



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-0463/3  
JK:emw&wlj

## 2021 ASSEMBLY BILL 1018

February 16, 2022 - Introduced by Representatives HESSELBEIN, SINICKI, HEBL, HINTZ, SHELTON, VRUWINK, SPREITZER, OHNSTAD, CONSIDINE, BROSTOFF, B. MEYERS, HAYWOOD, L. MYERS, EMERSON and SUBECK, cosponsored by Senators JOHNSON, KOOYENGA, ROYS, LARSON and ERPENBACH. Referred to Committee on Ways and Means.

1     **AN ACT to amend** 71.05 (6) (a) 26. a., 71.05 (6) (a) 26. b., 71.05 (6) (a) 26. c., 71.05  
2           (6) (b) 32. a., 71.05 (6) (b) 32. ae., 71.05 (6) (b) 32. am., 71.07 (10) (a) 1., 71.07  
3           (10) (a) 3., 71.07 (10) (b), 71.07 (10) (c) 2., 71.28 (10) (c) 2., 71.47 (10) (c) 2. and  
4           224.50 (2) (a); and **to create** 71.05 (6) (b) 32. ap., 71.07 (10) (c) 3., 71.28 (10) (c)  
5           3., 71.47 (10) (c) 3. and 71.98 (11) of the statutes; **relating to:** modifying the tax  
6           treatment of college savings accounts and the employee college savings account  
7           contribution credit.

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### *Analysis by the Legislative Reference Bureau*

This bill modifies the individual income tax treatment for contributions to and withdrawals from college savings accounts and the employee college savings account contribution credit.

Under current law, the College Savings Program Board, which is attached to the Department of Financial Institutions, administers the state's college savings programs. These programs, known as "Edvest" and "Tomorrow's Scholar," are qualified tuition programs authorized under federal law. Under the programs, anyone may contribute to an account, commonly called a "529 account," for the benefit of a prospective student. For state income tax purposes, individuals may deduct their contributions to accounts established under the Wisconsin qualified tuition programs. Withdrawals from an account are tax-free if used for qualified

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educational expenses but subject to negative federal and state tax consequences if used for nonqualified expenses.

The bill makes the following changes to the state individual income tax treatment for contributions to and withdrawals from 529 accounts:

1. Increases the maximum amount that may be deducted. Under current law, the maximum amount that a contributor may deduct is annually indexed for inflation and, in 2021, is \$3,380, which is reduced to \$1,690 for a married individual filing a separate return or, in the case of divorced parents, each former spouse. The bill increases these amounts to \$5,000 and \$2,500, which are indexed annually for inflation, and repeals the limitation for divorced parents.

2. Requires the use of a first in, first out method of accounting for purposes of provisions in current law requiring that account withdrawals be added to income for state tax purposes and restricting carry-overs of contributions in excess of the maximum deduction threshold if the carry-over amount was withdrawn from the account within 365 days of being contributed.

3. Conforms the definition of “qualified higher education expense” to federal law. In recent years, the federal definition of “qualified higher education expense” has been expanded to include tuition expenses for elementary and secondary schools, expenses for apprenticeship programs, and qualified education loan repayments. The bill conforms state law to the federal definition.

Additionally, the bill modifies the tax credit that may be claimed by an employer for contributions to an employee’s 529 account. Under current law, the maximum credit per employee is 25 percent of the amount the employer contributes to the 529 account, up to a maximum contribution that is 25 percent of the maximum amount that an individual contributor may deduct under state law. For 2021, the maximum credit is \$211.25. Under the bill, the maximum credit per employee is 50 percent of the amount the employer contributes to the 529 account, not exceeding a maximum credit of \$800, adjusted annually for inflation. The bill also specifies that sole proprietors may claim the credit and that the credit may only be claimed for a contribution to an employee’s 529 account if the employee’s compensation is reported, or required to be reported, on a W-2 form issued by the employer.

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.

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

1           **SECTION 1.** 71.05 (6) (a) 26. a. of the statutes is amended to read:

2           71.05 (6) (a) 26. a. To the extent that the receipt of such the amounts by the  
3 owner or beneficiary of the account results in a penalty as provided in 26 USC 529

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1 (c) (6), any amount that was not used for qualified higher education expenses, as that  
2 ~~term is defined in 26 USC 529 (c) (7), (8), and (9) and (e) (3), and was contributed to~~  
3 ~~the account after December 31, 2013, except that this subd. 26. a. applies only to~~  
4 ~~amounts for which a subtraction was made under par. (b) 32. or 32m. For purposes~~  
5 ~~of this subd. 26. a., a first in, first out method of accounting shall apply to the account.~~

6 **SECTION 2.** 71.05 (6) (a) 26. b. of the statutes is amended to read:

7 71.05 (6) (a) 26. b. Any amount rolled over by an owner into another state's  
8 qualified tuition program, as described in 26 USC 529 (c) (3) (C) (i), to the extent that  
9 the amount was previously claimed as a deduction under par. (b) 32. or 32m. For  
10 purposes of this subd. 26. b., a first in, first out method of accounting shall apply to  
11 the account.

12 **SECTION 3.** 71.05 (6) (a) 26. c. of the statutes is amended to read:

13 71.05 (6) (a) 26. c. To the extent that an amount is not otherwise added back  
14 under this subdivision, any amount withdrawn from ~~a college savings~~ the account,  
15 ~~as described in s. 224.50, for any purpose if the withdrawn amount was contributed~~  
16 ~~to the account within 365 days of the day on which the amount was withdrawn from~~  
17 ~~such an~~ the account and if the withdrawn amount was previously subtracted under  
18 par. (b) 32. For purposes of this subd. 26. c., a first in, first out method of accounting  
19 shall apply to the account.

20 **SECTION 4.** 71.05 (6) (b) 32. a. of the statutes is amended to read:

21 71.05 (6) (b) 32. a. Except as otherwise provided in this subdivision, an amount  
22 equal to not more than ~~\$3,000~~ \$5,000 per beneficiary, by each contributor, or ~~\$1,500~~  
23 \$2,500 by each contributor who is married and files separately, to an account for each  
24 year to which the claim relates, except that the total amount for which a deduction  
25 may be claimed under this subdivision and under subd. 33., per beneficiary by any

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1 claimant may not exceed ~~\$3,000~~ \$5,000 each year, or ~~\$1,500~~ \$2,500 each year by any  
2 claimant who is married and files separately. In the case of a married couple, the  
3 total deduction under this subdivision and under subd. 33., per beneficiary by the  
4 married couple may not exceed ~~\$3,000~~ \$5,000 each year. ~~In the case of divorced~~  
5 ~~parents, the total deduction under this subdivision and under subd. 33., per~~  
6 ~~beneficiary by the formerly married couple, may not exceed \$3,000, and the~~  
7 ~~maximum amount that may be deducted by each former spouse is \$1,500, unless the~~  
8 ~~divorce judgment specifies a different division of the \$3,000 maximum that may be~~  
9 ~~claimed by each former spouse. For taxable years beginning after December 31, 2013~~  
10 2021, the dollar amounts in this subd. 32. a., and the dollar amounts in subd. 33. a.,  
11 shall be increased each year by a percentage equal to the percentage change between  
12 the U.S. consumer price index for all urban consumers, U.S. city average, for the  
13 month of August of the previous year and the U.S. consumer price index for all urban  
14 consumers, U.S. city average, for the month of August 2012, as determined by the  
15 federal department of labor, except that the adjustment may occur only if the  
16 resulting amount is greater than the corresponding amount that was calculated for  
17 the previous year. Each amount that is revised under this subd. 32. a. and under  
18 subd. 33. a. shall be rounded to the nearest multiple of \$10 if the revised amount is  
19 not a multiple of \$10 or, if the revised amount is a multiple of \$5, such an amount  
20 shall be increased to the next higher multiple of \$10. The department of revenue  
21 shall annually adjust the changes in dollar amounts required under this subd. 32.  
22 a. and incorporate the changes into the income tax forms and instructions. Any  
23 amount that is paid into an account under this subdivision that exceeds the  
24 maximum amount that may be subtracted under this subdivision may be carried

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1 forward to the next taxable year, and thereafter, subject to the limitations in this  
2 subdivision.

3 **SECTION 5.** 71.05 (6) (b) 32. ae. of the statutes is amended to read:

4 71.05 (6) (b) 32. ae. No ~~carryover~~ carry-over that would otherwise be  
5 authorized under this subdivision may be allowed if the ~~carryover~~ carry-over  
6 amount was withdrawn from an account for any purpose and the withdrawal  
7 occurred within 365 days of the day on which the amount was contributed to the  
8 account. For purposes of this subd. 32. ae., a first in, first out method of accounting  
9 shall apply to the account.

10 **SECTION 6.** 71.05 (6) (b) 32. am. of the statutes is amended to read:

11 71.05 (6) (b) 32. am. Any ~~carryover~~ carry-over amount that is otherwise eligible  
12 for a subtraction under this subdivision shall be reduced by an amount equal to the  
13 amount of a withdrawal from an account that was not used for qualified higher  
14 education expenses, as ~~that term~~ is defined in 26 USC 529 (c) (7), (8), and (9) and (e)  
15 (3), to the extent that the withdrawn amount exceeds the amount that is added to  
16 income under par. (a) 26.

17 **SECTION 7.** 71.05 (6) (b) 32. ap. of the statutes is created to read:

18 71.05 (6) (b) 32. ap. No subtraction may be allowed under this subdivision for  
19 any amount contributed to an account for which a credit is claimed under s. 71.07  
20 (10), 71.28 (10), or 71.47 (10).

21 **SECTION 8.** 71.07 (10) (a) 1. of the statutes is amended to read:

22 71.07 (10) (a) 1. "Claimant" means an individual who files a claim under this  
23 subsection and who is a sole proprietor and an employer and contributes to an  
24 employee's college savings account under par. (b). or who is a partner of a  
25 partnership, member of a limited liability company, or shareholder of a tax-option

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1 corporation that is an employer and that contributes to an employee's college savings  
2 account under par. (b).

3 **SECTION 9.** 71.07 (10) (a) 3. of the statutes is amended to read:

4 71.07 (10) (a) 3. "Employer" means ~~an employer that is a partnership, as~~  
5 ~~defined in s. 71.195, or a tax-option corporation, as defined in s. 71.34 (2) a person~~  
6 for whom an individual performs or performed any service as an employee of that  
7 person and who is required to furnish a W-2 form to the employee for federal income  
8 tax purposes.

9 **SECTION 10.** 71.07 (10) (b) of the statutes is amended to read:

10 71.07 (10) (b) *Filing claims.* Subject to the limitations provided in this  
11 subsection, a claimant may claim as a credit against the tax imposed under s. 71.02,  
12 up to the amount of those taxes, for each employee of an employer, ~~the claimant's~~  
13 ~~proportionate share, as computed under par. (c) 1., of an amount equal to the amount~~  
14 ~~the employer paid into a college savings account owned by the employee in the~~  
15 ~~taxable year in which the contribution is made.~~

16 **SECTION 11.** 71.07 (10) (c) 2. of the statutes is amended to read:

17 71.07 (10) (c) 2. The maximum amount of the credit per employee that a  
18 claimant may claim under this subsection is ~~the claimant's proportionate share of an~~  
19 ~~amount equal to 25~~ 50 percent of the amount the employee's employer contributed  
20 to the employee's college savings account ~~up to a maximum contribution equal to 25~~  
21 ~~percent of the maximum amount that an individual contributor may deduct under~~  
22 ~~s. 71.05 (6) (b) 32. a. per beneficiary, not to exceed a maximum credit of \$800. For~~  
23 taxable years beginning after December 31, 2021, the dollar amount in this  
24 subdivision shall be increased each year by a percentage equal to the percentage  
25 change between the U.S. consumer price index for all urban consumers, U.S. city

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1 average, for the month of August of the previous year and the U.S. consumer price  
2 index for all urban consumers, U.S. city average, for the month of August 2020, as  
3 determined by the federal department of labor, except that the adjustment may occur  
4 only if the resulting amount is greater than the corresponding amount that was  
5 calculated for the previous year. The amount that is revised under this subdivision  
6 shall be rounded to the nearest multiple of \$10 if the revised amount is not a multiple  
7 of \$10 or, if the revised amount is a multiple of \$5, such an amount shall be increased  
8 to the next higher multiple of \$10. The department of revenue shall annually adjust  
9 the change in the dollar amount required under this subdivision and incorporate the  
10 change into the income tax forms and instructions.

11 **SECTION 12.** 71.07 (10) (c) 3. of the statutes is created to read:

12 71.07 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income  
13 tax purposes, the compensation of the employee described in par. (b) is reported, or  
14 required to be reported, on a W-2 form issued by the claimant.

15 **SECTION 13.** 71.28 (10) (c) 2. of the statutes is amended to read:

16 71.28 (10) (c) 2. The maximum amount of the credit per employee that a  
17 claimant may claim under this subsection is an amount equal to ~~25~~ 50 percent of the  
18 amount the claimant contributed to the employee's college savings account ~~up to a~~  
19 ~~maximum contribution equal to 25 percent of the maximum amount that an~~  
20 ~~individual contributor may deduct under s. 71.05 (6) (b) 32. a. per beneficiary, not to~~  
21 exceed a maximum credit of \$800. For taxable years beginning after December 31,  
22 2021, the dollar amount in this subdivision shall be increased each year by a  
23 percentage equal to the percentage change between the U.S. consumer price index  
24 for all urban consumers, U.S. city average, for the month of August of the previous  
25 year and the U.S. consumer price index for all urban consumers, U.S. city average,

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1 for the month of August 2020, as determined by the federal department of labor,  
2 except that the adjustment may occur only if the resulting amount is greater than  
3 the corresponding amount that was calculated for the previous year. The amount  
4 that is revised under this subdivision shall be rounded to the nearest multiple of \$10  
5 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple  
6 of \$5, such an amount shall be increased to the next higher multiple of \$10. The  
7 department of revenue shall annually adjust the change in the dollar amount  
8 required under this subdivision and incorporate the change into the income tax  
9 forms and instructions.

10 **SECTION 14.** 71.28 (10) (c) 3. of the statutes is created to read:

11 71.28 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income  
12 tax purposes, the compensation of the employee described in par. (b) is reported, or  
13 required to be reported, on a W-2 form issued by the claimant.

14 **SECTION 15.** 71.47 (10) (c) 2. of the statutes is amended to read:

15 71.47 (10) (c) 2. The maximum amount of the credit per employee that a  
16 claimant may claim under this subsection is an amount equal to ~~25~~ 50 percent of the  
17 amount the claimant contributed to the employee's college savings account ~~up to a~~  
18 ~~maximum contribution equal to 25 percent of the maximum amount that an~~  
19 ~~individual contributor may deduct under s. 71.05 (6) (b) 32. a. per beneficiary, not to~~  
20 exceed a maximum credit of \$800. For taxable years beginning after December 31,  
21 2021, the dollar amount in this subdivision shall be increased each year by a  
22 percentage equal to the percentage change between the U.S. consumer price index  
23 for all urban consumers, U.S. city average, for the month of August of the previous  
24 year and the U.S. consumer price index for all urban consumers, U.S. city average,  
25 for the month of August 2020, as determined by the federal department of labor,



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1 except that the adjustment may occur only if the resulting amount is greater than  
2 the corresponding amount that was calculated for the previous year. The amount  
3 that is revised under this subdivision shall be rounded to the nearest multiple of \$10  
4 if the revised amount is not a multiple of \$10 or, if the revised amount is a multiple  
5 of \$5, such an amount shall be increased to the next higher multiple of \$10. The  
6 department of revenue shall annually adjust the change in the dollar amount  
7 required under this subdivision and incorporate the change into the income tax  
8 forms and instructions.

9 **SECTION 16.** 71.47 (10) (c) 3. of the statutes is created to read:

10 71.47 (10) (c) 3. A credit may be claimed under par. (b) only if, for federal income  
11 tax purposes, the compensation of the employee described in par. (b) is reported, or  
12 required to be reported, on a W-2 form issued by the claimant.

13 **SECTION 17.** 71.98 (11) of the statutes is created to read:

14 71.98 (11) QUALIFIED TUITION PROGRAMS. For taxable years beginning after  
15 December 31, 2020, sections 221 (e) (1) and 529 of the Internal Revenue Code as in  
16 effect for federal purposes, relating to qualified tuition programs.

17 **SECTION 18.** 224.50 (2) (a) of the statutes is amended to read:

18 224.50 (2) (a) Except as provided in s. 224.51, establish and administer a  
19 college savings program that allows an individual, trust, legal guardian, or entity  
20 described under 26 USC 529 (e) (1) (C) to establish a college savings account to cover  
21 tuition, fees, and the costs of room and board, books, supplies, and equipment  
22 required for the enrollment or attendance of a beneficiary at an eligible educational  
23 institution, as defined under 26 USC 529, and to cover tuition expenses in connection  
24 with enrollment or attendance at an elementary or secondary public, private, or  
25 religious school, as described in section 11032 of P.L. 115-97, related to qualified

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1 tuition programs under 26 USC 529, to cover the expenses for fees, books, supplies,  
2 and equipment required for the participation of a beneficiary in an apprenticeship  
3 program described in 26 USC 529 (c) (8), and to cover the amounts paid as principal  
4 or interest on a qualified education loan, as defined in 26 USC 221 (d) (1), of the  
5 beneficiary or a sibling of the beneficiary.

6 **SECTION 19. Initial applicability.**

7 (1) ADDITION TO TAX FOR NONQUALIFIED WITHDRAWALS PREVIOUSLY DEDUCTED. The  
8 treatment of s. 71.05 (6) (a) 26. a. that amends the definition of qualified higher  
9 education expenses to include a cross-reference to 26 USC 529 (c) (7) first applies  
10 retroactively to taxable years beginning after December 31, 2017. The treatment of  
11 s. 71.05 (6) (a) 26. a. that amends the definition of qualified higher education  
12 expenses to include a cross-reference to 26 USC 529 (c) (8) and (9) first applies  
13 retroactively to taxable years beginning after December 31, 2018. The treatment of  
14 s. 71.05 (6) (a) 26. a. to require the use of a first in, first out method of accounting and  
15 to include a cross-reference to s. 71.05 (6) (b) 32m. first applies to taxable years  
16 beginning on January 1 of the year in which this subsection takes effect, except that  
17 if this subsection takes effect after July 31, the treatment first applies to taxable  
18 years beginning on January 1 of the year following the year in which this subsection  
19 takes effect.

20 (2) DEFINITION OF QUALIFIED HIGHER EDUCATION EXPENSES. The treatment of s.  
21 71.05 (6) (b) 32. am. that amends the definition of qualified higher education  
22 expenses to include a cross-reference to 26 USC 529 (c) (7) first applies retroactively  
23 to taxable years beginning after December 31, 2017. The treatment of s. 71.05 (6)  
24 (b) 32. am. that amends the definition of qualified higher education expenses to

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1 include a cross-reference to 26 USC 529 (c) (8) and (9) and the treatment of s. 224.50  
2 (2) (a) first apply retroactively to taxable years beginning after December 31, 2018.  
3 (3) TAX TREATMENT FOR CONTRIBUTIONS AND WITHDRAWALS; EMPLOYEE COLLEGE  
4 SAVINGS ACCOUNT CONTRIBUTION CREDIT. The treatment of ss. 71.05 (6) (a) 26. b. and  
5 c. and (b) 32. a., ae., and ap., 71.07 (10) (a) 1. and 3., (b), and (c) 2. and 3., 71.28 (10)  
6 (c) 2. and 3., and 71.47 (10) (c) 2. and 3. first applies to taxable years beginning on  
7 January 1 of the year in which this subsection takes effect, except that if this  
8 subsection takes effect after July 31, the treatment first applies to taxable years  
9 beginning on January 1 of the year following the year in which this subsection takes  
10 effect.

11 (END)