

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 268**

January 16, 2004 - Offered by 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.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2003 Wisconsin Act
6 99, is amended to read:

7 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
8 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), and (3t), and (5r) and not passed
9 through by a partnership, limited liability company, or tax-option corporation that
10 has added that amount to the partnership's, company's, or tax-option corporation's
11 income under s. 71.21 (4) or 71.34 (1) (g).

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

1 71.07 (5r) EDUCATION CREDIT. (a) In this subsection:

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

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

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

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

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

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

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

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

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

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

24 2. Seventy five percent of the tuition that the claimant paid or incurred during
25 the taxable year for an individual to participate in an education program of a

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

5 (bm) 1. No credit may be allowed under par. (b) unless the claimant obtains
6 written certification from a qualified postsecondary institution concerning the
7 amount of tuition that the claimant paid or incurred during the taxable year for an
8 individual to participate in an education program of the qualified postsecondary
9 institution and includes a copy of the certification with the claimant's return.

10 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
11 written certification from a qualified postsecondary institution that the taxable
12 income of the individual for whom the claimant has paid or incurred tuition during
13 the taxable year for the individual to participate in an education program of the
14 qualified postsecondary institution is not more than 185% of the poverty line and
15 includes a copy of the certification with the claimant's return. For purposes of this
16 subdivision and par. (b) 2., if an individual for whom the claimant has paid or
17 incurred tuition is claimed as a dependent on another person's tax return, the
18 individual's taxable income shall be the taxable income of the person on whose return
19 the individual is claimed as a dependent.

20 3. No credit may be allowed under par. (b) unless the claimant certifies to the
21 department of revenue that the claimant will not be reimbursed for any amount of
22 tuition for which the claimant claims a credit under par. (b).

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

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

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

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

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

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

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

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

24 (g) The department of revenue shall biennially submit a report to the
25 legislature under s. 13.172 (2) that identifies each qualified postsecondary

1 institution for which it has received written certification from a claimant under par.
2 (bm). The report shall specify the total amount of the tuition for each such institution
3 that is claimed as a credit under this subsection in the previous biennium.

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

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

6 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2003 Wisconsin Act 99, is
7 amended to read:

8 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
9 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3s), ~~and (3t)~~, and (5r) and passed through to
10 partners shall be added to the partnership's income.

11 **SECTION 5.** 71.26 (2) (a) of the statutes, as affected by 2003 Wisconsin Act 99,
12 is amended to read:

13 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
14 the gross income as computed under the Internal Revenue Code as modified under
15 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
16 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
17 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
18 under this paragraph at the time that the taxpayer first claimed the credit plus the
19 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
20 (1ds), (1dx), (3g), ~~and (3t)~~, and (5r) and not passed through by a partnership, limited
21 liability company, or tax-option corporation that has added that amount to the
22 partnership's, limited liability company's, or tax-option corporation's income under
23 s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or other disposition
24 of assets the gain from which would be wholly exempt income, as defined in sub. (3)
25 (L), if the assets were sold or otherwise disposed of at a gain and minus deductions,

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

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

7 **71.28 (5r) EDUCATION CREDIT.** (a) In this subsection:

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

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

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

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

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

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

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

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

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

24 1. Fifty percent of the tuition that the claimant paid or incurred during the
25 taxable year for an individual to participate in an education program of a qualified

1 postsecondary institution, if the individual was enrolled in a degree-granting
2 program.

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

9 (bm) 1. No credit may be allowed under par. (b) unless the claimant obtains
10 written certification from a qualified postsecondary institution concerning the
11 amount of tuition that the claimant paid or incurred during the taxable year for an
12 individual to participate in an education program of the qualified postsecondary
13 institution and includes a copy of the certification with the claimant's return.

14 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
15 written certification from a qualified postsecondary institution that the taxable
16 income of the individual for whom the claimant has paid or incurred tuition during
17 the taxable year for the individual to participate in an education program of the
18 qualified postsecondary institution is not more than 185% of the poverty line and
19 includes a copy of the certification with the claimant's return. For purposes of this
20 subdivision and par. (b) 2., if an individual for whom the claimant has paid or
21 incurred tuition is claimed as a dependent on another person's tax return, the
22 individual's taxable income shall be the taxable income of the person on whose return
23 the individual is claimed as a dependent.

1 3. No credit may be allowed under par. (b) unless the claimant certifies to the
2 department of revenue that the claimant will not be reimbursed for any amount of
3 tuition for which the claimant claims a credit under par. (b).

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

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

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

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

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

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

1 shareholders of tax-option corporations may claim the credit in proportion to their
2 ownership interest.

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

5 (g) The department of revenue shall biennially submit a report to the
6 legislature under s. 13.172 (2) that identifies each qualified postsecondary
7 institution for which it has received written certification from a claimant under par.
8 (bm). The report shall specify the total amount of the tuition for each such institution
9 that is claimed as a credit under this subsection in the previous biennium.

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

11 71.30 (3) (dm) The education credit under s. 71.28 (5r).

12 **SECTION 8.** 71.34 (1) (g) of the statutes, as affected by 2003 Wisconsin Act 99,
13 is amended to read:

14 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
15 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
16 ~~and (3t), and (5r)~~ and passed through to shareholders.

17 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2003 Wisconsin Act
18 99, is amended to read:

19 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
20 computed under s. 71.47 (1dd) to (1dx) and (5r) and not passed through by a
21 partnership, limited liability company, or tax-option corporation that has added that
22 amount to the partnership's, limited liability company's, or tax-option corporation's
23 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
24 s. 71.47 (1), (3), (3t), (4), and (5).

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

1 71.47 **(5r)** EDUCATION CREDIT. (a) In this subsection:

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

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

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

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

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

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

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

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

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

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

22 2. Seventy five percent of the tuition that the claimant paid or incurred during
23 the taxable year for an individual to participate in an education program of a
24 qualified postsecondary institution, if the individual was enrolled in a
25 degree-granting program and if the individual's taxable income in the year prior to

1 commencing participation in the education program in connection with which a
2 credit is claimed is not more than 185% of the poverty line.

3 (bm) 1. No credit may be allowed under par. (b) unless the claimant obtains
4 written certification from a qualified postsecondary institution concerning the
5 amount of tuition that the claimant paid or incurred during the taxable year for an
6 individual to participate in an education program of the qualified postsecondary
7 institution and includes a copy of the certification with the claimant's return.

8 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
9 written certification from a qualified postsecondary institution that the taxable
10 income of the individual for whom the claimant has paid or incurred tuition during
11 the taxable year for the individual to participate in an education program of the
12 qualified postsecondary institution is not more than 185% of the poverty line and
13 includes a copy of the certification with the claimant's return. For purposes of this
14 subdivision and par. (b) 2., if an individual for whom the claimant has paid or
15 incurred tuition is claimed as a dependent on another person's tax return, the
16 individual's taxable income shall be the taxable income of the person on whose return
17 the individual is claimed as a dependent.

18 3. No credit maybe allowed under par. (b) unless the claimant certifies to the
19 department of revenue that the claimant will not be reimbursed for any amount of
20 tuition for which the claimant claims a credit under par. (b).

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

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

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

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

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

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

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

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

21 (g) The department of revenue shall biennially submit a report to the
22 legislature under s. 13.172 (2) that identifies each qualified postsecondary
23 institution for which it has received written certification from a claimant under par.
24 (bm). The report shall specify the total amount of the tuition for each such institution
25 that is claimed as a credit under this subsection in the previous biennium.

