

**2009 DRAFTING REQUEST**

**Bill**

Received: **01/14/2010**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Brett Davis (608) 266-1192**

By/Representing: **Kate, Luke**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters:

Subject: **Tax, Individual - income credit**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Davis@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Refundable individual income tax credit for property taxes paid on primary home that is destroyed by natural or man-made disaster

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**Instructions:**

See attached

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**Drafting History:**

| <u>Vers.</u> | <u>Drafted</u>         | <u>Reviewed</u>      | <u>Typed</u>           | <u>Proofed</u> | <u>Submitted</u>       | <u>Jacketed</u>        | <u>Required</u> |
|--------------|------------------------|----------------------|------------------------|----------------|------------------------|------------------------|-----------------|
| /?           |                        |                      |                        | _____          |                        |                        | State           |
| /1           | mshovers<br>01/14/2010 | bkraft<br>01/22/2010 | rschluet<br>01/25/2010 | _____          | sbasford<br>01/25/2010 | sbasford<br>02/25/2010 |                 |

FE Sent For: *"/1" @intro. 3/14/10*

<END>

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|--------------|----------------|-----------------|--------------|---|------------------|-----------------|-----------------|
| /?           | mshovers       | /PI bjk'1/22    |              |  |                  |                 |                 |

FE Sent For:

<END>

**Shovers, Marc**

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**From:** Kreye, Joseph  
**Sent:** Thursday, January 14, 2010 11:56 AM  
**To:** Shovers, Marc  
**Subject:** Drafting request from Rep. Davis

Mr. Shovers,

I received a call from Kate in Rep. Davis' office. They want a bill that would provide an individual income tax credit for the amount of property taxes paid on property that is destroyed or rendered uninhabitable during the taxable year by flood, fire, tornado, or other natural or man-made disaster. This would apply only to someone's primary residence (you could use the definition of "principal dwelling" under s. 79.10 (1) (dm)). It would not apply if the residence is destroyed by the homeowner's negligent or intentional act and the homeowner can only claim a credit for the taxes that are due and payable for the assessment year in which the property is destroyed or rendered uninhabitable (I can help with that language when the time comes).

I told Kate that this idea may or may not violate the uniformity clause, depending on whether a court would rule that this is a partial exemption or property tax relief.

Joe

**Joseph T. Kreye**  
Senior Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263

*I talked to Luke on 1/14:  
He said to make the credit  
refundable, with NO maximum*



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-4133

MES.....

bjk

Tues 2/26  
(CMR 2/22)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

SA  
X-ref

1-14-10

1 AN ACT <sup>gen.</sup> ...; relating to: creating a refundable individual income tax credit for  
2 property taxes paid on a ~~primary residence~~ principal dwelling that is destroyed by a natural or  
3 man-made disaster and making an appropriation.

**Analysis by the Legislative Reference Bureau**

This bill creates a refundable individual income tax credit that is equal to the amount of property taxes that an individual paid in the taxable year to which the claim relates on the claimant's principal dwelling that was destroyed by fire, flood, or other natural or man-made disaster.

No individual may claim the tax credit if the individual's principal ~~primary~~ dwelling is destroyed by the claimant's negligent or intentional act. In addition, no claim may be made for an amount that is, or will be, reimbursed under an insurance policy.

Because the credit is refundable, if the amount of the credit exceeds the individual's tax liability, the state will issue a check to the individual for the excess amount.

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:**

4 SECTION 1. 20.835 (2) (cb) of the statutes is created to read:

1           20.835 (2) (cb) *Destroyed principal dwelling tax credit.* A sum sufficient to pay  
2 the claims approved under s. 71.07 (5p).

3           **SECTION 2.** 71.07 (5p) of the statutes is created to read:

4           **71.07 (5p) DESTROYED PRINCIPAL DWELLING TAX CREDIT.** (a) *Definitions.* In this  
5 subsection:

6           1. "Claimant" means an individual who files a claim under this subsection.

7           2. "Destroyed" means a condition so damaged as to make a principal dwelling  
8 uninhabitable.

9           3. "Principal dwelling" means any dwelling that is owned and the land  
10 surrounding it that is reasonably necessary for use of the dwelling as a primary  
11 dwelling of the claimant and may include a part of a multidwelling or multipurpose  
12 building and a part of the land upon which it is built that is used as the claimant's  
13 primary dwelling.

14           4. "Property taxes" has the meaning given in s. 71.07 (9) (a) 3.

15           (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
16 claimant may claim as a credit against the tax imposed under s. 71.02 or 71.08 the  
17 amount of property taxes the claimant paid in the taxable year to which the claim  
18 relates on the claimant's principal dwelling that was destroyed by fire, flood, or other  
19 natural or man-made disaster in the year to which the claim relates. If the allowable  
20 amount of the claim exceeds the income taxes otherwise due on the claimant's  
21 income, the amount of the claim not used as an offset against those taxes shall be  
22 certified by the department of revenue to the department of administration for  
23 payment to the claimant by check, share draft, or other draft drawn from the  
24 appropriation under s. 20.835 (2) (cb).

1 (c) *Limitations.* 1. No claim may be allowed under this subsection if the  
2 principal dwelling to which the claim relates was destroyed by the claimant's  
3 negligent or intentional act.

4 2. No credit may be claimed under this subsection for any amounts for which  
5 the claimant received, or will receive, payment or reimbursement under an  
6 insurance policy.

7 3. No credit may be allowed under this subsection unless it is claimed within  
8 the time period under s. 71.75 (2).

9 (d) *Administration.* Subsection (5m) (d), as it applies to the credit under that  
10 subsection, applies to the credit under this subsection.

11 **SECTION 3.** 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act  
12 <sup>8</sup> is amended to read:

13 71.08 (1) IMPOSITION. (intro.) If the tax imposed on a natural person, married  
14 couple filing jointly, trust, or estate under s. 71.02, not considering the credits under  
15 ss. 71.07 (1), (2dd), (2de), (2di), (2dj), (2dL), (2dr), (2ds), (2dx), (2dy), (3m), (3n), (3p),  
16 (3q), (3r), (3s), (3t), (3w), (5b), (5d), (5e), (5f), (5h), (5i), (5j), (5p), (6), (6e), (8r), and (9e),  
17 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),  
18 71.47 (1dd), (1de), (1di), (1dj), (1dL), (1ds), (1dx), (1dy), (2m), (3), (3n), (3t), and (3w),  
19 71.57 to 71.61, and 71.613 and subch. VIII and payments to other states under s.  
20 71.07 (7), is less than the tax under this section, there is imposed on that natural  
21 person, married couple filing jointly, trust or estate, instead of the tax under s. 71.02,  
22 an alternative minimum tax computed as follows:

History: 1987 a. 312, 411; 1989 a. 31; 1991 a. 39; 1995 a. 27, 209; 1997 a. 27, 237; 1999 a. 9; 2001 a. 109; 2003 a. 99, 135, 255, 326; 2005 a. 25, 177, 361, 479, 483; 2007 a. 20, 97; 2009 a. 2, 28.

23 **SECTION 4.** 71.10 (4) (i) of the statutes, as affected by 2009 Wisconsin Act <sup>28</sup>,  
24 is amended to read:

*Handwritten mark: 28 and*

1           71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland  
2           preservation credit under ss. 71.57 to 71.61, farmland preservation credit, 2010 and  
3           beyond under s. 71.613, homestead credit under subch. VIII, farmland tax relief  
4           credit under s. 71.07 (3m),, dairy manufacturing facility investment credit under s.  
5           71.07 (3p), jobs tax credit under s. 71.07 (3q), meat processing facility investment  
6           credit under s. 71.07 (3r), film production services credit under s. 71.07 (5f), film  
7           production company investment credit under s. 71.07 (5h), destroyed principal  
8           dwelling tax credit under s. 71.07 (5p), veterans and surviving spouses property tax  
9           credit under s. 71.07 (6e), enterprise zone jobs credit under s. 71.07 (3w), beginning  
10          farmer and farm asset owner tax credit under s. 71.07 (8r), earned income tax credit  
11          under s. 71.07 (9e), estimated tax payments under s. 71.09, and taxes withheld under  
12          subch. X.

History: 1987 a. 312; 1987 a. 411 ss. 94, 97, 176 to 179; 1987 a. 422 s. 4; 1989 a. 31, 56, 359; 1991 a. 39; 1993 a. 16, 184; 1995 a. 27, 209, 418, 453; 1997 a. 27, 63, 237, 248; 1999 a. 9, 167; 2001 a. 16, 109; 2003 a. 33, 99, 135, 176, 255, 321; 2005 a. 25, 49, 71, 74, 177, 178, 323, 361, 460, 479, 483; 2007 a. 1, 20, 96, 97; 2009 a. 2, 28, 89.

13           **SECTION 5. Initial applicability.**

14           (1) This act first applies to taxable years beginning on January 1 of the year  
15           in which this subsection takes effect, except that if this subsection takes effect after  
16           July 31 this act first applies to taxable years beginning on January 1 of the year  
17           following the year in which this subsection takes effect.

18           (END)

D-note



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-4133/dn

MES:.....

1  
Lbjk

Date

Representative Davis:

This drafter's note is meant to alert you to the possibility that the tax credit created in this bill could be challenged as a violation of the uniformity clause of the Wisconsin Constitution, article VIII, section 1. Basically, the uniformity clause requires that the taxation of real property be uniform. The uniformity clause does not apply to income taxes. See *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427-428 (1967). A 1974 amendment to the uniformity clause exempted agricultural land from the uniformity requirement.

The tax credit for property taxes paid that is created in this bill, however, essentially provides a refund to some taxpayers based on the fact that their principal residence was destroyed by a natural or man-made disaster. One could argue that such a refund provides a partial exemption for the property taxes of some taxpayers. The Wisconsin Supreme Court has held that reducing the taxes on some property but not exempting the property is a partial exemption that violates the uniformity clause. See *Knowlton v. Supervisors of Rock County*, 9 Wis. 410 (1859), *Gottlieb*, and *Ehrlich v. Racine*, 26 Wis. 2d 352 (1964). It could be argued that the economic effect of this credit is a reduction of property tax liability, which is a partial exemption, and that the credit therefore violates the uniformity clause.

A court could, however, decide that the credit created in this bill is a relief measure that benefits individuals whose homes were destroyed and is not a tax provision. The uniformity clause does not apply to relief measures. It was on this basis that the Wisconsin Supreme Court held that the homestead tax credit was not a violation of the uniformity clause. See *Harvey v. Morgan*, 30 Wis. 2d 1 (1966).

While I am not certain how a court would rule on a constitutional challenge to this bill, should it become law, I believe that you should be aware of possible challenges to the bill. If you have any further questions about this issue, please don't hesitate to contact me.

Marc E. Shovers  
Managing Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4133/1dn  
MES:bjk:md

January 22, 2010

Representative Davis:

This drafter's note is meant to alert you to the possibility that the tax credit created in this bill could be challenged as a violation of the uniformity clause of the Wisconsin Constitution, article VIII, section 1. Basically, the uniformity clause requires that the taxation of real property be uniform. The uniformity clause does not apply to income taxes. See *Gottlieb v. Milwaukee*, 33 Wis. 2d 408, 427-428 (1967). A 1974 amendment to the uniformity clause exempted agricultural land from the uniformity requirement.

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Managing Attorney  
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E-mail: [marc.shovers@legis.wisconsin.gov](mailto:marc.shovers@legis.wisconsin.gov)

**Basford, Sarah**

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**From:** Stewart, Kate  
**Sent:** Thursday, February 25, 2010 8:46 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-4133/1 Topic: Refundable individual income tax credit for property taxes paid on primary home that is destroyed by natural or man-made disaster

Please Jacket LRB 09-4133/1 for the ASSEMBLY.