



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-0305/P1
MES:eev:rs

DOA:.....Quinn, BB0023 – Ineligibility for homestead and earned income tax credits based on fraudulent or reckless refund claims

FOR 2013-2015 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; **relating to:** the budget.

Analysis by the Legislative Reference Bureau

TAXATION

INCOME TAXATION

This bill prohibits an individual who files a fraudulent claim for an earned income tax credit or homestead tax credit (credit) from filing a claim for either credit for 10 years. The bill also prohibits an individual who files a reckless claim for a credit from filing a claim for either credit for two years.

Under the bill, a claim is fraudulent if it is false or excessive and filed with fraudulent intent, as determined by DOR, and a claim is reckless if it is improper, due to reckless or intentional disregard of the provisions of the income tax statutes or of rules and regulations of DOR, as determined by the department.

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. 71.83 (5) of the statutes is created to read:

71.83 (5) INELIGIBILITY TO CLAIM CERTAIN CREDITS. (a) *Definitions*. In this subsection:

1. “Credit” means the earned income tax credit under s. 71.07 (9e) or the homestead credit under subch. VIII.

2. “Fraudulent claim” means a claim for a credit, filed by an individual, that is false or excessive and filed with fraudulent intent, as determined by the department.

3. “Reckless claim” means a claim for a credit, filed by an individual, that is improper, due to reckless or intentional disregard of the provisions in this chapter or of rules and regulations of the department, as determined by the department.

****NOTE: Your instructions do not contain any definitions for “fraudulent” or “reckless,” and the description of these terms in the instructions seems vague and subject to a great deal of interpretation by DOR. I’m not sure what the legal standard is for “fraudulent” or “reckless” claims under this paragraph, or on what basis DOR could determine that a claim was “fraudulent” or “reckless.” I based the definition of “fraudulent claim” on the description of “fraudulent claim for credit” under s. 71.83 (2) (b) 4., although the use of the term in that subdivision seems to be predicated on a judicial finding. I could not find a definition of “reckless” in the statutes.

Your instructions seem to indicate that DOR may determine what’s fraudulent or reckless, without any particular standards that a taxpayer could look to in an attempt to determine whether his or her actions would violate this provision. Do these definitions meet your intent, or would you like to provide more precise definitions?

(b) *Disallowance period*. 1. An individual who files a fraudulent claim may not file a claim for a credit for 10 successive taxable years, beginning with the taxable year that begins immediately after the taxable year for which the department determined that the individual filed a fraudulent claim.

2. An individual who files a reckless claim may not file a claim for a credit for 2 successive taxable years, beginning with the taxable year that begins immediately after the taxable year for which the department determined that the individual filed a reckless claim.

(c) *Reinstatement.* After the period described under par. (b) during which an individual may not file a claim for a credit, he or she may file a claim for a credit, subject to any requirements that the department may impose on the individual to demonstrate that he or she is eligible to claim the credit.

****NOTE: I believe that par. (c) is drafted according to your instructions, but it seems a little vague.

SECTION 9337. Initial applicability; Revenue.

(1) FRAUDULENT OR RECKLESS CLAIMS FOR TAX CREDITS. The treatment of section 71.83 (5) of the statutes first applies to a fraudulent or reckless claim that is filed with the department of revenue on the effective date of this subsection.

(END)