



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

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STEPHEN R. MILLER  
CHIEF

January 4, 2010

## MEMORANDUM

**To:** Representative Molepske

**From:** Christopher T. Sundberg, Legislative Attorney, (608) 266-9739  
Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263  
Mark D. Kunkel, Sr. Legislative Attorney, (608) 266-0131  
Tracy K. Kuczenski, Legislative Attorney, (608) 266-9867

**Subject:** Technical Memorandum to **2009 AB 641** (LRB-3888/1) 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

January 4, 2010

**TO:** Christopher T Sundberg  
Joseph Kreye  
Mark Kunkel  
Tracy T. Kuczenski  
Legislative Reference Bureau

**FROM:** Rebecca Boldt  
Department of Revenue

**SUBJECT:** Technical Memorandum on AB 641 (LRB 3888/1) – Post-secondary Education Tax Credit

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

- Sections 71.07(5r)(b)1., 71.28(5r)(b)1., and 71.47(5r)(b)1. provide that the credit is equal to 25% of the tuition paid by the claimant. Sections 71.07(5r)(b)2., 71.28(5r)(b)2., and 71.47(5r)(b)1. provide that the credit is equal to 30% of the tuition paid by the claimant if the course of instruction relates to a projected worker shortage. It appears that if an employee is in a course of study related to a projected worker shortage, a taxpayer could claim both 25% and 30% for a total of 55% of the tuition. Is this the intent? The author may wish to clarify this.
- The use of “partially exercises” in the definition of “Managing employee” in sections 71.07(5r)(a)4., 71.28(5r)(a)4., and 71.47(5r)(a)4., may have the unintended consequence of allowing a person who only exercises a *de minimis* amount of operational or managerial control over another to come within the purview of the credit. Is this the author's intent?
- Except for the class of family members, the language of the bill would extend the credit to any individual, whether or not an employee of the claimant. Even a family member needs to be employed for only 20 hours per week for one year before attending college. After the one year, the family member would no longer have to be an employee and could participate in the program for future years. Is this the intent? The author may wish to clarify this.
- Sections 71.07(5r)(b), 71.28(5r)(b), and 71.47(5r)(b) provide that the credit may be claimed for tuition paid or incurred for an individual (singular) to participate in an educational program. Was it the author's intent to limit the credit to a single individual for each claimant? The author may wish to clarify this.
- As case law suggests, the use of the legal standard “substantially related” is likely to increase disputes as to what is or what is not “substantially related.” The author may wish to use a standard that is more concrete.
- The bill is silent on the claiming of the credit by a single-member LLC (which is disregarded for tax purposes) when the SMLLC hires the single member as an employee. In this case, the SMLLC would be both the claimant and the individual attending college for whom the

tuition was paid. Is it the author's intent to allow an individual to claim the credit for tuition paid for the benefit of themselves? Similarly, the proposed statutory language applies to sole proprietorships, but it is unclear whether a sole proprietor who is the only employee of the business could be both the student and the claimant. The author may wish to clarify this.

- The treatment under 71.07(5r)(c)2., 71.28(5r)(c)2. and 71.47(5r)(c)2. for individuals and corporations is different. The provisions applicable to individuals disallows the credit if the individual excluded tuition amounts under s. 71.05(6)(b)28. or sec. IRC 127; the provisions applicable to corporations disallow the credit only when the tuition is excluded under sec. IRC 127. Was this the author's intent?
- The requirement in sections 71.07(5r)(c)1., 71.28(5r)(c)1., and 71.47(5r)(c)1. that the claimant certify to the Department that the claimant will not be reimbursed for any of the tuition that is used as a basis for the credit does not specify how and when the certification will happen. The certification process in other credits is done by other state agencies prior to the claiming of the credit. Is it the author's intent that potential claimants seek certification from the Department prior to claiming the credit?
- As written, the requirement in sections 71.07(5r)(c)3.a., 71.28(5r)(c)3.a., and 71.47(5r)(c)3.a. that a "family member" work an average of 20 hours per week during the one-year period prior to commencing participation in the education program could be satisfied if the individual works 15 hours in one week and 25 hours in another week and then does no more work during the year. Is this the author's intent? The author may wish to include a minimum number of weeks of work by the individual in the year prior to commencing participation.
- The Legislative Reference Bureau analysis discussion of current law for the angel investment credit makes reference to the credit being equal to 12.5% of the investment in each of two tax years. 2009 Act 2 changed the credit to allow a single 25% credit to be claimed in the year the investment is made.

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: Sen. Lassa