

Unofficial Draft Copy - TC-02

As of: 2022/08/24 09:57:22

Drafter: Megan Moore, 406-444-4496

68th Legislature

PD 0007

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A LOTTERY SYSTEM TO SELECT DONORS
6 ELIGIBLE TO CLAIM A TAX CREDIT FOR PROVIDING SUPPLEMENTAL FUNDING TO PUBLIC SCHOOLS
7 FOR INNOVATIVE EDUCATIONAL PROGRAMS; AMENDING SECTIONS 23, 24, AND 25 ,CHAPTER 480,
8 LAWS OF 2021; AMENDING SECTION 15-30-3110, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE
9 AND A RETROACTIVE APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12

13 **Section 1.** 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.)~~

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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~~

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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 -- rulemaking.** (1) Subject to ~~subsection-subsections (4)~~
17 ~~and (5)~~, a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations
18 made to a school district for the purpose of providing supplemental funding to the school district for innovative
19 educational programs. The amount of the credit allowed is equal to the amount of the donation, not to exceed
20 \$200,000. A district shall deposit a donation made for an innovative educational program into the district's
21 miscellaneous programs fund and shall limit the expenditure of the donation to expenditures for innovative
22 educational programs of the district.

23 (2) (a) ~~If Subject to subsection (4), if~~ the credit allowed under this section is claimed by a small
24 business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders,
25 owners, or partners using the same proportion as used to report the entity's income or loss.

26 (b) ~~A Subject to subsection, (4), a~~ donation by an estate or trust qualifies for the credit. Any credit not
27 used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion
28 used to report the 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 may
2 be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first
3 to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

4 (4) (a) Subject to the aggregate limit provided for in subsection (5), the department of revenue shall
5 establish rules to select by lottery the taxpayers who may make donations eligible for the credit provided for in
6 this section. Except as provided in subsection (4)(b), taxpayers may submit one lottery entry per year and must
7 indicate the intended school district recipient and donation amount.

Commented [MM1]: Are multiple entries allowed?
Can a taxpayer donate to multiple schools?

8 (b) A taxpayer selected in the lottery may not enter the lottery in the 3 years following the taxpayer's
9 selection. A taxpayer is considered to be selected in the lottery if:

10 (i) the individual taxpayer's name is selected in the prior 3 years;

11 (ii) a small business corporation, a pass-through entity, or a partnership in which the taxpayer has an
12 interest was selected in the prior 3 years; or

13 (iii) an estate or trust that attributed the credit to the taxpayer was selected in the prior 3 years.

14 (c) [Option 1] The department shall hold one lottery per year. If all taxpayers selected to donate do not
15 complete their donations under the rules adopted by the department, [the difference between the amount
16 actually donated and the limit provided for in subsection (5) must be added to the following year's aggregate
17 limit. An increase to the aggregate limit under this subsection (4)(c) may not be included when calculating
18 increases in the aggregate limit pursuant to subsection (5)] OR [the amount of donations not completed is
19 forfeited for the year].

Commented [MM2]: Option 1

Commented [MM3]: Option 1a

Commented [MM4]: Option 1b

20 (c) [Option 2] If all taxpayers selected to donate do not complete their donations under the rules
21 adopted by the department or if the total amount of entries is less than the aggregate limit, the department [may
22 or shall] hold additional lotteries until completed donations total the aggregate limit in subsection (5).

Commented [MM5]: Option 2

Commented [MM6]: May or shall

23 (4)(5) (a) (i) The aggregate amount of tax credits allowed under this section is \$1 million per year in
24 tax year 2022 and \$2 million per year in tax year 2023 and subsequent tax years except as provided in this
25 subsection (4)(a)(5)(a).

26 (ii) Beginning in 2023, by December 31 of each year, the department shall determine if completed
27 donations in the prior year exceeded 80% of the aggregate limit provided for in subsection (4)(a)(iii) in
28 donations was preapproved by the department (5)(a)(iii). If this condition is satisfied, the aggregate amount of

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1 tax credits allowed must be increased by 20% for the succeeding tax years.

2 (iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the
3 base aggregate limit for succeeding tax years until a new aggregated aggregate limit is established under the
4 provisions of subsection ~~(4)(a)(ii)~~ (5)(a)(ii).

5 (b) The aggregate limit under this subsection ~~(4)(5)~~ applies to the year in which a donation is made
6 regardless of whether the full credit is claimed in that tax year or carried forward.

7 ~~(5)(6)~~ A credit is not allowed under this section with respect to any amount deducted by the taxpayer
8 for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3)
9 of 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
12 for which the credit is allowed under this section.

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

16 ~~(b)(7)(a) On preapproval by the department, a school district shall issue a receipt, in a form
17 prescribed by the department, to each contributing taxpayer indicating the value of the donation received and
18 preapproval of the tax credit taxpayer selected in the lottery who indicates the school district is the intended
19 recipient of the donation. The receipt must indicate the donation amount approved in the lottery and the actual
20 donation amount.~~

21 ~~(e)(b)~~ A taxpayer shall provide a copy of the receipt when claiming the tax credit. (Terminates
22 December 31, 2029--secs. 20, 24(6), Ch. 480, L. 2021.)"

23

24 **Section 2.** Section 23, Chapter 480, Laws of 2021, is amended to read:

25 **"Section 23. Effective date -- applicability** (1) Except as provided in subsections (2) through (7),
26 [this act] is effective July 1, 2021.

27 (2) [Sections 1 through 6, 12, 18, 19, and 21] are effective October 1, 2021, and apply to the income
28 tax year beginning after December 31, 2021.

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1 (3) [Sections 7 and 13] are effective January 1, 2022, and apply to the income tax year beginning
2 after December 31, 2021.

3 (4) [Sections 8, ~~11~~, and 14] are effective January 1, 2023, and apply to the income tax year beginning
4 after December 31, 2022.

5 (5) [Sections ~~9~~ and Section 15] are ~~is~~ effective January 1, 2024, and apply ~~applies~~ to the income tax
6 year beginning after December 31, 2023.

7 (6) [Sections ~~10~~ and Section 16] are ~~is~~ effective January 1, 2025, and apply ~~applies~~ to the income tax
8 year beginning after December 31, 2024.

9 (7) [Sections ~~11~~ and Section 17] are ~~is~~ effective July 1, 2025, and apply ~~applies~~ to income tax years
10 beginning after June 30, 2025."

11
12 **Section 3.** Section 24, Chapter 480, Laws of 2021, is amended to read:

13 "**Section 24. Termination** (1) [Sections 7 and 13] terminate December 31, 2022.

14 (2) [Sections ~~8~~ and Section 14] terminate ~~terminates~~ December 31, 2023.

15 (3) [Sections ~~9~~ and Section 15] terminate ~~terminates~~ December 31, 2024.

16 (4) [Sections ~~10~~ and Section 16] terminate ~~terminates~~ December 31, 2025.

17 (5) [Section 25] terminates January 1, 2025.

18 (6) [Sections 1 through 6 and 11, 12, 17, and 18] terminate December 31, 2029.[***]"

19
20 **Section 4.** Section 25, Chapter 480, Laws of 2021, is amended to read:

21 "**Section 25. Contingent termination – legislative intent – specific findings – report to**

22 **legislative finance committee.** (1) The legislature intends to provide the tax relief provided by ~~this act~~

23 ~~sections 12 through 17~~ while also preventing the loss of federal funds that are available to the state as part of

24 the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in

25 subsections (2) through (5) are limited to the duration of time established by each subsection and are

26 necessary based on the lack of information available to the legislature from the federal government at the time

27 of enactment of ~~this act sections 12 through 17~~.

28 (2) [Sections 7 and 13] terminate on the date that the budget director provides the certification

Commented [MM7]: This effective date should match the bill's effective date so may need to be moved to subsection (5) if bill is not effective on passage and approval.

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1 provided for in subsection (7). In order to be effective, the certification must be made in calendar year
2 2021.

3 (3) ~~Sections 8 and Section 14~~ terminate-terminates on the date that the budget director provides the
4 certification provided for in subsection (7). In order to be effective, the certification must be made between
5 October 1, 2022, and December 31, 2022.

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6 (4) ~~Sections 9 and Section 15~~ terminate terminates on the date that the budget director provides the
7 certification provided for in subsection (7). In order to be effective, the certification must be made between
8 October 1, 2023, and December 31, 2023.

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9 (5) ~~Sections 10 and Section 16~~ terminate terminates on the date that the budget director provides the
10 certification provided for in subsection (7). In order to be effective, the certification must be made between
11 October 1, 2024, and December 31, 2024.

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12 (6) (a) The budget director shall continually evaluate whether implementation of a section of ~~this act~~
13 sections 12 through 17 will:

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- 14 (i) result in a reduction of funds from the American Rescue Plan Act; or
- 15 (ii) require the state to repay or refund to the federal government pursuant to the American Rescue
16 Plan Act.

17 (b) The budget director shall consider guidance from:

- 18 (i) the federal government about the American Rescue Plan Act;
- 19 (ii) court decisions about the American Rescue Plan Act;
- 20 (iii) amendments to the American Rescue Plan Act;
- 21 (iv) any information provided by the attorney general; and
- 22 (v) other relevant information about the American Rescue Plan Act.

23 (c) If the budget director determines that the implementation of a section of ~~this act~~ section 12 through
24 17 may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director
25 shall notify the legislative finance committee of the preliminary determination. The budget director's notification
26 of the preliminary determination may occur after January 1 but no later than December 10 of each of the
27 calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee
28 shall provide the budget director with any recommendations concerning the preliminary determination. The

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1 budget director shall consider any recommendations of the legislative finance committee.
2 (7) If the budget director determines that the implementation of a section of ~~this act sections 12~~
3 ~~through 17~~ would more likely than not satisfy the criteria in subsection (6)(a) based on the guidance in
4 subsection (6)(b) and the recommendations of the legislative finance committee in subsection (6)(c), the budget
5 director shall provide certification in writing to the legislative finance committee and the code commissioner of
6 the occurrence of the relevant contingency provided for in subsections (2) through (5)."

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7
8 **NEW SECTION. Section 5. Section 2. Transition.** For the income tax year beginning on or after
9 January 1, 2023, the department of revenue shall select by lottery the taxpayers who may make donations
10 eligible for the credit provided in 15-30-3110.

Commented [MM8]: Making this effective for 2023 is tricky. A transition can direct DOR to use a lottery for 2023, but the bill is unlikely to become effective before April or May. A bill is not binding until it becomes law, which could be after DOR holds the 2023 lottery.

11
12 **NEW SECTION. Section 6. Section 3. {standard} Effective date.** [This act] is effective on passage
13 and approval.

14
15 **NEW SECTION. Section 7. Section 4. Retroactive applicability.** [This act] applies retroactively,
16 within the meaning of 1-2-109, to income tax years beginning on or after January 1, 2023.

Commented [MM9]: Implementing a lottery in 2024 may be better from an administrative perspective. The draft includes a 2023 applicability to show that transition language should be included if the intent is to use a lottery in 2023.

17 - END -