



# State of Wisconsin

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STEPHEN R. MILLER  
CHIEF

February 28, 2007

## MEMORANDUM

**To:** Senator Darling

**From:** Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

**Subject:** Technical Memorandum to **2007 SB 31** (LRB 07-1145/2) **by DOR**

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We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

## MEMORANDUM

February 27, 2007

**TO:** Joseph Kreye  
Legislative Reference Bureau

**FROM:** Rebecca Boldt  
Department of Revenue

**SUBJECT:** Technical Memorandum on SB 31 – An education tax credit for businesses

In the bill, sections 71.07(5r)(d), 71.28(5r)(d), and 71.47(5r)(d) provide that a claimant may not claim the credit “for any tuition amounts that the claimant excluded...under section 127 of the Internal Revenue Code.” Section 127, IRC, allows an exclusion from gross income of the employee for amounts paid by the employer for educational assistance. This code section does not allow an exclusion for the claimant (employer). If it is the intent that the employer cannot claim the credit for educational expenses that are excluded from the taxable income of the employee under IRC section 127, these provisions should be changed to read “ ... that the individual excluded under section 127 ...”

Sections 71.07(5r)(b)1 and 2 and (c)1, 71.28(5r)(b)1 and 2 and (c)1, and 71.47(5r)(b)1 and 2 and (c)1 base the credit on the amount “paid or incurred” during the taxable year. The tuition expenses could be incurred in one taxable year but paid in another. This would result in a credit being allowed for the same expenses in two successive tax years. To prevent this from happening, the credit should be based on the amount paid during the taxable year.

The draft provides for a credit equal to 75% of eligible tuition expenses if the individual’s taxable income is not more than 185% of the poverty line. This would force either the business or the educational institution to require personal information from students about their taxable income, their spouse’s income, or their parents’ income and to provide that information to the claimant.

For purposes of the 75% credit, the taxable income is considered for the year prior to commencing participation in the education program. However, for purposes of the written certification from the postsecondary institution, the taxable income to be reported is for the taxable year in which the tuition is paid. The language in par. (b)2 and par. (c)2 should be consistent. Since it would be unlikely that the postsecondary institution would have financial information available for the current taxable year, we suggest that par. (c)2 be changed to refer to the taxable income for the year prior to the taxable year in which the credit is claimed.

Section 71.07(5r)(b) provides that the credit may be claimed against the tax imposed under ss. 71.02 and 71.08 (alternative minimum tax). However, the order of computation in sec. 71.10(4)(cd) places the credit before the alternative minimum tax. If this credit is to offset the minimum tax, it should be listed below sec. 71.10(4)(f) and sec. 71.08(1) should be amended to include 71.07(5r)(b) in the list of credits not considered in computing alternative minimum tax. If the intent is to not offset the minimum tax, the reference to sec. 71.08 in sec. 71.07(5r)(b) should be deleted.

It is unclear if the intent is that the credit be allowed to nonresidents and part-year residents of Wisconsin? It appears that a nonresident self-employed person who sends their child to a Wisconsin school could claim the credit even though the self-employment income may not be taxable to Wisconsin.

It can be confusing to taxpayers when a credit is effective in taxable years beginning in a month other than January of the calendar year. In this instance, the credit would have to be listed on the forms for tax years beginning on or after January 1, 2007, but would only apply to those taxpayers who file on a fiscal-year basis whose tax year begins on July 1, 2007, or later. It would be more straightforward to have the credit apply for taxable years beginning on or after January 1, 2008. Using an applicability date of taxable years beginning on July 1, 2007, will also be a problem if this bill is enacted late in the year after 2007 forms have been sent to the printer.

If you have any questions regarding this technical memorandum, please contact Michael Oakleaf at 261-5173.

cc: Sen. Darling