



2005 SENATE BILL 152

March 30, 2005 – Introduced by Senators DARLING, OLSEN, HARSDORF, LEIBHAM, STEPP, BROWN and KANAVAS, cosponsored by Representatives JENSEN, KLEEFISCH, NISCHKE, WARD, JESKEWITZ, TOWNSEND, PETTIS, BIES, HAHN, AINSWORTH, MUSSER, VOS, DAVIS, SUDER, KREIBICH, MURSAU, PRIDEMORE, LEMAHIEU, BALLWEG, LAMB, F. LASEE, NASS, MOULTON, PETROWSKI, SHILLING, GARD, VRAKAS, STRACHOTA, J. FITZGERALD, HINES, NERISON and SEIDEL. Referred to Committee on Veterans, Homeland Security, Military Affairs, Small Business 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.

Analysis by the Legislative Reference Bureau

This bill creates an income tax and franchise tax credit for businesses that pay tuition for an individual to attend a university, college, or technical college. Sole proprietorships, corporations, and insurers may claim the credit. Partnerships, limited liability companies, and tax-option corporations compute the credit but pass it on to the partners, members, and shareholders in proportion to their ownership interests. The credit is an amount equal to: 1) 50 percent of the tuition paid by a business for an individual to attend school in a taxable year, if the individual is enrolled in a degree-granting program; and 2) 75 percent of the tuition paid by a business for an individual to attend school in a taxable year, if the individual is enrolled in a degree-granting program and if the individual's taxable income is not more than 185 percent of the federal poverty line. If the credit claimed by a business exceeds the business's tax liability, the state will not issue a refund check, but the business may carry forward any remaining credit to subsequent taxable years.

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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:

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

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

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

8 71.07 **(5r)** EDUCATION CREDIT. (a) In this subsection:

9 1. "Claimant" means a sole proprietor, a partner, a member of a limited liability
10 company, or a shareholder of a tax-option corporation who files a claim under this
11 subsection.

12 2. "Degree-granting program" means an educational program for which an
13 associate, a bachelor's, or a graduate degree is awarded upon successful completion.

14 3. "Family member" has the meaning given in s. 157.061 (7).

15 4. "Managing employee" means an individual who wholly or partially exercises
16 operational or managerial control over, or who directly or indirectly conducts, the
17 operation of the claimant's business.

18 5. "Poverty line" has the meaning given under s. 49.001 (5).

19 6. "Qualified postsecondary institution" means all of the following:

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

4 b. A school approved under s. 45.54, if the delivery of education occurs in this
5 state.

6 (b) Subject to the limitations provided in this subsection, a claimant may claim
7 as a credit against the tax imposed under ss. 71.02 and 71.08 an amount equal to the
8 following:

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

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

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

24 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
25 written certification from a qualified postsecondary institution that the taxable

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1 income of the individual for whom the claimant has paid or incurred tuition during
2 the taxable year for the individual to participate in an education program of the
3 qualified postsecondary institution is not more than 185 percent of the poverty line
4 and includes a copy of the certification with the claimant's return. For purposes of
5 this subdivision and par. (b) 2., if an individual for whom the claimant has paid or
6 incurred tuition is claimed as a dependent on another person's tax return, the
7 individual's taxable income shall be the taxable income of the person on whose return
8 the individual is claimed as a dependent.

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

12 (d) A claimant may not claim the credit under par. (b) for any tuition amounts
13 that the claimant excluded under s. 71.05 (6) (b) 28. or under section 127 of the
14 Internal Revenue Code.

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

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

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

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

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

3 (g) Partnerships, limited liability companies, and tax-option corporations may
4 not claim the credit under this subsection, but the eligibility for, and the amount of,
5 the credit are based on their payment of tuition under par. (b). A partnership, limited
6 liability company, or tax-option corporation shall compute the amount of credit that
7 each of its partners, members, or shareholders may claim and shall provide that
8 information to each of them. Partners, members of limited liability companies, and
9 shareholders of tax-option corporations may claim the credit in proportion to their
10 ownership interest.

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

13 (i) The department of revenue shall biennially submit a report to the legislature
14 under s. 13.172 (2) that identifies each qualified postsecondary institution for which
15 it has received written certification from a claimant under par. (c). The report shall
16 specify the total amount of the tuition for each such institution that is claimed as a
17 credit under this subsection in the previous biennium.

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

19 71.10 (4) (cd) The education credit under s. 71.07 (5r).

20 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

21 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
22 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), (3n), (3s), (3t), ~~and (5b)~~, and (5r) and passed
23 through to partners shall be added to the partnership's income.

24 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

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1 71.26 (2) (a) *Corporations in general.* The “net income” of a corporation means
2 the gross income as computed under the Internal Revenue Code as modified under
3 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
4 computed under s. 71.28 (1), (3), (4), and (5) minus, as provided under s. 71.28 (3) (c)
5 7., the amount of the credit under s. 71.28 (3) that the taxpayer added to income
6 under this paragraph at the time that the taxpayer first claimed the credit plus the
7 amount of the credit computed under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm),
8 (1ds), (1dx), (3g), (3n), (3t), ~~and (5b),~~ and (5r) and not passed through by a
9 partnership, limited liability company, or tax-option corporation that has added that
10 amount to the partnership’s, limited liability company’s, or tax-option corporation’s
11 income under s. 71.21 (4) or 71.34 (1) (g) plus the amount of losses from the sale or
12 other disposition of assets the gain from which would be wholly exempt income, as
13 defined in sub. (3) (L), if the assets were sold or otherwise disposed of at a gain and
14 minus deductions, as computed under the Internal Revenue Code as modified under
15 sub. (3), plus or minus, as appropriate, an amount equal to the difference between
16 the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or
17 otherwise disposed of in a taxable transaction during the taxable year, except as
18 provided in par. (b) and s. 71.45 (2) and (5).

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

20 71.28 (5r) EDUCATION CREDIT. (a) In this subsection:

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

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

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

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

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

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

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

9 b. A school approved under s. 45.54, if the delivery of education occurs in this
10 state.

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

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

17 2. Seventy-five percent of the tuition that the claimant paid or incurred during
18 the taxable year for an individual to participate in an education program of a
19 qualified postsecondary institution, if the individual was enrolled in a
20 degree-granting program and if the individual’s taxable income in the year prior to
21 commencing participation in the education program in connection with which a
22 credit is claimed is not more than 185 percent of the poverty line.

23 (c) 1. No credit may be allowed under par. (b) unless the claimant obtains
24 written certification from a qualified postsecondary institution concerning the
25 amount of tuition that the claimant paid or incurred during the taxable year for an

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1 individual to participate in an education program of the qualified postsecondary
2 institution and includes a copy of the certification with the claimant's return.

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

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

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

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

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

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

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

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

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

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

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

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

23 71.30 (3) (dm) The education credit under s. 71.28 (5r).

24 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

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

4 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

5 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
6 computed under s. 71.47 (1dd) to (1dx), (3n), ~~and (5b)~~, and (5r) and not passed
7 through by a partnership, limited liability company, or tax-option corporation that
8 has added that amount to the partnership's, limited liability company's, or
9 tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) and the amount of
10 credit computed under s. 71.47 (1), (3), (3t), (4), and (5).

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

12 71.47 (5r) EDUCATION CREDIT. (a) In this subsection:

13 1. "Claimant" means a corporation that files a claim under this subsection.

14 2. "Degree-granting program" means an educational program for which an
15 associate, a bachelor's, or a graduate degree is awarded upon successful completion.

16 3. "Family member" has the meaning given in s. 157.061 (7).

17 4. "Managing employee" means an individual who wholly or partially exercises
18 operational or managerial control over, or who directly or indirectly conducts, the
19 operation of the claimant's business.

20 5. "Poverty line" has the meaning given under s. 49.001 (5).

21 6. "Qualified postsecondary institution" means all of the following:

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

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1 b. A school approved under s. 45.54, if the delivery of education occurs in this
2 state.

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

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

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

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

20 2. No credit may be allowed under par. (b) 2. unless the claimant obtains
21 written certification from a qualified postsecondary institution that the taxable
22 income of the individual for whom the claimant has paid or incurred tuition during
23 the taxable year for the individual to participate in an education program of the
24 qualified postsecondary institution is not more than 185 percent of the poverty line
25 and includes a copy of the certification with the claimant's return. For purposes of

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1 this subdivision and par. (b) 2., if an individual for whom the claimant has paid or
2 incurred tuition is claimed as a dependent on another person's tax return, the
3 individual's taxable income shall be the taxable income of the person on whose return
4 the individual is claimed as a dependent.

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

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

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

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

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

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

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

23 (g) Partnerships, limited liability companies, and tax-option corporations may
24 not claim the credit under this subsection, but the eligibility for, and the amount of,
25 the credit are based on their payment of tuition under par. (b). A partnership, limited

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1 liability company, or tax-option corporation shall compute the amount of credit that
2 each of its partners, members, or shareholders may claim and shall provide that
3 information to each of them. Partners, members of limited liability companies, and
4 shareholders of tax-option corporations may claim the credit in proportion to their
5 ownership interest.

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

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

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

14 71.49 (1) (dm) The education credit under s. 71.47 (5r).

15 **SECTION 12.** 77.92 (4) of the statutes is amended to read:

16 77.92 (4) "Net business income," with respect to a partnership, means taxable
17 income as calculated under section 703 of the Internal Revenue Code; plus the items
18 of income and gain under section 702 of the Internal Revenue Code, including taxable
19 state and municipal bond interest and excluding nontaxable interest income or
20 dividend income from federal government obligations; minus the items of loss and
21 deduction under section 702 of the Internal Revenue Code, except items that are not
22 deductible under s. 71.21; plus guaranteed payments to partners under section 707
23 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
24 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), (3s), (3n), (3t), ~~and (5b)~~, and (5r); and
25 plus or minus, as appropriate, transitional adjustments, depreciation differences,

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1 and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding
2 income, gain, loss, and deductions from farming. "Net business income," with respect
3 to a natural person, estate, or trust, means profit from a trade or business for federal
4 income tax purposes and includes net income derived as an employee as defined in
5 section 3121 (d) (3) of the Internal Revenue Code.

6 **SECTION 13. Initial applicability.**

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

9 (END)