

REFERENCE TITLE: STOs; tax credit requirements

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

HB 2664

Introduced by
Representatives Murphy, Biggs, Brown, Lesko

AN ACT

AMENDING SECTION 43-1089, ARIZONA REVISED STATUTES; AMENDING TITLE 43, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 15; RELATING TO SCHOOL TUITION ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 43-1089, Arizona Revised Statutes, is amended to
3 read:
4 43-1089. Credit for contributions to school tuition
5 organization; definitions
6 A. A credit is allowed against the taxes imposed by this title for the
7 amount of voluntary cash contributions by the taxpayer or on the taxpayer's
8 behalf pursuant to section 43-401, subsection ~~H~~ I during the taxable year to
9 a school tuition organization, ~~but not exceeding~~ THAT IS CERTIFIED PURSUANT
10 TO CHAPTER 15 OF THIS TITLE AT THE TIME OF DONATION. EXCEPT AS PROVIDED BY
11 SUBSECTION C OF THIS SECTION, THE AMOUNT OF THE CREDIT SHALL NOT EXCEED:
12 1. ~~Five~~ SEVEN hundred FIFTY dollars in any taxable year for a single
13 individual or a head of household.
14 ~~2. Eight hundred twenty-five dollars in taxable year 2005 for a~~
15 ~~married couple filing a joint return.~~
16 ~~3.~~ 2. One thousand FIVE HUNDRED dollars in ~~taxable year 2006 and~~ any
17 ~~subsequent~~ taxable year for a married couple filing a joint return.
18 B. A husband and wife who file separate returns for a taxable year in
19 which they could have filed a joint return may each claim only one-half of
20 the tax credit that would have been allowed for a joint return.
21 C. FOR EACH TAXABLE YEAR BEGINNING ON OR AFTER JANUARY 1, THE
22 DEPARTMENT SHALL ADJUST THE DOLLAR AMOUNTS PRESCRIBED BY SUBSECTION A,
23 PARAGRAPHS 1 AND 2 OF THIS SECTION ACCORDING TO THE AVERAGE ANNUAL CHANGE IN
24 THE METROPOLITAN PHOENIX CONSUMER PRICE INDEX PUBLISHED BY THE UNITED STATES
25 BUREAU OF LABOR STATISTICS, EXCEPT THAT THE DOLLAR AMOUNTS SHALL NOT BE
26 REVISED DOWNWARD BELOW THE AMOUNTS ALLOWED IN THE PRIOR TAXABLE YEAR. THE
27 REVISED DOLLAR AMOUNTS SHALL BE RAISED TO THE NEAREST WHOLE DOLLAR.
28 ~~C.~~ D. If the allowable tax credit exceeds the taxes otherwise due
29 under this title on the claimant's income, or if there are no taxes due under
30 this title, the taxpayer may carry the amount of the claim not used to offset
31 the taxes under this title forward for not more than five consecutive taxable
32 years' income tax liability.
33 ~~D.~~ E. The credit allowed by this section is in lieu of any deduction
34 pursuant to section 170 of the internal revenue code and taken for state tax
35 purposes.
36 ~~E.~~ F. The tax credit is not allowed if the taxpayer designates the
37 taxpayer's contribution to the school tuition organization for the direct
38 benefit of any dependent of the taxpayer. THE TAX CREDIT IS NOT ALLOWED IF
39 THE TAXPAYER, WITH THE INTENT TO BENEFIT THE TAXPAYER'S DEPENDENT, AGREES
40 WITH ONE OR MORE OTHER TAXPAYERS TO DESIGNATE EACH TAXPAYER'S CONTRIBUTION TO
41 THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF THE OTHER
42 TAXPAYER'S DEPENDENT.

1 ~~F. A school tuition organization that receives a voluntary cash~~
2 ~~contribution pursuant to subsection A shall report electronically to the~~
3 ~~department, in a form prescribed by the department, by February 28 of each~~
4 ~~year the following information:~~

5 ~~1. The name, address and contact name of the school tuition~~
6 ~~organization.~~

7 ~~2. The total number of contributions received during the previous~~
8 ~~calendar year.~~

9 ~~3. The total dollar amount of contributions received during the~~
10 ~~previous calendar year.~~

11 ~~4. The total number of children awarded educational scholarships or~~
12 ~~tuition grants during the previous calendar year.~~

13 ~~5. The total dollar amount of educational scholarships and tuition~~
14 ~~grants awarded during the previous calendar year.~~

15 ~~6. For each school to which educational scholarships or tuition grants~~
16 ~~were awarded:~~

17 ~~(a) The name and address of the school.~~

18 ~~(b) The number of educational scholarships and tuition grants awarded~~
19 ~~during the previous calendar year.~~

20 ~~(c) The total dollar amount of educational scholarships and tuition~~
21 ~~grants awarded during the previous calendar year.~~

22 G. For the purposes of this section:

23 1. "Handicapped student" means a student who has any of the following
24 conditions:

25 (a) Hearing impairment.

26 (b) Visual impairment.

27 (c) Developmental delay.

28 (d) Preschool severe delay.

29 (e) Speech/language impairment.

30 2. "Qualified school":

31 (a) Means a nongovernmental primary school or secondary school or a
32 preschool for handicapped students that is located in this state, that does
33 not discriminate on the basis of race, color, handicap, familial status or
34 national origin and that satisfies the requirements prescribed by law for
35 private schools in this state on January 1, 1997.

36 (b) DOES NOT INCLUDE A CHARTER SCHOOL OR PROGRAMS OPERATED BY CHARTER
37 SCHOOLS.

38 ~~3. "School tuition organization" means a charitable organization in~~
39 ~~this state that is exempt from federal taxation under section 501(c)(3) of~~
40 ~~the internal revenue code and that allocates at least ninety per cent of its~~
41 ~~annual revenue for educational scholarships or tuition grants to children to~~
42 ~~allow them to attend any qualified school of their parents' choice. In~~
43 ~~addition, to qualify as a school tuition organization the charitable~~
44 ~~organization shall provide educational scholarships or tuition grants to~~
45 ~~students without limiting availability to only students of one school.~~

1 OF CERTIFIED SCHOOL TUITION ORGANIZATIONS MUST NOTIFY ANY TAXPAYER WHO
2 ATTEMPTS TO MAKE A CONTRIBUTION THAT THE CONTRIBUTION IS NOT ELIGIBLE FOR THE
3 TAX CREDIT AND OFFER TO REFUND ALL DONATIONS RECEIVED AFTER THE DATE OF THE
4 NOTICE OF TERMINATION OF CERTIFICATION.

5 E. A SCHOOL TUITION ORGANIZATION MAY REQUEST AN ADMINISTRATIVE HEARING
6 ON THE REVOCATION OF ITS CERTIFICATION AS PROVIDED BY TITLE 41, CHAPTER 6,
7 ARTICLE 10. EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, A
8 DECISION OF THE DEPARTMENT IS SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE
9 12, CHAPTER 7, ARTICLE 6.

10 43-1503. Operational requirements for school tuition
11 organizations; notice; qualified schools

12 A. A CERTIFIED SCHOOL TUITION ORGANIZATION MUST BE ESTABLISHED TO
13 RECEIVE CONTRIBUTIONS FROM TAXPAYERS FOR THE PURPOSES OF INCOME TAX CREDITS
14 UNDER SECTION 43-1089 AND TO PAY EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS
15 TO ALLOW STUDENTS TO ATTEND ANY QUALIFIED SCHOOL OF THEIR PARENTS' CHOICE.

16 B. TO BE ELIGIBLE FOR CERTIFICATION AND RETAIN CERTIFICATION, THE
17 SCHOOL TUITION ORGANIZATION:

18 1. MUST ALLOCATE AT LEAST NINETY PER CENT OF ITS ANNUAL REVENUE FOR
19 EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS.

20 2. SHALL NOT LIMIT THE AVAILABILITY OF EDUCATIONAL SCHOLARSHIPS OR
21 TUITION GRANTS TO ONLY STUDENTS OF ONE SCHOOL.

22 3. MAY ALLOW DONORS TO RECOMMEND STUDENT BENEFICIARIES, BUT SHALL NOT
23 AWARD, DESIGNATE OR RESERVE SCHOLARSHIPS SOLELY ON THE BASIS OF DONOR
24 RECOMMENDATIONS.

25 4. SHALL NOT ALLOW DONORS TO DESIGNATE STUDENT BENEFICIARIES AS A
26 CONDITION OF ANY CONTRIBUTION TO THE ORGANIZATION, OR FACILITATE, ENCOURAGE
27 OR PERMIT THE EXCHANGE OF BENEFICIARY STUDENT DESIGNATIONS IN VIOLATION OF
28 SECTION 43-1089, SUBSECTION F.

29 C. A SCHOOL TUITION ORGANIZATION SHALL INCLUDE THE FOLLOWING NOTICE IN
30 ANY PRINTED MATERIALS SOLICITING DONATIONS, IN APPLICATIONS FOR SCHOLARSHIPS
31 AND ON ITS WEBSITE:

32 NOTICE

33 A SCHOOL TUITION ORGANIZATION CANNOT AWARD, RESTRICT OR
34 RESERVE SCHOLARSHIPS SOLELY ON THE BASIS OF A DONOR'S
35 RECOMMENDATION.

36 A TAXPAYER MAY NOT CLAIM A TAX CREDIT IF THE TAXPAYER
37 AGREES TO SWAP DONATIONS WITH ANOTHER TAXPAYER TO BENEFIT EITHER
38 TAXPAYER'S OWN DEPENDENT.

39 D. IN EVALUATING APPLICATIONS AND AWARDING, DESIGNATING OR RESERVING
40 SCHOLARSHIPS, A SCHOOL TUITION ORGANIZATION:

41 1. SHALL NOT AWARD, DESIGNATE OR RESERVE A SCHOLARSHIP SOLELY ON THE
42 RECOMMENDATION OF ANY PERSON CONTRIBUTING MONEY TO THE ORGANIZATION, BUT MAY
43 CONSIDER THE RECOMMENDATION AMONG OTHER FACTORS.

44 2. SHALL CONSIDER THE FINANCIAL NEED OF APPLICANTS.

1 E. A QUALIFIED SCHOOL SHALL NOT ACCEPT AN EDUCATIONAL SCHOLARSHIP OR
2 TUITION GRANT FROM A SCHOOL TUITION ORGANIZATION IN AN AMOUNT THAT EXCEEDS
3 THE SCHOOL'S TOTAL COST OF EDUCATING THE STUDENT IN WHOSE NAME THE
4 SCHOLARSHIP OR GRANT IS RECEIVED.

5 43-1504. Annual report

6 ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, EACH SCHOOL TUITION
7 ORGANIZATION SHALL REPORT ELECTRONICALLY TO THE DEPARTMENT, IN A FORM
8 PRESCRIBED BY THE DEPARTMENT, THE FOLLOWING INFORMATION, SEPARATELY COMPILED
9 AND IDENTIFIED FOR THE PURPOSES OF SECTION 43-1089:

10 1. THE NAME, ADDRESS AND CONTACT PERSON OF THE SCHOOL TUITION
11 ORGANIZATION.

12 2. THE TOTAL NUMBER OF CONTRIBUTIONS RECEIVED DURING THE PREVIOUS
13 FISCAL YEAR.

14 3. THE TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS RECEIVED DURING THE
15 PREVIOUS FISCAL YEAR.

16 4. THE TOTAL NUMBER OF CHILDREN AWARDED EDUCATIONAL SCHOLARSHIPS OR
17 TUITION GRANTS DURING THE PREVIOUS FISCAL YEAR.

18 5. THE TOTAL DOLLAR AMOUNT OF:

19 (a) EDUCATIONAL SCHOLARSHIPS AND TUITION GRANTS DISTRIBUTED DURING THE
20 PREVIOUS FISCAL YEAR.

21 (b) MONEY BEING HELD FOR IDENTIFIED STUDENTS' SCHOLARSHIPS AND TUITION
22 GRANTS IN FUTURE YEARS.

23 6. THE COST OF AUDITS PURSUANT TO SECTION 43-1505 PAID DURING THE
24 FISCAL YEAR.

25 7. THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION
26 GRANTS AWARDED DURING THE PREVIOUS FISCAL YEAR TO:

27 (a) STUDENTS WHOSE FAMILY INCOME MEETS THE ECONOMIC ELIGIBILITY
28 REQUIREMENTS ESTABLISHED UNDER THE NATIONAL SCHOOL LUNCH AND CHILD NUTRITION
29 ACTS (42 UNITED STATES CODE SECTIONS 1751 THROUGH 1785) FOR FREE OR REDUCED
30 PRICE LUNCHES.

31 (b) STUDENTS WHOSE FAMILY INCOME EXCEEDS THE THRESHOLD PRESCRIBED BY
32 SUBDIVISION (a) BUT DOES NOT EXCEED ONE HUNDRED EIGHTY-FIVE PER CENT OF THE
33 ECONOMIC ELIGIBILITY REQUIREMENTS ESTABLISHED UNDER THE NATIONAL SCHOOL LUNCH
34 AND CHILD NUTRITION ACTS (42 UNITED STATES CODE SECTIONS 1751 THROUGH 1785)
35 FOR FREE OR REDUCED PRICE LUNCHES.

36 8. FOR EACH SCHOOL TO WHICH EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS
37 WERE AWARDED:

38 (a) THE NAME AND ADDRESS OF THE SCHOOL.

39 (b) THE NUMBER OF EDUCATIONAL SCHOLARSHIPS AND TUITION GRANTS AWARDED
40 DURING THE PREVIOUS FISCAL YEAR.

41 (c) THE TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AND TUITION
42 GRANTS AWARDED DURING THE PREVIOUS FISCAL YEAR.

43 43-1505. Audits and financial reviews

44 A. ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, EACH SCHOOL TUITION
45 ORGANIZATION THAT RECEIVED ONE MILLION DOLLARS OR MORE IN TOTAL TAXPAYER

1 DONATIONS IN THE PREVIOUS FISCAL YEAR SHALL PROVIDE FOR A FINANCIAL AND
2 COMPLIANCE AUDIT OF THE ORGANIZATION. THE AUDIT MUST BE CONDUCTED BY AN
3 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE. THE
4 CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS
5 AFFILIATED WITH MAY NOT REGULARLY PERFORM SERVICES FOR THE SCHOOL TUITION
6 ORGANIZATION OR FOR ANY OF ITS OFFICERS OR DIRECTORS.

7 B. ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, EACH SCHOOL TUITION
8 ORGANIZATION THAT RECEIVED LESS THAN ONE MILLION DOLLARS IN TOTAL TAXPAYER
9 DONATIONS IN THE PREVIOUS FISCAL YEAR SHALL PROVIDE FOR A FINANCIAL REVIEW OF
10 THE ORGANIZATION. THE REVIEW MUST BE CONDUCTED BY AN INDEPENDENT CERTIFIED
11 PUBLIC ACCOUNTANT LICENSED IN THIS STATE. THE CERTIFIED PUBLIC ACCOUNTANT
12 AND THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS AFFILIATED WITH MAY NOT
13 REGULARLY PERFORM SERVICES FOR THE SCHOOL TUITION ORGANIZATION OR FOR ANY OF
14 ITS OFFICERS OR DIRECTORS.

15 C. WITHIN FIVE DAYS AFTER RECEIVING THE REPORT THE SCHOOL TUITION
16 ORGANIZATION SHALL FILE A CERTIFIED COPY OF THE AUDIT OR FINANCIAL REVIEW
17 WITH THE DEPARTMENT.

18 D. THE SCHOOL TUITION ORGANIZATION SHALL PAY THE FEES AND COSTS OF THE
19 CERTIFIED PUBLIC ACCOUNTANT AND AUDITOR GENERAL UNDER THIS SECTION FROM THE
20 ORGANIZATION'S OPERATING MONIES. THE FEES AND COSTS SHALL BE EXCLUDED FROM
21 THE CALCULATION OF TOTAL REVENUES SPENT ON SCHOLARSHIPS AND TUITION GRANTS.

22 Sec. 3. School tuition organizations; transition reports

23 Notwithstanding the provisions of this act providing for school tuition
24 organization annual reports on or before September 30, on or before February
25 28, 2011, each school tuition organization shall submit to the department of
26 revenue the report required by section 43-1089, subsection F, Arizona Revised
27 Statutes, as in effect before the effective date of this act, for the 2010
28 calendar year. Thereafter, the school tuition organization shall submit an
29 annual fiscal year report as prescribed by section 43-1504, Arizona Revised
30 Statutes, as added by this act.

31 Sec. 4. Effective date

32 This act is effective from and after December 31, 2010.