

2011 DRAFTING REQUEST

Senate Amendment (SA-SB364)

Received: **01/17/2012**

Received By: **mshovers**

Wanted: **As time permits**

Companion to LRB:

For: **Glenn Grothman (608) 266-7513**

By/Representing: **Hariah in Rep. Thiesfeldt's offi**

May Contact:

Drafter: **mshovers**

Subject: **Tax, Individual - dedct/sbtrct**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Grothman@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Individual income tax subtraction for Coverdell education savings account contributions

Instructions:

See attached. Address concerns from DOR tech. memo. 1) Eliminate the double benefit potential; 2) Add a penalty provision for non-qualified distributions

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>
/?	mshovers 01/17/2012	kfollett 01/24/2012		_____			
/1			phenry 01/24/2012	_____	ggodwin 01/24/2012	ggodwin 01/24/2012	
/2	mshovers 01/25/2012	kfollett 01/25/2012	phenry 01/25/2012	_____	lparisi 01/25/2012	lparisi 01/25/2012	
/3	jkreye	kfollett	jmurphy	_____	ggodwin	ggodwin	

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	01/25/2012	01/25/2012	01/25/2012 _____		01/25/2012	01/25/2012	

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jm
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/1		<i>12/5</i> <i>1/25</i>	phenry 01/24/2012	_____	ggodwin 01/24/2012	ggodwin 01/24/2012	

12 MFS 1/25/12
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/? mshovers

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1/17/12 1/24 by ph
ph lem

FE Sent For:

<END>

Shovers, Marc

From: Hutkowski, Hariah
Sent: Tuesday, January 17, 2012 1:41 PM
To: Shovers, Marc
Cc: Julian, Jamie
Subject: FW: Re: Assembly Bill 466 (Coverdell Education Savings Accounts)

Marc,

Please write up an amendment for this bill and SB 364. Thank you!

Hariah Hutkowski
Legislative Assistant
Rep. Thiesfeldt's office
1-888-529-0052
FAX: 608-282-3652

From: Wagner, Michael W - DOR [<mailto:MichaelW.Wagner@revenue.wi.gov>]
Sent: Thursday, January 12, 2012 5:56 PM
To: Rep.Thiesfeldt
Cc: Hutkowski, Hariah; Julian, Jamie
Subject: Re: Assembly Bill 466 (Coverdell Education Savings Accounts)

Dear Representative Thiesfeldt,

I enjoyed meeting with you earlier this week. Per our discussion, I have provided drafting language that you could choose to pursue if it is consistent with your legislative intent for Assembly Bill 466.

Suggestion 1) Eliminate the double benefit potential (deduction both for the contribution to a CESA and under the tuition deduction for higher education expenses) by creating 71.05(6)(b)28.i.

- (i) No modification may be claimed under this subdivision for an amount paid for tuition expenses and mandatory student fees, as described under this subdivision, if the source of the payment is an amount withdrawn from a Coverdell Education Savings Account, as described under 26 USC 530, and for which a subtraction was claimed under sec. 71.05(6)(b)48.

Suggestion 2) Wisconsin law currently does not provide a penalty for distributions from a Coverdell Education Savings Account that are used for non-qualified purposes. AB 466, as currently drafted, also does not create a state penalty for non-qualified distributions. However, the IRS has penalty equal to 10% of the non-qualified distribution. This 10% penalty only relates to the earnings of the account that had been tax exempt. It does not relate to the full distribution.

However, the state does impose its own penalty on non-qualified distributions for certain other preferred accounts, including Health Savings Accounts and Individual Retirement Accounts. For those accounts, the Wisconsin penalty is equal to 33% of the federal penalty.

If you would like to create a parallel for non-qualified distributions from Coverdell Savings Accounts, you could create a new section of statutes, 71.83(1)(cf):

71.83(1)(cf) Coverdell Education Savings Accounts. Any person who is liable for a penalty for federal income tax purposes under section sec. 530(d)(4) of the Internal Revenue Code is liable for a penalty equal to 33 percent of that penalty. The department of revenue shall assess, levy, and collect the penalty under this paragraph as it assesses, levies, and collects taxes under this chapter. A person subject to the penalty under sec. 530(d)(4) is also subject to a

33 - per Mike Wagner
penalty of 3.3 percent on any portion of the distribution for which a subtraction was claimed under sec. 71.05(6)(b)48

Please note, the underlined portion above would also apply the 33% penalty against the deduction benefit that this bill creates. The policy argument for creating this portion of the penalty is that if Wisconsin is going to create an additional tax benefit for contributing to a Coverdell Account, then providing a penalty against non-qualified use of this benefit would be consistent with the legislative intent to promote the expanded, appropriate use of the benefit. (In other words, if we're increasing the reward, there should be a penalty for those who use the increased incentive but do so for non-educational purposes).

Without adding a penalty, which is how the bill reads now, an individual could claim this new tax deduction, use the money for an unrelated expense, and not owe any WI penalty. In those cases, a person could use a Coverdell Account as a shelter from state taxes with no intent to use it for education (however, the federal penalty would still apply to the untaxed earnings of the account). Creating 71.83(1)(cf) as outlined above would address this issue.

Please let me know if you have any questions.

Regards,

Mike Wagner
Legislative Advisor, Dept. of Revenue
608-266-7817

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State of Wisconsin
2011 - 2012 LEGISLATURE



LRB 2133/1
MES. k...

a2133/1

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT,
TO 2011 ASSEMBLY BILL 466

SENATE
RM NR

Fix request sheet

wanted: soon

today

364

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 1: before that line insert:

3 "SECTION 1e. 71.05 (6) (b) 28. i. of the statutes is created to read:

4 71.05 (6) (b) 28. i. No modification may be claimed under this subdivision for
5 an amount paid for tuition expenses and mandatory student fees, as described under
6 this subdivision, if the source of the payment is an amount withdrawn from a
7 Coverdell Education Savings Account, as described under 26 USC 530, and for which
8 a subtraction is claimed under subd. 48."

Page 2, line 1:

delete "SECTION 1e" and substitute "SECTION 1m".

9 2. Page 2, line 5: after that line insert:

10 "SECTION 2m. 71.83 (1) (cm) of the statutes is created to read:

11 71.83 (1) (cm) Coverdell education savings accounts. Any person who is liable
12 for a penalty for federal income tax purposes under section 530 (d) (4) of the Internal

1 Revenue Code is liable for a penalty equal to 33 percent of that penalty. The
2 department of revenue shall assess, levy, and collect the penalty under this
3 paragraph as it assesses, levies, and collects taxes under this chapter. A person who
4 is subject to the penalty under section 530 (d) (4) of the Internal Revenue Code is also
5 subject to a penalty of 33 percent of any portion of the distribution for which a
6 subtraction is claimed under s. 71.05 (6) (b) 48.”

7 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa2133/1

MES:kjf:ph

pmk

SENATE AMENDMENT,
TO 2011 SENATE BILL 364

Wanted
11 a.m.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 1: before that line insert:

3 “SECTION 1e. 71.05 (6) (b) 28. i. of the statutes is created to read:

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5 an amount paid for tuition expenses and mandatory student fees, as described under
6 this subdivision, if the source of the payment is an amount withdrawn from a
7 Coverdell Education Savings Account, as described under 26 USC 530, and for which
8 a subtraction ~~is~~ ^{has been} claimed under subd. 48.”.

9 **2.** Page 2, line 1: delete “SECTION 1” and substitute “SECTION 1m”.

10 **3.** Page 2, line 5: after that line insert:

11 “SECTION 1s. 71.83 (1) (cm) of the statutes is created to read:

12 71.83 (1) (cm) *Coverdell education savings accounts.* Any person who is liable
13 for a penalty for federal income tax purposes under section 530 (d) (4) of the Internal

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2 department of revenue shall assess, levy, and collect the penalty under this
3 paragraph as it assesses, levies, and collects taxes under this chapter. A person who
4 is subject to the penalty under section 530 (d) (4) of the Internal Revenue Code is also
5 subject to a penalty of 33 percent of any portion of the distribution for which a
6 subtraction is claimed under s. 71.05 (6) (b) 48.”.

7 (END)



State of Wisconsin
2011 - 2012 LEGISLATURE



LRBa2133/2
MES:kjf:ph

RMR

SENATE AMENDMENT,
TO 2011 SENATE BILL 364

JK

in 1-25-12
Today

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 1: before that line insert:

3 "SECTION 1e. 71.05 (6) (b) 28. i. of the statutes is created to read:

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2 department of revenue shall assess, levy, and collect the penalty under this
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4 is subject to the penalty under section 530 (d) (4) of the Internal Revenue Code is also
5 subject to a penalty of 33 percent of any portion of the distribution for which a
6 subtraction is claimed under s. 71.05 (6) (b) 48.”

7 (END)

