

2007 SENATE BILL 31

February 9, 2007 – Introduced by Senators DARLING, PLALE, KANAVAS, LEIBHAM, S. FITZGERALD, ROESSLER, KEDZIE and SCHULTZ, cosponsored by Representatives ZIPPERER, PETERSEN, NASS, NYGREN, TAUCHEN, ROTH, GUNDRUM, KRAMER, MOULTON, ZIEGELBAUER, MURSAU, J. OTT, BIES, HONADEL, TOWNSEND, HAHN, STRACHOTA, HINES, JESKEWITZ, GRONEMUS, DAVIS, MURTHA, PETROWSKI, VAN ROY and GUNDERSON. Referred to Committee on Small Business, Emergency Preparedness, Workforce Development, Technical Colleges and Consumer Protection.

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) (dn), 71.47 (5r) and 71.49 (1) (dn) 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) 50 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) 75 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 percent 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.

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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), (2dm), (2dr), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5d), and
4 (5e), (5f), and (5h), and (5r) and not passed through by a partnership, limited liability
5 company, or tax–option corporation that has added that amount to the partnership’s,
6 company’s, or tax–option corporation’s income under s. 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. “Paid or incurred” includes any amount paid by the claimant to reimburse
19 an individual for the tuition that the individual paid or incurred.

20 6. “Poverty line” has the meaning given in s. 49.001 (5).

21 7. “Qualified postsecondary institution” means all of the following:

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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. 38.50, if the delivery of education occurs in this
5 state.

6 (b) Subject to the limitations provided in this subsection, a claimant may claim
7 as a credit against the tax imposed under ss. 71.02 and 71.08 an amount equal to the
8 following:

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

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

19 (c) 1. No credit may be allowed under par. (b) unless the claimant obtains
20 written certification from a qualified postsecondary institution concerning the
21 amount of tuition paid or incurred during the taxable year for which the claimant is
22 claiming a credit under this subsection and includes a copy of the certification with
23 the claimant's return.

24 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
25 written certification from a qualified postsecondary institution that the taxable

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1 income of the individual for whom the claimant has paid or incurred tuition during
2 the taxable year for the individual to participate in an education program of the
3 qualified postsecondary institution is not more than 185 percent of the poverty line
4 and includes a copy of the certification with the claimant's return. For purposes of
5 this subdivision and par. (b) 2., if an individual for whom the claimant has paid or
6 incurred tuition is claimed as a dependent on another person's tax return, the
7 individual's taxable income shall be the taxable income of the person on whose return
8 the individual is claimed as a dependent.

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

12 (d) A claimant may not claim the credit under par. (b) for any tuition amounts
13 that the claimant excluded under s. 71.05 (6) (b) 28. or under section 127 of the
14 Internal Revenue Code.

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

18 1. The family member was employed an average of at least 20 hours per week
19 as an employee of the claimant, or the claimant's business, during the one-year
20 period prior to commencing participation in the education program in connection
21 with which the claimant claims a credit under par. (b).

22 2. The family member is enrolled in a degree-granting program that is
23 substantially related to the claimant's business.

24 3. The family member is making satisfactory progress towards completing the
25 degree-granting program under subd. 2.

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

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

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

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

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

19 71.10 (4) (cd) The education credit under s. 71.07 (5r).

20 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

21 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
22 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h)~~,
23 and (5r) and passed through to partners shall be added to the partnership's income.

24 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

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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), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
5 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
6 under this paragraph at the time that the taxpayer first claimed the credit plus the
7 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
8 (1ds), (1dx), (3g), (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h), 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, limited liability company’s, or
11 tax–option corporation’s income under s. 71.21 (4) or 71.34 (1) (g) plus the amount
12 of losses from the sale or other disposition of assets the gain from which would be
13 wholly exempt income, as defined in sub. (3) (L), if the assets were sold or otherwise
14 disposed of at a gain and minus deductions, as computed under the Internal Revenue
15 Code as modified under sub. (3), plus or minus, as appropriate, an amount equal to
16 the difference between the federal basis and Wisconsin basis of any asset sold,
17 exchanged, abandoned, or otherwise disposed of in a taxable transaction during the
18 taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

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

20 71.28 (5r) EDUCATION CREDIT. (a) In this subsection:

21 1. “Claimant” means a corporation that files a claim under this subsection.

22 2. “Degree–granting program” means an education program for which an
23 associate, a bachelor’s, or a graduate degree is awarded upon successful completion.

24 3. “Family member” has the meaning given in s. 157.061 (7).

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1 4. “Managing employee” means an individual who wholly or partially exercises
2 operational or managerial control over, or who directly or indirectly conducts, the
3 operation of the claimant’s business.

4 5. “Paid or incurred” includes any amount paid by the claimant to reimburse
5 an individual for the tuition that the individual paid or incurred.

6 6. “Poverty line” has the meaning given in s. 49.001 (5).

7 7. “Qualified postsecondary institution” means all of the following:

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

11 b. A school approved under s. 38.50, if the delivery of education occurs in this
12 state.

13 (b) Subject to the limitations provided in this subsection, a claimant may claim
14 as a credit against the tax imposed under s. 71.23 an amount equal to the following:

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

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

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1 (c) 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 paid or incurred during the taxable year for which the claimant is
4 claiming a credit under this subsection and includes a copy of the certification with
5 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 percent of the poverty line
11 and includes a copy of the certification with the claimant's return. For purposes of
12 this 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 3. No credit may be allowed under par. (b) unless the claimant certifies to the
17 department of revenue that the claimant will not be reimbursed for any amount of
18 tuition for which the claimant claims a credit under par. (b).

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

21 (e) 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 a managing employee
23 unless all of the following apply:

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

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1 period prior to commencing participation in the education program in connection
2 with 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 (f) 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 (g) 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 (h) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
18 to the credit under this subsection.

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

24 **SECTION 7.** 71.30 (3) (dn) of the statutes is created to read:

25 71.30 (3) (dn) The education credit under s. 71.28 (5r).

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1 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

2 71.34 **(1)** (g) An addition shall be made for credits computed by a tax-option
3 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),
4 (3n), (3t), (3w), (5b), (5e), (5f), (5g), ~~and (5h)~~, and (5r) and passed through to
5 shareholders.

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

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

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

14 71.47 **(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 educational program for which an
17 associate, a bachelor's, or a graduate degree is awarded upon successful completion.

18 3. "Family member" has the meaning given in s. 157.061 (7).

19 4. "Managing employee" means an individual who wholly or partially exercises
20 operational or managerial control over, or who directly or indirectly conducts, the
21 operation of the claimant's business.

22 5. "Paid or incurred" includes any amount paid by the claimant to reimburse
23 an individual for the tuition that the individual paid or incurred.

24 6. "Poverty line" has the meaning given in s. 49.001 (5).

25 7. "Qualified postsecondary institution" means all of the following:

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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. 38.50, if the delivery of education occurs in this
5 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. 71.43 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 percent of the poverty line.

18 (c) 1. No credit may be allowed under par. (b) unless the claimant obtains
19 written certification from a qualified postsecondary institution concerning the
20 amount of tuition paid or incurred during the taxable year for which the claimant is
21 claiming a credit under this subsection and includes a copy of the certification with
22 the claimant's return.

23 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
24 written certification from a qualified postsecondary institution that the taxable
25 income of the individual for whom the claimant has paid or incurred tuition during

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1 the taxable year for the individual to participate in an education program of the
2 qualified postsecondary institution is not more than 185 percent of the poverty line
3 and includes a copy of the certification with the claimant's return. For purposes of
4 this subdivision and par. (b) 2., if an individual for whom the claimant has paid or
5 incurred tuition is claimed as a dependent on another person's tax return, the
6 individual's taxable income shall be the taxable income of the person on whose return
7 the individual is claimed as a dependent.

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

11 (d) 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 (e) 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 per week
17 as an employee of the claimant, or the claimant's business, during the one-year
18 period prior to commencing participation in the education program in connection
19 with 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 (f) 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.

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

16 **SECTION 11.** 71.49 (1) (dn) of the statutes is created to read:

17 71.49 (1) (dn) The education credit under s. 71.47 (5r).

18 **SECTION 12.** 77.92 (4) of the statutes is amended to read:

19 77.92 (4) “Net business income,” with respect to a partnership, means taxable
20 income as calculated under section 703 of the Internal Revenue Code; plus the items
21 of income and gain under section 702 of the Internal Revenue Code, including taxable
22 state and municipal bond interest and excluding nontaxable interest income or
23 dividend income from federal government obligations; minus the items of loss and
24 deduction under section 702 of the Internal Revenue Code, except items that are not
25 deductible under s. 71.21; plus guaranteed payments to partners under section 707

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1 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
2 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), (3w), (5b), (5e), (5f),
3 (5g), ~~and (5h),~~ and (5r); and plus or minus, as appropriate, transitional adjustments,
4 depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and
5 (19); but excluding income, gain, loss, and deductions from farming. “Net business
6 income,” with respect to a natural person, estate, or trust, means profit from a trade
7 or business for federal income tax purposes and includes net income derived as an
8 employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

9 **SECTION 13. Initial applicability.**

10 (1) EDUCATION CREDIT. This act first applies to taxable years beginning on July
11 1, 2007.

12 (END)