Received By: mshovers

2009 DRAFTING REQUEST

Bill

Received: 01/14/2010

Wanted:	As time permi	its			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, Inc	dividual - inco	me credit		Extra Copies:			
Submit vi	ia email: YES							
Requester	r's email:	Rep.Davis@	@legis.wisco	nsin.gov				
Carbon co	opy (CC:) to:							
Pre Topi	c:						***************************************	
No specif	ic pre topic gi	ven					•	
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Instructi	ons:	· · · · · · · · · · · · · · · · · · ·				·		
See attach	ned							
Drafting	History:							
Vers.	<u>Drafted</u>	Reviewed	Typed	Proofed	Submitted	<u>Jacketed</u>	Required	
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				Extra Copies:				
Submit	via email: YES							
Request	er's email:	Rep.Davis	@legis.wisc	consin.gov				
Carbon	copy (CC:) to:							
Pre Top	pic:	· · · · · · · · · · · · · · · · · · ·						
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Refunda natural o	able individual : or man-made di	income tax crec saster	lit for prope	erty taxes paid	on primary home	that is destroy	ed by	
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Wanted: As time permits

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For: Brett Davis (608) 266-1192

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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:

Pre Topic:

No specific pre topic given

Topic:

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

Instructions:

See attached

Drafting History:

Vers. Drafted

Typed

Submitted

Jacketed

Required

/?

mshovers

/PI bjk/22

Reviewed

FE Sent For:

<END>

Shovers, Marc

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).

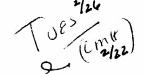
I told Kate that this idea may or may not violate the uniformity clause, depending on whether a court would rule that this is a partial exemption or property tax relief.

Joe

Joseph T. Kreye Senior Legislative Attorney Legislative Reference Bureau (608) 266-2263 I talked to bute on 1/14: He said to make the credit refundable, with Nomaximum



State of Misconsin 2009 - 2010 LEGISLATURE





PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note

SAyres

m 1-14-10

AN ACT ...; relating to: creating a refundable individual income tax credit for

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property taxes paid on a primary residence that is destroyed by a natural or

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 <u>forimary</u> 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:

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

(9)

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

- **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 subsection:
 - 1. "Claimant" means an individual who files a claim under this subsection.
 - 2. "Destroyed" means a condition so damaged as to make a principal dwelling uninhabitable.
 - 3. "Principal dwelling" means any dwelling that is owned, and the land surrounding it that is reasonably necessary for use of the dwelling as a primary dwelling of the claimant and may include a part of a multidwelling or multipurpose building and a part of the land upon which it is built that is used as the claimant's primary dwelling.
 - 4. "Property taxes" has the meaning given in s. 71.07 (9) (a) 3.
 - (b) Filing claims. Subject to the limitations provided in this subsection, a claimant may claim as a credit against the tax imposed under s. 71.02 or 71.08 the amount of property taxes the claimant 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 in the year to which the claim relates. If the allowable amount of the claim exceeds the income taxes otherwise due on the claimant's income, the amount of the claim not used as an offset against those taxes shall be certified by the department of revenue to the department of administration for payment to the claimant by check, share draft, or other draft drawn from the appropriation under s. 20.835 (2) (cb).

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- (c) *Limitations*. 1. No claim may be allowed under this subsection if the principal dwelling to which the claim relates was destroyed by the claimant's negligent or intentional act.
 - 2. No credit may be claimed under this subsection for any amounts for which the claimant received, or will receive, payment or reimbursement under an insurance policy.
- 3. No credit may be allowed under this subsection unless it is claimed within the time period under s. 71.75 (2).
- (d) *Administration*. Subsection (5m) (d), as it applies to the credit under that subsection, applies to the credit under this subsection.
- SECTION 3. 71.08 (1) (intro.) of the statutes, as affected by 2009 Wisconsin Act 2 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), (6e), (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.

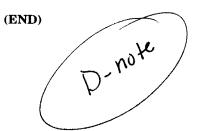
SECTION 4. 71.10 (4) (i) of the statutes, as affected by 2009 Wisconsin Act 28

is amended to read:

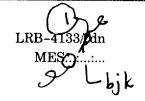
71.10 (4) (i) The total of claim of right credit under s. 71.07 (1), farmland
preservation credit under ss. 71.57 to 71.61 , farmland preservation credit, 2010 and
beyond under s. 71.613, homestead credit under subch. VIII, farmland tax relief
credit under s. 71.07 (3m),, dairy manufacturing facility investment credit under s.
71.07 (3p), jobs tax credit under s. 71.07 (3q), meat processing facility investment
credit under s. 71.07 (3r), film production services credit under s. 71.07 (5f), film
production company investment credit under s. 71.07 (5h), destroyed principal
dwelling tax credit under s. 71.07 (5p), veterans and surviving spouses property tax
credit under s. $71.07~(6e)$, enterprise zone jobs credit under s. $71.07~(3w)$, beginning
farmer and farm asset owner tax credit under s. 71.07 (8r), earned income tax credit
unders.71.07(9e), estimatedtaxpaymentsunders.71.09, andtaxeswithheldunders.71.09
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. **SECTION 5. Initial applicability.**

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



DRAFTER'S NOTE FROM THE LEGISLATIVE REFERENCE BUREAU



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

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Marc E. Shovers Managing Attorney Phone: (608) 266-0129

E-mail: marc.shovers@legis.wisconsin.gov

Basford, Sarah

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.