

2003 DRAFTING REQUEST

Bill

Received: 09/09/2003

Received By: jkreye

Wanted: As time permits

Identical to LRB:

For: Alberta Darling (608) 266-5830

By/Representing: jessica

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax - corp. inc. and fran.

Extra Copies:

Submit via email: YES

Requester's email: Sen.Darling@legis.state.wi.us ✓

Carbon copy (CC:) to: joseph.kreye@legis.state.wi.us ✓

Pre Topic:

No specific pre topic given

Topic:

Education tax credit for businesses

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> |
|--------------|----------------------|------------------------|------------------------|----------------|-----------------------|-----------------------|-----------------|
| /? | jkreye 09/22/2003 | csicilia 09/22/2003 | | _____ | | | State |
| /1 | | | jfrantze 09/22/2003 | _____ | mbarman 09/22/2003 | mbarman 09/22/2003 | State |

FE Sent For:

<END>



AT

Intro.

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|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1? | jkreye | 1 cjs 9/22/03 | 09/22 | APg 9/22 | | | |

Please
JACKET
3253/1
FOR SEN.
DARLING.
thanks, Joe

FE Sent For:

<END>

Alberta Darling

Wisconsin State Senator

Co-Chair, Joint Committee on Finance

Joe -

This is different. Two changes to
AB 320

* took out amendment dealing with
"children of management" not
getting the credit

Asking DOE to report to Legislature

Can you rush this back to
me this afternoon?

Thanks
Tom

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2003 Senate Bill _____

Relating to an Education Tax Credit for businesses.

SECTION 1. 71.05 (6) (a) 15. of the statutes is amended to read:

71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2di), (2dj), (2dL), (2dr), (2ds), (2dx) ~~and (3s)~~, and (5r) and not passed through partnership, limited liability company, or tax-option corporation that has added amount to the partnership's, company's, or tax-option corporation's income under 71.21 (4) or 71.34 (1) (g).

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

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

1. "Claimant" means a sole proprietor, a partner, a member of a limited liability company, or a shareholder of a tax-option corporation who files a claim under subsection.
2. "Degree-granting program" means an educational program for which associate, a bachelor's, or a graduate degree is awarded upon successful completion.
3. "Poverty line" has the meaning given under s. 49.001 (5).
4. "Qualified postsecondary institution" means all of the following:

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

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

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

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

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

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

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

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

SECTION 3. 71.10 (4) (cd) of the statutes is created to read:
71.10 (4) (cd) The education credit under s. 71.07 (5r).

SECTION 4. 71.21 (4) of the statutes is amended to read:
71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2ds), (2dx) ~~and~~, (3s), and (5r) and passed through to partners shall be added to the partnership's income.

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

SECTION 6. 71.28 (5r) of the statutes is created to read:
71.28 (5r) EDUCATION CREDIT. (a) In this subsection:
1. "Claimant" means a corporation that files a claim under this subsection.
2. "Degree-granting program" means an education program for which an associate, a bachelor's, or a graduate degree is awarded upon successful completion.
3. "Poverty line" has the meaning given under s. 49.001 (5).
4. "Qualified postsecondary institution" means all of the following:

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

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

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

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

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

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

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

(e) Partnerships, limited liability companies, and tax-option corporations may not claim the credit under this subsection, but the eligibility for, and the amount of, the credit are based on their payment of tuition under par. (b). A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members prior to commencing participation in the education program in connection with which the claimant claims a credit under par. (b).

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

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

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

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

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

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

71.45 (2) (a) 10. By adding to federal taxable income the amount of credit

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

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

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

1. "Claimant" means a corporation that files a claim under this subsection.
2. "Degree-granting program" means an educational program for which an associate, a bachelor's, or a graduate degree is awarded upon successful completion.
3. "Poverty line" has the meaning given under s. 49.001 (5).

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

- a. A University of Wisconsin System institution, a technical college system institution, or a regionally accredited 4-year nonprofit college or university having its regional headquarters and principal place of business in this state.
- b. A school approved under s. 45.54, if the school has a physical presence, and the delivery of education occurs, in this state.

(b) Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.43 an amount equal to the following:

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

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

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

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

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

applies to the credit under this subsection.

SECTION 11. 71.49 (1) (dm) of the statutes is created to read:
71.49 (1) (dm) The education credit under s. 71.47 (5r).

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

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

Section 13. [Annual reporting]

Require the Department of Revenue annually to report to the legislature concerning each educational institution that has received tuition payments under the provisions of this act and, for each institution, the total amount of tuition claimed to calculate the credit.

SECTION 14. Initial applicability.

(1) EDUCATION CREDIT. This act first applies to taxable years beginning after December 31, 2005.

(END)

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P.W.F.

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, HARSDFORF, 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.

ASSEMBLY BILL 320

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:

SECTION 1. 71.05 (6) (a) 15. of the statutes is amended to read:

71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx) and (3s) and (5r) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g).

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

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

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

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

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

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

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

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

(2dm) 5 (3g) 5

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plain

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✓

ASSEMBLY BILL 320

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~~

ASSEMBLY BILL 320

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 (2dm) 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:

INSERT A

(3g) 5

ASSEMBLY BILL 320

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)~~ ^{(4) ↑ and} ~~to (5)~~ ^{↑ and (3g)} plus the amount of the credit computed
 5 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds) ^(1dm) ~~and (1dx)~~ ^{plain} 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 ^{plain} 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, ^{plain} 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

1

4
§. "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

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:

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(1 dm)
and (3g)
↑
plain

ASSEMBLY BILL 320

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.

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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

INSERT
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and (3g) 5

(2dm) 3

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ASSEMBLY BILL 320

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

SECTION 13. Initial applicability.

4
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)

, 2006

Insert A

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

3253/ldm
JK

Senator Darling:

Please review this draft carefully to ensure that it is consistent with your intent. This bill is similar to 2001 Assembly Bill 320, except that it removes the provisions that relate to "family members of managing employees" and adds a reporting provision for the department of revenue, as requested in the instructions.

VK

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3253/1dn

JK:cjs:jf

September 22, 2003

Senator Darling:

Please review this draft carefully to ensure that it is consistent with your intent. This bill is similar to 2001 Assembly Bill 320, except that it removes the provisions that relate to "family members of managing employees" and adds a reporting provision for the Department of Revenue, or requested in the instructions.

Joseph T. Kreye
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State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER
CHIEF

LRB

October 27, 2003

MEMORANDUM

To: Senator Darling

From: Joseph T. Kreye, Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **SB-268** (LRB 03-3253/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

LRB

MEMORANDUM

October 14, 2003

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on SB 268: Education Tax Credit for Businesses

Sections 71.07(5r)(c), 71.28(5r)(c), and 71.47(5r)(c) provide that a claimant may not claim the credit for any tuition amounts that the claimant excluded under section 127 of the Internal Revenue Code. However, section 127 does not allow an exclusion for the claimant. Rather, it allows an exclusion from gross income of the employee for amounts paid by the employer for educational assistance. This provision could be interpreted as requiring the employee to report the tuition payment as income in order for the employer to claim the credit.

The bill requires the department to report annually to the legislature the fiscal year amounts of tuition paid that is subject to credit by institution receiving the tuition payments. The department has a number of concerns with this provision.

- The reporting requirements refer to the amount "paid" by the claimant, but the credit refers to the amount "paid or incurred," which is the typical language for credits. Therefore, the reporting requirements should be based on the amount "paid or incurred" during the taxable year.
- The bill does not require the claimants to submit the names of the institutions and the dates of the payments to the department. That type of information generally would be available only upon audit.
- It is unclear if "fiscal year" means the taxpayer's fiscal year or the state fiscal year.
 - The provision is problematic if it is intended to refer to the state fiscal year. Taxpayers do not file returns based on the state fiscal year.
 - The provision is problematic if it is intended to mean tax year. The tax year of corporations do not have to coincide with the calendar year, so that a tax year for all taxpayers can span nearly two calendar years.
 - Most taxpayers are calendar year filers. Calendar year filers are first required to file in March or April, depending upon the type of entity, but may automatically extend their return date until August or September. Therefore, even for calendar year filers, the department would not receive information in a timely manner to comply with the reporting requirement.
- Regardless of the definition of fiscal year, if taxpayers were required to submit the necessary information, the department could only supply it to the legislature based on when returns are filed.

The draft provides for a credit equal to 75% of eligible tuition expenses if the individual's taxable income is not more than 185% of the poverty line. This would force employers to require personal information from employees or other individuals about their income and their spouse's income that could create legal and administrative problems for employers to comply with the law.

The proposed legislation makes no provision for the funding of the costs involved in administering the activities required, including computer programming and data capture. If the author wishes to provide funding, appropriation language could be developed and costs allocated in the following manner:

| | <u>Chapter 20</u> | <u>Amount</u> |
|----------|-------------------|---------------|
| one-time | s. 20.566 (1) (a) | \$48,100 |
| annual | s. 20.566 (1) (a) | \$51,100 |

If you have any questions regarding this technical memorandum, please contact Pam Walgren at 266-7817; for administrative costs Julie Feavel at 267-9892.