

2003 DRAFTING REQUEST

Bill

Received: 01/22/2004

Received By: mshovers

Wanted: As time permits

Identical to LRB:

For: Thomas Reynolds (608) 266-2512

By/Representing: Steve

This file may be shown to any legislator: NO

Drafter: mshovers

May Contact:

Addl. Drafters:

Subject: Tax Credits - individual income

Extra Copies:

Submit via email: YES

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

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Nonrefundable individual income tax credit for adoption expenses

Instructions:

Same as SB 292 (-2998/1), but do not prohibit new claims for the adoption expenses income tax deduction

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>
/?	mshovers 01/22/2004	jdye 01/22/2004		_____			State
/1			rschlue 01/22/2004	_____	sbasford 01/22/2004	sbasford 01/23/2004 sbasford 01/23/2004	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

FE Sent For:

<END>

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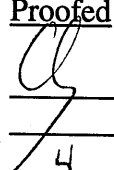

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FE Sent For:

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4093/1
LRB-2998/1
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Keep
RMNR

WANTED today

2003 SENATE BILL 292

October 21, 2003 - Introduced by Senators REYNOLDS, LASSA, STEPP, ROESSLER, WIRCH and CARPENTER, cosponsored by Representatives FREESE, MUSSER, HAHN, AINSWORTH, KREIBICH, BIES, GUNDRUM, HINES, GUNDERSON, W. WOOD, LOTHIAN, VRAKAS and HUNDERTMARK. Referred to Joint Survey Committee on Tax Exemptions.

Reger

1 AN ACT to amend 71.05 (6) (b) 22.; and to create 71.07 (6e) and 71.10 (4) (ce) of
2 the statutes; relating to: creating a nonrefundable individual income tax
3 credit for certain adoption expenses and prohibiting new claims for the
4 adoption expenses income tax deduction.

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 this bill, no deductions may be claimed for such expenses for taxable years that begin after December 31, 2003.

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

SENATE BILL 292

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.

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.

~~This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this 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.** 71.05 (6) (b) 22. of the statutes is amended to read:

2 71.05 (6) (b) 22. For taxable years beginning after December 31, 1995, and
3 before January 1, 2004, an amount up to \$5,000 that is expended during the period
4 that consists of the year to which the claim relates and the prior 2 taxable years, by
5 a full-year resident of this state who is an adoptive parent, for adoption fees, court

SENATE BILL 292

1 ~~costs or legal fees relating to the adoption of a child, for whom a final order of adoption~~
2 ~~has been entered under s. 48.91 (3) during the taxable year.~~

3 SECTION 2. 71.07 (6e) of the statutes is created to read:

4 71.07 (6e) ADOPTION EXPENSES CREDIT. (a) *Definitions*. In this subsection:

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

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

9 (b) *Filing claims*. Subject to the limitations provided in this subsection, a
10 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
11 amount of those taxes, an amount of up to \$5,000 of qualified adoption expenses, to
12 the extent that those expenses exceed the amount of the credit for which a claimant
13 is eligible, and claims, under the federal credit in the year to which the claim relates.

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

16 2. For a claimant who is a nonresident or part-year resident of this state and
17 who is a single person or a married person filing a separate return, multiply the
18 credit for which the claimant is eligible under par. (b) by a fraction the numerator of
19 which is the individual's Wisconsin adjusted gross income and the denominator of
20 which is the individual's federal adjusted gross income. If a claimant is married and
21 files a joint return, and if the claimant or the claimant's spouse, or both, are
22 nonresidents or part-year residents of this state, multiply the credit for which the
23 claimant is eligible under par. (b) by a fraction the numerator of which is the couple's
24 joint Wisconsin adjusted gross income and the denominator of which is the couple's
25 joint federal adjusted gross income.

Basford, Sarah

From: Krieser, Steve
Sent: Friday, January 23, 2004 10:00 AM
To: LRB.Legal
Subject: Draft review: LRB 03-4093/1 Topic: Nonrefundable individual income tax credit for adoption expenses

It has been requested by <Krieser, Steve> that the following draft be jacketed for the SENATE:

Draft review: LRB 03-4093/1 Topic: Nonrefundable individual income tax credit for adoption expenses



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

1 EAST MAIN, SUITE 200
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

February 6, 2004

MEMORANDUM

To: Representative Reynolds

From: Marc E. Shovers, Sr. Legislative Attorney, (608) 266-0129

Subject: Technical Memorandum to **SB-408** (LRB 03-4093/1)

We received the attached technical memorandum relating to your bill. This copy is for your information and your file. With regard to DOR's second point, created s.71.07(6e)(c)2. could be clarified to ensure that if a claimant is married, only a joint filer could claim this credit. With regard to DOR's third point, I think that the bill works fine because the income limitations in section 23(b) of the Internal Revenue Code are not explicitly excluded, they apply to the bill under terms of s.71.07(6e)(c)3. If the department thinks some uncertainty exists, it could promulgate rules to address its concerns. If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 2, 2004

TO: Marc Shovers
Legislative Reference Bureau

FROM: Dennis Collier
Department of Revenue

SUBJECT: Technical Memorandum on SB 408: Nonrefundable Individual Income Tax Credit for Adoption Expense

Section 71.05(6)(b)22 provides a subtraction for up to \$5,000 of adoption expenses under current law, and therefore, both a subtraction and a credit could be claimed for the same expenses. If this is not the intent, a provision would be needed to terminate the subtraction, or to disallow the subtraction for expenses on which a credit is received.

Under sec. 23(f) of the Internal Revenue Code (IRC), a married couple must file a joint federal return. Since the provisions of sec. 23 apply, it appears that a married couple must also file a joint return for Wisconsin. If this is the intent, the phrase "or a married person filing a separate return" should be deleted from the first sentence of proposed sec. 71.07(6e).

It is unclear how the federal income limitation would apply. For example, assume the claimant had \$10,000 of qualified adoption expenses, but could only claim \$2,000 as a federal credit because his or her credit was being phased out because income exceeded the threshold at which phase-out of the federal credit begins. This bill allows a credit of up to \$5,000 of qualified adoption expenses, to the extent those expenses exceed the amount of federal credit for which he was eligible and claimed. However, proposed sec. 71.07(6e) provides that the provisions of sec. 23 of the IRC apply unless explicitly provided otherwise. Clarification is needed as to whether the income limitations in the IRC sec. 23(b)(2) apply to prevent this person from claiming the Wisconsin credit.

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

	<u>Chapter 20</u>	<u>Amount</u>	<u>FTE</u>
one-time	s. 20.566 (1) (a)	\$18,700	

If you have any questions regarding this technical memorandum, please contact Karyn Kriz at 261-8984; for administrative costs contact Julie Feavel at 267-9892.