

**SENATE SUBSTITUTE AMENDMENT 1,
TO 2003 SENATE BILL 408**

February 10, 2004 – Offered by Senator REYNOLDS.

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 substitute amendment, no deductions may be claimed for such expenses for taxable years that begin after December 31, 2004.

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.

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 substitute amendment 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 substitute amendment, 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 substitute amendment.

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, 2005, 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
6 costs or legal fees relating to the adoption of a child, for whom a final order of adoption
7 has been entered under s. 48.91 (3) during the taxable year.

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

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

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

