



**ASSEMBLY SUBSTITUTE AMENDMENT 2,
TO 2009 ASSEMBLY BILL 135**

October 20, 2009 – Offered by Representatives MOLEPSKE JR. and ROYS.

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:** the individual
3 income tax deduction for certain amounts contributed to a child's college
4 savings account or college tuition and expenses program.

Analysis by the Legislative Reference Bureau

Under current law, as affected by 2009 Wisconsin Act 28 (the biennial budget act), 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; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

Also, under current law, as affected by the biennial budget act, there exists a college savings program, commonly referred to as "EdVest II," under which anyone may open an account for a prospective 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; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew.

Also under current law, as affected by the biennial budget act, 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 without regard to whether the child is his or her dependent. In addition, 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. Currently, the total annual deduction, per beneficiary, claimed by a married person who files separately may not exceed \$1,500 per claimant. The current total annual deduction 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.

Under the substitute amendment, for both EdVest I and EdVest II, the deduction may be claimed by any individual without regard to the beneficiary's relationship to the claimant. Also under the substitute amendment, 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.

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, as affected by 2009
2 Wisconsin Act 28, is amended to read:

3 71.05 **(6)** (b) 32. (intro.) An amount paid into a college savings account, as
4 described in s. 14.64, ~~if the beneficiary of the account is one of the following: the~~
5 ~~claimant; the claimant's child; the claimant's grandchild; the claimant's~~
6 ~~great-grandchild; or the claimant's niece or nephew;~~ calculated as follows:

7 **SECTION 2.** 71.05 (6) (b) 32. a. of the statutes, as affected by 2009 Wisconsin Act
8 28, is amended to read:

9 71.05 **(6)** (b) 32. a. An amount equal to not more than \$3,000 per beneficiary,
10 by each contributor, ~~or \$1,500 by each contributor who is married and files~~

1 ~~separately, to an account for each year to which the claim relates, except that the total~~
2 ~~amount for which a deduction may be claimed under this subdivision and under~~
3 ~~subd. 33., per beneficiary by any claimant may not exceed \$3,000 each year, or \$1,500~~
4 ~~each year by any claimant who is married and files separately. In the case of a~~
5 ~~married couple, the total deduction under this subdivision and under subd. 33., per~~
6 ~~beneficiary by the married couple may not exceed \$3,000 each year. In the case of~~
7 ~~divorced parents, the total deduction under this subdivision and under subd. 33., per~~
8 ~~beneficiary by the formerly married couple, may not exceed \$3,000, and the~~
9 ~~maximum amount that may be deducted by each former spouse is \$1,500, unless the~~
10 ~~divorce judgment specifies a different division of the \$3,000 maximum that may be~~
11 ~~claimed by each former spouse.~~

12 **SECTION 3.** 71.05 (6) (b) 33. (intro.) of the statutes, as affected by 2009
13 Wisconsin Act 28, is amended to read:

14 71.05 **(6)** (b) 33. (intro.) An amount paid into a college tuition and expenses
15 program, as described in s. 14.63, ~~if the beneficiary of the account is one of the~~
16 ~~following: the claimant; the claimant's child; the claimant's grandchild; the~~
17 ~~claimant's great-grandchild; or the claimant's niece or nephew; calculated as~~
18 ~~follows:~~

19 **SECTION 4.** 71.05 (6) (b) 33. a. of the statutes, as affected by 2009 Wisconsin Act
20 28, is amended to read:

21 71.05 **(6)** (b) 33. a. An amount equal to not more than \$3,000 per beneficiary,
22 by each contributor, ~~or \$1,500 by each contributor who is married and files~~
23 ~~separately, to an account for each year to which the claim relates, except that the total~~
24 ~~amount for which a deduction may be claimed under this subdivision and under~~
25 ~~subd. 32., per beneficiary by any claimant may not exceed \$3,000 each year, or \$1,500~~

1 ~~each year by any claimant who is married and files separately. In the case of a~~
2 ~~married couple, the total deduction under this subdivision and under subd. 32., per~~
3 ~~beneficiary by the married couple may not exceed \$3,000 each year. In the case of~~
4 ~~divorced parents, the total deduction under this subdivision and under subd. 32., per~~
5 ~~beneficiary by the formerly married couple, may not exceed \$3,000, and the~~
6 ~~maximum amount that may be deducted by each former spouse is \$1,500, unless the~~
7 ~~divorce judgment specifies a different division of the \$3,000 maximum that may be~~
8 ~~claimed by each former spouse.~~

9 **SECTION 5. Initial applicability.**

10 (1) This act first applies to taxable years beginning on January 1, 2010.

11 (END)