

1 HOUSE BILL NO. 511

2 INTRODUCED BY B. TSCHIDA

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING TAX CREDITS FOR CONTRIBUTIONS TO
5 EDUCATIONAL IMPROVEMENT ORGANIZATIONS AND STUDENT SCHOLARSHIP ORGANIZATIONS BY
6 INDIVIDUAL AND CORPORATE TAXPAYERS; CREATING PUBLIC SCHOOL AND STUDENT FUNDING
7 THROUGH TAX REPLACEMENT PROGRAMS; ESTABLISHING REQUIREMENTS FOR ORGANIZATIONS
8 THAT AWARD GRANTS AND SCHOLARSHIPS; ESTABLISHING REQUIREMENTS FOR AWARDED PUBLIC
9 SCHOOL GRANTS AND DETERMINING ELIGIBLE PUBLIC SCHOOLS; ESTABLISHING REQUIREMENTS
10 FOR GRANTING STUDENT SCHOLARSHIPS AND DETERMINING EDUCATION PROVIDERS THAT ARE
11 ELIGIBLE TO EDUCATE STUDENTS RECEIVING SCHOLARSHIPS; PROVIDING THAT THE AMOUNT OF
12 A SCHOLARSHIP IS NOT TAXABLE INCOME; ESTABLISHING THE MAXIMUM AMOUNTS THAT MAY BE
13 CLAIMED AS CREDITS; LIMITING THE TOTAL AMOUNT OF CREDITS THROUGH AN APPLICATION
14 PROCESS TO THE DEPARTMENT OF REVENUE; REQUIRING REPORTS TO THE REVENUE AND
15 TRANSPORTATION INTERIM COMMITTEE; ESTABLISHING ORGANIZATION REVIEW AND TERMINATION
16 PROCEDURES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2110, MCA; AND
17 PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A
18 TERMINATION DATE."

19
20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

21
22 NEW SECTION. **Section 1. Purpose.** Pursuant to 5-4-104, the legislature finds that the purpose of
23 educational improvement organizations and student scholarship organizations is to enhance the curriculum of
24 public schools and provide parental and student choice in education by replacing the use of state general fund
25 money with private contributions through tax replacement programs.

26
27 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 13], the following definitions
28 apply:

- 29 (1) "Department" means the department of revenue provided for in 2-15-1301.
30 (2) "Educational improvement organization" means a charitable organization in this state that:

- 1 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26
2 U.S.C. 501(c)(3); and
- 3 (b) contributes grants to an eligible public school for innovative educational programs.
- 4 (3) "Eligible public school" means a:
5 (a) Montana public school; or
6 (b) school offering vocational-technical education to vocational-technical students that is conducted by
7 a unit of the Montana university system, a community college, or a tribally controlled community college, as
8 designated by the board of regents.
- 9 (4) "Eligible student" means a student who is a Montana resident who is 5 years of age or older on or
10 before September 10 of the year of attendance and has not yet reached 19 years of age.
- 11 (5) (a) "Household" means an association of persons who live in the same dwelling, sharing its
12 furnishings, facilities, accommodations, and expenses.
13 (b) The term does not include bona fide lessees, tenants, or roomers and boarders on contract.
- 14 (6) "Household income" means all income received by all individuals of a household while they are
15 members of the household.
- 16 (7) (a) "Income" means, except as provided in subsection (7)(b), federal adjusted gross income, without
17 regard to loss, as that quantity is defined in the Internal Revenue Code, plus all nontaxable income, including but
18 not limited to:
19 (i) the amount of any pension or annuity, including Railroad Retirement Act benefits and veterans'
20 disability benefits;
21 (ii) the amount of capital gains excluded from adjusted gross income;
22 (iii) alimony;
23 (iv) support money;
24 (v) nontaxable strike benefits;
25 (vi) cash public assistance and relief;
26 (vii) interest on federal, state, county, and municipal bonds; and
27 (viii) all payments received under federal social security except social security income paid directly to a
28 nursing home.
- 29 (b) For the purposes of this subsection (7), income is reduced by the taxpayer's basis.
- 30 (8) "Innovative educational program" means an advanced academic program that is not part of the

1 regular academic program of public schools in this state but that enhances the curriculum or academic program
2 of an eligible public school or provides need-based scholarships for students that receive dual or concurrent
3 credit. The instruction, program, scholarship, or other activities offered through an innovative educational program
4 must include at least one of the following characteristics:

5 (a) provides different focus, methodology, skill training, or delivery, including internet-based and distance
6 learning technologies, than is provided in a typical academic program of a public school;

7 (b) is accessible before or after public school hours, on weekends, as a year-round program, as an
8 extension of the public school year, or a combination of these characteristics;

9 (c) uses specialized instructional materials, instructors, or instruction not provided by a public school;

10 (d) uses internships and other work-based learning opportunities for a student that supplements the
11 curriculum or academic program of a student and provides a student with the opportunity to apply the knowledge
12 and skills learned in the academic program;

13 (e) offers instruction or programming that provides credits or advanced placement, or both, at a 2-year
14 or 4-year college or university;

15 (f) provides a scholarship on behalf of a public high school student for dual or concurrent credit when the
16 student has a maximum annual household income of 400% of the federal poverty guidelines as adopted by the
17 United States department of health and human services; or

18 (g) provides expansion of the characteristics in this subsection (8).

19 (9) "Public school foundation" means a nonprofit organization in this state that:

20 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26
21 U.S.C. 501(c)(3);

22 (b) provides funding to support the educational needs of Montana public school students; and

23 (c) is not an eligible public school.

24 (10) "Qualified education provider" means an education provider that:

25 (a) is not a public school;

26 (b) (i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or
27 national accreditation organization; or

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

30 (c) is not a home school as referred to in 20-5-102(2)(e);

1 (d) administers a nationally recognized standardized assessment test or criterion-referenced test and
2 makes the results available to the child's parents or legal guardian;

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

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

5 (11) "Student scholarship organization" means a charitable organization in this state that:

6 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26
7 U.S.C. 501(c)(3);

8 (b) allocates not less than 90% of its annual revenue for scholarships to allow students to enroll with any
9 qualified education provider; and

10 (c) provides educational scholarships to eligible students without limiting student access to only one
11 education provider.

12

13 **NEW SECTION. Section 3. Requirements for educational improvement organization.** (1) An
14 educational improvement organization:

15 (a) shall obligate at least 90% of its annual innovative education donations for grants to eligible public
16 schools and for scholarships on behalf of public high school students. For the purpose of this calculation:

17 (i) the cost of the annual fiscal review provided for in [section 4(1)(b)] may be paid out of the total
18 innovative education donations before calculation of the 90% minimum obligation amount; and

19 (ii) all innovative education donations subject to the 90% minimum obligation amount that are received
20 in 1 calendar year must be paid out in grants within the 3 calendar years following the donation.

21 (b) shall provide innovative education grants only to eligible public schools;

22 (c) shall maintain separate accounts for innovative education grant funds and operating funds;

23 (d) may transfer innovative education funds to another educational improvement organization;

24 (e) shall maintain an application process under which innovative education grant applications are
25 accepted, reviewed, approved, and denied; and

26 (f) shall comply with reporting requirements in accordance with [section 4].

27 (2) Subject to the requirements of [section 4] and this section, a public school foundation may operate
28 as an educational improvement organization, in addition to operating as a public school foundation.

29 (3) An organization that fails to satisfy the conditions of this section is subject to termination as provided
30 in [section 12].

1
2 **NEW SECTION. Section 4. Reporting requirements for educational improvement organizations.**

3 (1) Each educational improvement organization shall:

4 (a) submit a notice to the department of its intent to operate as an educational improvement organization
5 prior to accepting donations;

6 (b) complete an annual fiscal review of its accounts by an independent certified public accountant within
7 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar
8 years:

9 (i) the total number and dollar value of individual and corporate contributions that were designated as
10 innovative education donations;

11 (ii) the total number and dollar value of innovative education grants obligated to eligible public schools
12 and a description of each school's program;

13 (iii) the total number and dollar value of innovative education grants awarded to eligible public schools
14 and a description of the programs funded; and

15 (iv) the cost of the annual fiscal review;

16 (c) submit the annual fiscal review report provided for in this section to the department within 150 days
17 of the close of the calendar year.

18 (2) The department shall provide written notice to an educational improvement organization that fails to
19 submit the annual fiscal review report required by this section, and the organization has 30 days from receipt of
20 the notice to submit the report.

21 (3) An educational improvement organization that fails to satisfy the conditions of this section is subject
22 to termination as provided in [section 12].

23
24 **NEW SECTION. Section 5. Requirements for student scholarship organizations.** (1) A student
25 scholarship organization:

26 (a) shall obligate at least 90% of its annual revenue for scholarships. For the purpose of this calculation:

27 (i) the cost of the annual fiscal review provided for in [section 7(1)(b)] may be paid out of the total
28 contributions before calculation of the 90% minimum obligation amount; and

29 (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year
30 must be paid out in scholarships within the 3 calendar years following the contribution.

1 (b) may not restrict or reserve scholarships for use at a particular education provider or any particular
2 type of education provider and shall allow an eligible student to enroll with any qualified education provider of the
3 parents' or legal guardian's choice;

4 (c) shall provide scholarships to eligible students to attend instruction offered by a qualified education
5 provider;

6 (d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the
7 per-pupil average of total public school expenditures calculated in [section 18];

8 (e) shall ensure that the organization's average scholarship for an academic year does not exceed 30%
9 of the per-pupil average of total public school expenditures calculated in [section 18];

10 (f) shall maintain separate accounts for scholarship funds and operating funds;

11 (g) may transfer funds to another student scholarship organization;

12 (h) shall maintain an application process under which scholarship applications are accepted, reviewed,
13 approved, and denied; and

14 (i) shall comply with payment and reporting requirements in accordance with [sections 6 and 7].

15 (2) An organization that fails to satisfy the conditions of this section is subject to termination as provided
16 in [section 12].

17
18 **NEW SECTION. Section 6. Tuition payment limitation.** (1) A student scholarship organization shall
19 deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian
20 of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the
21 parents or legal guardian that the payment was received.

22 (2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from
23 a student scholarship organization if the total amount of the awards exceeds 50% of the per-pupil average of total
24 public school expenditures calculated in [section 18].

25
26 **NEW SECTION. Section 7. Reporting requirements for student scholarship organizations.** (1) Each
27 student scholarship organization shall:

28 (a) submit a notice to the department of its intent to operate as a student scholarship organization prior
29 to accepting donations;

30 (b) complete an annual fiscal review of its accounts by an independent certified public accountant within

1 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar
2 years:

3 (i) the total number and dollar value of individual and corporate contributions;

4 (ii) the total number and dollar value of scholarships obligated to eligible students;

5 (iii) the total number and dollar value of scholarships awarded to eligible students; and

6 (iv) the cost of the annual fiscal review;

7 (c) submit the annual fiscal review report provided for in this section to the department within 150 days
8 of the close of the calendar year.

9 (2) The department shall provide written notice to a student scholarship organization that fails to submit
10 the annual fiscal review report required by this section, and the organization has 30 days from receipt of the
11 notice to submit the report.

12 (3) An organization that fails to satisfy the conditions of this section is subject to termination as provided
13 in [section 12].

14

15 **NEW SECTION. Section 8. Website.** (1) The department shall maintain on its website a link to a current
16 list of all educational improvement organizations and student scholarship organizations that have provided notice
17 pursuant to [sections 4(1)(a) and 7(1)(a)].

18 (2) The list must include:

19 (a) a statistical compilation of the information received from the educational improvement organizations
20 and student scholarship organizations; and

21 (b) information regarding a description of the eligible public school programs that utilize grants as
22 provided in [section 4(1)(b)(ii) and (1)(b)(iii)].

23

24 **NEW SECTION. Section 9. Qualified education tax credit for contributions to educational**
25 **improvement organization.** (1) A taxpayer or corporation is allowed a credit against the tax imposed by chapter
26 30 or 31 for donations made to an educational improvement organization in a preapproved amount as provided
27 in this section. The amount of the credit allowed is equal to 50% of the donation.

28 (2) (a) If the credit allowed under this section is claimed by a small business corporation, as defined in
29 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners using the same proportion
30 used to report the corporation's or partnership's income or loss for Montana income tax purposes.

1 (b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust
2 may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's
3 income from the estate or trust for Montana income tax purposes.

4 (3) The total amount of the tax credit under this section for a tax year may not exceed 50% of the
5 taxpayer's income tax liability.

6 (4) There is no carryback or carryforward of the credit permitted under this section, and the credit must
7 be applied in the year the donation is made, as determined by the taxpayer's accounting method.

8 (5) (a) (i) The aggregate initial amount of tax credits allowed under this section is \$5 million beginning
9 in tax year 2015.

10 (ii) Beginning in 2016, by August 1 of each year, the department shall determine if the value of the grants
11 awarded in the prior tax year is greater than 80% of the amount of tax credits that were preapproved under
12 subsection (5)(c). If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by
13 30% for the current tax year. If the value of grants awarded is less than or equal to 80% of the amount of tax
14 credits that were preapproved under subsection (5)(c), then the aggregate amount of tax credits allowed remains
15 unchanged for the current tax year. The determination under this subsection (5)(a)(ii) must be based on the
16 annual fiscal reviews that the educational improvement organizations have provided to the department in
17 accordance with [section 4(1)(b)].

18 (b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served
19 basis.

20 (c) Before making a contribution to an educational improvement organization, a potential donor shall by
21 October 1 of the year in which the credit is sought notify the department of the total amount of contributions that
22 the potential donor intends to make to the educational improvement organization. The donor shall use a form that
23 is approved by the department for the notification, and the department shall preapprove or deny the requested
24 amount within 30 days after receiving the request from the potential donor. If within 30 days the department fails
25 to preapprove or deny the request, the request is considered approved. To receive a tax credit under this section,
26 a donor shall make the contribution to the educational improvement organization within 30 days after receiving
27 notice from the department that the requested amount was preapproved or within 30 days of the date the amount
28 was considered approved. If the potential donor does not make the contribution within the required time, the
29 department may not include the preapproved contribution amount when calculating the limit prescribed in
30 subsection (5)(a) and the donor may not receive the credit.

1 (d) Preapproval of contributions by the department must be based solely on the availability of tax credits
2 subject to the aggregate total limit established in subsection (5)(a).

3 (e) To claim the tax credit under this section, a taxpayer shall attach a form that is approved by the
4 department to the taxpayer's tax return confirming that a donation was made. The form must be signed by the
5 educational improvement organization and include the taxpayer's name, address, tax identification number, the
6 amount of the contribution, the date of the contribution, and the amount of the credit.

7 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for
8 state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of
9 the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

10 (a) claiming a credit under this section instead of a deduction; or

11 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for
12 which the credit is allowed under this section.

13

14 **NEW SECTION. Section 10. Qualified education tax credit for contributions to student scholarship**
15 **organizations.** (1) A taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for
16 donations made to a student scholarship organization in a preapproved amount as provided in this section. The
17 donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education
18 provider. The amount of the credit allowed is equal to 50% of the donation.

19 (2) (a) If the credit allowed under this section is claimed by a small business corporation, as defined in
20 15-30-3301, or a partnership, the credit must be attributed to shareholders or partners using the same proportion
21 used to report the corporation's or partnership's income or loss for Montana income tax purposes.

22 (b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust
23 may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's
24 income from the estate or trust for Montana income tax purposes.

25 (3) The total amount of the tax credit under this section for a tax year may not exceed 50% of the
26 taxpayer's income tax liability.

27 (4) There is no carryback or carryforward of the credit permitted under this section, and the credit must
28 be applied in the year the donation is made, as determined by the taxpayer's accounting method.

29 (5) (a) (i) The aggregate initial amount of tax credits allowed under this section is \$5 million beginning
30 in tax year 2015.

1 (ii) Beginning in 2016, by August 1 of each year, the department shall determine if the value of the
2 scholarships awarded in the prior tax year is greater than 80% of the amount of tax credits that were preapproved
3 under subsection (5)(c). If this condition is satisfied, the aggregate amount of tax credits allowed must be
4 increased by 30% for the current tax year. If the value of scholarships awarded is less than or equal to 80% of
5 the amount of tax credits that were preapproved under subsection (5)(c), then the aggregate amount of tax credits
6 allowed remains unchanged for the current tax year. The determination must be based on the annual fiscal
7 reviews that student scholarship organizations have provided to the department in accordance with [section
8 7(1)(b)].

9 (b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served
10 basis.

11 (c) Before making a contribution to a student scholarship organization, a potential donor shall by October
12 1 of the year in which the credit is sought notify the department of the total amount of contributions that the
13 potential donor intends to make to the student scholarship organization. The donor shall use a form that is
14 approved by the department for the notification, and the department shall preapprove or deny the requested
15 amount within 30 days after receiving the request from the potential donor. If within 30 days the department fails
16 to preapprove or deny the request, the request is considered approved. To receive a tax credit under this section,
17 a donor shall make the contribution to the student scholarship organization within 30 days after receiving notice
18 from the department that the requested amount was preapproved or within 30 days of the date the amount was
19 considered approved. If the potential donor does not make the contribution within the required time, the
20 department may not include the preapproved contribution amount when calculating the limit prescribed in
21 subsection (5)(a) and the donor may not receive the credit.

22 (d) Preapproval of contributions by the department must be based solely on the availability of tax credits
23 subject to the aggregate total limit established in subsection (5)(a).

24 (e) To claim the tax credit under this section, a taxpayer shall attach a form that is approved by the
25 department to the taxpayer's tax return confirming that a donation was made. The form must be signed by the
26 student scholarship organization and include the taxpayer's name, address, tax identification number, the amount
27 of the contribution, the date of the contribution, and the amount of the credit.

28 (6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for
29 state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of
30 the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

- 1 (a) claiming a credit under this section instead of a deduction; or
 2 (b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for
 3 which the credit is allowed under this section.

4
 5 **NEW SECTION. Section 11. Report to revenue and transportation interim committee --**
 6 **educational improvement organizations and student scholarship organizations.** Each biennium, the
 7 department shall provide to the revenue and transportation interim committee a list of educational improvement
 8 organizations and student scholarship organizations receiving contributions from businesses and individuals that
 9 are granted tax credits under [sections 9 and 10]. The listing must detail the tax credits claimed under the
 10 individual income tax in chapter 30 and the corporate license tax in chapter 31.

11
 12 **NEW SECTION. Section 12. Review determination -- termination -- confidentiality.** (1) Subject to
 13 subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to
 14 determining whether:

- 15 (a) an educational improvement organization is in compliance with [sections 3, 4, and 9]; and
 16 (b) a student scholarship organization is in compliance with [sections 5 through 7 and 10].

17 (2) If an educational improvement organization or student scholarship organization is not in compliance,
 18 the department shall provide to the organization written notice of the specific failures, and the organization has
 19 30 days from the date of the notice to correct deficiencies. If the organization fails to correct all deficiencies, the
 20 department shall provide a final written notice of the failure to the organization. The organization may appeal the
 21 department's determination of failure to comply according to the uniform dispute review procedure in 15-1-211
 22 within 30 days of the date of the notice.

23 (3) (a) If an educational improvement organization or student scholarship organization does not seek
 24 review under 15-1-211 or if the dispute is not resolved, the department shall issue a final department decision.

25 (b) The final department decision for an educational improvement organization must provide that the
 26 educational improvement organization:

27 (i) will be removed from the list of eligible educational improvement organizations provided in [section
 28 8] and notified of the removal;

29 (ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list:

30 (A) cease all operations as an educational improvement organization and transfer all grant account funds

1 to a properly operating educational improvement organization; and

2 (B) provide written notice to all applicants that have been preapproved for a tax credit that the
3 organization is not allowed to operate as an educational improvement organization and that the applicant has 45
4 days from the date the organization was removed from the eligible list to transfer preapproval status to another
5 educational improvement organization.

6 (c) The final department decision for a student scholarship organization must provide that the student
7 scholarship organization:

8 (i) will be removed from the list of eligible student scholarship organizations provided in [section 8] and
9 notified of the removal;

10 (ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list:

11 (A) cease all operations as a student scholarship organization and transfer all scholarship account funds
12 to a properly operating student scholarship organization; and

13 (B) provide written notice to all applicants that have been preapproved for a tax credit that the
14 organization is not allowed to operate as a student scholarship organization and that the applicant has 45 days
15 from the date the organization was removed from the eligible list to transfer preapproval status to another student
16 scholarship organization.

17 (4) An educational improvement organization or student scholarship organization that receives a final
18 department decision may seek review of the decision from the state tax appeal board pursuant to 15-2-302.

19 (5) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial
20 review pursuant to 15-2-303.

21 (6) If an educational improvement organization or student scholarship organization files an appeal
22 pursuant to this section, the organization may continue to operate until the decision of the court is final.

23 (7) The identity of donors who make contributions to an educational improvement organization or student
24 scholarship organization is confidential tax information that is subject to the provisions of 15-30-2618.

25

26 **NEW SECTION. Section 13. Rulemaking.** The department may adopt rules, prepare forms, and
27 maintain records that are necessary to implement and administer [sections 1 through 13].

28

29 **NEW SECTION. Section 14. Qualified education individual income tax credit for contributions to**
30 **educational improvement organization.** There is a credit against tax liability under this chapter for charitable

1 donations made to an educational improvement organization as provided in [section 9].

2

3 **NEW SECTION. Section 15. Qualified education individual income tax credit for contributions to**
4 **student scholarship organization.** There is a credit against tax liability under this chapter for charitable
5 donations made to a student scholarship organization as provided in [section 10].

6

7 **NEW SECTION. Section 16. Qualified education corporate tax credit for contributions to**
8 **educational improvement organization.** There is a credit against tax liability under this chapter for charitable
9 donations made to an educational improvement organization as provided in [section 9].

10

11 **NEW SECTION. Section 17. Qualified education corporate tax credit for contributions to student**
12 **scholarship organization.** There is a credit against tax liability under this chapter for charitable donations made
13 to a student scholarship organization as provided in [section 10].

14

15 **NEW SECTION. Section 18. Statewide average per-pupil spending.** (1) The superintendent of public
16 instruction shall calculate the per-pupil average of total public school expenditures in Montana for the prior school
17 fiscal year by August 1 of the ensuing school fiscal year and make the calculation available to the public. The
18 calculation is made by dividing total expenditures calculated in subsection (2) by total pupils calculated in
19 subsection (3).

20 (2) Funds to be included in total school expenditures include but are not limited to:

21 (a) district general fund expenditures;

22 (b) transportation;

23 (c) bus depreciation;

24 (d) food services;

25 (e) tuition;

26 (f) retirement;

27 (g) miscellaneous programs;

28 (h) traffic education;

29 (i) nonoperating fund;

30 (j) lease-rental agreement;

- 1 (k) compensated absence fund;
- 2 (l) metal mines tax reserve;
- 3 (m) state mining impact;
- 4 (n) impact aid;
- 5 (o) litigation reserve;
- 6 (p) technology acquisition;
- 7 (q) flexibility fund;
- 8 (r) debt service;
- 9 (s) building reserve; and
- 10 (t) interlocal agreement.

11 (3) Total pupils are computed using an amount equal to the per-pupil average, but not the per-ANB
12 average provided in 20-9-311, for Montana school districts for the previous school year.

13

14 **Section 19.** Section 15-30-2110, MCA, is amended to read:

15 **"15-30-2110. Adjusted gross income.** (1) Subject to subsection (13), adjusted gross income is the
16 taxpayer's federal adjusted gross income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62,
17 and in addition includes the following:

18 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
19 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
20 under federal law;

21 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
22 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);

23 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
24 reduction of Montana income tax liability;

25 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
26 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

27 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

28 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the
29 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

30 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of

1 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
2 of the same estate or trust for the same tax period; and

3 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after
4 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted
5 gross income.

6 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
7 include the following, which are exempt from taxation under this chapter:

8 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
9 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
10 from taxation by Montana under federal law;

11 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
12 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

13 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
14 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

15 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
16 received as defined in 15-30-2101;

17 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

18 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
19 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
20 excess of \$30,000 as shown on the taxpayer's return;

21 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
22 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
23 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000
24 as shown on their joint return;

25 (d) all Montana income tax refunds or tax refund credits;

26 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

27 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section
28 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
29 1, 1983, received by a person for services rendered to patrons of premises licensed to provide food, beverage,
30 or lodging;

- 1 (g) all benefits received under the workers' compensation laws;
- 2 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
3 employee under federal law, including premiums paid by the employer for an employee pursuant to 33-22-166;
- 4 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
5 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";
- 6 (j) principal and income in a medical care savings account established in accordance with 15-61-201
7 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
8 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;
- 9 (k) principal and income in a first-time home buyer savings account established in accordance with
10 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
11 of a single-family residence;
- 12 (l) contributions or earnings withdrawn from a family education savings account or from a qualified tuition
13 program established and maintained by another state as provided by section 529(b)(1)(A)(ii) of the Internal
14 Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), for qualified higher education expenses, as defined in 15-62-103, of
15 a designated beneficiary;
- 16 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
17 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;
- 18 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
19 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
20 of the same estate or trust for the same tax period;
- 21 (o) deposits, not exceeding the amount set forth in 15-30-3003, deposited in a Montana farm and ranch
22 risk management account, as provided in 15-30-3001 through 15-30-3005, in any tax year for which a deduction
23 is not provided for federal income tax purposes;
- 24 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
25 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
26 taxpayer meet the filing requirements in 15-30-2602.
- 27 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or
28 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303;
- 29 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero; ~~and~~
- 30 (s) the amount of the gain recognized from the sale or exchange of a mobile home park as provided in

1 15-31-163; and

2 (t) the amount of a scholarship to a student by an educational improvement organization or a student
3 scholarship organization pursuant to [sections 3 and 6].

4 (3) A shareholder of a DISC that is exempt from the corporate income tax under 15-31-102(1)(l) shall
5 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
6 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
7 is effective.

8 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
9 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
10 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
11 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
12 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
13 be made to determine the amount of income or loss of the partnership or small business corporation.

14 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
15 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
16 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
17 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
18 Montana return.

19 (6) Married taxpayers filing a joint federal return who are allowed a capital loss deduction under section
20 1211 of the Internal Revenue Code, 26 U.S.C. 1211, and who file separate Montana income tax returns may
21 claim the same amount of the capital loss deduction that is allowed on the federal return. If the allowable capital
22 loss is clearly attributable to one spouse, the loss must be shown on that spouse's return; otherwise, the loss
23 must be split equally on each return.

24 (7) In the case of passive and rental income losses, married taxpayers filing a joint federal return and
25 who file separate Montana income tax returns are not required to recompute allowable passive losses according
26 to the federal passive activity rules for married taxpayers filing separately under section 469 of the Internal
27 Revenue Code, 26 U.S.C. 469. If the allowable passive loss is clearly attributable to one spouse, the loss must
28 be shown on that spouse's return; otherwise, the loss must be split equally on each return.

29 (8) Married taxpayers filing a joint federal return in which one or both of the taxpayers are allowed a
30 deduction for an individual retirement contribution under section 219 of the Internal Revenue Code, 26 U.S.C.

1 219, and who file separate Montana income tax returns may claim the same amount of the deduction that is
2 allowed on the federal return. The deduction must be attributed to the spouse who made the contribution.

3 (9) (a) Married taxpayers filing a joint federal return who are allowed a deduction for interest paid for a
4 qualified education loan under section 221 of the Internal Revenue Code, 26 U.S.C. 221, and who file separate
5 Montana income tax returns may claim the same amount of the deduction that is allowed on the federal return.
6 The deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted
7 gross income.

8 (b) Married taxpayers filing a joint federal return who are allowed a deduction for qualified tuition and
9 related expenses under section 222 of the Internal Revenue Code, 26 U.S.C. 222, and who file separate Montana
10 income tax returns may claim the same amount of the deduction that is allowed on the federal return. The
11 deduction may be split equally on each return or in proportion to each taxpayer's share of federal adjusted gross
12 income.

13 (10) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
14 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
15 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
16 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
17 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
18 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
19 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
20 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
21 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
22 or expected to last at least 12 months.

23 (11) (a) An individual who contributes to one or more accounts established under the Montana family
24 education savings program or to a qualified tuition program established and maintained by another state as
25 provided by section 529(b)(1)(A)(ii) of the Internal Revenue Code, 26 U.S.C. 529(b)(1)(A)(ii), may reduce adjusted
26 gross income by the lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each
27 spouse is entitled to a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses
28 may jointly elect to treat half of the total contributions made by the spouses as being made by each spouse. The
29 reduction in adjusted gross income under this subsection applies only with respect to contributions to an account
30 of which the account owner is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the

1 taxpayer's child or stepchild is a Montana resident. The provisions of subsection (1)(e) do not apply with respect
2 to withdrawals of contributions that reduced adjusted gross income.

3 (b) Contributions made pursuant to this subsection (11) are subject to the recapture tax provided in
4 15-62-208.

5 (12) (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection
6 (12)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

7 (i) is a health care professional licensed in Montana as provided in Title 37;

8 (ii) is serving a significant portion of a designated geographic area, special population, or facility
9 population in a federally designated health professional shortage area, a medically underserved area or
10 population, or a federal nursing shortage county as determined by the secretary of health and human services
11 or by the governor;

12 (iii) has had a student loan incurred as a result of health-related education; and

13 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment
14 program described in subsection (12)(b) as an incentive to practice in Montana.

15 (b) For the purposes of subsection (12)(a), a loan repayment program includes a federal, state, or
16 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
17 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
18 as a licensed health care professional.

19 (13) Notwithstanding the provisions of subsection (1), adjusted gross income does not include 40% of
20 capital gains on the sale or exchange of capital assets before December 31, 1986, as capital gains are
21 determined under subchapter P. of Chapter 1 of the Internal Revenue Code as it read on December 31, 1986.

22 (14) By November 1 of each year, the department shall multiply the amount of pension and annuity
23 income contained in subsection (2)(c)(i) and the federal adjusted gross income amounts in subsection (2)(c)(ii)
24 by the inflation factor for that tax year, but using the year 2009 consumer price index, and rounding the results
25 to the nearest \$10. The resulting amounts are effective for that tax year and must be used as the basis for the
26 exemption determined under subsection (2)(c). (Subsection (2)(f) terminates on occurrence of contingency--sec.
27 3, Ch. 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

28
29 **NEW SECTION. Section 20. Codification instruction.** (1) [Sections 1 through 13] are intended to be
30 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 13].

