



2009 ASSEMBLY BILL 135

March 9, 2009 – Introduced by Representatives MOLEPSKE JR., ROYS, CULLEN, NASS, BERCEAU, SUDER, VOS, RICHARDS, KAUFERT, SMITH, POPE-ROBERTS, BIES, ZEPNICK, KESTELL and FIELDS, cosponsored by Senators LASSA, TAYLOR, KREITLOW, HOLPERIN, DARLING, LEHMAN, ERPENBACH, PLALE, GROTHMAN, OLSEN and KEDZIE. Referred to Committee on Colleges and Universities.

1 **AN ACT to amend** 71.05 (6) (b) 32. (intro.), 71.05 (6) (b) 32. a., 71.05 (6) (b) 33.
2 (intro.) and 71.05 (6) (b) 33. a. of the statutes; **relating to:** allowing an
3 individual income tax deduction for certain amounts contributed by a divorced
4 or legally separated parent to his or her child's college savings account or college
5 tuition and expenses program and limiting the deduction that may be claimed
6 by a married person who files separately.

Analysis by the Legislative Reference Bureau

Under current law, there is a college tuition and expenses program, commonly referred to as "EdVest I," under which a contributor may purchase "tuition units" that can be used to pay qualified educational costs on behalf of a beneficiary. The purchase of the units is limited to parents, grandparents, aunts, uncles, legal guardians, trusts created on behalf of a beneficiary, or individuals purchasing units for their own use. Contributions made to an account set up under the program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child and the claimant's dependent under the Internal Revenue Code; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

Also, under current law, there exists a college savings program, commonly referred to as "EdVest II," under which anyone may open an account for a prospective

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student, regardless of the contributor's relationship to the beneficiary. Individuals may open accounts for themselves, and a prospective student may be the beneficiary of more than one college savings account. Contributions made to an account set up under the program, up to a limit of \$3,000 each year for each beneficiary, may be deducted from a contributor's income in the calculation of his or her income taxes if the beneficiary of the account is one of the following: the claimant; the claimant's child and the claimant's dependent under the Internal Revenue Code; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

Under this bill, an income tax deduction for amounts contributed to both EdVest I and EdVest II may be claimed by a divorced or legally separated parent of a child. The deduction may be claimed without regard to whether the child is his or her dependent.

Currently, the total amount for which a deduction may be claimed under EdVest I and EdVest II, per beneficiary, by any claimant, may not exceed \$3,000 each year and, in the case of a married couple filing a joint return, the total annual deduction under these two programs, per beneficiary, claimed by the married couple may not exceed \$3,000.

Under the bill, the total annual deduction under these two programs, per beneficiary, claimed by married parents who file jointly or separately, or by the divorced or legally separated parents of a child, may not exceed \$3,000. The total annual deduction under the bill, under these two programs, per beneficiary, claimed by a married person who files separately may not exceed \$1,500 per claimant. The total annual deduction under the bill, under these two programs, per beneficiary, claimed by a formerly married couple may not exceed a total of \$3,000, or \$1,500 per claimant, except that the former couple's divorce judgment may specify a different division of the \$3,000 maximum that may be claimed by each former spouse.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the 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 **SECTION 1.** 71.05 (6) (b) 32. (intro.) of the statutes is amended to read:

2 71.05 **(6)** (b) 32. (intro.) An amount paid into a college savings account, as
3 described in s. 14.64, if the beneficiary of the account is one of the following: the
4 claimant; the claimant's child and the claimant's dependent who is claimed under
5 ~~section 151 (c) of the Internal Revenue Code~~; the claimant's grandchild; the

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1 claimant's great-grandchild; or the claimant's niece or nephew; calculated as
2 follows:

3 **SECTION 2.** 71.05 (6) (b) 32. a. of the statutes is amended to read:

4 71.05 **(6)** (b) 32. a. An amount equal to not more than \$3,000 per beneficiary,
5 by each contributor, or \$1,500 by each contributor who is married and files
6 separately, to an account for each year to which the claim relates, except that the total
7 amount for which a deduction may be claimed under this subdivision and under
8 subd. 33., per beneficiary by any claimant may not exceed \$3,000 each year, or \$1,500
9 each year by any claimant who is married and files separately. In the case of a
10 married couple ~~filing a joint return~~, the total deduction under this subdivision and
11 under subd. 33., per beneficiary by the married couple may not exceed \$3,000 each
12 year. In the case of divorced parents, the total deduction under this subdivision and
13 under subd. 33., per beneficiary by the formerly married couple, may not exceed
14 \$3,000, and the maximum amount that may be deducted by each former spouse is
15 \$1,500, unless the divorce judgment specifies a different division of the \$3,000
16 maximum that may be claimed by each former spouse.

17 **SECTION 3.** 71.05 (6) (b) 33. (intro.) of the statutes is amended to read:

18 71.05 **(6)** (b) 33. (intro.) An amount paid into a college tuition and expenses
19 program, as described in s. 14.63, if the beneficiary of the account is one of the
20 following: the claimant; the claimant's child ~~and the claimant's dependent who is~~
21 ~~claimed under section 151 (c) of the Internal Revenue Code~~; the claimant's
22 grandchild; the claimant's great-grandchild; or the claimant's niece or nephew;
23 calculated as follows:

24 **SECTION 4.** 71.05 (6) (b) 33. a. of the statutes is amended to read:

