



2011 ASSEMBLY BILL 287

September 29, 2011 - Introduced by Representatives BERNIER, JACQUE, BALLWEG, BROOKS, DOYLE, ENDSLEY, JORGENSEN, KOOYENGA, KRUG, LEMAHIEU, NERISON, PETRYK, RIVARD, STEINEKE, THIESFELDT, VOS and RIPP, cosponsored by Senators SCHULTZ and CARPENTER. Referred to Committee on Children and Families.

1 **AN ACT** *to amend* 71.05 (6) (b) 22.; and *to create* 71.07 (6s) and 71.10 (4) (cs) of
2 the statutes; **relating to:** creating a nonrefundable individual income tax
3 credit for certain adoption expenses and modifying eligibility for the adoption
4 expenses tax deduction.

Analysis by the Legislative Reference Bureau

In calculating an individual's Wisconsin adjusted gross income (AGI), an adoptive parent may generally, under current law, deduct from federal AGI up to \$5,000 that is expended during the year to which the claim relates and the preceding two years for adoption fees, court costs, or legal fees relating to the adoption of a child.

Under federal law, there is a refundable adoption expenses tax credit (which will become nonrefundable after 2011), under which amounts of up to \$13,170 (for taxable year (TY) 2010, and indexed for inflation for TY 2011) of qualified adoption expenses may, generally, be credited against the federal tax that is imposed. If the allowable federal credit exceeds the taxpayer's tax liability, the excess credit is refunded to the taxpayer. For taxable years beginning after December 31, 2011, the federal credit becomes a nonrefundable credit and the maximum allowable credit will be approximately \$12,170 for taxable year 2012, and \$5,000 (or \$6,000 for a special needs child) thereafter for qualified adoption expenses.

The Internal Revenue Code defines qualified adoption expenses to mean, generally, reasonable and necessary adoption fees, court costs, attorney fees, and other costs that are directly related to the legal adoption of an eligible child by the

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taxpayer, and defines eligible child to mean an individual who is under the age of 18 or who is physically or mentally incapable of caring for himself or herself.

Federal law provides that, if adoption expenses are paid or incurred during a taxable year before the taxable year in which the adoption is finalized, the credit for those expenses is allowed during the year following the year during which the expenses are paid or incurred, and, if the expenses are paid or incurred during or after the year in which the adoption becomes final, the credit for those expenses is allowed for the year in which they are paid or incurred.

If the amount of the federal credit for which a taxpayer is eligible exceeds the amount of taxes owed, the excess amount of credit may be carried forward for up to five years. The maximum credit limit is for each child adopted and is a cumulative limit. The amount of the credit that may be claimed is phased out to zero as the claimant's modified federal AGI rises from \$182,520 to \$222,520 (for taxable year 2010). With regard to the adoption of a child who is not a citizen or resident of the United States at the time that the adoption proceedings commence, the credit may be claimed only upon the adoption becoming final.

This bill creates a nonrefundable individual income tax credit for adoption expenses incurred by an individual who is eligible for, and claims, the federal credit. The credit may be claimed for an amount of qualified adoption expenses, up to \$5,000, to the extent that the expenses exceed the amount that the claimant is eligible for, and claims, under the federal credit. For claimants who are nonresidents or part-year residents of Wisconsin, the credit that may be claimed is prorated based on the ratio of the claimant's Wisconsin AGI to federal AGI. The maximum credit that may be claimed each fiscal year by all claimants is \$500,000. If the total amount of eligible claims exceed this amount, the department of revenue must prorate the amount of credit that each claimant may receive.

If the credit amount that the claimant is eligible for exceeds the claimant's taxes due, the claimant may carry forward the unused credit for up to five years. Generally, under the bill, the provisions of the federal credit, including the definitions of qualified adoption expenses and eligible child, the maximum income phaseout provisions, the determination of the years in which the credit may be claimed for expenses paid or incurred, and the provisions relating to foreign adoptions apply to the credit created in the bill.

Also under this bill, the current law \$5,000 deduction from Wisconsin AGI for adoption expenses may be claimed only to the extent that the adoption expenses are not claimed under the federal credit or the credit created in this bill.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

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:

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1 **SECTION 1.** 71.05 (6) (b) 22. of the statutes is amended to read:

2 71.05 **(6)** (b) 22. For taxable years beginning after December 31, 1995, an
3 amount up to \$5,000 that is expended during the period that consists of the year to
4 which the claim relates and the prior 2 taxable years, by a full-year resident of this
5 state who is an adoptive parent, for adoption fees, court costs or legal fees relating
6 to the adoption of a child, for whom a final order of adoption has been entered under
7 s. 48.91 (3) during the taxable year, to the extent that such expenses are not claimed
8 under section 36c of the Internal Revenue Code or under s. 71.07 (6s).

9 **SECTION 2.** 71.07 (6s) of the statutes is created to read:

10 71.07 **(6s)** ADOPTION EXPENSES CREDIT. (a) *Definitions.* In this subsection:

11 1. "Claimant" means an individual who is eligible for, and claims, the federal
12 credit.

13 2. "Federal credit" means the federal tax credit for adoption expenses under
14 section 36c of the Internal Revenue Code.

15 (b) *Filing claims.* Subject to the limitations provided in this subsection, a
16 claimant may claim as a credit against the tax imposed under s. 71.02, up to the
17 amount of those taxes, an amount of up to \$5,000 of qualified adoption expenses, to
18 the extent that those expenses exceed the amount of the credit that a claimant is
19 eligible for, and claims, under the federal credit in the year to which the claim relates.

20 (c) *Limitations.* 1. No credit may be allowed under this subsection unless it
21 is claimed within the time period under s. 71.75 (2).

22 2. For a claimant who is a nonresident or part-year resident of this state and
23 who is a single person or a married person filing a separate return, multiply the
24 credit for which the claimant is eligible under par. (b) by a fraction the numerator of
25 which is the individual's Wisconsin adjusted gross income and the denominator of

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1 which is the individual's federal adjusted gross income. If a claimant is married and
2 files a joint return, and if the claimant or the claimant's spouse, or both, are
3 nonresidents or part-year residents of this state, multiply the credit for which the
4 claimant is eligible under par. (b) by a fraction the numerator of which is the couple's
5 joint Wisconsin adjusted gross income and the denominator of which is the couple's
6 joint federal adjusted gross income.

7 3. The provisions contained in section 36c of the Internal Revenue Code, to the
8 extent that they apply to the credit under that section, apply to the credit under this
9 subsection, unless this subsection explicitly provides otherwise.

10 4. The maximum amount of credit that may be allocated under this subsection,
11 each fiscal year, is \$500,000. If the amount of eligible claims under this subsection
12 exceed \$500,000 in any fiscal year, the department of revenue shall prorate the
13 amount of credit which each eligible claimant may receive.

14 (d) *Administration.* Subsection (9e) (d), to the extent that it applies to the credit
15 under that subsection, applies to the credit under this subsection.

16 (e) *Carry-forward.* If a credit computed under this subsection is not entirely
17 offset against Wisconsin income taxes otherwise due, the unused balance may be
18 carried forward and credited against Wisconsin income taxes otherwise due for the
19 following 5 taxable years to the extent not offset by these taxes otherwise due in all
20 intervening years between the year in which the expense was incurred and the year
21 in which the carry-forward credit is claimed.

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

23 71.10 (4) (cs) The adoption expenses credit under s. 71.07 (6s).

24 **SECTION 4. Initial applicability.**

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1 (1) This act first applies to taxable years beginning on January 1 of the year
2 in which this subsection takes effect, except that if this subsection takes effect on or
3 after August 1 this act first applies to taxable years beginning on January 1 of the
4 year following the year in which this subsection takes effect.

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(END)