

2003 SENATE BILL 408

January 27, 2004 – Introduced by Senator REYNOLDS. Referred to Committee on Health, Children, Families, Aging and Long Term Care.

1 **AN ACT** *to create* 71.07 (6e) and 71.10 (4) (ce) of the statutes; **relating to:**
2 creating a nonrefundable individual income tax credit for certain adoption
3 expenses.

Analysis by the Legislative Reference Bureau

In calculating an individual's Wisconsin adjusted gross income (AGI), an adoptive parent may generally, under current law, deduct from federal AGI up to \$5,000 that is expended during the year to which the claim relates and the preceding two years for adoption fees, court costs, or legal fees relating to the adoption of a child.

Under federal law, there is a nonrefundable adoption expenses tax credit, under which amounts of up to \$10,000 of qualified adoption expenses may, generally, be credited against the federal tax that is imposed. The Internal Revenue Code (IRC) defines qualified adoption expenses to mean, generally, reasonable and necessary adoption fees, court costs, attorney fees, and other costs that are directly related to the legal adoption of an eligible child by the taxpayer, and defines eligible child to mean an individual under age 18 or physically or mentally incapable of caring for himself.

Federal law provides that, if adoption expenses are paid or incurred during a taxable year before the taxable year in which the adoption is finalized, the credit for those expenses is allowed during the year following the year during which the expenses are paid or incurred, and, if the expenses are paid or incurred during or after the year in which the adoption becomes final, the credit for those expenses may be claimed for the year in which they are paid or incurred.

SENATE BILL 408

If the amount of the federal credit for which a taxpayer is eligible exceeds the amount of taxes owed, the excess amount of credit may be carried forward for up to five years. The \$10,000 limit is for each child adopted and is a cumulative limit. The amount of the credit that may be claimed is phased out to zero as the claimant's modified federal AGI income rises from \$150,001 to \$190,000. With regard to the adoption of a child who is not a citizen or resident of the United States at the time that the adoption proceedings commence, the credit may be claimed only upon the adoption becoming final.

This bill creates a nonrefundable individual income tax credit for adoption expenses incurred by an individual who is eligible for, and claims, the federal credit. The credit may be claimed for an amount of qualified adoption expenses, up to \$5,000, to the extent that the expenses exceed the amount that the claimant is eligible for, and claims, under the federal credit. For claimants who are nonresidents or part-year residents of Wisconsin, the credit that may be claimed is prorated based on the ratio of the claimant's Wisconsin AGI to federal AGI.

If the credit amount that the claimant is eligible for exceeds the claimant's taxes due, the claimant may carry forward the unused credit for up to five years. Generally, under the bill, the provisions of the federal credit, including the definitions of qualified adoption expenses and eligible child, the maximum income phaseout provisions, the determination of the years in which the credit may be claimed for expenses paid or incurred, and the provisions relating to foreign adoptions apply to the credit created in the bill.

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.** 71.07 (6e) of the statutes is created to read:

2 71.07 **(6e)** ADOPTION EXPENSES CREDIT. (a) *Definitions.* In this subsection:

3 1. "Claimant" means an individual who is eligible for, and claims, the federal
4 credit.

5 2. "Federal credit" means the federal tax credit, for adoption expenses, under
6 section 23 of the Internal Revenue Code.

7 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
8 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
9 amount of those taxes, an amount of up to \$5,000 of qualified adoption expenses, to

SENATE BILL 408

1 the extent that those expenses exceed the amount of the credit for which a claimant
2 is eligible, and claims, under the federal credit in the year to which the claim relates.

3 (c) *Limitations.* 1. No credit may be allowed under this subsection unless it
4 is claimed within the time period under s. 71.75 (2).

5 2. For a claimant who is a nonresident or part-year resident of this state and
6 who is a single person or a married person filing a separate return, multiply the
7 credit for which the claimant is eligible under par. (b) by a fraction the numerator of
8 which is the individual's Wisconsin adjusted gross income and the denominator of
9 which is the individual's federal adjusted gross income. If a claimant is married and
10 files a joint return, and if the claimant or the claimant's spouse, or both, are
11 nonresidents or part-year residents of this state, multiply the credit for which the
12 claimant is eligible under par. (b) by a fraction the numerator of which is the couple's
13 joint Wisconsin adjusted gross income and the denominator of which is the couple's
14 joint federal adjusted gross income.

15 3. The provisions contained in section 23 of the Internal Revenue Code, to the
16 extent that they apply to the credit under that section, apply to the credit under this
17 subsection, unless this subsection explicitly provides otherwise.

18 (d) *Administration.* Subsection (9e) (d), to the extent that it applies to the credit
19 under that subsection, applies to the credit under this subsection.

20 (e) *Carry-forward.* If a credit computed under this subsection is not entirely
21 offset against Wisconsin income taxes otherwise due, the unused balance may be
22 carried forward and credited against Wisconsin income taxes otherwise due for the
23 following 5 taxable years to the extent not offset by these taxes otherwise due in all
24 intervening years between the year in which the expense was incurred and the year
25 in which the carry-forward credit is claimed.

