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Revenue Interim Committee

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**FINAL REPORT TO THE 68<sup>TH</sup> MONTANA LEGISLATURE**

# **2021-2022 TAX CREDIT REVIEW FINAL REPORT**



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This report is a summary of the work of the Revenue Interim Committee, specific to the Revenue Interim Committee’s 2021-2022 tax credit review as outlined in the Revenue Interim Committee’s 2021-22 work plan and Section [15-30-2303](#), MCA. Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Revenue Interim Committee in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the Revenue Interim Committee website: <https://leg.mt.gov/committees/interim/ric/>.

A full report, including links to the documents referenced in this print report, is available at the Revenue Interim Committee website: <https://leg.mt.gov/committees/interim/ric/>.

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## BACKGROUND

Section [15-30-2303](#), MCA, requires the Revenue Interim Committee to review certain tax credits each biennium. The statute requires review of six tax credits during the 2021-2022 biennium, however, four of the tax credits scheduled for review were repealed on January 1, 2022, when [Senate Bill 399](#) went into effect.

In addition to reviewing the two tax credits not repealed, the innovative educational program credit and the student scholarship organization credit, the committee considered revisions to the tax credit review schedule.

## RECOMMENDATIONS

*[Insert recommendations for the tax credits reviewed and any changes to the tax credit review schedule.]*

## TAX CREDIT REVIEW SCHEDULE

The 2021 Legislature enacted bills that repealed 17 tax credits and created two new credits. One repealed credit is the credit for new or expanding manufacturing, which the 2019-2020 Revenue Interim Committee recommended repealing after reviewing the credit last interim.

[Senate Bill 399](#) repealed the other 16 credits.<sup>1</sup> The two new credits are the credit for trades education and training and the job growth incentive tax credit.

Because of varying effective dates and uncertainties about which bills would become law, staff did not advise the Legislature to coordinate the tax credit review process. Instead, the Revenue Interim Committee analyzed the review process and recommended changing the biennium in which three of the credits will be reviewed. This will allow all credits to be reviewed over four bienniums instead of the five bienniums in the current schedule.

The following table summarizes the tax credits and the review schedule proposed by the Revenue Interim Committee.

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<sup>1</sup> The repealed credits are for contributions to a university or college foundation or endowment, disability insurance for employees, energy-conserving expenditures, commercial or net-metering systems, installation of a geothermal system, converting a motor vehicle to alternative fuel, mineral or coal exploration, new employees in an empowerment zone, oilseed crush facilities, biodiesel blending and storage, biodiesel or biolubricant production facilities, adoption, caring for an elderly family member, dependent care assistance and referral services, and providing temporary emergency lodging. The capital gains credit will be repealed in 2024.

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Credit	Statutory Reference	Enacted	Term.	Sched. Review	RIC Rec. Changes
Donations to an educational improvement account	<a href="#">15-30-2334</a> , <a href="#">15-30-3110</a> , <a href="#">15-31-158</a>	2015	2029	2021	
Donations to a student scholarship organization	<a href="#">15-30-2335</a> , <a href="#">15-30-3111</a> , <a href="#">15-31-159</a>	2015	2029	2021	
Property to recycle or manufacture using recycled material	<a href="#">Title 15, chapter 32, part 6</a>	1991	-	2023	
Infrastructure use fees	<a href="#">17-6-316</a>	1995	-	2023	
Contributions to a qualified endowment	<a href="#">15-30-2327</a> , <a href="#">15-30-2329</a> , <a href="#">15-31-161</a> , <a href="#">15-31-162</a>	1997	2025	2023	
Preservation of historic buildings	<a href="#">15-30-2342</a> , <a href="#">15-31-151</a>	1997	-	2025	2023
Unlocking state lands	<a href="#">15-30-2380</a>	2013	2027	2025	
Trades education and training	<a href="#">HB 252</a> (2021)	2021	2026	2025	
Job growth incentive tax credit	<a href="#">HB 629</a> (2021)	2021	2028	2025	
Registered apprentice or veteran apprentice	<a href="#">15-30-2357</a> , <a href="#">15-31-173</a>	2017	-	2027	
Earned income tax credit	<a href="#">15-30-2318</a>	2017	-	2027	
Media production and postproduction credits	<a href="#">15-31-1007</a> , <a href="#">15-31-1009</a>	2019	2029	2027	
Contractor's gross receipts	<a href="#">15-50-207</a>	1967	-	2029	2027
Credit for elderly homeowners and renters	<a href="#">15-30-2337</a> through <a href="#">15-30-2341</a>	1981	-	2029	2025
Income taxes imposed by foreign states or countries	<a href="#">15-30-2302</a>	1941	-	-	

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## INNOVATIVE EDUCATIONAL PROGRAM 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 up to a maximum of \$200,000 per taxpayer.<sup>2</sup>

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

Recommendation for innovative education

### INNOVATIVE EDUCATIONAL PROGRAM CREDIT CHANGES

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

<sup>2</sup> Additional information about the innovative education program credit is available at: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/November-2021/innovative-educational-program-credit-review.pdf>

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## Taxpayer Use of Innovative Educational Program Credit

Donors reached the \$1 million limit for 2022 donations within 6 minutes of the [online portal](#) opening for donations. Twenty individuals donated \$938,000 and three corporations gave \$62,000. The average individual donation was \$46,900 and the average corporation donation was \$20,667. Ten school districts received donations, with more than two-thirds of the dollars going to the Big Sky K-12 district.<sup>3</sup>

### INNOVATIVE EDUCATION PROGRAM CREDIT DONATIONS BY SCHOOL DISTRICT, 2022

School District	Number of donations	Average school district donation	Total donations	Percent of total
Big Sky School K-12	4	\$173,500	\$694,000	69%
Livingston Elementary	8	\$9,125	\$73,000	7%
Kalispell High School	3	\$23,333	\$70,000	7%
Montana City Elementary	2	\$27,500	\$55,000	5.5%
Shepherd Elementary	1	\$50,000	\$50,000	5%
Great Falls Elementary	1	\$40,000	\$40,000	4%
Kalispell Elementary	1	\$10,000	\$10,000	1%
Somers Elementary	1	\$5,000	\$5,000	0.5%
Whitefish Elementary	1	\$2,000	\$2,000	0.2%
Bonner Elementary	1	\$1,000	\$1,000	0.1%
<b>Total</b>	<b>23</b>	<b>\$43,478</b>	<b>\$1,000,000</b>	

Tax returns claiming credits for 2022 donations will not be filed until next year. Credits could total \$1 million or may be less if some donors carry forward the tax credit to a future year.

The most recent data shows 152 Montana tax returns claimed \$24,163 in credits for innovative educational programs between 2016 and 2020, before the 2022 increase in the donation limit. The

<sup>3</sup> "Stats," Student Scholarship Organization Tax Credit, available from: <https://svc.mt.gov/dor/educationdonation2/Pages/Reports/PublicStats?dt=PSD>, accessed May 25, 2022.

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average credit claimed per year was between \$150 and \$165,<sup>4</sup> but the average is expected to increase significantly when 2022 credits are claimed.

## INNOVATIVE EDUCATION PROGRAM CREDITS CLAIMED, 2016-2020

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
Total	152	\$24,163	\$159

\*Partial Tax Year Data

Source: Department of Revenue

## STUDENT SCHOLARSHIP ORGANIZATION 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.<sup>5</sup>

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

Recommendation for student scholarship organization credit

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<sup>4</sup> The average credit may be greater than the \$150 maximum allowable credit because taxpayers filing married filing separately on the same form are counted as a single return even if both spouses claim the credit.

<sup>5</sup> Additional information about the student scholarship organization credit is available at <https://leg.mt.gov/content/Committees/Interim/2021-2022/Revenue/Meetings/April-2022/student-scholarship-credit-review.pdf>.

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## STUDENT SCHOLARSHIP ORGANIZATION CREDIT CHANGES

2016-2021		2022 and After
<b>Credit Changes</b>		
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
<b>Scholarship Changes</b>		
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"> <li>50% of per-pupil average of total school expenditures</li> <li>Average scholarship not to exceed 30% of per-pupil average of total school expenditures</li> </ul>	<ul style="list-style-type: none"> <li>Per-pupil average of total school expenditures (\$13,380 for FY21)</li> <li>Removes average scholarship requirement</li> </ul>

## Taxpayer Use of Student Scholarship Organization Credit

Donations to student scholarship organizations in 2022 reached the \$1 million limit after 13 days. Seven student scholarship organizations received 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 organization.<sup>6</sup>

<sup>6</sup> "Stats," Student Scholarship Organization Tax Credit, available from: <https://svc.mt.gov/dor/educationdonation2/Pages/Reports/PublicStats?dt=SSO>, accessed Feb. 18, 2022.



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## STUDENT SCHOLARSHIP ORGANIZATIONS RECEIVING DONATIONS, 2022

	Number of donations	Average donation	Total donations	Percent of total
ACE Scholarships	24	\$20,263	\$486,300	49%
Missoula Catholic Schools Foundation	15	\$23,480	\$352,200	35%
St. Matthew's Catholic School	19	\$3,632	\$69,000	7%
Holy Spirit Catholic School	4	\$15,250	\$61,000	6%
St. Mary's Catholic School	2	\$6,250	\$12,500	1%
Intermountain Children's Services	2	\$6,000	\$12,000	1%
The Way Christian School	3	\$2,333	\$7,000	0.7%
<b>Total</b>	<b>69</b>	<b>\$14,492</b>	<b>\$1,000,000</b>	

Between 2016 and 2020, 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.

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.

## 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
<b>Total</b>	<b>494</b>	<b>\$80,066</b>	<b>\$162</b>

Source: Department of Revenue

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## APPENDIX A: REVENUE INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Revenue Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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