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STEPHEN R. MILLER
CHIEF

November 6, 2013

MEMORANDUM

To: Senator Darling

From: Marc E. Shovers, Managing Attorney, (608) 266–0129

Subject: Technical Memorandum to **2013 SB 389** (LRB–3508/1) **by DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

M E M O R A N D U M

November 5, 2013

TO: Marc Shovers
Legislative Reference Bureau

FROM: Mike Wagner
Department of Revenue

SUBJECT: Technical Memorandum on Senate Bill 389: Indexing for Inflation of, and Making Other Changes to, the College Savings Plan income Tax Deduction

The Department has the following concerns related to the bill:

There is an inconsistency between sec. 16.641(3)(a)1 and sec. 71.05(6)(b)32.(intro.), as amended. Section 16.641(3)(a)1 provides that the owner of the account may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to contribute to the account. Section 71.05(6)(b)32,(intro.) provides that any other individual may contribute to a college savings account. In order to allow an owner to authorize anyone to contribute to the account set up by the owner, then sec. 16.641(3)(a)1 should be amended accordingly.

Section 71.05(6)(a)26. provides that any amount not used for qualified higher education expenses must be added to income by the owner or beneficiary, to the extent that the amount was previously claimed as a deduction. With multiple contributors and a potential 15 to 20 year lag between the contribution and the distribution, it may be hard to determine the amounts that were previously claimed as a deduction. It may be more easily administrable to remove "to the extent that the amount was previously claimed as a deduction under par. (b)32."

Section 71.05(6)(b)32.(intro.) provides a subtraction for "an amount paid into a college savings account... on or before the 15th day of the 4th month beginning after the close of a taxpayer's taxable year to which this subtraction relates, subject to any applicable extension under s. 71.03(7)...". Without further clarification, this could be interpreted to mean only amounts contributed after the close of a taxable year and before the 15th day of the 4th month (plus extensions) can be subtracted.

Given the extended contribution period under the bill, it may be unclear to which taxable year a particular contribution pertains. The federal Internal Revenue Code allows a similar extension of time to contribute to an IRA and language similar to the federal statute could be used to clarify the contribution periods for this bill. The federal statute reads "...a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extension thereof)."

If you have any questions regarding this technical memorandum, please contact Brad Caruth at (608) 261-8984 or bradley.caruth@revenue.wi.gov.

cc: Senator Darling