

2003 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB268)

Received: **01/06/2004**

Received By: **jkreye**

Wanted: **Today**

Identical to LRB:

For: **Ronald Brown (608) 266-8546**

By/Representing: **melissa**

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.Brown@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**
mary.offerdahl@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Education tax credit; certification and reporting requirements

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 01/06/2004	csicilia 01/06/2004		_____			
/1	jkreye 01/12/2004	csicilia 01/12/2004	pgreensl 01/06/2004	_____	sbasford 01/06/2004	sbasford 01/06/2004	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2			chaugen 01/12/2004	_____	lemery 01/12/2004	lemery 01/12/2004	

FE Sent For:

<END>

2003 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB268)

Received: **01/06/2004**

Received By: **jkreye**

Wanted: **Today**

Identical to LRB:

For: **Ronald Brown (608) 266-8546**

By/Representing: **melissa**

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.Brown@legis.state.wi.us**

Carbon copy (CC:) to: **joseph.kreye@legis.state.wi.us**
mary.offerdahl@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Education tax credit; certification and reporting requirements

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 01/06/2004	csicilia 01/06/2004		_____			
/1		12 cjs 1/13/03	pgreensl 01/06/2004 CH 1-12	_____	sbasford 01/06/2004	sbasford 01/06/2004	

FE Sent For:

<END>

2003 DRAFTING REQUEST

Senate Substitute Amendment (SSA-SB268)

Received: 01/06/2004

Received By: jkreye

Wanted: Today

Identical to LRB:

For: Ronald Brown (608) 266-8546

By/Representing: melissa

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.Brown@legis.state.wi.us

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

Pre Topic:

No specific pre topic given

Topic:

Education tax credit; certification and reporting requirements

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	1/6/03 1/6/03	Y P8	Y P8			

FE Sent For:

<END>

Sen. Brown

Kreye, Joseph

From: Offerdahl, Mary — 6-230
Sent: Tuesday, January 06, 2004 9:20 AM
To: Tormey, Jessica
Cc: Gilbert, Melissa; Sweet, Richard; Kreye, Joseph
Subject: RE: SB 268 amendment redraft

Sure. I left a voice mail for Joe Kreye and will let him know that we would like the combined substitute amendment as soon as possible. I'll copy this to Joe, too— it shouldn't take more than a few minutes to combine using the approach at the bottom of this email correspondence, so I expect we'd have the sub by Wed. or Thurs. at the latest. Then I could get a short memo out on it by Thursday or Friday at the latest.

Mary Offerdahl
Staff Attorney
Legislative Council

-----Original Message-----

From: Tormey, Jessica
Sent: Tuesday, January 06, 2004 9:07 AM
To: Offerdahl, Mary
Subject: RE: SB 268 amendment redraft

Oh, yes, Mary, I do know you! But thank you kindly for clarifying. Thank you for forwarding e-mails to me, too.

I just spoke to Missy, who indicated she had communicated last night Sen. Darling's hope to roll it into a sub. I told her the Senator would appreciate your brief on the bill as soon as possible - to ensure everyone is comfortable with the bill early on.

Thank you for your help.

Jessica

-----Original Message-----

From: Offerdahl, Mary
Sent: Monday, January 05, 2004 4:59 PM
To: Tormey, Jessica
Subject: FW: SB 268 amendment redraft

Hi Jessica, For some reason when I sent the email below my title info didn't make it, and it occurred to me you might not know who I am. Here it is, with best regards:

Mary Offerdahl
Staff Attorney
Legislative Council

-----Original Message-----

From: Offerdahl, Mary
Sent: Monday, January 05, 2004 4:55 PM
To: Gilbert, Melissa
Cc: Tormey, Jessica; Sweet, Richard
Subject: FW: SB 268 amendment redraft

Hi Missy,

I am copying this, as per your request, to Jessica in Sen. Darling's office.

Earlier today I mentioned to you that apparently the LRBa1577/1 amendment would not achieve its intended effect in adding the words "or incurred" to the SB 268 provisions requiring DoR to submit a report identifying each qualified institution that **has received** tuition payments **paid or incurred**, because of the preceding words "has received" that I've bolded. Once having received payment, "paid" is the only operative word and adding "or incurred" doesn't do anything for you. Here is a possibility I thought of for redrafting LRBa1577/1 to fix that

problem, after I read the related draft amendment, LRBA1887/1. Perhaps the two draft amendments (or all three--I'll use a slash below indicating the additional option of combining LRBA1578/1) could be combined and the language--e.g., on page 4 of SB 268, lines 3 to 7--could be redrafted to correspond to the par. (bm) language added by LRBA1887/1, as follows:

"The department of revenue shall ~~annually~~ biennially submit a report to the legislature under s. 13.172 (2) that identifies each qualified postsecondary institution **for which it has received written certification from a claimant under par. (bm)**. The report shall specify the total amount of the tuition for each such institution that the claimant claims as a credit under this subsection in the ~~preceding~~ previous biennium."

Best regards, Mary O.

1577/1
1887/1 - certification
1578/1

substitute

50287/1

2003 SENATE BILL 268

int-6-04
Walay please

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.

re gen

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.

SENATE BILL 268

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:

*Proof of Wis Act 99
section 1*

as affected by 2003 Wisconsin Act 99,

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), (2dm), (2dr), (2ds), (2dx), (3g), ~~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. "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.

SENATE BILL 268

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.

INSERT
3-12

SENATE BILL 268

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~~ ^{biennially} 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~~ ^{for which it has received written certification from} a claimant under par. ~~(b) in the fiscal year and~~
6 ~~specifies~~ ^{(dm) the report shall specify} the total amount of the tuition for each such institution that is claimed as
7 a credit under this subsection in the ~~fiscal year~~ ^{previous biennium} (use 2x)

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), ~~(3h)~~ (3s) and (5r) and passed through to
13 partners shall be added to the partnership's income. ^{and (3t)}

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), ~~(3g)~~ (3g) and (5r)
20 and not passed through by a partnership, limited liability company, or tax-option ^{and (3t)}
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

Proof w/ 2003 Wis Act 99 sec. 8

Proof w/ 2003 Wis Act 99 sec. 9

as affected by 2003 Wisconsin Act 99

minus, as provided under s. 71.28(3)(c) 7, the amount of the credit under s. 71.28(3) that the taxpayer added to income under this paragraph at the time that the taxpayer first claimed the credit

SENATE BILL 268

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

SENATE BILL 268

INSERT
6-3

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~~ ^{biennially} 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~~ ^{for which it has received written certification from} a claimant under par. (b) ~~in the fiscal year and~~
21 ~~specifies~~ ^{(b.m.). The report shall specify} the total amount of the tuition for each such institution that is claimed as
22 a credit under this subsection in the ~~fiscal year~~ ^{previous biennium}.

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:

, as affected by 2003 Wisconsin Act 99,

SENATE BILL 268

Proof with
2003 Wis
Consist Act 99
Section 14

Proof with
2003 Wis Act 99
Section 15

1
2
3
4
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), (1dm), (1ds), (1dx), (3), ~~(3g)~~ and (5r) and passed through to shareholders. *as affected by 2003 Wisconsin Act 99*

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

5
6
7
8
9
10
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). ~~(3A)~~

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:

SENATE BILL 268

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.

INSERT
8-10
10

SENATE BILL 268

biennially

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

(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 paid by~~ a claimant under par. (b) ~~in the fiscal year and~~ *for which it has received written certification from* ~~specifies~~ *(dm). The report shall specify* the total amount of the tuition for each such institution that is claimed as a credit under this subsection in the ~~fiscal year~~ *previous biennium*.

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).

or effected by 2003 Wisconsin act 99,

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 of 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), (2dm), (2dr), (2ds), (2dx), ~~and~~ (3g), ~~and~~ (3s), *and (3r)*; 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 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

SECTION 13. Initial applicability.

Proof with 2003 Wis Act 99 Section 23

~~SENATE AMENDMENT,
TO 2003 SENATE BILL 268~~

INSERT
3-12

1 ~~At the locations indicated, amend the bill as follows:~~

2 ~~1. Page 3, line 12: after that line insert:~~

3 (b) 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

3-12

1 subdivision and par. (b) 2., if an individual for whom the claimant has paid or
2 incurred tuition is claimed as a dependent on another person's tax return, the
3 individual's taxable income shall be the taxable income of the person on whose return
4 the individual is claimed as a dependent.

end of insert 3-12

INSERT
6-3

~~2. Page 6, line 3: after that line insert:~~

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

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

~~3. Page 8, line 10: after that line insert:~~

22 (b) 1. No credit may be allowed under par. (b) unless the claimant obtains
23 written certification from a qualified postsecondary institution concerning the
24 amount of tuition that the claimant paid or incurred during the taxable year for an

INSERT
8-10



8-10

1 individual to participate in an education program of the qualified postsecondary
2 institution and includes a copy of the certification with the claimant's return.

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

13

(END)

END OF INSERT 8-10

Kreye, Joseph

From: Gilbert, Melissa
Sent: Monday, January 12, 2004 2:17 PM
To: Kreye, Joseph; Tormey, Jessica; Offerdahl, Mary
Subject: RE: Follow up on SB 268

Sounds great -- I'll send the stripes over!

-----Original Message-----

From: Kreye, Joseph
Sent: Monday, January 12, 2004 2:15 PM
To: Tormey, Jessica; Gilbert, Melissa; Offerdahl, Mary
Subject: RE: Follow up on SB 268

I can get a redraft to you today. It is also my understanding, from speaking with Mary, that I should also include language that requires a claimant to certify to DOR that the claimant will not be reimbursed for tuition amounts that the claimant paid or incurred. Is that correct?

Melissa, please send the stripes back for LRBs0287/1, if you haven't already.

Joe

Joseph T. Kreye
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

-----Original Message-----

From: Tormey, Jessica
Sent: Monday, January 12, 2004 2:10 PM
To: Kreye, Joseph; Gilbert, Melissa; Offerdahl, Mary
Subject: RE: Follow up on SB 268

Hi Joe,

As I mentioned, it looks like we (Tom Petri and I) thought we were acting just the opposite of our intent in our drafting instructions in having you remove the language regarding family members of employees. Our intent is to protect from abuses by family members. Therefore, please add this language into the sub, as it was in AB320.

Could we redraft the substitute into a slash 2?

Mary, Could you please also amend your memo to include the amended language, too. If possible, we could call it a drafting error?

Given the exec. is on Wednesday, any help to expediate getting memos/drafts back is greatly appreciated.

Jess

-----Original Message-----

From: Kreye, Joseph
Sent: Monday, January 12, 2004 9:26 AM
To: Gilbert, Melissa; Tormey, Jessica; Offerdahl, Mary
Subject: Follow up on SB 268

With regards to the problem addressed on Friday regarding family members of employers and the education

tax credit, 2001 Assembly Bill 320 contained language limiting the credit with regards to such family members. I checked the drafting file on SB 268. As per the instructions I received from Tom in Sen. Darling's office, I removed the limitation from 2001 AB 320 when drafting SB 268. This is the language from 2001 AB 320:

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

1. The family member was employed an average of at least 20 hours a week as an employee of the claimant, or the claimant's business, during the one-year period prior to commencing participation in the education program in connection with which the claimant claims a credit under par. (b).
2. The family member is enrolled in a degree-granting program that is substantially related to the claimant's business.
3. The family member is making satisfactory progress towards completing the degree-granting program under subd. 2."

The following are the definitions of "family member" and "managing employee" from 2001 AB 320:

"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."

Finally, the definition of "family member" under s. 157.061 (7) reads as follows:

"Family member" means a spouse or an individual related by blood, marriage or adoption within the 3rd degree of kinship as computed under s. 990.001 (16).

Section 990.001 (16) has a diagram that shows up to the 7th degree of kinship. The 3rd degree of kinship includes parents, children, grandparents, brothers and sisters, grandchildren, uncles and aunts, nephews and nieces, and great grandchildren.

Please let me know if you wish to any of the preceding language, or a variation thereof, to the sub to SB 268. Also, with regard to the "technical" issue that Mary mentioned on Friday, I spoke with her regarding that, and, based on my knowledge of how DOR generally interprets such language--language that is used consistently in the drafting of tax credits--I will not need to change the language related to how partners, shareholders, and members of LLCs claim the credit.

Please contact me if you have any questions.

Joseph T. Kreye
Legislative Attorney
Legislative Reference Bureau
(608) 266-2263

1-12-04

Many offerable — sub to ^{SB} 2007 would include
language from AB320 re: family member &
managing employee (see-email)

also — have claimant certify to DOR that
claimant is not reimbursed for amounts
paid or incurred

Jessica in Sen. Darling's office will call to confirm

(see e-mail)

SENATE SUBSTITUTE AMENDMENT,
TO 2003 SENATE BILL 268

RM not R
stays

in 1-12-04
Today, please

D-N
Repeal

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.~~ ^{S.} "Poverty line" has the meaning given under s. 49.001 (5).

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

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

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

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

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

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

INDIRECT
2-6

3. No credit may be allowed under par. (b) unless the claimant certifies to the department of revenue that the claimant will not be reimbursed for amounts paid or incurred under par. (b).

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

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

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

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

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

any amount of tuition for which the claimant claims a credit under par. (b)

INSERT 3-18

1 information to each of them. Partners, members of limited liability companies, and
2 shareholders of tax-option corporations may claim the credit in proportion to their
3 ownership interest.

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

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

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

12 71.10 (4) (cd) The education credit under s. 71.07 (5r).

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

15 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
16 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3s), ~~and (3t)~~, and (5r) and passed through to
17 partners shall be added to the partnership's income.

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

20 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
21 the gross income as computed under the Internal Revenue Code as modified under
22 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
23 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
24 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
25 under this paragraph at the time that the taxpayer first claimed the credit plus the

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

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

14 **71.28 (5r) EDUCATION CREDIT.** (a) In this subsection:

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

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

18 ^{5.} ~~β.~~ "Poverty line" has the meaning given under s. 49.001 (5).

19 ^{6.} ~~α.~~ "Qualified postsecondary institution" means all of the following:

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

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

INSERT
5-17

1 (b) Subject to the limitations provided in this subsection, a claimant may claim
2 as a credit against the tax imposed under s. 71.23 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 (bm) 1. No credit may be allowed under par. (b) unless the claimant obtains
14 written certification from a qualified postsecondary institution concerning the
15 amount of tuition that the claimant paid or incurred during the taxable year for an
16 individual to participate in an education program of the qualified postsecondary
17 institution and includes a copy of the certification with the claimant's return.

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

3. *No credit may be allowed under par. (b) unless the claimant certifies to the Department of revenue that the claimant will not be reimbursed for amounts paid or incurred under par. (d)*
 1 individual's taxable income shall be the taxable income of the person on whose return
 2 the individual is claimed as a dependent.

INSERT
7-4

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

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

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

any amount of tuition for which the claimant claims a credit under par. (b)

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

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

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

23 71.30 (3) (dm) The education credit under s. 71.28 (5r).

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

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), (3g),
3 ~~and (3t), and (5r)~~ and passed through to shareholders.

4 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2003 Wisconsin Act
5 99, is amended to read:

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

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

13 71.47 (5r) EDUCATION CREDIT. (a) In this subsection:

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

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

17 ^{5.}
18 ~~3.~~ "Poverty line" has the meaning given under s. 49.001 (5).

19 ^{56.}
20 ~~4.~~ "Qualified postsecondary institution" means all of the following:

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

24 b. A school approved under s. 45.54, if the school has a physical presence, and
25 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:

INJECT
8-16

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

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

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

(INDEX 10-2) 1 (c) A claimant may not claim the credit under par. (b) for any tuition amounts
2 that the claimant excluded under section 127 of the Internal Revenue Code.

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

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

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

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

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

21 71.49 (1) (dm) The education credit under s. 71.47 (5r).

22 SECTION 12. 77.92 (4) of the statutes, as affected by 2003 Wisconsin Act 99, is
23 amended to read:

24 77.92 (4) "Net business income", with respect to a partnership, means taxable
25 income as calculated under section 703 of the Internal Revenue Code; plus the items

1 of income and gain under section 702 of the Internal Revenue Code, including taxable
2 state and municipal bond interest and excluding nontaxable interest income or
3 dividend income from federal government obligations; minus the items of loss and
4 deduction under section 702 of the Internal Revenue Code, except items that are not
5 deductible under s. 71.21; plus guaranteed payments to partners under section 707
6 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
7 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), ~~and (3t)~~, and (5r); and plus or
8 minus, as appropriate, transitional adjustments, depreciation differences, and basis
9 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
10 loss, and deductions from farming. “Net business income”, with respect to a natural
11 person, estate, or trust, means profit from a trade or business for federal income tax
12 purposes and includes net income derived as an employee as defined in section 3121
13 (d) (3) of the Internal Revenue Code.

14 **SECTION 13. Initial applicability.**

15 (1) EDUCATION CREDIT. This act first applies to taxable years beginning on
16 January 1, 2006.

17 (END)

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, HARSDOFF, 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:

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:

INSERT
2-6

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

INJECT
3-18



ASSEMBLY BILL 320

(IN) 2001
3-18

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:

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) 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).

(N 2221
5-17)

ASSEMBLY BILL 320

6. "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. 71.23 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 has excluded under section 127 of the Internal Revenue Code.

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

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

INSERT
7-4

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 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:

INSERT
7-4

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:

INSERT
8-16

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.~~

INSERT
10-2

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

ASSEMBLY BILL 320

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)

50287/2 dm
JK

Senator Brown:

This draft includes the language from 2001
Assembly Bill 320 regarding "family members" and
"managing employee." In addition, the draft requires
a claimant to certify to DOR that the claimant will not
be reimbursed for tuition amounts that the claimant paid
or incurred. Please contact me if you have any
questions.

✓

JK

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

LRBs0287/2dn
JK:cjs:ch

January 12, 2004

Senator Brown:

This draft includes the language from 2001 Assembly Bill 320 regarding "family member" and "managing employee." In addition, the draft requires a claimant to certify to DOR that the claimant will not be reimbursed for tuition amounts that the claimant paid or incurred. Please contact me if you have any questions.

Joseph T. Kreye
Legislative Attorney
Phone: (608) 266-2263
E-mail: joseph.kreye@legis.state.wi.us