AN ACT to amend 71.05 (6) (b) 22.; and to create 71.07 (6e) and 71.10 (4) (ce) of
the statutes; relating to: creating a nonrefundable individual income tax
credit for certain adoption expenses and prohibiting new claims for the
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
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. 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 before January 1, 2004, an amount up to $5,000 that is expended during the period that consists of the year to which the claim relates and the prior 2 taxable years, by a full-year resident of this state who is an adoptive parent, for adoption fees, court
costs or legal fees relating to the adoption of a child, for whom a final order of adoption has been entered under s. 48.91 (3) during the taxable year.

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

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

1. “Claimant” means an individual who is eligible for, and claims, the federal credit.

2. “Federal credit” means the federal tax credit, for adoption expenses, under section 23 of the Internal Revenue Code.

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

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

2. For a claimant who is a nonresident or part−year resident of this state and who is a single person or a married person filing a separate return, multiply the credit for which the claimant is eligible under par. (b) by a fraction the numerator of which is the individual’s Wisconsin adjusted gross income and the denominator of which is the individual’s federal adjusted gross income. If a claimant is married and files a joint return, and if the claimant or the claimant’s spouse, or both, are nonresidents or part−year residents of this state, multiply the credit for which the claimant is eligible under par. (b) by a fraction the numerator of which is the couple’s joint Wisconsin adjusted gross income and the denominator of which is the couple’s joint federal adjusted gross income.
3. The provisions contained in section 23 of the Internal Revenue Code, to the extent that they apply to the credit under that section, apply to the credit under this subsection, unless this subsection explicitly provides otherwise.

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

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

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

71.10 (4) (ce) The child and dependent care expenses credit under s. 71.07 (6e).

**SECTION 4. Initial applicability.**

(1) This act first applies to taxable years beginning on January 1, 2004.

(END)