



## 2009 ASSEMBLY BILL 941

April 7, 2010 – Introduced by Representatives DAVIS, VOS, BROOKS, HUEBSCH, LOTHIAN, NEWCOMER and SPANBAUER, cosponsored by Senators DARLING and SCHULTZ. Referred to Joint Committee on Finance.

1     **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a) 4., 71.34 (1k) (g), 71.45  
2           (2) (a) 10. and 77.92 (4); and *to create* 71.07 (5n), 71.07 (8m), 71.10 (4) (cs), 71.10  
3           (4) (ct), 71.28 (5n), 71.30 (3) (dq), 71.47 (5n) and 71.49 (1) (dq) of the statutes;  
4           **relating to:** creating an income and franchise tax credit for businesses that  
5           contribute to a scholarship-granting organization or to an educational  
6           improvement organization and a nonrefundable individual income tax credit  
7           for education expenses paid for dependents who attend elementary and  
8           secondary schools.

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### ***Analysis by the Legislative Reference Bureau***

This bill creates an income and franchise tax credit for businesses that contribute to a scholarship-granting organization or to an educational improvement organization. The amount of the credit is equal to 75 percent of the contribution, but the amount of the credit may not exceed \$200,000 in any taxable year. The total amount of the credit that all businesses may claim in any taxable year is \$12,000,000. Under the bill, a scholarship-granting organization is a nonprofit entity that contributes at least 80 percent of its annual receipts to scholarship programs for pupils in grades kindergarten to 12 at private or public schools in this state. Under the bill, an educational improvement organization is a nonprofit entity that

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contributes at least 80 percent of its annual receipts as grants to public schools for innovative educational programs.

This bill also creates a nonrefundable individual income tax credit for amounts spent by a claimant, for the claimant's dependent child, on eligible education expenses at public schools, private schools, or charter schools for grades kindergarten to 12. Because the credit is nonrefundable, no refund is paid if the amount of the credit exceeds the taxpayer's tax liability.

Under the bill, education expenses include amounts that are spent for tuition, books, and other educational materials or supplies that are purchased by a claimant in the year to which the claim relates and that are related to the pupil's curricular activities and attendance at an eligible institution.

The maximum credit that may be claimed under the bill is \$2,500 per year if the claimant files as a single individual, head of household, or married person filing separately. The maximum credit that may be claimed under the bill is \$5,000 per year if the claimant is a married person filing a joint return. The amount of credit that may be claimed by a nonresident or part-year resident of this state is modified based on the ratio of the claimant's Wisconsin adjusted gross income (AGI) to his or her federal AGI.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2009 Wisconsin Act  
2 28, is amended to read:

3           71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),  
5 (3t), (3w), (5e), (5f), (5h), (5i), (5j), (5k), (5n), and (8r) and not passed through by a  
6 partnership, limited liability company, or tax-option corporation that has added that  
7 amount to the partnership's, company's, or tax-option corporation's income under s.  
8 71.21 (4) or 71.34 (1k) (g).

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

10           71.07 **(5n)** EDUCATIONAL IMPROVEMENT CREDIT. (a) *Definitions.* In this  
11 subsection:

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1           1. “Claimant” means a sole proprietor, a partner, a member of a limited liability  
2 company, or a shareholder of a tax-option corporation who files a claim under this  
3 subsection.

4           2. “Contribution” means a donation of cash, personal property, or services.

5           3. “Dependent” means a dependent as defined in section 152 of the Internal  
6 Revenue Code.

7           4. “Educational improvement organization” means an entity described in  
8 section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income  
9 tax under section 501 (a) of the Internal Revenue Code and that spends at least 80  
10 percent of its annual receipts as grants to public schools for innovative educational  
11 programs.

12           5. “Eligible pupil” means any pupil to whom all of the following apply:

13           a. The pupil has not attained the age of 21 or been graduated from high school.

14           b. At the time the pupil first receives a scholarship from a scholarship-granting  
15 organization, he or she is a member of a household whose total annual household  
16 income during the year before the receipt of the scholarship does not exceed an  
17 amount equal to \$40,000 plus \$10,000 for each dependent.

18           6. “Household” means an individual and his or her spouse and dependents who  
19 all have the same principal abode for more than 6 months during the year to which  
20 a claim under this subsection relates.

21           7. “Household income” means all income received by all members of a  
22 household.

23           8. “Innovative educational program” means an advanced academic or similar  
24 program that is not part of the regular academic program of a public school in this  
25 state, but that enhances the curriculum or academic program of the public school.

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1           9. “Private school” has the meaning given in s. 115.001 (3r).

2           10. “Qualified school” means any public, private, or other school or program  
3 that provides elementary or secondary education, including kindergarten.

4           11. “Scholarship-granting organization” means an entity described in section  
5 501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under  
6 section 501 (a) of the Internal Revenue Code and that contributes at least 80 percent  
7 of its annual receipts to scholarship programs.

8           12. “Scholarship program” means a program to provide tuition for eligible  
9 students to attend a qualified school in this state.

10           (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
11 claimant may claim as a credit against the tax imposed under s. 71.02, up to the  
12 amount of those taxes, an amount that is equal to 75 percent of any contribution  
13 made by the claimant during the taxable year to an educational improvement  
14 organization or to a scholarship-granting organization.

15           (c) *Limitations.* 1. The amount of a credit that a claimant may receive under  
16 this subsection may not exceed \$200,000 in a taxable year.

17           2. The maximum amount of the credits that all claimants may receive under  
18 this subsection and ss. 71.28 (5n) and 71.47 (5n) in a taxable year is \$12,000,000.

19           3. The total amount of all credits awarded under this subsection and ss. 71.28  
20 (5n) and 71.47 (5n) for contributions to scholarship-granting organizations shall not  
21 exceed \$30,000,000 for all taxable years.

22           4. The total amount of all credits awarded under this subsection and ss. 71.28  
23 (5n) and 71.47 (5n) for contributions to educational improvement organizations shall  
24 not exceed \$20,000,000 for all taxable years.

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1           5. No claimant may claim a credit under this subsection unless the claimant  
2 first files an application for the credit with the department, in the manner prescribed  
3 by the department. The department shall allocate the credits claimed under this  
4 subsection and ss. 71.28 (5n) and 71.47 (5n) in the order in which the applications  
5 for such credits are received.

6           6. For purposes of determining the amount of any credit claimed under this  
7 subsection, the value of a contribution is equal to the net cost of the claimant's  
8 donation of cash or personal property or to the proportionate share of any wage paid  
9 by the claimant that is directly related to donating a service.

10          7. Partnerships, limited liability companies, and tax-option corporations may  
11 not claim the credit under this subsection, but the eligibility for, and the amount of,  
12 the credit are based on their payment of amounts under par. (b). A partnership,  
13 limited liability company, or tax-option corporation shall compute the amount of  
14 credit that each of its partners, members, or shareholders may claim and shall  
15 provide that information to each of them. Partners, members of limited liability  
16 companies, and shareholders of tax-option corporations may claim the credit in  
17 proportion to their ownership interests.

18          (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under  
19 s. 71.28 (4), applies to the credit under this subsection.

20          **SECTION 3.** 71.07 (8m) of the statutes is created to read:

21          71.07 **(8m)** EDUCATION EXPENSES CREDIT. (a) *Definitions.* In this subsection:

22          1. "Claimant" means an individual who claims a pupil as a dependent under  
23 section 151 (c) of the Internal Revenue Code, on his or her tax return.

24          2. "Education supplies" means tuition, books, and other educational materials  
25 or supplies that are purchased by a claimant in the year to which the claim relates

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1 and that are related to the pupil's curricular activities and attendance at an eligible  
2 institution.

3 3. "Eligible institution" means a private school, as defined in s. 115.001 (3r), or  
4 a charter school, as defined in s. 115.001 (1), that meets all of the criteria under s.  
5 118.165 (1) or a public school.

6 4. "Pupil" means an individual who is enrolled in kindergarten or grades one  
7 to 12 at an eligible institution and who is a dependent of the claimant under section  
8 151 (c) of the Internal Revenue Code.

9 (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
10 claimant may claim as a credit against the tax imposed under s. 71.02, up to the  
11 amount of those taxes, an amount equal to any amount paid for education supplies  
12 in the year to which the claim relates.

13 (c) *Limitations.* 1. Subject to subd. 4., the maximum credit that may be claimed  
14 under this subsection by a claimant who files as a single individual or head of  
15 household is \$2,500 in each year to which the claim relates.

16 2. Subject to subd. 4., the maximum credit that may be claimed under this  
17 subsection by claimants who are a married couple and file a joint return is a total of  
18 \$5,000 in each year to which the claim relates.

19 3. Subject to subd. 4., the maximum credit that may be claimed by each spouse  
20 of a married couple that files separately is 50 percent of the amount specified in subd.  
21 2.

22 4. If a part-year resident or a nonresident of this state files a claim under this  
23 subsection, the maximum credit amount in subd. 1., 2., or 3. shall be multiplied by  
24 a fraction, the numerator of which is the individual's and his or her spouse's  
25 Wisconsin adjusted gross income and the denominator of which is the individual's

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1 and his or her spouse's federal adjusted gross income. In this subdivision, for  
2 married persons filing separately "adjusted gross income" means the separate  
3 adjusted gross income of each spouse, and for married persons filing jointly "adjusted  
4 gross income" means the total adjusted gross income of both spouses.

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

7 6. No credit may be allowed under this subsection for a taxable year covering  
8 a period of less than 12 months, except for a taxable year closed by reason of the death  
9 of the taxpayer.

10 (d) *Administration.* The department may enforce the credit under this  
11 subsection and may take any action, conduct any proceeding, and proceed as it is  
12 authorized in respect to taxes under this chapter. The income tax provisions in this  
13 chapter relating to assessments, refunds, appeals, collection, interest, and penalties  
14 apply to the credit under this subsection.

15 **SECTION 4.** 71.10 (4) (cs) of the statutes is created to read:

16 71.10 (4) (cs) Education expenses credit under s. 71.07 (8m).

17 **SECTION 5.** 71.10 (4) (ct) of the statutes is created to read:

18 71.10 (4) (ct) Educational improvement credit under s. 71.07 (5n).

19 **SECTION 6.** 71.21 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is  
20 amended to read:

21 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
22 (2dj), (2dL), (2dm), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s), (3t), (3w),  
23 (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and passed through to partners shall  
24 be added to the partnership's income.

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1           **SECTION 7.** 71.26 (2) (a) 4. of the statutes, as affected by 2009 Wisconsin Act 28,  
2 is amended to read:

3           71.26 **(2)** (a) 4. Plus the amount of the credit computed under s. 71.28 (1dd),  
4 (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3t),  
5 (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and not passed through by a  
6 partnership, limited liability company, or tax-option corporation that has added that  
7 amount to the partnership's, limited liability company's, or tax-option corporation's  
8 income under s. 71.21 (4) or 71.34 (1k) (g).

9           **SECTION 8.** 71.28 (5n) of the statutes is created to read:

10           71.28 **(5n)** EDUCATIONAL IMPROVEMENT CREDIT. (a) *Definitions.* In this  
11 subsection:

12           1. "Claimant" means a person who files a claim under this subsection.

13           2. "Contribution" means a donation of cash, personal property, or services.

14           3. "Dependent" means a dependent as defined in section 152 of the Internal  
15 Revenue Code.

16           4. "Educational improvement organization" means an entity described in  
17 section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income  
18 tax under section 501 (a) of the Internal Revenue Code and that spends at least 80  
19 percent of its annual receipts as grants to public schools for innovative educational  
20 programs.

21           5. "Eligible pupil" means any pupil to whom all of the following apply:

22           a. The pupil has not attained the age of 21 or been graduated from high school.

23           b. At the time the pupil first receives a scholarship from a scholarship-granting  
24 organization, he or she is a member of a household whose total annual household



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1 income during the year before the receipt of the scholarship does not exceed an  
2 amount equal to \$40,000 plus \$10,000 for each dependent.

3 6. “Household” means an individual and his or her spouse and dependents who  
4 all have the same principal abode for more than 6 months during the year to which  
5 a claim under this subsection relates.

6 7. “Household income” means all income received by all members of a  
7 household.

8 8. “Innovative educational program” means an advanced academic or similar  
9 program that is not part of the regular academic program of a public school in this  
10 state, but that enhances the curriculum or academic program of the public school.

11 9. “Private school” has the meaning given in s. 115.001 (3r).

12 10. “Qualified school” means any public, private, or other school or program  
13 that provides elementary or secondary education, including kindergarten.

14 11. “Scholarship-granting organization” means an entity described in section  
15 501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under  
16 section 501 (a) of the Internal Revenue Code and that contributes at least 80 percent  
17 of its annual receipts to scholarship programs.

18 12. “Scholarship program” means a program to provide tuition for eligible  
19 students to attend a qualified school in this state.

20 (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
21 claimant may claim as a credit against the tax imposed under s. 71.23, up to the  
22 amount of those taxes, an amount that is equal to 75 percent of any contribution  
23 made by the claimant during the taxable year to an educational improvement  
24 organization or to a scholarship-granting organization.

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1           (c) *Limitations.* 1. The amount of a credit that a claimant may receive under  
2 this subsection may not exceed \$200,000 in a taxable year.

3           2. The maximum amount of the credits that all claimants may receive under  
4 this subsection and ss. 71.07 (5n) and 71.47 (5n) in a taxable year is \$12,000,000.

5           3. The total amount of all credits awarded under this subsection and ss. 71.07  
6 (5n) and 71.47 (5n) for contributions to scholarship-granting organizations shall not  
7 exceed \$30,000,000 for all taxable years.

8           4. The total amount of all credits awarded under this subsection and ss. 71.07  
9 (5n) and 71.47 (5n) for contributions to educational improvement organizations shall  
10 not exceed \$20,000,000 for all taxable years.

11           5. No claimant may claim a credit under this subsection unless the claimant  
12 first files an application for the credit with the department, in the manner prescribed  
13 by the department. The department shall allocate the credits claimed under this  
14 subsection and ss. 71.07 (5n) and 71.47 (5n) in the order in which the applications  
15 for such credits are received.

16           6. For purposes of determining the amount of any credit claimed under this  
17 subsection, the value of a contribution is equal to the net cost of the claimant's  
18 donation of cash or personal property or to the proportionate share of any wage paid  
19 by the claimant that is directly related to donating a service.

20           7. Partnerships, limited liability companies, and tax-option corporations may  
21 not claim the credit under this subsection, but the eligibility for, and the amount of,  
22 the credit are based on their payment of amounts under par. (b). A partnership,  
23 limited liability company, or tax-option corporation shall compute the amount of  
24 credit that each of its partners, members, or shareholders may claim and shall  
25 provide that information to each of them. Partners, members of limited liability

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1 companies, and shareholders of tax-option corporations may claim the credit in  
2 proportion to their ownership interests.

3 (d) *Administration.* Subsection (4) (e) to (h), as it applies to the credit under  
4 sub. (4), applies to the credit under this subsection.

5 **SECTION 9.** 71.30 (3) (dq) of the statutes is created to read:

6 71.30 (3) (dq) Educational improvement credit under s. 71.28 (5n).

7 **SECTION 10.** 71.34 (1k) (g) of the statutes, as affected by 2009 Wisconsin Act 28,  
8 is amended to read:

9 71.34 (1k) (g) An addition shall be made for credits computed by a tax-option  
10 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (1dy),  
11 (3), (3g), (3h), (3n), (3p), (3q), (3r), (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n),  
12 and (8r) and passed through to shareholders.

13 **SECTION 11.** 71.45 (2) (a) 10. of the statutes, as affected by 2009 Wisconsin Act  
14 28, is amended to read:

15 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit  
16 computed under s. 71.47 (1dd) to (1dy), (3g), (3h), (3n), (3p), (3q), (3r), (3w), (5e), (5f),  
17 (5g), (5h), (5i), (5j), (5k), (5n), and (8r) and not passed through by a partnership,  
18 limited liability company, or tax-option corporation that has added that amount to  
19 the partnership's, limited liability company's, or tax-option corporation's income  
20 under s. 71.21 (4) or 71.34 (1k) (g) and the amount of credit computed under s. 71.47  
21 (1), (3), (3t), (4), (4m), and (5).

22 **SECTION 12.** 71.47 (5n) of the statutes is created to read:

23 71.47 (5n) EDUCATIONAL IMPROVEMENT CREDIT. (a) *Definitions.* In this  
24 subsection:

25 1. "Claimant" means a person who files a claim under this subsection.

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1           2. “Contribution” means a donation of cash, personal property, or services.

2           3. “Dependent” means a dependent as defined in section 152 of the Internal  
3 Revenue Code.

4           4. “Educational improvement organization” means an entity described in  
5 section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income  
6 tax under section 501 (a) of the Internal Revenue Code and that spends at least 80  
7 percent of its annual receipts as grants to public schools for innovative educational  
8 programs.

9           5. “Eligible pupil” means any pupil to whom all of the following apply:

10           a. The pupil has not attained the age of 21 or been graduated from high school.

11           b. At the time the pupil first receives a scholarship from a scholarship-granting  
12 organization, he or she is a member of a household whose total annual household  
13 income during the year before the receipt of the scholarship does not exceed an  
14 amount equal to \$40,000 plus \$10,000 for each dependent.

15           6. “Household” means an individual and his or her spouse and dependents who  
16 all have the same principal abode for more than 6 months during the year to which  
17 a claim under this subsection relates.

18           7. “Household income” means all income received by all members of a  
19 household.

20           8. “Innovative educational program” means an advanced academic or similar  
21 program that is not part of the regular academic program of a public school in this  
22 state, but that enhances the curriculum or academic program of the public school.

23           9. “Private school” has the meaning given in s. 115.001 (3r).

24           10. “Qualified school” means any public, private, or other school or program  
25 that provides elementary or secondary education, including kindergarten.

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1           11. “Scholarship-granting organization” means an entity described in section  
2           501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under  
3           section 501 (a) of the Internal Revenue Code and that contributes at least 80 percent  
4           of its annual receipts to scholarship programs.

5           12. “Scholarship program” means a program to provide tuition for eligible  
6           students to attend a qualified school in this state.

7           (b) *Filing claims.* Subject to the limitations provided in this subsection, a  
8           claimant may claim as a credit against the tax imposed under s. 71.43, up to the  
9           amount of those taxes, an amount that is equal to 75 percent of any contribution  
10          made by the claimant during the taxable year to an educational improvement  
11          organization or to a scholarship-granting organization.

12          (c) *Limitations.* 1. The amount of a credit that a claimant may receive under  
13          this subsection may not exceed \$200,000 in a taxable year.

14          2. The maximum amount of the credits that all claimants may receive under  
15          this subsection and ss. 71.07 (5n) and 71.28 (5n) in a taxable year is \$12,000,000.

16          3. The total amount of all credits awarded under this subsection and ss. 71.07  
17          (5n) and 71.28 (5n) for contributions to scholarship-granting organizations shall not  
18          exceed \$30,000,000 for all taxable years.

19          4. The total amount of all credits awarded under this subsection and ss. 71.07  
20          (5n) and 71.28 (5n) for contributions to educational improvement organizations shall  
21          not exceed \$20,000,000 for all taxable years.

22          5. No claimant may claim a credit under this subsection unless the claimant  
23          first files an application for the credit with the department, in the manner prescribed  
24          by the department. The department shall allocate the credits claimed under this

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1 subsection and ss. 71.07 (5n) and 71.28 (5n) in the order in which the applications  
2 for such credits are received.

3 6. For purposes of determining the amount of any credit claimed under this  
4 subsection, the value of a contribution is equal to the net cost of the claimant's  
5 donation of cash or personal property or to the proportionate share of any wage paid  
6 by the claimant that is directly related to donating a service.

7 7. Partnerships, limited liability companies, and tax-option corporations may  
8 not claim the credit under this subsection, but the eligibility for, and the amount of,  
9 the credit are based on their payment of amounts under par. (b). A partnership,  
10 limited liability company, or tax-option corporation shall compute the amount of  
11 credit that each of its partners, members, or shareholders may claim and shall  
12 provide that information to each of them. Partners, members of limited liability  
13 companies, and shareholders of tax-option corporations may claim the credit in  
14 proportion to their ownership interests.

15 (d) *Administration.* Section 71.28 (4) (e) to (h), as it applies to the credit under  
16 s. 71.28 (4), applies to the credit under this subsection.

17 **SECTION 13.** 71.49 (1) (dq) of the statutes is created to read:

18 71.49 (1) (dq) Educational improvement credit under s. 71.47 (5n).

19 **SECTION 14.** 77.92 (4) of the statutes, as affected by 2009 Wisconsin Act 28, is  
20 amended to read:

21 77.92 (4) "Net business income," with respect to a partnership, means taxable  
22 income as calculated under section 703 of the Internal Revenue Code; plus the items  
23 of income and gain under section 702 of the Internal Revenue Code, including taxable  
24 state and municipal bond interest and excluding nontaxable interest income or  
25 dividend income from federal government obligations; minus the items of loss and

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1 deduction under section 702 of the Internal Revenue Code, except items that are not  
2 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
3 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),  
4 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (2dy), (3g), (3h), (3n), (3p), (3q), (3r), (3s),  
5 (3t), (3w), (5e), (5f), (5g), (5h), (5i), (5j), (5k), (5n), and (8r); and plus or minus, as  
6 appropriate, transitional adjustments, depreciation differences, and basis  
7 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,  
8 loss, and deductions from farming. “Net business income,” with respect to a natural  
9 person, estate, or trust, means profit from a trade or business for federal income tax  
10 purposes and includes net income derived as an employee as defined in section 3121  
11 (d) (3) of the Internal Revenue Code.

**SECTION 15. Initial applicability.**

12  
13 (1) This act first applies to taxable years beginning on January 1 of the year  
14 in which this subsection takes effect, except that if this subsection takes effect after  
15 July 31 this act first applies to taxable years beginning on January 1 of the year  
16 following the year in which this subsection takes effect.

17 (END)