

1 **AN ACT to create** 71.07 (9e) (ag) of the statutes; **relating to:** eligibility for the
 2 Wisconsin earned income tax credit for certain parents.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council’s Special Committee on Infant Mortality. The draft extends eligibility for the Wisconsin Earned Income Tax Credit (EITC) to certain parents who do not currently qualify for the EITC because their child does not reside with them.

Under federal law, the EITC is a refundable tax credit for low-income workers. If the amount of the credit exceeds a worker’s tax liability, the claimant receives a check from the Internal Revenue Service for the excess amount. The amount of the credit for which a claimant is eligible is based, in part, on whether the person has a qualifying child and how many qualifying children the person has. A qualifying child for purposes of the EITC is a child who meets four tests: (1) the relationship test; (2) the age test; (3) the residency test; and (4) the joint return test.

The relationship test requires that the child be the person’s son, daughter, stepchild, foster child, or descendant of one of those individuals (i.e. grandchild), or that the child be the person’s brother, sister, half brother, half sister, stepbrother, stepsister, or descendant of one of those individuals (i.e. niece). The age test requires that the child be under age 19 if he or she is not a student, that the child be under age 24 if he or she is a student, or that the child be permanently and totally disabled. The residency test requires that the child must have lived with the person for more than half of the year. The joint return test requires that the child not be filing a joint return for the year.

In addition, a child cannot be used by more than one person to claim the EITC. This means that eligibility for the EITC requires a person to use a child who is not used by any other person to claim the EITC.

A refundable earned income tax credit also exists under Wisconsin law. A person may claim the Wisconsin EITC in an amount equal to a specified percentage of the federal EITC for which the person is eligible if the person has one or more qualifying children.

This draft extends eligibility for the Wisconsin EITC to a parent whose child meets 3 of the tests for a qualifying child, but does not meet the residency test. Thus, the draft allows a parent to receive the credit even if his or her child did not share the same principal place of abode as the parent. The draft also allows a parent to receive the credit even if the person's child is already used by another person to claim tax benefits such as the federal EITC.

In the draft, the definition of "parent" is the same as the definition of parent used in the Children's Code, ch. 48, stats. Under that definition, "parent" includes, among others, biological parents, adoptive parents, and adjudicated parents.

1 **SECTION 1.** 71.07 (9e) (ag) of the statutes is created to read:

2 71.07 **(9e)** (ag) For purposes of par. (af), a child is a qualifying child for a person who
3 meets the definition of parent under s. 48.02 (13) for that child, notwithstanding the fact that
4 the child does not have the same principal place of abode as the person, and notwithstanding
5 the fact that another person uses that child as a qualifying child for tax benefit purposes.

COMMENT: There are several items that the committee may want to consider regarding this bill draft. Under the draft, an uninvolved parent may still claim the EITC for his or her child. The draft does not require that the parent be providing any support to the child. Thus, extending the Wisconsin EITC may not benefit the child in any way. One method of addressing this issue is to limit eligibility for the Wisconsin EITC to those parents who have a child support order in place with respect to that child. If a parent has a child support order in place, then the parent presumably provides financial support to the child.

Currently, only one person may receive the Wisconsin EITC for a particular child. Under the draft, the credit for an individual child may be claimed by up to 3 people. For example, if a child lives with his grandmother and she meets the tests to claim the child as a qualifying child, the grandmother may receive the federal EITC and the Wisconsin EITC. Under the draft, both of the child's parents would also be eligible to receive the Wisconsin EITC based on that child.

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