

# INNOVATIVE EDUCATIONAL PROGRAM CREDIT

## EXPLANATION OF CREDIT

An individual or corporate taxpayer who donates to provide supplemental funding to public schools for innovative educational programs is eligible for a tax credit equal to the donation amount (subject to limits).

The credit was first available in 2016. The 2021 Legislature made significant changes to the credit in [House Bill 279](#) (HB 279), and those changes apply to donations beginning in 2022. The following table compares the credit provisions before and after the 2021 amendments.

### INNOVATIVE EDUCATIONAL PROGRAM CREDIT CHANGES, 2021

	2016-2021	2022 and After
<b>Credit Amount</b>	100% of donation, maximum of \$150	100% of donation, maximum of \$200,000
<b>Refundable</b>	No	No
<b>Carry Forward</b>	No	3 years
<b>Aggregate Credit Limit</b>	\$3 million per year, with growth factor	2022: \$1 million 2023: \$2 million 2024 and after: \$2 million, with growth factor
<b>Administration of donations</b>	Taxpayer donates to educational improvement account and OPI distributes	Taxpayer donates directly to school district
<b>School district use of donations</b>	Broad definition of "innovative educational program"	Revised definition of "innovative educational program" that links to existing programs and definitions
<b>School district deposit of donations</b>	School flexibility fund	Miscellaneous program fund

## ADDITIONAL DETAILS ABOUT BASIC CREDIT PROVISIONS

The innovative educational program credit, provided for in [15-30-3110](#) and [15-31-158](#), MCA, is subject to provisions that apply to other tax credits, including:

- Married taxpayers may each claim the maximum credit amount.
- A taxpayer may not claim a donation to provide supplemental funding to public schools as both a credit and a deduction, though a donation that exceeds the credit limit may be claimed as a deduction.
- A credit claimed by a partnership, small business corporation, or pass-through entity must be attributed to shareholders or partners in the same proportion used to report income or loss.
- An estate or trust may claim the credit and credit not claimed by the estate or trust may be attributed to the beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust.

The credit terminates December 31, 2029.

## AGGREGATE CREDITS REDUCED FOR 2022, 2023, WITH ROOM TO GROW

For tax year 2021, aggregate credits claimed may not exceed \$3 million. When enacted, [15-30-3110](#), MCA, provided for an increase in the aggregate limit by 10% for the next year if the Department of Revenue (DOR) preapproved \$3 million in credits. The \$3 million aggregate limit was not reached between 2016 and 2020 so the limit remains at \$3 million.

[HB 279](#) reduces the aggregate credit limit to \$1 million for tax year 2022 and \$2 million for tax year 2023. For tax year 2024 and after, the aggregate credit limit will increase by 20% if DOR preapproves 80% or more of the limit in the prior year. For example, if DOR preapproves \$1.6 million or more in credits in 2023, the limit for 2024 will be \$2.4 million. An increase in the aggregate limit becomes the new base limit until a new limit is established.

## WHICH REGIONS AND DISTRICTS RECEIVED DONATIONS?

Until 2022, donations eligible for the credit are made to the educational improvement account provided for in [20-9-905](#), MCA.<sup>1</sup> The taxpayer may direct the donation to one of 11 geographic regions, identified in [20-9-903](#), MCA, or to one of the seven largest school districts: Billings, Butte, Bozeman, Great Falls, Helena, Kalispell, or Missoula.

The Office of Public Instruction then annually distributes at least 95% of the revenue in the educational improvement account as provided in [20-9-904](#), MCA, and may retain the remainder for administrative costs. The

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<sup>1</sup> Sections 20-9-903, 20-9-904, and 20-9-905, MCA, are repealed in HB 279. Links are to the 2019 Montana Code Annotated.

funding allocated to each geographic region or large school district is based on the proportion of donations attributed to the geographic region or large school district.

The taxpayer's address is used to attribute the donation to a geographic region or a large school district if the taxpayer did not direct the donation. If the taxpayer's address is served by a large school district and a smaller district (such as a K-8 district served by a high school in a large school district), the funding is allocated between the two districts based on average number belonging served by each district.

OPI distributes the funds to school districts within each geographic region or large school district based on the ratio of the school district's number of quality educators compared to the number of quality educators in the school district's geographic region.

The following table shows total donations by geographic region and large school district.

DISTRIBUTION OF DONATIONS BY REGION OR LARGE SCHOOL DISTRICT, 2016-2021

	2016	2017	2018	2019	2020	2021*	Total
Region 1: Flathead, Lake, and Lincoln	\$0	\$285	\$855	\$285	\$285	\$285	<b>\$1,995</b>
Region 2: Blaine, Hill, and Phillips	\$0	\$713	\$0	\$0	\$0	\$0	<b>\$713</b>
Region 3: Daniels, Roosevelt, Sheridan, and Valley	\$0	\$143	\$0	\$0	\$0	\$0	<b>\$143</b>
Region 4: Dawson, Garfield, McCone, Prairie, Richland, and Wibaux	\$0	\$713	\$285	\$285	\$0	\$143	<b>\$1,425</b>
Region 5: Cascade, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland	\$0	\$0	\$0	\$0	\$0	\$143	<b>\$143</b>
Region 6: Mineral, Missoula, Ravalli, and Sanders	\$0	\$285	\$0	\$0	\$143	\$285	<b>\$713</b>
Region 7: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, and Silver Bow	\$142	\$143	\$0	\$0	\$0	\$0	<b>\$285</b>
Region 8: Broadwater, Gallatin, Meagher, Park, and Sweet Grass	\$0	\$285	\$190	\$0	\$0	\$0	<b>\$475</b>
Region 9: Big Horn, Carbon, Stillwater, Treasure, and Yellowstone	\$0	\$285	\$0	\$0	\$0	\$143	<b>\$428</b>
Region 10: Carter, Custer, Gallon, Powder River, and Rosebud	\$0	\$285	\$0	\$0	\$0	\$0	<b>\$285</b>
Region 11: Chouteau, Glacier, Lewis and Clark, Liberty, Pondera, Teton, and Toole	\$0	\$2,138	\$713	\$285	\$0	\$0	<b>\$3,135</b>

	2016	2017	2018	2019	2020	2021*	Total
Billings	\$0	\$855	\$1,140	\$0	\$0	\$143	<b>\$2,138</b>
Bozeman	\$570	\$570	\$3,088	\$665	\$0	\$0	<b>\$4,893</b>
Great Falls	\$285	\$1,710	\$285	\$428	\$0	\$570	<b>\$3,278</b>
Helena	\$0	\$171	\$0	\$285	\$143	\$713	<b>\$1,311</b>
Kalispell	\$0	\$428	\$0	\$0	\$0	\$0	<b>\$428</b>
Missoula	\$143	\$285	\$523	\$143	\$0	\$0	<b>\$1,093</b>
<b>Total</b>	<b>\$1,140</b>	<b>\$9,291</b>	<b>\$7,078</b>	<b>\$2,375</b>	<b>\$570</b>	<b>\$2,423</b>	<b>\$22,876</b>

\*Preliminary data

Source: Data from Office of Public Instruction

This method of distributing donations to school districts in multi-county regions resulted in small distributions to many school districts. The following table compares school districts that received \$20 or less to those that received more than \$20.

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#### DISTRIBUTION OF DONATIONS BY TOTAL AMOUNT RECEIVED, 2016-2021

	Districts Receiving \$20 or Less		Districts Receiving More than \$20		All Districts Receiving Distributions	
	#	\$	#	\$	#	\$
<b>2016</b>	39	\$142	4	\$998	43	\$1,140
<b>2017</b>	278	\$1,516	79	\$7,775	357	\$9,291
<b>2018</b>	122	\$2,708	37	\$4,370	159	\$7,078
<b>2019</b>	106	\$507	17	\$1,868	123	\$2,375
<b>2020</b>	69	\$337	5	\$233	74	\$570
<b>2021*</b>	174	\$710	16	\$1,713	190	\$2,423

\*Preliminary data

Source: Data from Office of Public Instruction

#### DONATIONS DIRECTLY TO SCHOOL DISTRICTS PROVIDE SIMPLICITY

[HB 279](#) revised the donation process for donations eligible for the innovative educational program credit.

Beginning in 2022, a taxpayer claiming the credit donates directly to a school district. The school district seeks preapproval from DOR to ensure the aggregate limit has not been reached and issues the taxpayer a receipt of the donation. The receipt must be included with the tax return when claiming the tax credit.

## DONATIONS TO BE USED FOR INNOVATIVE EDUCATION, TECHNOLOGY

Prior to the changes in [HB 279](#), the donations eligible for the credit had to be deposited in a school district's school flexibility fund and spent on innovative educational programs or technology deficiencies.<sup>2</sup> Section [20-9-902](#), MCA, defined "innovative educational program" broadly as:

an advanced academic program that enhances the curriculum or academic program of an eligible public school and that is not part of the regular academic program of an eligible public school. The instruction, program, or other activities offered through an innovative educational program must include at least one of the following characteristics:

- (a) provides different focus, methodology, skill training, or delivery, including internet-based and distance learning technologies, than is provided in a typical academic program of a public school;
- (b) is accessible before or after public school hours, on weekends, as a year-round program, as an extension of the public school year, or in a combination of these characteristics;
- (c) uses specialized instructional materials, instructors, or instruction not provided by a public school;
- (d) uses internships and other work-based learning opportunities for a student that supplement the curriculum or academic program of a student and provide a student with the opportunity to apply the knowledge and skills learned in the academic program; or
- (e) offers instruction or programming that provides credits or advanced placement, or both, at a 2-year or 4-year college or university.

### HB 279 REVISES DEFINITION OF "INNOVATIVE EDUCATIONAL PROGRAM"

[HB 279](#) repealed [20-9-902](#), MCA, and inserted a definition of "innovative educational program" in [15-30-3102](#), MCA. The new definition provides flexibility, allowing the donations to be used for "courses provided through work-based learning partnerships or for postsecondary credit or career certification" or the following programs or definitions included elsewhere in state law:

- transformational learning as defined in [20-7-1602](#);
- advanced opportunity as defined in [20-7-1503](#);

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<sup>2</sup> There were no additional details about using the funds for "technology deficiencies."

- any program, service, instructional methodology, or adaptive equipment used to expand opportunity for a child with a disability as defined in [20-7-401](#); and
- technology enhancements, including but not limited to any expenditure incurred for purposes specified in [20-9-533](#).

Amendments to [15-30-3110](#), MCA, in [HB 279](#) also change the fund in which a school district must deposit donations from the school flexibility fund to the miscellaneous programs fund. This will allow the district to spend the donations without having to first budget for them.

## SCHOOL DISTRICTS FAIL TO REPORT USE OF DONATIONS

Section [20-9-904\(3\)](#), MCA, requires each school district to report to OPI how they spent revenue distributed from the innovative educational improvement account. Of the 400 school districts that received distributions between 2016 and 2021, just three reported their spending to OPI:

- Brorson Elementary district in Richland County spent \$25.08 in FY 2018 on employee benefits.
- Rapelje Elementary and Rapelje High School districts spent \$1.69 and \$1.46, respectively, on supplies and materials.

Some districts may not have spent the donations because of the small dollar amount, while others may have spent the money and failed to report to OPI.

[HB 279](#) repeals the requirement to report to OPI the use of donations eligible for the tax credit. The 2022 changes allow a taxpayer to donate up to \$200,000 directly to a school district. Information on how school districts spend the donations may be of greater interest when larger donations are allowed.

- The committee may consider a recommendation to reinstate the reporting requirement.

## PURPOSE & LEGISLATIVE HISTORY

### PURPOSE IN 2016 LAW REPEALED BY 2021 LEGISLATURE

The 2015 legislation enacting the innovative educational program credit included in [20-9-901](#), MCA, a purpose statement indicating the purpose of the credit was "to enhance the curriculum of public schools with supplemental private contributions through tax replacement programs."

During the committee hearings, bill sponsor then-Sen. Llew Jones said the goal of the bill was to "enhance student opportunity." The one proponent testifying on the bill, Dave Puyear of the Montana Rural Education Association,

supported the bill because it offered opportunities for taxpayers to direct tax dollars to rural communities and for public schools to innovate.<sup>3</sup>

The bill enacting the credit, [Senate Bill 410](#), also enacted credits for donations to student scholarship organizations that provide scholarships for students attending private schools. Much of the testimony on the bill focused on those provisions.

[HB 279](#) repealed all the sections in [Title 20, chapter 9, part 9](#), which included the purpose section cited above. The other sections in Title 20, chapter 9, part 9, provide for the deposit and distribution of donations to the educational improvement account., which were unnecessary due to the change to direct donations to school districts. The purpose section may have only been repealed because of its placement in that part of law.

## CREDIT ONLY AMENDED ONCE SINCE 2016

[HB 279](#) (2021) is the only bill amending the innovative educational program credit since its enactment. The changes made in [HB 279](#) are discussed throughout this document.

## TAXPAYER USE OF CREDIT

Since 2016, 152 Montana tax returns claimed \$24,163 in credits for innovative educational programs. The average credit claimed per year is between \$150 and \$165. Taxpayers filing married filing separately on the same form are counted as a single return even if both spouses claim the credit. This is why the average credit in some years is greater than the \$150 maximum allowable credit.

The credit is largely claimed by full-time Montana residents. Fewer than 10 non-resident or part-year resident returns claimed the credit in 2016, 2017, and 2019, and no non-resident or part-year resident returns claimed the credit in 2018. (DOR does not disclose the number of returns claiming a credit if it is fewer than 10 returns.) Non-residents claimed \$150 in credits in 2019. Part-year residents claimed \$100 in 2016, \$540 in 2017, and \$1 in 2019.

The following table shows the most recent data on innovative education credits claimed.

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<sup>3</sup> Hearing on [Senate Bill 410](#), Senate Finance & Claims Committee, March 25, 2015.

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 INNOVATIVE EDUCATION PROGRAM CREDITS CLAIMED, 2016-2020
 

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Montana Innovative Education Credit			
Tax Year	Number of Returns Claiming The Credit	Total Number of Credits Claimed	Average Credit Claimed
2016	49	\$7,851	\$160
2017	53	\$8,360	\$158
2018	23	\$3,700	\$161
2019	14	\$2,102	\$150
2020*	13	\$2,150	\$165
<b>Total</b>	<b>152</b>	<b>\$24,163</b>	<b>\$159</b>
*Partial Tax Year Data			

Source: Department of Revenue

No corporations claimed the innovative education program credit.

- Because the credit amount increases to \$200,000 in 2022, the committee may wish to review data on credits preapproved for tax year 2022 later this interim.

#### RELATED CREDIT LITIGATION MAY HAVE AFFECTED CREDIT USAGE

The bill enacting the innovative education program credits also enacted student scholarship organization (SSO) credits. The SSO credits were the subject of litigation filed in 2016 and ultimately decided by the U.S. Supreme Court in 2020. While the case did not involve the innovative education program credit, the pending litigation may have created uncertainty about the availability of this credit.

## 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, the donation methods, and the use of the donations would all 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.



## HB 279 EFFECTIVE DATES RAISE QUESTIONS ABOUT 2021 DONATIONS

On July 1, 2021, OPI stopped accepting donations for the innovative educational program based on a misunderstanding of [HB 279's](#) effective dates. In discussions with staff, OPI confirmed that they have not received donations since July 1 and expressed a belief that donations after October 1, 2021, should be made to school districts.

The section of [HB 279](#) providing for direct donations to school districts, Section 6(1), and the section repealing OPI's administrative duties related to the donations, Section 19, "are effective October 1, 2021, and apply to the income tax year beginning after December 31, 2021" (Section 23(2)).

Bills making prospective changes to income tax laws are generally effective on January 1 and apply to the income tax year beginning after December 31 of the year before the change goes into effect. The October 1, 2021, effective date is somewhat unusual but was necessary because of the complexity of the ARPA amendments discussed above. Even with the October 1 effective date, the bill states the provisions apply to the income tax year beginning after December 31, 2021.

The [HB 279](#) effective dates clearly allow innovative educational program donations and credits of \$150 through October 1, 2021. The intent evident in the applicability date arguably allows donations through the end of this year. OPI should have allowed donations through September 30, 2021, and likely should continue to allow them through the end of this year.

- The committee may wish to recommend to OPI whether donations should be allowed for the remainder of this year. If the committee recommends allowing donations through the end of the year, the committee may wish to recommend that OPI and DOR post information about how to donate on their websites.

## AGENCY INPUT ON ADMINISTRATION OF CREDIT PROVISIONS

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

### OFFICE OF PUBLIC INSTRUCTION

The Office of Public Instruction discussed difficulty distributing to school districts the approximately \$1,200 that remained in the educational improvement account at the end of fiscal year 2021. The mechanism used to distribute this money was a statutory appropriation. Section 21 of [HB 279](#) repealed the statutory appropriation on October 1, 2021.

Thinking the statutory appropriation was repealed on July 1, 2021, OPI was pursuing a budget change document through the governor's office to authorize an appropriation. The agency may change course and use the statutory appropriation authority that exists through September 30, 2021, now that it is aware of the October 1 effective date.

If there are additional innovative educational program donations this year, OPI may need appropriation authority to distribute the revenue to school districts.

Agency staff mentioned that the actual costs to administer the distribution of the donations exceeds the allowance for administrative costs (5% of donations). Beginning in 2022, OPI will not have a role in administering the innovative education program credits because taxpayers will make donations directly to school districts.

## DEPARTMENT OF REVENUE

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. School districts 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.

## DONATIONS TO SCHOOL DISTRICTS MAY REDUCE EQUITY

With the increase in the innovative educational program credit from \$150 to \$200,000 and the change to direct donations to school districts, there may be concerns about equity among school districts. The donations do not impact state funding directed to the district or the property taxes that a district may levy so a district that receives innovative educational program donations will simply have more revenue than districts that do not receive donations.

## STATE TAX CREDITS FOR DONATIONS TO PUBLIC SCHOOLS

The following table provides information about state tax credits for donations to public schools.

State	Credit Name	Credit Amount	Maximum Credit Amount			Refundable	Carry-forward	Aggregate Limit	Use of funds
			Individual	Pass-Through	Corporation				
AZ	<a href="#">Public School Tax Credit</a>	100%	\$400 MFJ; \$200 S/HOH/ MFS	Not eligible	Not eligible	No	5 years	None	Credit is for fees or contributions to public schools for extracurricular activities, character education, standardized testing fees, career and technical education assessment, CPR training and, through 2024: capital items, community school meal programs, consumable healthcare supplies, and playground equipment
GA	<a href="#">Qualified Education Donation Tax Credit</a>	100%	\$2,500 MFJ \$1,250 MFS \$1,000 S	Lesser of member's share of taxable income or \$10,000	75% of Georgia income tax liability	No	Individual/corporation: 5 years Pass-through: no carryforward	\$5 million	Competitive grants to public schools to improve student achievement, with priority on serving schools identified in bottom 5% of performance
MT	<a href="#">Innovative Educational Program Credit</a>	100%	\$200,000	\$200,000	\$200,000	No	3 years	2022: \$1 million 2023: \$2 million 2024 and after: \$2 million, with growth factor	Donations go directly to school districts and must be used for innovative educational programs

Innovative Educational Program Credit

State	Credit Name	Credit Amount	Maximum Credit Amount			Refund-able	Carry-forward	Aggregate Limit	Use of funds
			Individual	Pass-Through	Corporation				
OK	Educational Improvement Grant Organization Credit <sup>4</sup>	50%; or 75% if taxpayer commits to donate in 2 consecutive years <sup>5</sup>	\$1,000 S \$2,000 MFJ	\$100,000	\$100,000	No	3 years	\$1.5 million, credits are reduced proportionally if limit is reached	Donations are to Educational Improvement Grant Organizations, which provide grants for innovative educational programs to certain public schools not located within 10 miles of a private school unless the grade-level instruction is different or the school district has fewer than 4,500 students
PA	<u>Educational Improvement Tax Credit</u> <sup>6</sup>	75%; or 90% if taxpayer commits to donate in 2 consecutive years	Not eligible	\$750,000	\$750,000	No	Owner of pass-through: 1 year	\$37.5 million	Donations are to Educational Improvement Organizations, which provide grants to public schools, charter schools, and private schools for innovative educational programs

<sup>4</sup> 68 O.S. Section 2357.206.

<sup>5</sup> Tax credit amount is reduced proportionately if the aggregate cap is exceeded.

<sup>6</sup> Credit may be claimed against taxes other than the income tax.

## 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:

- The committee may consider a recommendation to reinstate the school district reporting requirement. (p. 6)
- Because the credit amount increases to \$200,000 in 2022, the committee may wish to review data on credits preapproved for tax year 2022 later this interim. (p. 7)
- The committee may wish to recommend to OPI whether donations should be allowed for the remainder of this year. If the committee recommends allowing donations through the end of the year, the committee may wish to recommend that OPI and DOR post information about how to donate on their websites. (p. 9)
- The committee may wish to recommend clarifying 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. (p. 10)