

2003 SENATE BILL 268

October 2, 2003 – Introduced by Senators DARLING, LEIBHAM, MOORE, SCHULTZ, REYNOLDS, M. MEYER, STEPP, BROWN, ROESSLER and KANAVAS, cosponsored by Representatives JENSEN, PETTIS, NISCHKE, SUDER, MUSSER, TOWNS, KRAWCZYK, MCCORMICK, VAN ROY, BIES, OLSEN, HAHN, OTT, J. WOOD, GRONEMUS, HINES, LADWIG, FREESE, OWENS, LEMAHIEU, ALBERS, VRAKAS and WARD. Referred to Committee on Homeland Security, Veterans and Military Affairs and Government Reform.

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), (2dm), (2dr), (2ds), (2dx), (3g), and (3s), and (5r) and not passed
4 through by a partnership, limited liability company, or tax-option corporation that
5 has added that amount to the partnership's, company's, or tax-option corporation's
6 income under s. 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. "Poverty line" has the meaning given under s. 49.001 (5).

15 4. "Qualified postsecondary institution" means all of the following:

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

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

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

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

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

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

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

18 (e) Partnerships, limited liability companies, and tax-option corporations may
19 not claim the credit under this subsection, but the eligibility for, and the amount of,
20 the credit are based on their payment of tuition under par. (b). A partnership, limited
21 liability company, or tax-option corporation shall compute the amount of credit that
22 each of its partners, members, or shareholders may claim and shall provide that
23 information to each of them. Partners, members of limited liability companies, and
24 shareholders of tax-option corporations may claim the credit in proportion to their
25 ownership interest.

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

3 (g) The department of revenue shall annually submit a report to the legislature
4 under s. 13.172 (2) that identifies each qualified postsecondary institution that has
5 received tuition payments paid by a claimant under par. (b) in the fiscal year and
6 specifies the total amount of the tuition for each such institution that is claimed as
7 a credit under this subsection in the fiscal year.

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

9 71.10 (4) (cd) The education credit under s. 71.07 (5r).

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

11 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
12 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), and (3s), and (5r) and passed through to
13 partners shall be added to the partnership's income.

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

15 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
16 the gross income as computed under the Internal Revenue Code as modified under
17 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
18 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
19 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g), and (5r)~~
20 and not passed through by a partnership, limited liability company, or tax-option
21 corporation that has added that amount to the partnership's, limited liability
22 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
23 the amount of losses from the sale or other disposition of assets the gain from which
24 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
25 otherwise disposed of at a gain and minus deductions, as computed under the

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1 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
2 amount equal to the difference between the federal basis and Wisconsin basis of any
3 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
4 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

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

6 **71.28 (5r) EDUCATION CREDIT.** (a) In this subsection:

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

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

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

11 4. “Qualified postsecondary institution” means all of the following:

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

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

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

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

23 2. Seventy five percent of the tuition that the claimant paid or incurred during
24 the taxable year for an individual to participate in an education program of a
25 qualified postsecondary institution, if the individual was enrolled in a

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1 degree-granting program and if the individual's taxable income in the year prior to
2 commencing participation in the education program in connection with which a
3 credit is claimed is not more than 185% of the poverty line.

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

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

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

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

18 (g) The department of revenue shall annually submit a report to the legislature
19 under s. 13.172 (2) that identifies each qualified postsecondary institution that has
20 received tuition payments paid by a claimant under par. (b) in the fiscal year and
21 specifies the total amount of the tuition for each such institution that is claimed as
22 a credit under this subsection in the fiscal year.

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

24 71.30 (3) (dm) The education credit under s. 71.28 (5r).

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

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1 71.34 (1) (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), (3), and
3 (3g), and (5r) and passed through to shareholders.

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

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

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

12 71.47 (5r) EDUCATION CREDIT. (a) In this subsection:

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

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

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

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

15 (e) Partnerships, limited liability companies, and tax-option corporations may
16 not claim the credit under this subsection, but the eligibility for, and the amount of,
17 the credit are based on their payment of tuition under par. (b). A partnership, limited
18 liability company, or tax-option corporation shall compute the amount of credit that
19 each of its partners, members, or shareholders may claim and shall provide that
20 information to each of them. Partners, members of limited liability companies, and
21 shareholders of tax-option corporations may claim the credit in proportion to their
22 ownership interest.

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

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1 (g) The department of revenue shall annually submit a report to the legislature
2 under s. 13.172 (2) that identifies each qualified postsecondary institution that has
3 received tuition payments paid by a claimant under par. (b) in the fiscal year and
4 specifies the total amount of the tuition for each such institution that is claimed as
5 a credit under this subsection in the fiscal year.

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

7 71.49 (1) (dm) The education credit under s. 71.47 (5r).

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

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

24 **SECTION 13. Initial applicability.**

