



State of Wisconsin  
2003 - 2004 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,  
TO 2003 SENATE BILL 268**

January 16, 2004 – Offered by COMMITTEE ON HOMELAND SECURITY, VETERANS AND  
MILITARY AFFAIRS AND GOVERNMENT REFORM.

1     **AN ACT** *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)  
2           (a) 10. and 77.92 (4); and *to create* 71.07 (5r), 71.10 (4) (cd), 71.28 (5r), 71.30  
3           (3) (dm), 71.47 (5r) and 71.49 (1) (dm) of the statutes; **relating to:** an education  
4           tax credit for businesses.

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

5           **SECTION 1.** 71.05 (6) (a) 15. of the statutes, as affected by 2003 Wisconsin Act  
6           99, is amended to read:

7           71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),  
8           (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), and (3t), and (5r) and not passed  
9           through by a partnership, limited liability company, or tax-option corporation that  
10          has added that amount to the partnership's, company's, or tax-option corporation's  
11          income under s. 71.21 (4) or 71.34 (1) (g).

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

1           71.07 (5r) EDUCATION CREDIT. (a) In this subsection:

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

5           2. “Degree-granting program” means an educational program for which an  
6 associate, a bachelor’s, or a graduate degree is awarded upon successful completion.

7           3. “Family member” has the meaning given in s. 157.061 (7).

8           4. “Managing employee” means an individual who wholly or partially exercises  
9 operational or managerial control over, or who directly or indirectly conducts, the  
10 operation of the claimant’s business.

11           5. “Poverty line” has the meaning given under s. 49.001 (5).

12           6. “Qualified postsecondary institution” means all of the following:

13           a. A University of Wisconsin System institution, a technical college system  
14 institution, or a regionally accredited 4-year nonprofit college or university having  
15 its regional headquarters and principal place of business in this state.

16           b. A school approved under s. 45.54, if the school has a physical presence, and  
17 the delivery of education occurs, in this state.

18           (b) Subject to the limitations provided in this subsection, a claimant may claim  
19 as a credit against the tax imposed under s. 71.02 an amount equal to the following:

20           1. Fifty percent of the tuition that the claimant paid or incurred during the  
21 taxable year for an individual to participate in an education program of a qualified  
22 postsecondary institution, if the individual was enrolled in a degree-granting  
23 program.

24           2. Seventy five percent of the tuition that the claimant paid or incurred during  
25 the taxable year for an individual to participate in an education program of a

1 qualified postsecondary institution, if the individual was enrolled in a  
2 degree-granting program and if the individual's taxable income in the year prior to  
3 commencing participation in the education program in connection with which a  
4 credit is claimed is not more than 185% of the poverty line.

5 (bm) 1. No credit may be allowed under par. (b) unless the claimant obtains  
6 written certification from a qualified postsecondary institution concerning the  
7 amount of tuition that the claimant paid or incurred during the taxable year for an  
8 individual to participate in an education program of the qualified postsecondary  
9 institution and includes a copy of the certification with the claimant's return.

10 2. No credit may be allowed under par. (b) 2. unless the claimant obtains  
11 written certification from a qualified postsecondary institution that the taxable  
12 income of the individual for whom the claimant has paid or incurred tuition during  
13 the taxable year for the individual to participate in an education program of the  
14 qualified postsecondary institution is not more than 185% of the poverty line and  
15 includes a copy of the certification with the claimant's return. For purposes of this  
16 subdivision and par. (b) 2., if an individual for whom the claimant has paid or  
17 incurred tuition is claimed as a dependent on another person's tax return, the  
18 individual's taxable income shall be the taxable income of the person on whose return  
19 the individual is claimed as a dependent.

20 3. No credit may be allowed under par. (b) unless the claimant certifies to the  
21 department of revenue that the claimant will not be reimbursed for any amount of  
22 tuition for which the claimant claims a credit under par. (b).

23 (c) A claimant may not claim the credit under par. (b) for any tuition amounts  
24 that the claimant excluded under s. 71.05 (6) (b) 28. or under section 127 of the  
25 Internal Revenue Code.

1 (cm) A claimant may not claim the credit under par. (b) for any tuition amounts  
2 that the claimant paid or incurred for a family member of the claimant or for a family  
3 member of a managing employee unless all of the following apply:

4 1. The family member was employed an average of at least 20 hours a week as  
5 an employee of the claimant, or the claimant's business, during the one-year period  
6 prior to commencing participation in the education program in connection with  
7 which the claimant claims a credit under par. (b).

8 2. The family member is enrolled in a degree-granting program that is  
9 substantially related to the claimant's business.

10 3. The family member is making satisfactory progress towards completing the  
11 degree-granting program under subd. 2.

12 (d) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit  
13 under s. 71.28 (4), apply to the credit under this subsection.

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

22 (f) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),  
23 applies to the credit under this subsection.

24 (g) The department of revenue shall biennially submit a report to the  
25 legislature under s. 13.172 (2) that identifies each qualified postsecondary

1 institution for which it has received written certification from a claimant under par.  
2 (bm). The report shall specify the total amount of the tuition for each such institution  
3 that is claimed as a credit under this subsection in the previous biennium.

4 **SECTION 3.** 71.10 (4) (cd) of the statutes is created to read:

5 71.10 (4) (cd) The education credit under s. 71.07 (5r).

6 **SECTION 4.** 71.21 (4) of the statutes, as affected by 2003 Wisconsin Act 99, is  
7 amended to read:

8 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),  
9 (2dj), (2dL), (2dm), (2ds), (2dx), (3g),<sup>7</sup> (3s), ~~and (3t)~~, and (5r) and passed through to  
10 partners shall be added to the partnership's income.

11 **SECTION 5.** 71.26 (2) (a) of the statutes, as affected by 2003 Wisconsin Act 99,  
12 is amended to read:

13 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means  
14 the gross income as computed under the Internal Revenue Code as modified under  
15 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit  
16 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)  
17 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income  
18 under this paragraph at the time that the taxpayer first claimed the credit plus the  
19 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),  
20 (1ds), (1dx), (3g), ~~and (3t)~~, and (5r) and not passed through by a partnership, limited  
21 liability company, or tax-option corporation that has added that amount to the  
22 partnership's, limited liability company's, or tax-option corporation's income under  
23 s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or other disposition  
24 of assets the gain from which would be wholly exempt income, as defined in sub. (3)  
25 (L), if the assets were sold or otherwise disposed of at a gain and minus deductions,

1 as computed under the Internal Revenue Code as modified under sub. (3), plus or  
2 minus, as appropriate, an amount equal to the difference between the federal basis  
3 and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed  
4 of in a taxable transaction during the taxable year, except as provided in par. (b) and  
5 s. 71.45 (2) and (5).

6 **SECTION 6.** 71.28 (5r) of the statutes is created to read:

7 71.28 (5r) EDUCATION CREDIT. (a) In this subsection:

8 1. “Claimant” means a corporation that files a claim under this subsection.

9 2. “Degree-granting program” means an education program for which an  
10 associate, a bachelor’s, or a graduate degree is awarded upon successful completion.

11 3. “Family member” has the meaning given in s. 157.061 (7).

12 4. “Managing employee” means an individual who wholly or partially exercises  
13 operational or managerial control over, or who directly or indirectly conducts, the  
14 operation of the claimant’s business.

15 5. “Poverty line” has the meaning given under s. 49.001 (5).

16 6. “Qualified postsecondary institution” means all of the following:

17 a. A University of Wisconsin System institution, a technical college system  
18 institution, or a regionally accredited 4-year nonprofit college or university having  
19 its regional headquarters and principal place of business in this state.

20 b. A school approved under s. 45.54, if the school has a physical presence, and  
21 the delivery of education occurs, in this state.

22 (b) Subject to the limitations provided in this subsection, a claimant may claim  
23 as a credit against the tax imposed under s. 71.23 an amount equal to the following:

24 1. Fifty percent of the tuition that the claimant paid or incurred during the  
25 taxable year for an individual to participate in an education program of a qualified

1 postsecondary institution, if the individual was enrolled in a degree-granting  
2 program.

3 2. Seventy five percent of the tuition that the claimant paid or incurred during  
4 the taxable year for an individual to participate in an education program of a  
5 qualified postsecondary institution, if the individual was enrolled in a  
6 degree-granting program and if the individual's taxable income in the year prior to  
7 commencing participation in the education program in connection with which a  
8 credit is claimed is not more than 185% of the poverty line.

9 (bm) 1. No credit may be allowed under par. (b) unless the claimant obtains  
10 written certification from a qualified postsecondary institution concerning the  
11 amount of tuition that the claimant paid or incurred during the taxable year for an  
12 individual to participate in an education program of the qualified postsecondary  
13 institution and includes a copy of the certification with the claimant's return.

14 2. No credit may be allowed under par. (b) 2. unless the claimant obtains  
15 written certification from a qualified postsecondary institution that the taxable  
16 income of the individual for whom the claimant has paid or incurred tuition during  
17 the taxable year for the individual to participate in an education program of the  
18 qualified postsecondary institution is not more than 185% of the poverty line and  
19 includes a copy of the certification with the claimant's return. For purposes of this  
20 subdivision and par. (b) 2., if an individual for whom the claimant has paid or  
21 incurred tuition is claimed as a dependent on another person's tax return, the  
22 individual's taxable income shall be the taxable income of the person on whose return  
23 the individual is claimed as a dependent.

1           3. No credit may be allowed under par. (b) unless the claimant certifies to the  
2 department of revenue that the claimant will not be reimbursed for any amount of  
3 tuition for which the claimant claims a credit under par. (b).

4           (c) A claimant may not claim the credit under par. (b) for any tuition amounts  
5 that the claimant has excluded under section 127 of the Internal Revenue Code.

6           (cm) A claimant may not claim the credit under par. (b) for any tuition amounts  
7 that the claimant paid or incurred for a family member of a managing employee  
8 unless all of the following apply:

9           1. The family member was employed an average of at least 20 hours a week as  
10 an employee of the claimant, or the claimant's business, during the one-year period  
11 prior to commencing participation in the education program in connection with  
12 which the claimant claims a credit under par. (b).

13           2. The family member is enrolled in a degree-granting program that is  
14 substantially related to the claimant's business.

15           3. The family member is making satisfactory progress towards completing the  
16 degree-granting program under subd. 2.

17           (d) The carry-over provisions of sub. (4) (e) and (f), as they apply to the credit  
18 under sub. (4), apply to the credit under this subsection.

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



1 shareholders of tax-option corporations may claim the credit in proportion to their  
2 ownership interest.

3 (f) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies  
4 to the credit under this subsection.

5 (g) The department of revenue shall biennially submit a report to the  
6 legislature under s. 13.172 (2) that identifies each qualified postsecondary  
7 institution for which it has received written certification from a claimant under par.  
8 (bm). The report shall specify the total amount of the tuition for each such institution  
9 that is claimed as a credit under this subsection in the previous biennium.

10 **SECTION 7.** 71.30 (3) (dm) of the statutes is created to read:

11 71.30 (3) (dm) The education credit under s. 71.28 (5r).

12 **SECTION 8.** 71.34 (1) (g) of the statutes, as affected by 2003 Wisconsin Act 99,  
13 is amended to read:

14 71.34 (1) (g) An addition shall be made for credits computed by a tax-option  
15 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), (3g),  
16 ~~and (3t), and (5r)~~ and passed through to shareholders.

17 **SECTION 9.** 71.45 (2) (a) 10. of the statutes, as affected by 2003 Wisconsin Act  
18 99, is amended to read:

19 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit  
20 computed under s. 71.47 (1dd) to (1dx) and (5r) and not passed through by a  
21 partnership, limited liability company, or tax-option corporation that has added that  
22 amount to the partnership's, limited liability company's, or tax-option corporation's  
23 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under  
24 s. 71.47 (1), (3), (3t), (4), and (5).

25 **SECTION 10.** 71.47 (5r) of the statutes is created to read:

1           71.47 **(5r)** EDUCATION CREDIT. (a) In this subsection:

2           1. “Claimant” means a corporation that files a claim under this subsection.

3           2. “Degree-granting program” means an educational program for which an  
4 associate, a bachelor’s, or a graduate degree is awarded upon successful completion.

5           3. “Family member” has the meaning given in s. 157.061 (7).

6           4. “Managing employee” means an individual who wholly or partially exercises  
7 operational or managerial control over, or who directly or indirectly conducts, the  
8 operation of the claimant’s business.

9           5. “Poverty line” has the meaning given under s. 49.001 (5).

10          6. “Qualified postsecondary institution” means all of the following:

11          a. A University of Wisconsin System institution, a technical college system  
12 institution, or a regionally accredited 4-year nonprofit college or university having  
13 its regional headquarters and principal place of business in this state.

14          b. A school approved under s. 45.54, if the school has a physical presence, and  
15 the delivery of education occurs, in this state.

16          (b) Subject to the limitations provided in this subsection, a claimant may claim  
17 as a credit against the tax imposed under s. 71.43 an amount equal to the following:

18          1. Fifty percent of the tuition that the claimant paid or incurred during the  
19 taxable year for an individual to participate in an education program of a qualified  
20 postsecondary institution, if the individual was enrolled in a degree-granting  
21 program.

22          2. Seventy five percent of the tuition that the claimant paid or incurred during  
23 the taxable year for an individual to participate in an education program of a  
24 qualified postsecondary institution, if the individual was enrolled in a  
25 degree-granting program and if the individual’s taxable income in the year prior to

1 commencing participation in the education program in connection with which a  
2 credit is claimed is not more than 185% of the poverty line.

3 (bm) 1. No credit may be allowed under par. (b) unless the claimant obtains  
4 written certification from a qualified postsecondary institution concerning the  
5 amount of tuition that the claimant paid or incurred during the taxable year for an  
6 individual to participate in an education program of the qualified postsecondary  
7 institution and includes a copy of the certification with the claimant's return.

8 2. No credit may be allowed under par. (b) 2. unless the claimant obtains  
9 written certification from a qualified postsecondary institution that the taxable  
10 income of the individual for whom the claimant has paid or incurred tuition during  
11 the taxable year for the individual to participate in an education program of the  
12 qualified postsecondary institution is not more than 185% of the poverty line and  
13 includes a copy of the certification with the claimant's return. For purposes of this  
14 subdivision and par. (b) 2., if an individual for whom the claimant has paid or  
15 incurred tuition is claimed as a dependent on another person's tax return, the  
16 individual's taxable income shall be the taxable income of the person on whose return  
17 the individual is claimed as a dependent.

18 3. No credit maybe allowed under par. (b) unless the claimant certifies to the  
19 department of revenue that the claimant will not be reimbursed for any amount of  
20 tuition for which the claimant claims a credit under par. (b).

21 (c) A claimant may not claim the credit under par. (b) for any tuition amounts  
22 that the claimant excluded under section 127 of the Internal Revenue Code.

23 (cm) A claimant may not claim the credit under par. (b) for any tuition amounts  
24 that the claimant paid or incurred for a family member of a managing employee  
25 unless all of the following apply:

1           1. The family member was employed an average of at least 20 hours a week as  
2 an employee of the claimant, or the claimant's business, during the one-year period  
3 prior to commencing participation in the education program in connection with  
4 which the claimant claims a credit under par. (b).

5           2. The family member is enrolled in a degree-granting program that is  
6 substantially related to the claimant's business.

7           3. The family member is making satisfactory progress towards completing the  
8 degree-granting program under subd. 2.

9           (d) The carry-over provisions of s. 71.28 (4) (e) and (f), as they apply to the credit  
10 under s. 71.28 (4), apply to the credit under this subsection.

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

19           (f) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),  
20 applies to the credit under this subsection.

21           (g) The department of revenue shall biennially submit a report to the  
22 legislature under s. 13.172 (2) that identifies each qualified postsecondary  
23 institution for which it has received written certification from a claimant under par.  
24 (bm). The report shall specify the total amount of the tuition for each such institution  
25 that is claimed as a credit under this subsection in the previous biennium.

1           **SECTION 11.** 71.49 (1) (dm) of the statutes is created to read:

2           71.49 (1) (dm) The education credit under s. 71.47 (5r).

3           **SECTION 12.** 77.92 (4) of the statutes, as affected by 2003 Wisconsin Act 99, is  
4 amended to read:

5           77.92 (4) “Net business income”, with respect to a partnership, means taxable  
6 income as calculated under section 703 of the Internal Revenue Code; plus the items  
7 of income and gain under section 702 of the Internal Revenue Code, including taxable  
8 state and municipal bond interest and excluding nontaxable interest income or  
9 dividend income from federal government obligations; minus the items of loss and  
10 deduction under section 702 of the Internal Revenue Code, except items that are not  
11 deductible under s. 71.21; plus guaranteed payments to partners under section 707  
12 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),  
13 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), ~~and (3t)~~, and (5r); and plus or  
14 minus, as appropriate, transitional adjustments, depreciation differences, and basis  
15 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,  
16 loss, and deductions from farming. “Net business income”, with respect to a natural  
17 person, estate, or trust, means profit from a trade or business for federal income tax  
18 purposes and includes net income derived as an employee as defined in section 3121  
19 (d) (3) of the Internal Revenue Code.

20           **SECTION 13. Initial applicability.**

21           (1) EDUCATION CREDIT. This act first applies to taxable years beginning on  
22 January 1, 2006.

23

(END)