

STUDENT SCHOLARSHIP ORGANIZATION CREDIT

EXPLANATION OF CREDIT

The student scholarship organization credit is a credit for donations made to a charitable organization that uses revenue from donations to provide scholarships for students to enroll with a qualified education provider.

The credit may be claimed by an individual or a corporation and is equal to 100% of the donation amount up to a maximum of \$200,000 per taxpayer. Married taxpayers may each claim the credit. Unused credit may be carried forward for 3 years.

Aggregate tax credits are limited to \$1 million in 2022 and \$2 million in 2023. If 80% of the limit is reached in 2023, the limit for 2024 must be increased by 20%. The increased limit then becomes the new base year and the subsequent year's limit is increased if the 80% threshold is met.

Student scholarship organizations registered \$1 million in donations, the 2022 limit, by Jan. 19, 2022.¹

The student scholarship organization credit terminates on Dec. 31, 2029.

REQUIREMENTS RELATED TO STUDENT SCHOLARSHIPS

The student scholarship organizations that receive donations eligible for the credit must:

- be tax-exempt 501(c)(3) organizations;
- use at least 90% of revenue from donations for scholarships to allow students to enroll with any qualified education provider;
- may not reserve scholarships for use at a particular education provider and must allow a student receiving a scholarship to enroll with any qualified education provider.

¹ "Stats," Student Scholarship Organization Tax Credit, available from: <https://svc.mt.gov/dor/educationdonation2/Pages/Reports/PublicStats?dt=SSO>, accessed Feb. 18, 2022.

A qualified education provider is not a public school or a home school and must:

- be accredited, have applied for accreditation, or be provisionally accredited by a state, regional, or national accreditation organization, or be a nonaccredited provider or tutor that has informed the child's parents in writing that the provider is not accredited and is not seeking accreditation;
- satisfy health and safety requirements for private schools; and
- qualify under state law for an exemption from compulsory enrollment.

To qualify for a scholarship eligible for a tax credit, a student must be a Montana resident between the ages of 5 and 19.

PURPOSE & LEGISLATIVE HISTORY

PURPOSE OF CREDIT IS TO PROVIDE CHOICE

The purpose of the student scholarship organization credit is outlined in [15-30-3101](#):

15-30-3101. (Temporary) Purpose. Pursuant to 5-4-104, the legislature finds that the purpose of student scholarship organizations is to provide parental and student choice in education with private donations through tax replacement programs.

CREDIT AMENDED ONCE SINCE 2016

The Legislature amended the student scholarship organization credit once since its enactment in 2016. [HB 279](#) (2021) revised both the tax credit – by significantly increasing the maximum credit and allowing the credit to be carried forward – and requirements for student scholarships. The credit was due to expire in 2023 but HB 279 extended the termination to 2029. The following table summarizes the 2021 legislative changes.

STUDENT SCHOLARSHIP ORGANIZATION CREDIT CHANGES, 2021

| 2016-2021 | | 2022 and After |
|-------------------------------|--|---|
| Credit Changes | | |
| Maximum Credit | \$150 | \$200,000 |
| Carry Forward | No | 3 years |
| Aggregate Credit Limit | \$3 million | 2022: \$1 million 2023: \$2 million 2024 and after: \$2 million, with growth factor |
| Termination | 2023 | 2029 |
| Scholarship Changes | | |
| Testing requirement | Qualified education provider required to administer nationally recognized standardized assessment test or criterion test | No testing required |
| Scholarship limit | <ul style="list-style-type: none"> 50% of per-pupil average of total school expenditures Average scholarship not to exceed 30% of per-pupil average of total school expenditures | <ul style="list-style-type: none"> Per-pupil average of total school expenditures (\$13,380 for FY21) Removes average scholarship requirement |

TAXPAYER USE OF CREDIT

CREDIT CAP NOT REACHED BEFORE 2022 CREDIT INCREASE

Between 2016 and 2020², student scholarship organization credits claimed were far less than the \$3 million aggregate credit limit.

Individual taxpayers claimed the entire \$80,066 in credit; no corporations claimed a credit for a donation to a student scholarship organization.³ Information on whether the taxpayers claiming the credit are residents, non-

² Data on tax credits claimed for tax year 2021 is not yet available because those tax returns are currently being filed. Donation data for 2021 provided by the Department of Revenue indicates that 2021 donations totaled \$2,600.

³ In the April 14, 2020, "[Annual Report on Student Scholarship Organization Credit](#)," Aaron McNay indicates that a corporation did claim the student scholarship organization credit in 2017. The Department of Revenue determined the claim of the credit was a typo and confirmed that no corporations claimed the credit between 2016 and 2020. Email from Aaron McNay, March 15, 2022.

residents, or part-year residents is not provided because there were few non-residents and part-year residents claiming credits.

STUDENT SCHOLARSHIP ORGANIZATION PROGRAM CREDITS CLAIMED, 2016-2020

| Montana Student Scholarship Education Credit | | | |
|--|---------------------------------------|---------------------------------|------------------------|
| Tax Year | Number of Returns Claiming The Credit | Total Number of Credits Claimed | Average Credit Claimed |
| 2016 | 188 | \$32,129 | \$171 |
| 2017 | 175 | \$28,482 | \$163 |
| 2018 | 75 | \$11,651 | \$155 |
| 2019 | 12 | \$1,563 | \$130 |
| 2020 | 44 | \$6,241 | \$142 |
| Total | 494 | \$80,066 | \$162 |

Source: Department of Revenue

RELATED CREDIT LITIGATION MAY HAVE AFFECTED CREDIT USAGE

The bill enacting the student scholarship organization credit was the subject of litigation filed in 2016 and ultimately decided by the U.S. Supreme Court in 2020. Uncertainty about the credit's future may have affected donations and credits during the litigation period.

BIG SKY SCHOLARSHIPS RECEIVED MOST DONATIONS BEFORE 2022

For tax years 2016 through 2020, the only registered student scholarship organization was Big Sky Scholarships. In tax year 2021, both Big Sky Scholarships and ACE Scholarships collected donations. Of the \$2,600 in 2021 donations, Big Sky Scholarships received \$2,000 and ACE Scholarships collected \$600.⁴

DONATIONS SUGGEST LARGER CREDITS TO BE CLAIMED IN 2022

Donations to student scholarship organizations in 2022 reached the \$1 million limit after 13 days. This indicates that \$1 million of tax credits could be claimed when taxpayers file their 2022 tax returns. However, some taxpayers may not have sufficient tax liability to claim the full donation amount and may carry forward the credit for up to 3 years.

⁴ Department of Revenue data on education portal donations, 2016-2021, provided via email from Tony Zammit, Feb. 22, 2022.

Seven student scholarship organizations received the 69 donations totaling \$1 million. Sixty individuals donated \$880,000, and 9 corporations gave an additional \$120,000. The average individual donation was \$14,667 and the average corporation donation was \$13,333. The following table shows the donations received by each organization⁵.

STUDENT SCHOLARSHIP ORGANIZATIONS RECEIVING DONATIONS, 2022

| | Number of donations | Total donations | Average donation |
|--------------------------------------|---------------------|--------------------|------------------|
| ACE Scholarships | 24 | \$486,300 | \$20,263 |
| Missoula Catholic Schools Foundation | 15 | \$352,200 | \$23,480 |
| St. Matthew's Catholic School | 19 | \$69,000 | \$3,632 |
| Holy Spirit Catholic School | 4 | \$61,000 | \$15,250 |
| St. Mary's Catholic School | 2 | \$12,500 | \$6,250 |
| Intermountain Children's Services | 2 | \$12,000 | \$6,000 |
| The Way Christian School | 3 | \$7,000 | \$2,333 |
| Total | 69 | \$1,000,000 | \$14,492 |

ADDITIONAL CONSIDERATIONS

ARPA SAVINGS CLAUSE AIMS TO PREVENT LOSS OF FEDERAL FUNDS

The 2021 Legislature included language in [HB 279](#) and other bills that reduced taxes or increased tax credits to prevent the potential loss of federal funds available to states through the American Rescue Plan Act (ARPA). The bills include a contingent termination that rolls back the changes if the director of the Office of Budget and Program Planning determines that the amended laws would result in a reduction of federal funds or require the state to repay funds received.

If the contingent termination is triggered, the changes to the aggregate credit limit and to scholarship and qualified education provider requirements would remain in law. The only portions of the law that would terminate are the increase in the credit amount to \$200,000, and the ability to carry the credit forward for 3 years.

⁵ "Stats," Student Scholarship Organization Tax Credit, available from: <https://svc.mt.gov/dor/educationdonation2/Pages/Reports/PublicStats?dt=SSO>, accessed Feb. 18, 2022.

AGENCY INPUT ON ADMINISTRATION OF CREDIT PROVISIONS

This section discusses administrative issues raised by agencies involved in administering the credit.

The Department of Revenue raised one concern about the credit explained in the following scenario involving pass-through entities making donations eligible for the credit. The maximum credit a taxpayer may claim is \$200,000 beginning in 2022 and there is a \$1 million cap on total credits claimed in that year.

Scenario: A taxpayer has multiple pass-through entities. The taxpayer gets preapproved for an individual donation and donations by pass-throughs that exceed the \$200,000 per taxpayer limit. The \$1 million aggregate limit is reached for the year and no more donations are allowed.

The taxpayer files a tax return claiming a credit in excess of \$200,000 based on donations by the individual taxpayer and by pass-throughs in which the taxpayer has an ownership interest. Student scholarship organizations receive the preapproved donations. DOR should catch this error when the tax return is filed. However, other taxpayers wishing to claim the credit may be prevented from doing so because the aggregate limit was reached based on donations that are later determined not to qualify for the credit.

- DOR plans to address this concern in administrative rules, but the committee may wish to clarify in statute that an individual taxpayer is subject to the maximum credit amount even if multiple pass-through entities, trusts, or estates in which the taxpayer has an ownership interest make donations.

STATE SCHOLARSHIP TAX CREDIT PROGRAMS

Twenty-one states have state scholarship tax credit programs. Unless indicated otherwise, the summary information contained in the table below is from Ed Choice's [Tax-Credit Scholarships website](#).

| State | Credit Name | Credit Amount | Maximum Credit | | Carry-forward | Aggregate Limit | Use of funds |
|-------|--|---------------|--|----------------------|-----------------------|-----------------|--|
| | | | Ind. | Business | | | |
| AL | Tax Credit for Contributions to Scholarship Granting Organizations | 100% | \$50,000, not to exceed 50% of tax liability | 50% of tax liability | 3 years ⁶ | \$30 million | Scholarships for students who qualify for federal free and reduced-price lunch program (FRL) and zoned to attend a public school designated as failing |
| AZ | Individual Income Tax Credit Scholarship Program | 100% | \$611 Single \$1,221 MFJ | N/A | 5 years ⁷ | None | Scholarships for K-12 students or preschool students with disabilities |
| | Low-Income Corporate Income Tax Scholarship Program | 100% | N/A | No maximum | 5 years ⁸ | \$135 million | Scholarships for students with family income of 185% or less of income qualifying for FRL |
| | Lexie's Law for Disabled and Displaced Students Tax Credit Scholarship Program | 100% | N/A | No maximum | 5 years ⁹ | \$6 million | Scholarships for students with special needs and those in foster care |
| | Switcher Individual Income Tax Credit Scholarship Program | 100% | \$608 single \$1,214 MFJ ¹⁰ | N/A | 5 years ¹¹ | None | Scholarships for K-12 students or preschool students with disabilities |

⁶ [The Code of Alabama](#), Section 16-6D-9.

⁷ Arizona Revised Statutes, [43-1089](#).

⁸ Arizona Revised Statutes, [20-224.06](#).

⁹ Arizona Revised Statutes, [20-224.07](#).

¹⁰ Must first make max donation for individual income tax credit scholarship program

¹¹ Arizona Revised Statutes, [43-1089.03](#).

Student Scholarship Organization Credit

| State | Credit Name | Credit Amount | Maximum Credit | | Carry-forward | Aggregate Limit | Use of funds |
|-------|---|---------------|--|----------------------|------------------------------------|-----------------|---|
| | | | Ind. | Business | | | |
| AR | Philanthropic Investment in Arkansas Kids Scholarship Program | 100% | No maximum | | 3 years ¹² | \$2 million | Scholarships for students with family income up to 200% of federal poverty level (FPL) |
| FL | Florida Tax Credit Scholarship Program | 100% | N/A | No maximum | 10 years ¹³ | \$873.6 million | Scholarships for students with family income up to 375% of FPL (priority given to families with 185% or less) or in foster care |
| | Hope Scholarship Program | 100% | \$105/vehicle | | N/A | None | Purchasers of motor vehicles can donate sales tax to provide scholarships to victims of bullying and violence in public schools |
| GA | Qualified Education Expense Tax Credit | 100% | \$1,000 Single \$1,250 MFS \$2,500 MFJ | 75% of tax liability | 5 years (corps only) ¹⁴ | \$100 million | Scholarships for K-12 students |
| IA | School Tuition Organization Tax Credit | 75% | No maximum | | 5 years ¹⁵ | \$20 million | Scholarships for students with family income that does not exceed 400% of FPL |
| IL | Invest in Kids Program | 75% | \$1 million | | 5 years | \$75 million | Scholarships for students with family income that does not exceed 300% of FPL |
| IN | School Scholarship Tax Credit | 50% | No maximum | | 9 years ¹⁶ | \$18.5 million | Scholarships for students with family income that does not exceed 300% of income qualifying for FRL |

¹² State of Arkansas, 93rd General Assembly, Regular Session 2021, [Senate Bill 680](#).

¹³ Florida Statutes, [1002.395](#)

¹⁴ [Qualified Education Expense Tax Credit form](#)

¹⁵ Iowa Code 2022, [Section 422.11S](#).

¹⁶ Indiana Code, [Section 6-3.1-30.5-9.5](#).

Student Scholarship Organization Credit

| State | Credit Name | Credit Amount | Maximum Credit | | Carry-forward | Aggregate Limit | Use of funds |
|-------|--|---------------|----------------|----------|-----------------------|---|---|
| | | | Ind. | Business | | | |
| KS | Tax Credit for Low Income Students Scholarship Program | 70% | \$500,000 | | Yes ¹⁷ | \$10 million | Scholarships for students with family income that does not exceed 100% of income qualifying for FRL |
| LA | Tuition Donation Credit Program | 100% | No maximum | | 3 years ¹⁸ | None | Scholarships for students with family income of 250% or less of FPL |
| MT | Student Scholarship Organization Credit | 100% | \$200,000 | | 3 years ¹⁹ | 2022: \$1 million 2023: \$2 million 2024 and after: \$2 million, with growth factor | Scholarships for students to enroll with a qualified education provider |
| NH | Education Tax Credit Program | 85% | \$600,000 | | 5 years ²⁰ | \$5.1 million | Scholarships for private school, tutoring, online learning, college classes, or homeschooling expenses for students with family income of 300% or less of FPL |

¹⁷ No limit on number of years for carryforward. Kansas Statutes Annotated, [Section 72-4357](#).

¹⁸ [RS 47:6301](#).

¹⁹ "[General Information on the Invest in Kids Act](#)," Illinois Department of Revenue, accessed March 25, 2022.

²⁰ New Hampshire Statutes, [Section 77-G:4](#).

Student Scholarship Organization Credit

| State | Credit Name | Credit Amount | Maximum Credit | | Carry-forward | Aggregate Limit | Use of funds |
|-------|--|--|-------------------------------|--|-----------------------|------------------|---|
| | | | Ind. | Business | | | |
| NV | Nevada Educational Choice Scholarship Program | 100% | N/A | No maximum | 5 years | \$14.235 million | Scholarships for students with family income of 300% or less of FPL |
| OH | Ohio Tax-Credit Scholarship Program | 100% | \$750 | N/A | No | None | Scholarships for K-12 students with priority given to low-income families |
| OK | Oklahoma Equal Opportunity Education Scholarships | 50% (75% for same contribution for 2 years) | \$1,000 Single \$2,000 MFJ | \$100,000 | 3 years ²¹ | \$25 million | Scholarships for students with family income of 300% or less of FPL or that attend a public school designated as "in need of improvement" |
| PA | Opportunity Scholarship Tax Credit Program | 75% (90% for same contribution for 2 years) | N/A | \$750,000 | No ²² | \$55 million | Scholarships for students with family income below \$96,676 plus \$17,017 for each child |
| | Educational Improvement Tax Credit Program | | | | | \$175 million | Grants to public schools, charter schools, and private schools for innovative educational programs |
| RI | Tax Credits for Contributions to Scholarship Organizations | 75% (90% for 2 years if second year's donation is 80% of first year's) | N/A | \$100,000 (may not exceed minimum tax) | No ²³ | \$1.5 million | Scholarships for students with family income of less than 250% of FPL |

²¹ [68 O.S. Section 2357.206 \(OSCN 2022\), Oklahoma Equal Opportunity Scholarship Act.](#)

²² FYs 2021 and 2022 only: 2-year carryforward. [24 P.S. Section 20-2006-B.](#)

²³ Rhode Island General Laws, [Section 44-62-5.](#)

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| State | Credit Name | Credit Amount | Maximum Credit | | Carry-forward | Aggregate Limit | Use of funds |
|-------|--|---------------|----------------------|--|-----------------------|-----------------|---|
| | | | Ind. | Business | | | |
| SC | Educational Credit for Exceptional Needs Children Fund | 100% | 75% of tax liability | | 3 years ²⁴ | \$12 million | Scholarships for students with disabilities |
| SD | Partners in Education Tax Credit Program | 100% | N/A | Insurance corps. only, excludes fire premium and worker's compensation | No | \$2 million | Scholarships for students with family income of 150% or less of income qualifying for FRL |
| UT | Special Needs Opportunity Scholarship Program | 100% | No maximum | N/A | 3 years ²⁵ | \$5.9 million | Scholarships for students with special needs |
| VA | Education Improvement Scholarships Tax Credit Program | 65% | \$125,000 | No maximum | 5 years ²⁶ | \$25 million | Scholarships for students with family income of less than 300% of FPL |

²⁴ South Carolina Code of Laws, [Section 12-6-3790](#).

²⁵ Utah Code, [Section 59-10-1041](#).

²⁶ Code of Virginia, [Section 58.1-439.26](#).

POSSIBLE TOPICS FOR COMMITTEE FOLLOW UP

The [tax credit review worksheet](#) is intended to assist the committee in the tax credit review process. The committee may wish to work through the worksheet to determine next steps.

Possible topics for committee follow up are included throughout this document. They are also summarized below:

- DOR plans to address this concern in administrative rules, but the committee may wish to clarify in statute that an individual taxpayer is subject to the maximum credit amount even if multiple pass-through entities, trusts, or estates in which the taxpayer has an ownership interest make donations.