

Unofficial Draft Copy - TC-03

As of: 2022/08/22 05:33:01

Drafter: Megan Moore, 406-444-4496

68th Legislature

PD 0008

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

5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE CREDIT FOR INNOVATIVE EDUCATIONAL
6 PROGRAMS TO LIMIT DONATIONS TO A SCHOOL DISTRICT; AMENDING SECTIONS 23, 24, AND 25,
7 CHAPTER 480, LAWS OF 2021; REPEALING SECTIONS 8, 9, AND 10, CHAPTER 480, LAWS OF 2021;
8 AMENDING SECTION 15-30-3110, MCA; AND PROVIDING AN EFFECTIVE DATE."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 **Section 1.** Section 15-30-3110, MCA, is amended to read:

13 ~~"15-30-3110.—(Temporary) Credit for providing supplemental funding to public schools—~~
14 ~~innovative educational program. (1) Subject to subsection (4), a taxpayer or corporation is allowed a credit~~
15 ~~against the tax imposed by chapter 30 or 31 for donations made to a school district for the purpose of providing~~
16 ~~supplemental funding to the school district for innovative educational programs. The amount of the credit~~
17 ~~allowed is equal to the amount of the donation, not to exceed \$200,000. A district shall deposit a donation made~~
18 ~~for an innovative educational program into the district's miscellaneous programs fund and shall limit the~~
19 ~~expenditure of the donation to expenditures for innovative educational programs of the district.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ~~**15-30-3110.—(Temporary — effective on occurrence of contingency) Credit for providing**~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **15-30-3110. (Temporary — effective July 1, 2025) Credit for providing supplemental funding to**
15 **public schools -- innovative educational program.** (1) Subject to subsection (4), a taxpayer or corporation is
16 allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a school district for the
17 purpose of providing supplemental funding to the school district for innovative educational programs. The
18 amount of the credit allowed is equal to the amount of the donation, not to exceed \$200,000. A district shall
19 deposit a donation made for an innovative educational program into the district's miscellaneous programs fund
20 and shall limit the expenditure of the donation to expenditures for innovative educational programs of the
21 district.

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

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

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

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1 be carried forward 3 years. The entire amount of the tax credit not used in the year earned must be carried first
2 to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

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

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

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

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

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

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

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

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

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

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

28 ~~(d) A school district may not be preapproved for donations that total more than XX% of the aggregate~~

Commented [MM1]: Insert percentage

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1 limit provided for in subsection (4). (Terminates December 31, 2029--secs. 20, 24(6), Ch. 480, L. 2021.)"

2

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

4 **"Section 23. Effective date -- applicability.** (1) Except as provided in subsections (2) through (7),

5 [this act] is effective July 1, 2021.

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

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

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

12 (5) [Sections ~~9-11~~ and 15] are effective January 1, 2024, and apply to the income tax year beginning
13 after December 31, 2023.

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

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

18

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

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

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

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

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

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

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

26

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

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

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1 legislative finance committee. (1) The legislature intends to provide the tax relief provided by ~~this act~~
2 sections 12 through 17 while also preventing the loss of federal funds that are available to the state as part of
3 the recently enacted American Rescue Plan Act, Public Law 117-2. The contingent termination provisions in
4 subsections (2) through (5) are limited to the duration of time established by each subsection and are
5 necessary based on the lack of information available to the legislature from the federal government at the time
6 of enactment of ~~this act~~ sections 12 through 17.

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7 (2) [Sections 7 and 13] terminate on the date that the budget director provides the certification
8 provided for in subsection (7). In order to be effective, the certification must be made in calendar year
9 2021.

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

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

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

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

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

- 24 (b) The budget director shall consider guidance from:
 - 25 (i) the federal government about the American Rescue Plan Act;
 - 26 (ii) court decisions about the American Rescue Plan Act;
 - 27 (iii) amendments to the American Rescue Plan Act;
 - 28 (iv) any information provided by the attorney general; and

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1 (v) other relevant information about the American Rescue Plan Act.

2 (c) If the budget director determines that the implementation of a section of ~~this act section 12 through~~
3 ~~17~~ may satisfy the criteria in subsection (6)(a) based on the guidance in subsection (6)(b), the budget director
4 shall notify the legislative finance committee of the preliminary determination. The budget director's notification
5 of the preliminary determination may occur after January 1 but no later than December 10 of each of the
6 calendar years 2021, 2022, 2023, and 2024. Within 20 days of notification, the legislative finance committee
7 shall provide the budget director with any recommendations concerning the preliminary determination. The
8 budget director shall consider any recommendations of the legislative finance committee.

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

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14
15 **NEW SECTION. Section 5. Section 2. {standard} Repealer.** Sections 8, 9, and 10, Chapter 480,
16 Laws of 2021, are repealed.

17
18 **NEW SECTION. Section 6. Effective date.** [This act] is effective January 1, 2024, and applies to the
19 income tax year beginning after December 31, 2023.

20 - END -