



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER  
CHIEF

February 17, 2009

## MEMORANDUM

**To:** Representative Shilling

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

**Subject:** Technical Memorandum to **2009 AB 18** (LRB-0033/2) **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 5, 2009

**TO:** Joseph Kreye  
Legislative Reference Bureau

**FROM:** Rebecca Boldt  
Department of Revenue

**SUBJECT:** Technical Memorandum on AB 18 (LRB 0033/2) – Supplement to the Federal Historic Rehabilitation Credit

The Department has the following technical concern with the above-referenced bill:

As currently drafted, the bill would require all partnerships to have a written agreement on allocation of the credit, even if the partnership allocates the credit in proportion to the partners' ownership interest. Sections 71.07(9m)(f), 71.28(6)(f), and 71.47(6)(f) provide that "Credits computed by a partnership or limited liability company shall be allocated to partners or members as provided in a written agreement among the partners or members that is entered into no later than the last day of the taxable year of the partnership or limited liability company, for which the credit is claimed." Because the word "shall" is used, it appears that a partnership or LLC will always be required to have a written agreement, even if the credit is allocated in proportion to the ownership interest.

If the author chooses, the following three changes could be made so that only partnerships that choose to allocate the credit using a method other than percentage of ownership interest would be required to draft a written agreement and include it with their return:

- Sections 71.07(9m)(f), 71.28(6)(f), and 71.47(6)(f) could be changed to read "Credits computed by a partnership or limited liability company may be allocated to their partners or members in proportion to their ownership interest or may be allocated to partners or members as provided in a written agreement . . ."
- The next sentence could be changed so that it would read "Any partner or member who claims the credit as provided under this paragraph, ~~for which the credit is claimed~~ shall attach a copy of the agreement, if applicable, to the tax return on which the credit is claimed."
- One additional minor change would be necessary. On page 4, line 25, the first word, "shareholder" should be stricken so that the sentence reads (beginning on line 20): "The partners of a partnership, members of a limited liability company, or shareholders in a tax-option corporation may claim the credit under this subsection based on eligible costs incurred by the partnership, limited liability company, or tax-option corporation, ~~in proportion to the ownership interest of each partner, member, or shareholder.~~"

If you have any questions regarding this technical memorandum, please contact Michael Oakleaf at 261-5173 or via email at [Michael.oakleaf@revenue.wi.gov](mailto:Michael.oakleaf@revenue.wi.gov).

cc: Rep. Shilling