

HOUSE BILL NO. 213

INTRODUCED BY FITZPATRICK, BLASDEL, O'HARA, VANCE, WELBORN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TAX CREDIT FOR TUITION PAID FOR ELEMENTARY OR SECONDARY NONPUBLIC SCHOOL EDUCATION; LIMITING ELIGIBILITY FOR AND THE AMOUNT OF THE TAX CREDIT; REQUIRING AN INFORMATION RETURN FROM A QUALIFIED EDUCATION PROVIDER; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Elementary and secondary education tax credit for nonpublic school education -- definitions. (1) There is a credit against the taxes otherwise due under this chapter for ~~tuition paid~~ A QUALIFYING TUITION PAYMENT MADE by an individual for an eligible student to attend an elementary or secondary education program offered by a qualified education provider. THE INDIVIDUAL AND THE ELIGIBLE STUDENT MUST BE CONNECTED BY CONSANGUINITY WITHIN THE SECOND DEGREE.

(2) Subject to subsections (3) through (7), the amount of the credit for a qualifying tuition payment is \$550 in a tax year for each eligible student. THE DOLLAR AMOUNT OF THE CREDIT ALLOWABLE UNDER THIS SECTION IS LIMITED TO \$550 FOR EACH ELIGIBLE STUDENT AS PROVIDED IN SUBSECTION (7).

(3) A credit is not allowed under any other provision of this chapter with respect to any amount for which a credit is allowed under this section.

(4) The credit allowed under this section may not exceed the taxpayer's income tax liability. A credit may not be refunded if a taxpayer has tax liability that is less than the amount of the credit.

(5) The credit may be used as a carryforward against taxes due under this chapter for the 5 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(6) In the case of a married individual filing a separate return, the amount of the credit under subsection (2) ~~is limited to one-half of the applicable amount~~ MAY BE SPLIT IN PROPORTION TO EACH TAXPAYER'S SHARE OF THE CONTRIBUTION, SUBJECT TO THE MAXIMUM CREDIT LIMITATION IN SUBSECTION (2).

(7) (a) The department shall approve the tax credit on a first-come, first-served basis. Before making a

1 QUALIFYING tuition payment to a qualified education provider, a taxpayer shall by BETWEEN JANUARY 1 AND October
 2 1 of the year in which the credit is sought notify the department of AN ESTIMATE OF the total amount of QUALIFYING
 3 tuition payment that the taxpayer intends to make to the qualified education provider DURING THE TAX YEAR. The
 4 taxpayer shall use a form that is approved by the department for the notification, and the department shall
 5 preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer. If within
 6 30 days the department fails to preapprove or deny the request, the request is considered approved.

7 (b) To receive a tax credit under this section, a taxpayer shall make the QUALIFYING tuition payment to
 8 the qualified education provider within 30 days after receiving notice from the department that the requested
 9 amount was preapproved or within 30 days of the date the amount was considered approved. If the taxpayer does
 10 not make the QUALIFYING tuition payment within the required time, the department may not include the
 11 preapproved QUALIFYING tuition payment amount when calculating the \$550 limit IN SUBSECTION (2) and the
 12 taxpayer may not receive the credit.

13 (8) As used in [SECTION 2] AND this section, the following definitions apply:

14 (a) "Eligible student" means a student who is a Montana resident and who is 5 years of age or older on
 15 or before September 10 of the year of attendance and has not yet reached 19 years of age.

16 (b) "Qualified education provider" means an education provider that:

17 (i) is not a public school;

18 (ii) (A) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or
 19 national accreditation organization; or

20 (B) is a nonaccredited provider or tutor and has informed the child's parents or legal guardian in writing
 21 at the time of enrollment that the provider is not accredited and is not seeking accreditation;

22 (C) is not a home school as referred to in 20-5-109;

23 (D) administers a nationally recognized normative assessment test or criterion reference test and makes
 24 the results available to the child's parents or legal guardian;

25 (E) satisfies the health and safety requirements prescribed by law for private schools in this state; and

26 (F) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.

27 (C) "QUALIFYING TUITION PAYMENT" MEANS A PAYMENT OF TUITION AND FEES TO A QUALIFIED EDUCATION
 28 PROVIDER FOR AN ELIGIBLE STUDENT.

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 30 NEW SECTION. Section 2. Education tax credit -- information return. (1) Each qualified education

1 provider, ~~as defined in [section 1]~~, shall make an information return to the department concerning the credit
 2 allowed under [section 1]. The return must show the amount of the QUALIFYING tuition paid PAYMENT MADE by an
 3 individual for each eligible student, ~~as defined in [section 1]~~, and must include the individual's name, address, and
 4 social security number or taxpayer identification number. The qualified education provider shall provide a copy
 5 of the return to the individual making the QUALIFYING tuition payment.

6 (2) The return must be made under rules adopted by the department and in the form and manner
 7 prescribed by the department.

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 9 NEW SECTION. Section 3. Codification instruction. ~~(1) [Section 1] is [SECTIONS 1 AND 2] ARE~~ intended
 10 to be codified as an integral part of Title 15, chapter 30, part 23, and the provisions of Title 15, chapter 30, part
 11 23, apply to ~~[section 1]~~ [SECTIONS 1 AND 2].

12 ~~———— (2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 26, and the~~
 13 ~~provisions of Title 15, chapter 30, part 26, apply to [section 2].~~

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15 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

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17 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the
 18 meaning of 1-2-109, to tax years beginning after December 31, 2012.

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