

2001 ASSEMBLY BILL 320

April 16, 2001 – Introduced by Representatives JENSEN, RHOADES, PLALE, WADE, MUSSER, GUNDRUM, URBAN, LADWIG, D. MEYER, DUFF, KESTELL, STARZYK, AINSWORTH, LOEFFELHOLZ, KRAWCZYK, TOWNSEND, OWENS, FREESE, MCCORMICK, GUNDERSON, HUNDERTMARK, PETTIS, RILEY, HAHN, HUEBSCH, ALBERS, MILLER, BERCEAU, OTT, VRAKAS, LEIBHAM, WARD, SYKORA, OLSEN, ZIEGELBAUER, SUDER, MONTGOMERY, STONE, KREIBICH, WASSERMAN, PLOUFF, PETROWSKI, JESKEWITZ, SERATTI, F. LASEE, JOHNSRUD, WALKER, KAUFERT, SCHOOFF, WIECKERT and UNDERHEIM, cosponsored by Senators M. MEYER, DARLING, MOORE, SCHULTZ, PLACHE, HUELSMAN, ROESSLER, HARSDDORF, WELCH, BURKE, WIRCH and GEORGE, by request of Wisconsin Association of Independent Colleges and Universities; University of Wisconsin System; and Wisconsin Technical College System. Referred to Committee on Colleges and Universities.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (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) (dm), 71.47 (5r) and 71.49 (1) (dm) of the statutes; **relating to:** an education
4 tax credit for businesses.

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) Fifty 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) Seventy five 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% 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.

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), (2dr), (2ds), (2dx) ~~and (3s), and (5r)~~ and not passed through by a
4 partnership, limited liability company, or tax-option corporation that has added that
5 amount to the partnership's, company's, or tax-option corporation's income under s.
6 71.21 (4) or 71.34 (1) (g).

7 **SECTION 2.** 71.07 (5r) of the statutes is created to read:

8 71.07 **(5r)** EDUCATION CREDIT. (a) In this subsection:

9 1. "Claimant" means a sole proprietor, a partner, a member of a limited liability
10 company, or a shareholder of a tax-option corporation who files a claim under this
11 subsection.

12 2. "Degree-granting program" means an educational program for which an
13 associate, a bachelor's, or a graduate degree is awarded upon successful completion.

14 3. "Family member" has the meaning given in s. 157.061 (7).

15 4. "Managing employee" means an individual who wholly or partially exercises
16 operational or managerial control over, or who directly or indirectly conducts, the
17 operation of the claimant's business.

18 5. "Poverty line" has the meaning given under s. 49.001 (5).

19 6. "Qualified postsecondary institution" means all of the following:

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1 a. A University of Wisconsin System institution, a technical college system
2 institution, or a regionally accredited 4-year nonprofit college or university having
3 its regional headquarters and principal place of business in this state.

4 b. A school approved under s. 45.54, if the school has a physical presence, and
5 the delivery of education occurs, in this state.

6 (b) Subject to the limitations provided in this subsection, a claimant may claim
7 as a credit against the tax imposed under s. 71.02 an amount equal to the following:

8 1. Fifty percent of the tuition that the claimant paid or incurred during the
9 taxable year for an individual to participate in an education program of a qualified
10 postsecondary institution, if the individual was enrolled in a degree-granting
11 program.

12 2. Seventy five percent of the tuition that the claimant paid or incurred during
13 the taxable year for an individual to participate in an education program of a
14 qualified postsecondary institution, if the individual was enrolled in a
15 degree-granting program and if the individual's taxable income in the year prior to
16 commencing participation in the education program in connection with which a
17 credit is claimed is not more than 185% of the poverty line.

18 (c) A claimant may not claim the credit under par. (b) for any tuition amounts
19 that the claimant excluded under s. 71.05 (6) (b) 28. or under section 127 of the
20 Internal Revenue Code.

21 (cm) A claimant may not claim the credit under par. (b) for any tuition amounts
22 that the claimant paid or incurred for a family member of the claimant or for a family
23 member of a managing employee unless all of the following apply:

24 1. The family member was employed an average of at least 20 hours a week as
25 an employee of the claimant, or the claimant's business, during the one-year period

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1 prior to commencing participation in the education program in connection with
2 which the claimant claims a credit under par. (b).

3 2. The family member is enrolled in a degree-granting program that is
4 substantially related to the claimant's business.

5 3. The family member is making satisfactory progress towards completing the
6 degree-granting program under subd. 2.

7 (d) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
8 under s. 71.28 (4), apply to the credit under this subsection.

9 (e) 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 tuition under par. (b). A partnership, limited
12 liability company, or tax-option corporation shall compute the amount of credit that
13 each of its partners, members, or shareholders may claim and shall provide that
14 information to each of them. Partners, members of limited liability companies, and
15 shareholders of tax-option corporations may claim the credit in proportion to their
16 ownership interest.

17 (f) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
18 applies to the credit under this subsection.

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

20 71.10 (4) (cd) The education credit under s. 71.07 (5r).

21 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

22 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
23 (2dj), (2dL), (2ds), (2dx) ~~and (3s), and (5r)~~ and passed through to partners shall be
24 added to the partnership's income.

25 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

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1 71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means
2 the gross income as computed under the internal revenue code as modified under
3 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
4 computed under s. 71.28 (1) and (3) to (5) plus the amount of the credit computed
5 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds) ~~and (1dx)~~, and (5r) and not passed
6 through by a partnership, limited liability company, or tax-option corporation that
7 has added that amount to the partnership’s, limited liability company’s, or
8 tax-option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) plus the amount
9 of losses from the sale or other disposition of assets the gain from which would be
10 wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise
11 disposed of at a gain and minus deductions, as computed under the internal revenue
12 code as modified under sub. (3), plus or minus, as appropriate, an amount equal to
13 the difference between the federal basis and Wisconsin basis of any asset sold,
14 exchanged, abandoned, or otherwise disposed of in a taxable transaction during the
15 taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

16 **SECTION 6.** 71.28 (5r) of the statutes is created to read:

17 71.28 (5r) EDUCATION CREDIT. (a) In this subsection:

18 1. “Claimant” means a corporation that files a claim under this subsection.

19 2. “Degree-granting program” means an education program for which an
20 associate, a bachelor’s, or a graduate degree is awarded upon successful completion.

21 3. “Family member” has the meaning given in s. 157.061 (7).

22 4. “Managing employee” means an individual who wholly or partially exercises
23 operational or managerial control over, or who directly or indirectly conducts, the
24 operation of the claimant’s business.

25 5. “Poverty line” has the meaning given under s. 49.001 (5).

ASSEMBLY BILL 320**SECTION 6**

1 6. “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. 45.54, if the school has a physical presence, and
6 the delivery of education occurs, in this state.

7 (b) Subject to the limitations provided in this subsection, a claimant may claim
8 as a credit against the tax imposed under s. 71.23 an amount equal to the following:

9 1. Fifty percent of the tuition that the claimant paid or incurred during the
10 taxable year for an individual to participate in an education program of a qualified
11 postsecondary institution, if the individual was enrolled in a degree-granting
12 program.

13 2. Seventy five percent of the tuition that the claimant paid or incurred during
14 the taxable year for an individual to participate in an education program of a
15 qualified postsecondary institution, if the individual was enrolled in a
16 degree-granting program and if the individual’s taxable income in the year prior to
17 commencing participation in the education program in connection with which a
18 credit is claimed is not more than 185% of the poverty line.

19 (c) A claimant may not claim the credit under par. (b) for any tuition amounts
20 that the claimant has excluded under section 127 of the Internal Revenue Code.

21 (cm) A claimant may not claim the credit under par. (b) for any tuition amounts
22 that the claimant paid or incurred for a family member of a managing employee
23 unless all of the following apply:

24 1. The family member was employed an average of at least 20 hours a week as
25 an employee of the claimant, or the claimant’s business, during the one-year period

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1 prior to commencing participation in the education program in connection with
2 which the claimant claims a credit under par. (b).

3 2. The family member is enrolled in a degree-granting program that is
4 substantially related to the claimant's business.

5 3. The family member is making satisfactory progress towards completing the
6 degree-granting program under subd. 2.

7 (d) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit
8 under sub. (4), apply to the credit under this subsection.

9 (e) 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 tuition under par. (b). A partnership, limited
12 liability company, or tax-option corporation shall compute the amount of credit that
13 each of its partners, members, or shareholders may claim and shall provide that
14 information to each of them. Partners, members of limited liability companies, and
15 shareholders of tax-option corporations may claim the credit in proportion to their
16 ownership interest.

17 (f) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
18 to the credit under this subsection.

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

20 71.30 (3) (dm) The education credit under s. 71.28 (5r).

21 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

22 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
23 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx) ~~and (3), and~~
24 (5r) and passed through to shareholders.

25 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

ASSEMBLY BILL 320**SECTION 9**

1 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
2 computed under s. 71.47 (1dd) to (1dx) and (5r) and not passed through by a
3 partnership, limited liability company, or tax-option corporation that has added that
4 amount to the partnership's, limited liability company's, or tax-option corporation's
5 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
6 s. 71.47 (1), (3), (4), and (5).

7 **SECTION 10.** 71.47 (5r) of the statutes is created to read:

8 71.47 **(5r)** EDUCATION CREDIT. (a) In this subsection:

9 1. "Claimant" means a corporation that files a claim under this subsection.

10 2. "Degree-granting program" means an educational program for which an
11 associate, a bachelor's, or a graduate degree is awarded upon successful completion.

12 3. "Family member" has the meaning given in s. 157.061 (7).

13 4. "Managing employee" means an individual who wholly or partially exercises
14 operational or managerial control over, or who directly or indirectly conducts, the
15 operation of the claimant's business.

16 5. "Poverty line" has the meaning given under s. 49.001 (5).

17 6. "Qualified postsecondary institution" means all of the following:

18 a. A University of Wisconsin System institution, a technical college system
19 institution, or a regionally accredited 4-year nonprofit college or university having
20 its regional headquarters and principal place of business in this state.

21 b. A school approved under s. 45.54, if the school has a physical presence, and
22 the delivery of education occurs, in this state.

23 (b) Subject to the limitations provided in this subsection, a claimant may claim
24 as a credit against the tax imposed under s. 71.43 an amount 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% of the poverty line.

11 (c) A claimant may not claim the credit under par. (b) for any tuition amounts
12 that the claimant excluded under section 127 of the Internal Revenue Code.

13 (cm) A claimant may not claim the credit under par. (b) for any tuition amounts
14 that the claimant paid or incurred for a family member of a managing employee
15 unless all of the following apply:

16 1. The family member was employed an average of at least 20 hours a week as
17 an employee of the claimant, or the claimant's business, during the one-year period
18 prior to commencing participation in the education program in connection with
19 which the claimant claims a credit under par. (b).

20 2. The family member is enrolled in a degree-granting program that is
21 substantially related to the claimant's business.

22 3. The family member is making satisfactory progress towards completing the
23 degree-granting program under subd. 2.

24 (d) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit
25 under s. 71.28 (4), apply to the credit under this subsection.

ASSEMBLY BILL 320**SECTION 10**

1 (e) Partnerships, limited liability companies, and tax–option corporations may
2 not claim the credit under this subsection, but the eligibility for, and the amount of,
3 the credit are based on their payment of tuition under par. (b). A partnership, limited
4 liability company, or tax–option corporation shall compute the amount of credit that
5 each of its partners, members, or shareholders may claim and shall provide that
6 information to each of them. Partners, members of limited liability companies, and
7 shareholders of tax–option corporations may claim the credit in proportion to their
8 ownership interest.

9 (f) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
10 applies to the credit under this subsection.

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

12 71.49 (1) (dm) The education credit under s. 71.47 (5r).

13 **SECTION 12.** 77.92 (4) of the statutes is amended to read:

14 77.92 (4) “Net business income”, with respect to a partnership, means taxable
15 income as calculated under section 703 of the Internal Revenue Code; plus the items
16 of income and gain under section 702 of the Internal Revenue Code, including taxable
17 state and municipal bond interest and excluding nontaxable interest income or
18 dividend income from federal government obligations; minus the items of loss and
19 deduction under section 702 of the Internal Revenue Code, except items that are not
20 deductible under s. 71.21; plus guaranteed payments to partners under section 707
21 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
22 (2di), (2dj), (2dL), (2dr), (2ds), (2dx) ~~and (3s), and (5r)~~; and plus or minus, as
23 appropriate, transitional adjustments, depreciation differences, and basis
24 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
25 loss, and deductions from farming. “Net business income”, with respect to a natural

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1 person, estate, or trust, means profit from a trade or business for federal income tax
2 purposes and includes net income derived as an employe as defined in section 3121
3 (d) (3) of the Internal Revenue Code.

4 **SECTION 13. Initial applicability.**

5 (1) EDUCATION CREDIT. This act first applies to taxable years beginning on
6 January 1 of the year in which this subsection takes effect, except that if this
7 subsection takes effect after July 31 this act first applies to taxable years beginning
8 on January 1 of the year following the year in which this subsection takes effect.

9 (END)