department of Education under the Higher Education Act of 1985.

Amount of credit. The amount of the Hope credit is 100% of the first \$1,000 plus 50% of the next \$1,000 you pay for each eligible student's qualified tuition and related expenses. The maximum amount of Hope credit you can claim in 1999 is \$1,500 times the number of eligible students. You can claim the full \$1,500 for each eligible student for whom you pay at least \$2,000 for qualified expenses. However, the credit may be reduced based on your modified adjusted gross income. See *Income Phaseout*, earlier.

Example. Jon and Karen are married and file a joint tax return. For 1999, they claim an exemption for their dependent daughter on their tax return and their modified adjusted gross income is \$70,000. Their daughter is in her sophomore (second) year of studies at the local university and Jon and

costs.

Jon and Karen, their daughter, and the local university meet all of the requirements for the Hope credit. Jon and Karen can claim a \$1,500 Hope credit in 1999. This is the maximum amount allowed for 1999.

How to figure the Hope credit. The Hope credit is figured in Parts I and III of Form 8863. An illustrated example using Form 8863 appears later.

Lifetime Learning Credit

You may be able to claim a lifetime learning credit of up to \$1,000 for qualified tuition and related expenses paid for all students enrolled in eligible educational institutions. You can take into account expenses paid in 1999 for academic periods beginning after December 31, 1998, and before April 1, 2000.

The lifetime learning credit is different than the Hope credit in the following ways.

- 1) The lifetime learning credit is not based on the student's work load. It is allowed for one or more courses.
- 2) The lifetime learning credit is not limited to students in the first 2 years of postsecondary education.
- 3) Expenses for graduate-level degree work are eligible.
- 4) Expenses related to a course of instruction or other education that involves sports, games, hobbies, or other noncredit courses are eligible if they are part of a course of instruction to acquire or improve job skills.
- 5) There is no limit on the number of years for which the lifetime learning credit can be claimed for each student.
- 6) The amount you can claim as a lifetime learning credit does not vary (increase) based on the number of students for whom you pay qualified expenses.

Amount of credit. The amount of the lifetime learning credit is 20% of the first \$5,000 you pay for qualified tuition and related expenses for all students in the family. The maximum amount of lifetime learning credit you can claim for 1999 is \$1,000 (20% x \$5,000). However, that amount may be reduced based on your modified adjusted gross income. See *Income Phaseout*, earlier.

Example. Bruce and Toni are married and file a joint tax return. For 1999, their modified adjusted gross income is \$50,000. Toni is attending the community college (an eligible educational institution) to earn credits towards an associate's degree in nursing; she already has a bachelor's degree in history and wants to become a nurse. In August 1999, Toni paid \$2,000 for her fall 1999 semester. Bruce and Toni can claim a \$400 (20% x \$2,000) lifetime learning credit on their 1999 joint tax return.

How to figure the lifetime learning credit. The lifetime learning credit is figured in Parts II and III of Form 8863. An illustrated example using Form 8863 appears later.

Choosing Which Credit To Claim

For each student, you can elect for any tax year only **one** of the credits or a tax-free withdrawal from an education IRA. (See *Education IRAs* in chapter 18 for more information.) For example, if you elect to take the Hope credit for a child on your 1999 tax return, you cannot, for that same child, also claim the lifetime learning credit for 1999 or take a tax-free withdrawal from an education IRA for 1999.

Lifetime learning credit after Hope credit
You can claim the Hope credit for the 2 years of a student's postsecondary education and claim the lifetime learning credit for that same student in later tax years.

More than one student. If you pay qualified expenses for more than one student in the same year, you can choose to take credits on a per-student, per-year basis. This means that, for example, you can claim the Hope credit for one student and the lifetime learning credit for another student in the same tax year.

How To Claim the Credits

You elect to claim education credits and you figure their amount by completing Form 8863. Use Part I for the Hope credit and Part II for the lifetime learning credit. In both parts, you enter the student's name and taxpayer identification number (usually a social security number) and the amount of qualified expenses paid in 1999. You then complete Part III to compute the amount to

enter on line 44 of Form 1040 or line 29 of Form 1040A. Attach the completed Form 8863 to your return.



Legislation affecting this credit was pending at the time of printing. For guidance, visit the IRS's web site at www.irs.gov or see your tax forms instructions. Publication 553, Highlights of 1999 Tax Changes, will also contain information about this and other tax law changes.

An eligible educational institution (such as a college or university) that receives payment of qualified tuition and related expenses should issue Form 1098-T, *Tuition Payments Statement*, to each student by February 1, 2000. The information on Form 1098-T will help you determine whether you can claim an education tax credit for 1999. The following information should be included on the 1999 form.

- 1) The name, address, and taxpayer identification number of the educational institution.
- 2) The name, address, and taxpayer identification number of the student.
- 3) Whether the student was enrolled for at least half of the full-time academic workload.
- 4) Whether the student was enrolled exclusively in a graduate-level program.

The eligible educational institution may ask for a completed Form W-9S, *Request for Student's or Borrower's Social Security Number and Certification*, or similar state-

ment, to obtain the information needed to complete (2) above.

Illustrated Example

Dave and Valerie are married and file a joint tax return. For 1999, they claim exemptions for their two dependent children on their tax return, and their modified adjusted gross income is \$72,000. Their son, Sean, will receive his bachelor's degree in psychology from the state college in May 2000. Their daughter, Corey, enrolled full-time at that same college in August 1998 to begin working on her bachelor's degree in physical education. In December 1998, Dave and Valerie paid \$2,000 for each child's tuition for the winter 1999 semester. In July 1999, they paid \$2,200 in tuition costs for each of them for the fall 1999 semester.

Dave and Valerie, their children, and the college meet all of the requirements for the higher education credits. Because Sean is beyond the second (sophomore) year of his postsecondary education, his expenses do not qualify for the Hope credit. But, amounts paid for Sean's expenses in 1999 for academic periods after 1998 and before April 1, 2000, qualify for the lifetime learning credit. Corey is in her first (freshman) year of postsecondary education and expenses paid for her in 1999 for academic periods beginning after 1998 and before April 1, 2000, qualify for the Hope credit.

Dave and Valerie figure their total higher education credits for 1999, \$1,940, as shown in the completed Form 8863. They can claim the full amount because their modified adjusted gross income is not more than \$80,000. They carry the amount from Form 8863 to line 44 of Form 1040, and they attach the Form 8863 to their return.



JLG
PMR

WFO -
Fix request sheet

**SENATE AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,**

TO 1999 ASSEMBLY BILL 244

m 2-29-2000

JON

bill, as shown by assembly

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At the locations indicated, amend the substitute amendment as follows:

1. Page 5, line 14: delete lines 14 to 16. ✓

2. Page 6, line 5: delete lines 5 and 6 and substitute "that the claimant paid or incurred for a family member of an officer, director or shareholder owning at least 5% of the outstanding stock of the claimant unless all of the following apply:"

3. Page 8, line 1: delete lines 1 to 3. ✓

4. Page 8, line 17: delete lines 17 and 18 and substitute "that the claimant paid or incurred for a family member of an officer, director or shareholder owning at least 5% of the outstanding stock of the claimant unless all of the following apply:"

5. Page 10, line 13: delete "taxable years beginning on" and substitute "tuition amounts that are paid for academic periods beginning after". ✓

(END) ✓

