

1 HOUSE BILL NO. 408

2 INTRODUCED BY S. VINTON, M. BINKLEY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STUDENT SCHOLARSHIP ORGANIZATION AND  
5 INNOVATIVE EDUCATIONAL PROGRAM INCOME TAX CREDITS; INCREASING THE AGGREGATE LIMITS  
6 FOR THE CREDITS; LIMITING THE AMOUNT OF DONATIONS THAT A SCHOOL DISTRICT MAY RETAIN;  
7 PROVIDING FOR REDISTRIBUTION OF FUNDS THAT EXCEED A SCHOOL DISTRICT'S LIMIT TO  
8 SCHOOL DISTRICTS THAT RECEIVE ADVANCED OPPORTUNITY AID; REVISING THE DEFINITION OF  
9 "INNOVATIVE EDUCATIONAL PROGRAM"; PROVIDING A STATUTORY APPROPRIATION; AMENDING  
10 SECTIONS 15-30-3102, 15-30-3110, 15-30-3111, AND 17-7-502, MCA; AMENDING SECTIONS 23 AND 24,  
11 CHAPTER 480, LAWS OF 2021; REPEALING SECTIONS 8, 9, 10, 14, 15, 16, AND 25, CHAPTER 480, LAWS  
12 OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A  
13 TERMINATION DATE."

14

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

16

17 **NEW SECTION. Section 1. Innovative educational program account -- revenue allocated --**  
18 **appropriations from account.** (1) There is an innovative educational program account in the state special  
19 revenue fund established in 17-2-102. The funds in the account must be administered by the superintendent of  
20 public instruction.

21 (2) The superintendent of public instruction shall deposit in the account innovative educational  
22 program donations transferred from school districts because the donations exceed the limits provided for in 15-  
23 30-3110(7).

24 (3) Interest and earnings on the account must be deposited in the account.

25 (4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the superintendent  
26 of public instruction for distribution pursuant to 15-30-3110(7)(c) to school districts that receive advanced  
27 opportunity aid under 20-7-1506(4). The funds must be distributed at the same time and in the same proportion  
28 as the advanced opportunity aid distributions.

**Amendment - 1st Reading-white - Requested by: Dave Fern - (H) Taxation**

- 2023

68th Legislature 2023

Drafter: Megan Moore, 406-444-4496

HB0408.001.003

- 1 (e) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.
- 2 (8) "Small business corporation" has the meaning provided in 15-30-3301.
- 3 (9) "Student scholarship organization" means a charitable organization in this state that:
- 4 (a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code,
- 5 26 U.S.C. 501(c)(3);
- 6 (b) allocates not less than 90% of its annual revenue from donations eligible for the tax credit
- 7 under 15-30-3111 for scholarships to allow students to enroll with any qualified education provider; and
- 8 (c) provides educational scholarships to eligible students without limiting student access to only
- 9 one education provider.
- 10 (10) "Taxpayer" has the meaning provided in 15-30-2101. (Terminates December 31, 2029--secs.
- 11 20 and 24(6), Ch. 480, L. 2021.)"
- 12

13 **Section 3.** Section 15-30-3110, MCA, is amended to read:

14 ~~" 15-30-3110. (Temporary) Credit for providing supplemental funding to public schools --~~

15 ~~innovative educational program. (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit~~

16 ~~against the tax imposed by chapter 30 or 31 for donations made to a school district for the purpose of providing~~

17 ~~supplemental funding to the school district for innovative educational programs. The amount of the credit~~

18 ~~allowed is equal to the amount of the donation, not to exceed \$200,000. A district shall deposit a donation made~~

19 ~~for an innovative educational program into the district's miscellaneous programs fund and shall limit the~~

20 ~~expenditure of the donation to expenditures for innovative educational programs of the district.~~

21 ~~(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-~~

22 ~~through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the~~

23 ~~same proportion as used to report the entity's income or loss.~~

24 ~~(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust~~

25 ~~may be attributed to each beneficiary of the estate or trust in the same proportion used to report the~~

26 ~~beneficiary's income from the estate or trust for Montana income tax purposes.~~

27 ~~(3) The credit allowed under this section may not exceed the taxpayer's income tax liability but may~~

28 ~~be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first~~

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1 to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

2 ~~(4) (a) (i) The aggregate amount of tax credits allowed under this section is \$1 million per year in tax~~  
3 ~~year 2022 and \$2 million per year in tax year 2023 and subsequent tax years except as provided in this~~  
4 ~~subsection (4)(a).~~

5 ~~(ii) Beginning in 2023, by December 31 of each year, the department shall determine if 80% of the~~  
6 ~~aggregate limit provided for in subsection (4)(a)(iii) in donations was preapproved by the department. If this~~  
7 ~~condition is satisfied, the aggregate amount of tax credits allowed must be increased by 20% for the~~  
8 ~~succeeding tax years.~~

9 ~~(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the~~  
10 ~~base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of~~  
11 ~~subsection (4)(a)(ii).~~

12 ~~(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made~~  
13 ~~regardless of whether the full credit is claimed in that tax year or carried forward.~~

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

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

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

20 ~~(6) (a) On receiving a donation under this part, a school district shall seek preapproval, in a manner~~  
21 ~~prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the~~  
22 ~~aggregate limit under subsection (4).~~

23 ~~(b) On preapproval by the department, a school district shall issue a receipt, in a form prescribed by~~  
24 ~~the department, to each contributing taxpayer indicating the value of the donation received and preapproval of~~  
25 ~~the tax credit.~~

26 ~~(c) A taxpayer shall provide a copy of the receipt when claiming the tax credit. (Terminates December~~  
27 ~~31, 2022, 2023, and 2024, on occurrence of contingency until June 30, 2025—secs. 23(7), 25, Ch. 480, L. 2021-~~  
28 ~~see compiler's comment.)~~

1           ~~15-30-3110. (Temporary—effective on occurrence of contingency) Credit for providing~~  
2 ~~supplemental funding to public schools—innovative educational program.~~ (1) Subject to subsection (4),  
3 a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to  
4 a school district for the purpose of providing supplemental funding to the school district for innovative  
5 educational programs. The amount of the credit allowed is equal to the amount of the donation, not to exceed  
6 \$150. A district shall deposit a donation made for an innovative educational program into the district's  
7 miscellaneous programs fund and shall limit the expenditure of the donation to expenditures for innovative  
8 educational programs of the district.

9           ~~(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-~~  
10 ~~through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the~~  
11 ~~same proportion as used to report the entity's income or loss.~~

12           ~~(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust~~  
13 ~~may be attributed to each beneficiary of the estate or trust in the same proportion used to report the~~  
14 ~~beneficiary's income from the estate or trust for Montana income tax purposes.~~

15           ~~(3) The credit allowed under this section may not exceed the taxpayer's income tax liability. There is~~  
16 ~~no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the~~  
17 ~~year the donation is made, as determined by the taxpayer's accounting method.~~

18           ~~(4) (a) (i) The aggregate amount of tax credits allowed under this section is \$1 million per year in tax~~  
19 ~~year 2022 and \$2 million per year in tax year 2023 and subsequent tax years except as provided in this~~  
20 ~~subsection (4)(a).~~

21           ~~(ii) Beginning in 2023, by December 31 of each year, the department shall determine if 80% of the~~  
22 ~~aggregate limit provided for in subsection (4)(a)(iii) in donations was preapproved by the department. If this~~  
23 ~~condition is satisfied, the aggregate amount of tax credits allowed must be increased by 20% for the~~  
24 ~~succeeding tax years.~~

25           ~~(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the~~  
26 ~~base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of~~  
27 ~~subsection (4)(a)(ii).~~

28           ~~(b) The aggregate limit under this subsection (4) applies to the year in which a donation is made~~

1 regardless of whether the full credit is claimed in that tax year or carried forward.

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

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

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

8 (6) (a) On receiving a donation under this part, a school district shall seek preapproval, in a manner  
9 prescribed by the department, that the amount of tax credit sought by the taxpayer is available under the  
10 aggregate limit under subsection (4).

11 (b) On preapproval by the department, a school district shall issue a receipt, in a form prescribed by  
12 the department, to each contributing taxpayer indicating the value of the donation received and preapproval of  
13 the tax credit.

14 (c) A taxpayer shall provide a copy of the receipt when claiming the tax credit.

15 **15-30-3110. (Temporary -- effective July 1, 2025) Credit for providing supplemental funding to**  
16 **public schools -- innovative educational program.** (1) Subject to subsection (4), a taxpayer or corporation is  
17 allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a school district for the  
18 purpose of providing supplemental funding to the school district for innovative educational programs. The  
19 amount of the credit allowed is equal to the amount of the donation, not to exceed \$200,000. A district shall  
20 deposit a donation made for an innovative educational program into the district's miscellaneous programs fund  
21 and shall limit the expenditure of the donation to expenditures for innovative educational programs of the  
22 district.

23 (2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-  
24 through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the  
25 same proportion as used to report the entity's income or loss.

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

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1 (3) The credit allowed under this section may not exceed the taxpayer's income tax liability but  
2 may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried  
3 first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

4 (4) (a) (i) The aggregate amount of tax credits allowed under this section is ~~\$1 million per year in~~  
5 ~~tax year 2022 and~~ \$2 million per year in tax year 2023 and \$5 million per year in tax year 2024 and subsequent  
6 tax years except as provided in this subsection (4)(a).

7 (ii) Beginning in ~~2023~~ 2024, by December 31 of each year, the department shall determine if 80%  
8 of the aggregate limit provided for in subsection (4)(a)(iii) in donations was preapproved by the department. If  
9 this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 20% for the  
10 succeeding tax years.

11 (iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the  
12 base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of  
13 subsection (4)(a)(ii).

14 (b) The aggregate limit under this subsection (4) applies to the year in which a donation is made  
15 regardless of whether the full credit is claimed in that tax year or carried forward.

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

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

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

22 (6) (a) On receiving a donation under this part, a school district shall seek preapproval, in a  
23 manner prescribed by the department, that the amount of tax credit sought by the taxpayer is available under  
24 the aggregate limit under subsection (4).

25 (b) On preapproval by the department, a school district shall issue a receipt, in a form prescribed  
26 by the department, to each contributing taxpayer indicating the value of the donation received and preapproval  
27 of the tax credit.

28 (c) A taxpayer shall provide a copy of the receipt when claiming the tax credit.

(7) (a) A school district may not retain donations under this section that exceed either:

(i) the greater of \$50,000 or ~~45%~~ 10% of the school district's maximum general fund budget; or

(ii) ~~20%~~ 10% of the total aggregate amount provided for in subsection (4).

(b) If a school district receives donations that exceed the amounts provided for in subsection (7)(a), the school district shall transfer the excess funds within 30 days to the superintendent of public instruction for deposit in the account provided for in [section 1].

(c) The superintendent of public instruction shall distribute funds received under subsection (7)(b) to school districts that receive advanced opportunity aid under 20-7-1506(4). A school district shall deposit funds received under this subsection (7)(c) into the school district flexibility fund and use them for out-of-pocket pupil costs provided for in 20-7-1506(5)(a).

(8) A school district shall deposit retained donations into the school district's miscellaneous programs fund and shall limit the expenditure of the donation to expenditures for innovative educational programs of the school district. (Terminates December 31, 2029--secs. 20, 24(6), Ch. 480, L. 2021.)"

**Section 4.** Section 15-30-3111, MCA, is amended to read:

~~" 15-30-3111. (Temporary) Qualified education tax credit for donations to student scholarship organizations. (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate donations to a parent, legal guardian, or specific qualified education provider. The amount of the credit allowed is equal to the amount of the donation, not to exceed \$200,000.~~

~~(2) (a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.~~

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

~~(3) The credit allowed under this section may not exceed the taxpayer's income tax liability but may be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first~~