



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to amend* 71.07 (6) (am) 1. and 71.07 (6) (am) 2. d.; and *to create* 71.07
2 (6) (am) 1m. of the statutes; **relating to:** updating the references to the Internal
3 Revenue Code definition of earned income for the married persons tax credit
4 (suggested as remedial legislation by the Department of Revenue).

Analysis by the Legislative Reference Bureau

This bill updates references to, and incorporates definitions from, the Internal Revenue Code.

For further information, see the NOTES provided by the Law Revision Committee of the Joint Legislative Council.

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

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Department of Revenue and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

5 **SECTION 1.** 71.07 (6) (am) 1. of the statutes is amended to read:

1 71.07 (6) (am) 1. ~~In this paragraph~~ For purposes of subd. 1m., “earned income”
2 means qualified earned income, as defined in section 221 (b) of the internal revenue
3 code as amended to December 31, 1985, plus employee business expenses under
4 section 62 (2) (B) to (D) of that code, allocable to Wisconsin under s. 71.04, plus
5 amounts received by the individual for services performed in the employ of the
6 individual’s spouse minus the amount of disability income excluded under s. 71.05
7 (6) (b) 4. and minus any other amount not subject to tax under this chapter wages,
8 salaries, or professional fees, amounts received for services performed by an
9 individual in the employ of his or her spouse, and other amounts received as
10 compensation for personal services actually rendered, but does not include that part
11 of the compensation derived by the taxpayer for personal services rendered by him
12 or her to a corporation which represents a distribution of earnings or profits rather
13 than a reasonable allowance as compensation for the personal services actually
14 rendered. In the case of a taxpayer engaged in a trade or business in which both
15 personal services and capital are material income-producing factors, under federal
16 regulations, a reasonable allowance as compensation for the personal services
17 rendered by the taxpayer, not in excess of 30 percent of his or her share of the net
18 profits of such trade or business, shall be considered as earned income. Earned
19 income includes gains, other than any gain which is treated under any provision of
20 chapter 26 of the Internal Revenue Code as gain from the sale or exchange of a capital
21 asset, and includes net earnings derived from the sale or disposition of, the transfer
22 of any interest in, or the licensing of the use of property, other than goodwill, by an
23 individual whose personal efforts created such property. Earned income does not
24 include any amount not included in gross income, received as a pension or annuity,
25 paid or distributed out of an individual retirement plan, within the meaning of

1 section 7701 (a) (37) of the Internal Revenue Code, or received as deferred
2 compensation. Earned income is computed notwithstanding the fact that each
3 spouse owns an undivided one-half interest in the whole of the marital property. A
4 marital property agreement or unilateral statement under ch. 766 transferring
5 income between spouses has no effect in computing earned income under this
6 paragraph.

NOTE: This SECTION incorporates the text of the definition of “earned income” from the Internal Revenue Code.

7 **SECTION 2.** 71.07 (6) (am) 1m. of the statutes is created to read:

8 71.07 (6) (am) 1m. In this paragraph, “qualified earned income” means an
9 amount equal to the excess of the earned income of the spouse for the taxable year,
10 over an amount equal to the sum of the deductions described in paragraphs (1), (2)
11 (B), (C), and (E), (6), (7), and (12) of section 62 (a) of the Internal Revenue Code to the
12 extent such deductions are properly allocable to or chargeable against earned
13 income, allocable to Wisconsin under s. 71.04, minus the amount of disability income
14 excluded under s. 71.05 (6) (b) 4. and minus any other amount not subject to tax
15 under this chapter.

NOTE: This SECTION incorporates the text of the definition of “qualified earned income” from the Internal Revenue Code. Because this SECTION defines “qualified earned income” separately from “earned income,” SECTION 3 also replaces the phrase “earned income” with “qualified earned income.”

16 **SECTION 3.** 71.07 (6) (am) 2. d. of the statutes is amended to read:

17 71.07 (6) (am) 2. d. For taxable years beginning after December 31, 2000, 3
18 percent of the qualified earned income of the spouse with the lower qualified earned
19 income, but not more than \$480.

20 **SECTION 4. Initial applicability.**

