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REFERENCE TITLE: tax credit; school tuition organizations

State of Arizona
Senate
Fiftieth Legislature
Second Regular Session
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SB 1047

Introduced by
Senators Murphy, Biggs, Yarbrough; Representatives Lesko, Yee

AN ACT

AMENDING SECTIONS 43-222, 43-401 AND 43-1021, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1089.03; AMENDING SECTIONS 43-1602, 43-1603 AND 43-1604, ARIZONA REVISED STATUTES; RELATING TO TAX CREDITS FOR CONTRIBUTIONS TO SCHOOL TUITION ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 43-222, Arizona Revised Statutes, is amended to read:

43-222. Income tax credit review schedule

The joint legislative income tax credit review committee shall review the following income tax credits:

1. For years ending in 0 and 5, sections 43-1075, 43-1075.01, 43-1079.01, 43-1087, 43-1088, 43-1090.01, 43-1163, 43-1163.01, 43-1167.01, 43-1175 and 43-1182.

2. For years ending in 1 and 6, sections 43-1074.02, 43-1083, 43-1083.02, 43-1085.01, 43-1164.02, 43-1164.03 and 43-1183.

3. For years ending in 2 and 7, sections 43-1073, 43-1079, 43-1080, 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1090, 43-1164, 43-1167, 43-1169, 43-1176 and 43-1181.

4. For years ending in 3 and 8, sections 43-1074.01, 43-1081, 43-1168, 43-1170 and 43-1178.

5. For years ending in 4 and 9, sections 43-1076, 43-1081.01, 43-1083.01, 43-1084, 43-1162, 43-1164.01, 43-1170.01 and 43-1184.

Sec. 2. Section 43-401, Arizona Revised Statutes, is amended to read:

43-401. Withholding tax; rates; election by employee

A. Except as provided by subsection B of this section, every employer at the time of the payment of wages, salary, bonus or other emolument to any employee whose compensation is for services performed within this state shall deduct and retain from the compensation an amount that is determined by the department pursuant to subsection D of this section or that is equal to a percentage, determined pursuant to subsection C of this section, of the total amount of the federal income tax deducted and withheld by an employer from the total value of such wages, bonus or other emolument of an employee under the provisions of the United States internal revenue code computed without deductions for any amount withheld.

B. An employer may voluntarily elect to not withhold tax during December by notifying:

1. The department on a form prescribed by the department.

2. The employer's employees in writing in a manner prescribed by the department.

C. The percentage deducted and retained under subsection A of this section:

1. Through April 30, 2009 shall be:

(a) If the employee's annual compensation is less than fifteen thousand dollars, ten per cent, nineteen per cent, twenty-three per cent, twenty-five per cent, thirty-one per cent or thirty-seven per cent, at the employee's election pursuant to subsection G of this section.

(b) If the employee's annual compensation is fifteen thousand dollars or more, nineteen per cent, twenty-three per cent, twenty-five per cent,

thirty-one per cent or thirty-seven per cent, at the employee's election pursuant to subsection G of this section.

(c) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year.

2. Beginning from and after April 30, 2009 through December 31, 2009, if an employee's rate of withholding under paragraph 1 of this subsection immediately before May 1, 2009 was:

(a) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year, the withholding tax rate shall remain zero per cent.

(b) Ten per cent, the withholding tax rate shall be increased to 11.5 per cent.

(c) Nineteen per cent, the withholding tax rate shall be increased to 21.9 per cent.

(d) Twenty-three per cent, the withholding tax rate shall be increased to 26.5 per cent.

(e) Twenty-five per cent, the withholding tax rate shall be increased to 28.8 per cent.

(f) Thirty-one per cent, the withholding tax rate shall be increased to 35.7 per cent.

(g) Thirty-seven per cent, the withholding tax rate shall be increased to 42.6 per cent.

3. Beginning from and after December 31, 2009 through June 30, 2010, if an employee's rate of withholding under paragraph 2 of this subsection immediately before January 1, 2010 was:

(a) Zero per cent at the election of an employee who had no state income tax liability in the prior taxable year and expects to have no state income tax liability for the current taxable year, the withholding tax rate shall remain zero per cent.

(b) 11.5 per cent, the withholding tax rate shall be decreased to 10.7 per cent.

(c) 21.9 per cent, the withholding tax rate shall be decreased to 20.3 per cent.

(d) 26.5 per cent, the withholding tax rate shall be decreased to 24.5 per cent.

(e) 28.8 per cent, the withholding tax rate shall be decreased to 26.7 per cent.

(f) 35.7 per cent, the withholding tax rate shall be decreased to 33.1 per cent.

(g) 42.6 per cent, the withholding tax rate shall be decreased to 39.5 per cent.

D. Beginning from and after June 30, 2010, the amount deducted and retained under subsection A of this section shall be prescribed by tables

adopted by the department. On or before March 15, 2010, the department shall submit to the joint legislative budget committee a copy of the table.

E. If the amount collected and payable by the employer to the department in each of the preceding four calendar quarters did not exceed an average of one thousand five hundred dollars, the amount collected shall be paid to the department on or before April 30, July 31, October 31 and January 31 for the preceding calendar quarter. If such amount exceeded one thousand five hundred dollars in each of the preceding four calendar quarters, the employer shall pay to the department the amount the employer deducts and retains pursuant to this section at the same time as the employer is required to make deposits of federal tax pursuant to section 6302 of the internal revenue code. On or before April 30, July 31, October 31 and January 31 each year the employer shall reconcile the amounts payable during the preceding calendar quarter in a manner prescribed by the department, except that if the full amount collected and payable is paid timely to the department under this subsection, the employer may reconcile the amounts on or before May 10, August 10, November 10 and February 10 each year. The department by rule may allow and determine which employers qualify for annual payments of withholding taxes, with an annual report by the employer pursuant to section 43-412, subsection B, if the qualifying employer has established sufficient payment history to indicate that the employer is current and in good standing pursuant to standards established by rule. For any business which has not had a withholding certificate for the four preceding consecutive quarters, the quarterly average shall be computed in a manner prescribed by the department.

F. If an employer fails to make a timely monthly payment because prior to that reporting period it reported on a quarterly basis instead of on a monthly basis, the department shall notify the employer that it is out of compliance with this section. Notwithstanding section 42-1125, the department shall not assess a penalty against an employer for failing to make a timely monthly payment if the employer had filed and remitted all taxes due on a quarterly basis and brings all filings and payments into current compliance within thirty days after being notified by the department.

G. Each employee shall elect the amount authorized by subsection C of this section to be withheld for application toward the employee's state income tax liability. The election provided under this subsection shall be exercised by each employee, in writing on a form prescribed by the department. The election shall be made within five days of employment. Each employer shall notify the employees of the election made available under this subsection and shall have election forms available at all times. Each form shall be completed in triplicate, with one copy each for the department, the employer and the employee. The employer shall file a copy of each completed form with the department. Any employee failing to complete an election form as prescribed shall be deemed to have elected the smallest applicable withholding percentage.

H. Before July 1 of each year, each employer who chooses to not withhold tax pursuant to subsection B of this section shall notify each employee that:

1. State income taxes will not be withheld from compensation in December.

2. The employee may elect to change the rate of withholding tax prescribed by this section to compensate for the resulting change in annual withholdings from the employee's compensation.

I. At an employee's written request, the employer may agree to reduce the amount withheld under this section by the amount of credit that the employee represents to the employer that the employee will qualify for and be entitled to under sections 43-1088, 43-1089, ~~and~~ 43-1089.01 AND 43-1089.03. The employee's request must include the name and address of the qualifying charitable organization, qualified school tuition organization or public school. Within thirty days after agreeing to the employee's request, the employer shall reduce the withholding amount by the amount of the credit, but not below zero, prorated for the number of pay periods remaining in the employee's taxable year after the employee makes the request. If an employer agrees to reduce the withholding amount pursuant to this subsection, the following apply:

1. Within fifteen days after the end of each calendar quarter, the employer must pay the entire amount of the reduction in withholding tax for that quarter to the designated charitable organization, school tuition organization or public school. These payments are considered to be on the employee's behalf, and not the employer's, for the purposes of qualifying for the income tax credits under sections 43-1088, 43-1089, ~~and~~ 43-1089.01 AND 43-1089.03.

2. The employee is responsible and accountable for the accuracy and the amount of reduction in withholding tax and the payments to the charitable organization, school tuition organization or public school.

3. The employer is responsible and accountable to the charitable organization, school tuition organization or public school, to the employee and to the department for actually making the required payments.

4. Within thirty days after the end of each calendar year, or within fifteen days after the termination of employment, the employer must furnish to each electing employee and to the department a statement of the amount withheld and paid on behalf of the employee during that year.

Sec. 3. Section 43-1021, Arizona Revised Statutes, is amended to read:

43-1021. Additions to Arizona gross income

In computing Arizona adjusted gross income, the following amounts shall be added to Arizona gross income:

1. A beneficiary's share of the fiduciary adjustment to the extent that the amount determined by section 43-1333 increases the beneficiary's Arizona gross income.

2. An amount equal to the "ordinary income portion" of a lump sum distribution that was excluded from federal adjusted gross income pursuant to section 402(d) of the internal revenue code.

3. The amount of interest income received on obligations of any state, territory or possession of the United States, or any political subdivision thereof, located outside the state of Arizona, reduced, for tax years beginning from and after December 31, 1996, by the amount of any interest on indebtedness and other related expenses that were incurred or continued to purchase or carry those obligations and that are not otherwise deducted or subtracted in arriving at Arizona gross income.

4. Annuity income received during the taxable year to the extent that the sum of the proceeds received from such annuity in all taxable years prior to and including the current taxable year exceeds the total consideration and premiums paid by the taxpayer. This paragraph applies only to those annuities with respect to which the first payment was received prior to December 31, 1978.

5. The excess of a partner's share of partnership taxable income required to be included under chapter 14, article 2 of this title over the income required to be reported under section 702(a)(8) of the internal revenue code.

6. The excess of a partner's share of partnership losses determined pursuant to section 702(a)(8) of the internal revenue code over the losses allowable under chapter 14, article 2 of this title.

7. The amount by which the adjusted basis of property described in this paragraph and computed pursuant to the internal revenue code exceeds the adjusted basis of such property computed pursuant to this title and the income tax act of 1954, as amended. This paragraph shall apply to all property which is held for the production of income and which is sold or otherwise disposed of during the taxable year, except depreciable property used in a trade or business.

8. The amount of depreciation or amortization of costs of any capital investment that is deducted pursuant to section 167 or 179 of the internal revenue code by a qualified defense contractor with respect to which an election is made to amortize pursuant to section 43-1024.

9. The amount of gain from the sale or other disposition of a capital investment which a qualified defense contractor has elected to amortize pursuant to section 43-1024.

10. Amounts withdrawn from the Arizona state retirement system, the corrections officer retirement plan, the public safety personnel retirement system, the elected officials' retirement plan or a county or city retirement plan by an employee upon termination of employment before retirement to the extent they were deducted in arriving at Arizona taxable income in any year.

11. That portion of the net operating loss included in federal adjusted gross income which has already been taken as a net operating loss for Arizona purposes or which is separately taken as a subtraction under the special net operating loss transition rule.

12. Any nonitemized amount deducted pursuant to section 170 of the internal revenue code representing contributions to an educational institution which denies admission, enrollment or board and room accommodations on the basis of race, color or ethnic background except those institutions primarily established for the education of American Indians.

13. The amount paid as taxes on property in this state with respect to which a credit is claimed under section 43-1078.

14. Amounts withdrawn from a medical savings account by the individual during the taxable year computed pursuant to section 220(f) of the internal revenue code and not included in federal adjusted gross income.

15. Any amount of agricultural water conservation expenses that were deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1084.

16. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1080 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

17. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1080 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1080.

18. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under either section 43-1081 or 43-1081.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

19. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1074.02, 43-1081 or 43-1081.01, as applicable.

20. The deduction referred to in section 1341(a)(4) of the internal revenue code for restoration of a substantial amount held under a claim of right.

21. The amount by which a net operating loss carryover or capital loss carryover allowable pursuant to section 1341(b)(5) of the internal revenue code exceeds the net operating loss carryover or capital loss carryover allowable pursuant to section 43-1029, subsection F.

22. Any amount deducted pursuant to section 170 of the internal revenue code representing contributions to a school tuition organization or a public school for which a credit is claimed under section 43-1089, ~~or~~ 43-1089.01 OR 43-1089.03.

23. Any amount deducted in computing Arizona gross income as expenses for installing solar stub outs or electric vehicle recharge outlets in this state with respect to which a credit is claimed pursuant to section 43-1090.

24. Any wage expenses deducted pursuant to the internal revenue code for which a credit is claimed under section 43-1087 and representing net increases in qualified employment positions for employment of temporary assistance for needy families recipients.

25. Any amount deducted for conveying ownership or development rights of property to an agricultural preservation district under section 48-5702 for which a credit is claimed under section 43-1081.02.

26. The amount of any depreciation allowance allowed pursuant to section 167(a) of the internal revenue code to the extent not previously added.

27. With respect to property for which an expense deduction was taken pursuant to section 179 of the internal revenue code, the amount in excess of twenty-five thousand dollars.

28. The amount of any deductions that are claimed in computing federal adjusted gross income representing expenses for which a credit is claimed under either section 43-1075 or 43-1075.01 or both.

29. The amount by which the depreciation or amortization computed under the internal revenue code with respect to property for which a credit was taken under section 43-1090.01 exceeds the amount of depreciation or amortization computed pursuant to the internal revenue code on the Arizona adjusted basis of the property.

30. The amount by which the adjusted basis computed under the internal revenue code with respect to property for which a credit was claimed under section 43-1090.01 and which is sold or otherwise disposed of during the taxable year exceeds the adjusted basis of the property computed under section 43-1090.01.

31. The amount of a nonqualified withdrawal, as defined in section 15-1871, from a college savings plan established pursuant to section 529 of the internal revenue code that is made to a distributee to the extent the amount is not included in computing federal adjusted gross income, except that the amount added under this paragraph shall not exceed the difference between the amount subtracted under section 43-1022 in prior taxable years and the amount added under this section in any prior taxable years.

32. The amount of unemployment compensation that is excluded from federal adjusted gross income pursuant to section 85(c) of the internal revenue code as added by section 1007 of the American recovery and reinvestment act of 2009 (P.L. 111-5).

33. The amount of discharge of indebtedness income that is deferred and excluded from the computation of federal adjusted gross income or federal taxable income in the current taxable year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5).

34. The amount of any previously deferred original issue discount that was deducted in computing federal adjusted gross income or federal taxable income in the current year pursuant to section 108(i) of the internal revenue code as added by section 1231 of the American recovery and reinvestment act of 2009 (P.L. 111-5), to the extent that the amount was previously subtracted from Arizona gross income pursuant to section 43-1022, paragraph 33.

35. For taxable years beginning from and after December 31, 2011 through December 31, 2014, the amount of any deduction that is claimed in computing federal adjusted gross income for health insurance premiums or contributions to a health savings account for which a credit is claimed under section 43-1087.01.

Sec. 4. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1089.03, to read:

43-1089.03. Credit for contributions to certified school tuition organization

A. A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE AMOUNT OF VOLUNTARY CASH CONTRIBUTIONS BY THE TAXPAYER OR ON THE TAXPAYER'S BEHALF PURSUANT TO SECTION 43-401, SUBSECTION I DURING THE TAXABLE YEAR TO A SCHOOL TUITION ORGANIZATION THAT IS CERTIFIED PURSUANT TO CHAPTER 16 OF THIS TITLE AT THE TIME OF DONATION. EXCEPT AS PROVIDED BY SUBSECTION C OF THIS SECTION, THE AMOUNT OF THE CREDIT SHALL NOT EXCEED:

1. FIVE HUNDRED DOLLARS IN ANY TAXABLE YEAR FOR A SINGLE INDIVIDUAL OR A HEAD OF HOUSEHOLD.

2. ONE THOUSAND DOLLARS IN ANY TAXABLE YEAR FOR A MARRIED COUPLE FILING A JOINT RETURN.

B. A HUSBAND AND WIFE WHO FILE SEPARATE RETURNS FOR A TAXABLE YEAR IN WHICH THEY COULD HAVE FILED A JOINT RETURN MAY EACH CLAIM ONLY ONE-HALF OF THE TAX CREDIT THAT WOULD HAVE BEEN ALLOWED FOR A JOINT RETURN.

C. FOR EACH TAXABLE YEAR BEGINNING ON OR AFTER JANUARY 1, THE DEPARTMENT SHALL ADJUST THE DOLLAR AMOUNTS PRESCRIBED BY SUBSECTION A, PARAGRAPHS 1 AND 2 OF THIS SECTION ACCORDING TO THE AVERAGE ANNUAL CHANGE IN THE METROPOLITAN PHOENIX CONSUMER PRICE INDEX PUBLISHED BY THE UNITED STATES BUREAU OF LABOR STATISTICS, EXCEPT THAT THE DOLLAR AMOUNTS SHALL NOT BE REVISED DOWNWARD BELOW THE AMOUNTS ALLOWED IN THE PRIOR TAXABLE YEAR. THE REVISED DOLLAR AMOUNTS SHALL BE RAISED TO THE NEAREST WHOLE DOLLAR.

D. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE YEARS' INCOME TAX LIABILITY.

E. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX PURPOSES.

F. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER DESIGNATES THE TAXPAYER'S CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF ANY DEPENDENT OF THE TAXPAYER OR IF THE TAXPAYER DESIGNATES A STUDENT BENEFICIARY AS A CONDITION OF THE TAXPAYER'S CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER, WITH THE INTENT TO BENEFIT THE TAXPAYER'S DEPENDENT, AGREES WITH ONE OR MORE OTHER TAXPAYERS TO DESIGNATE EACH TAXPAYER'S CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF THE OTHER TAXPAYER'S DEPENDENT.

G. FOR THE PURPOSES OF THIS SECTION, A CONTRIBUTION, FOR WHICH A CREDIT IS CLAIMED, THAT IS MADE ON OR BEFORE THE FIFTEENTH DAY OF THE FOURTH MONTH FOLLOWING THE CLOSE OF THE TAXABLE YEAR MAY BE APPLIED TO EITHER THE CURRENT OR PRECEDING TAXABLE YEAR AND IS CONSIDERED TO HAVE BEEN MADE ON THE LAST DAY OF THAT TAXABLE YEAR.

H. A TAXPAYER MAY NOT CLAIM A CREDIT UNDER THIS SECTION AND ALSO UNDER SECTION 43-1089 WITH RESPECT TO THE SAME CONTRIBUTION. IF A TAXPAYER'S CONTRIBUTION TO A SCHOOL TUITION ORGANIZATION EXCEEDS THE AMOUNT OF THE CREDIT ALLOWED UNDER SECTION 43-1089, A TAXPAYER MAY CLAIM A CREDIT UNDER THIS SECTION AND ALSO UNDER SECTION 43-1089. IF A TAXPAYER'S CONTRIBUTION TO A SCHOOL TUITION ORGANIZATION DOES NOT EXCEED THE AMOUNT OF THE CREDIT ALLOWED BY SECTION 43-1089, THE CONTRIBUTION IS CONSIDERED TO HAVE BEEN MADE PURSUANT TO SECTION 43-1089.

Sec. 5. Section 43-1602, Arizona Revised Statutes, is amended to read:

43-1602. Certification as a school tuition organization

A. A nonprofit organization in this state that is exempt or has applied for exemption from federal taxation under section 501(c)(3) of the internal revenue code may apply to the department of revenue for certification as a school tuition organization, and the department shall certify the school tuition organization if it meets the requirements prescribed by this chapter. An organization must apply for certification on a form prescribed and furnished on request by the department.

B. The department shall:

1. Maintain a public registry of currently certified school tuition organizations.

2. Make the registry available to the public on request.

3. Post the registry on the department's official website.

C. The department shall send written notice by certified mail to a school tuition organization if the department determines that the school tuition organization has engaged in any of the following activities:

1. Failing or refusing to allocate at least ninety per cent of annual revenues FROM CONTRIBUTIONS MADE FOR THE PURPOSES OF SECTIONS 43-1089 AND 43-1089.03 for educational scholarships or tuition grants.

2. Failing or refusing to file the annual reports required by section 43-1604.

3. Limiting availability of scholarships to students of only one school.

4. Encouraging, facilitating or knowingly permitting taxpayers to engage in actions prohibited by this article.

5. Awarding, restricting or reserving educational scholarships or tuition grants for use by a particular student based solely on the recommendation of the donor.

D. A school tuition organization that receives notice from the department pursuant to subsection C of this section has ninety days to correct the violation identified by the department in the notice. If a school tuition organization fails or refuses to comply after ninety days, the department may remove the organization from the list of certified school tuition organizations and shall make available to the public notice of removal as soon as possible. An organization that is removed from the list of certified school tuition organizations must notify any taxpayer who attempts to make a contribution that the contribution is not eligible for the tax credit and offer to refund all donations received after the date of the notice of termination of certification.

E. A school tuition organization may request an administrative hearing on the revocation of its certification as provided by title 41, chapter 6, article 10. Except as provided in section 41-1092.08, subsection H, a decision of the department is subject to judicial review pursuant to title 12, chapter 7, article 6.

Sec. 6. Section 43-1603, Arizona Revised Statutes, is amended to read:

43-1603. Operational requirements for school tuition organizations; notice; qualified schools

A. A certified school tuition organization must be established to receive contributions from taxpayers for the purposes of income tax credits under section 43-1089 and to pay educational scholarships or tuition grants to allow students to attend any qualified school of their parents' choice.

B. To be eligible for certification and retain certification, the school tuition organization:

1. Must allocate at least ninety per cent of its annual revenue FROM CONTRIBUTIONS MADE FOR THE PURPOSES OF SECTIONS 43-1089 AND 43-1089.03 for educational scholarships or tuition grants.

2. Shall not limit the availability of educational scholarships or tuition grants to only students of one school.

3. May allow donors to recommend student beneficiaries, but shall not award, designate or reserve scholarships solely on the basis of donor recommendations.

4. Shall not allow donors to designate student beneficiaries as a condition of any contribution to the organization, or facilitate, encourage

or knowingly permit the exchange of beneficiary student designations in violation of section 43-1089, subsection F.

C. A school tuition organization shall include the following notice in any printed materials soliciting donations, in applications for scholarships and on its website:

Notice

A school tuition organization cannot award, restrict or reserve scholarships solely on the basis of a donor's recommendation.

A taxpayer may not claim a tax credit if the taxpayer agrees to swap donations with another taxpayer to benefit either taxpayer's own dependent.

D. In evaluating applications and awarding, designating or reserving scholarships, a school tuition organization:

1. Shall not award, designate or reserve a scholarship solely on the recommendation of any person contributing money to the organization, but may consider the recommendation among other factors.

2. Shall consider the financial need of applicants.

~~E. A qualified school shall not accept an educational scholarship or tuition grant from a school tuition organization in an amount that exceeds the school's total cost of educating the student in whose name the scholarship or grant is received.~~

E. A TAXPAYER'S CONTRIBUTION TO A SCHOOL TUITION ORGANIZATION THAT EXCEEDS THE AMOUNT OF THE CREDIT ALLOWED BY SECTION 43-1089 BUT DOES NOT EXCEED THE AMOUNT OF THE CREDIT ALLOWED BY SECTION 43-1089.03 IS CONSIDERED A CONTRIBUTION PURSUANT TO SECTION 43-1089.03. A SCHOOL TUITION ORGANIZATION MUST USE AT LEAST NINETY PER CENT OF CONTRIBUTIONS MADE PURSUANT TO SECTION 43-1089.03 FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS FOR STUDENTS TO WHOM ANY OF THE FOLLOWING APPLIES:

1. ATTENDED A GOVERNMENTAL PRIMARY OR SECONDARY SCHOOL AS A FULL-TIME STUDENT AS DEFINED IN SECTION 15-901 OR ATTENDED A PRESCHOOL PROGRAM THAT OFFERS SERVICES TO STUDENTS WITH DISABILITIES AT A GOVERNMENTAL SCHOOL FOR AT LEAST NINETY DAYS OF THE PRIOR FISCAL YEAR AND TRANSFERRED FROM A GOVERNMENTAL SCHOOL TO A QUALIFIED SCHOOL.

2. ENROLLS IN A QUALIFIED SCHOOL IN A KINDERGARTEN PROGRAM OR A PRESCHOOL PROGRAM THAT OFFERS SERVICES TO STUDENTS WITH DISABILITIES.

3. IS THE DEPENDENT OF A MEMBER OF THE ARMED FORCES OF THE UNITED STATES WHO IS STATIONED IN THIS STATE PURSUANT TO MILITARY ORDERS.

4. RECEIVED AN EDUCATIONAL SCHOLARSHIP OR TUITION GRANT UNDER PARAGRAPH 1, 2 OR 3 OF THIS SUBSECTION OR UNDER CHAPTER 15 OF THIS TITLE IF THE STUDENT CONTINUES TO ATTEND A QUALIFIED SCHOOL IN A SUBSEQUENT YEAR.

F. IN AWARDING EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS FROM CONTRIBUTIONS MADE PURSUANT TO SECTION 43-1089.03, A SCHOOL TUITION ORGANIZATION SHALL GIVE PRIORITY TO STUDENTS AND SIBLINGS OF STUDENTS ON A WAITING LIST FOR SCHOLARSHIPS IF THE SCHOOL TUITION ORGANIZATION MAINTAINS A

WAITING LIST AND TO SIBLINGS OF STUDENTS WHO RECEIVED AN EDUCATIONAL SCHOLARSHIP OR TUITION GRANT FROM A SCHOOL TUITION ORGANIZATION IN THE PREVIOUS YEAR.

G. IF AN INDIVIDUAL EDUCATIONAL SCHOLARSHIP OR TUITION GRANT EXCEEDS THE SCHOOL'S TOTAL COST OF EDUCATING THAT STUDENT, THE AMOUNT IN EXCESS SHALL BE RETURNED TO THE SCHOOL TUITION ORGANIZATION THAT MADE THE AWARD OR GRANT. THE SCHOOL TUITION ORGANIZATION MAY ALLOCATE THE RETURNED MONIES AS A MULTIYEAR AWARD FOR THAT STUDENT AND REPORT THE AWARD PURSUANT TO SECTION 43-1604, PARAGRAPH 5, SUBDIVISION (b) OR MAY ALLOCATE THE RETURNED MONIES FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS FOR OTHER STUDENTS.

Sec. 7. Section 43-1604, Arizona Revised Statutes, is amended to read:

43-1604. Annual report

On or before September 30 of each year, each school tuition organization shall report electronically to the department, in a form prescribed by the department, the following information, separately compiled and identified for the purposes of ~~section~~ SECTIONS 43-1089 AND 43-1089.03:

1. The name, address and contact person of the school tuition organization.

2. The total number of contributions received during the previous fiscal year.

3. The total dollar amount of contributions received during the previous fiscal year.

4. The total number of children awarded educational scholarships or tuition grants during the previous fiscal year.

5. The total dollar amount of:

(a) Educational scholarships and tuition grants distributed during the previous fiscal year.

(b) Money being held for identified students' scholarships and tuition grants in future years.

6. The cost of audits pursuant to section 43-1605 paid during the fiscal year.

7. The total dollar amount of educational scholarships and tuition grants awarded during the previous fiscal year to:

(a) Students whose family income meets the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1785) for free or reduced price lunches.

(b) Students whose family income exceeds the threshold prescribed by subdivision (a) of this paragraph but does not exceed one hundred eighty-five per cent of the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1785) for free or reduced price lunches.

8. For each school to which educational scholarships or tuition grants were awarded:

(a) The name and address of the school.

(b) The number of educational scholarships and tuition grants awarded during the previous fiscal year.

(c) The total dollar amount of educational scholarships and tuition grants awarded during the previous fiscal year.

9. The names, job titles and annual salaries of the three employees who receive the highest annual salaries from the school tuition organization.

Sec. 8. Purpose

Pursuant to section 43-223, Arizona Revised Statutes, the legislature enacts section 43-1089.03, Arizona Revised Statutes, as added by this act, to encourage individuals to make charitable contributions to school tuition organizations in order to improve education by raising tuition scholarships for children in this state.

Sec. 9. Retroactivity

This act applies retroactively to taxable years beginning from and after December 31, 2011.