

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SENATE BILL 1048

AN ACT

AMENDING SECTIONS 43-222 AND 43-1021, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1089.04; AMENDING SECTIONS 43-1183, 43-1184, 43-1503 AND 43-1603, ARIZONA REVISED STATUTES; RELATING TO INCOME TAX CREDITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 43-222. Income tax credit review schedule

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

7 1. For years ending in 0 and 5, sections 43-1079.01, 43-1087, 43-1088,
8 43-1090.01, 43-1167.01, 43-1175 and 43-1182.

9 2. For years ending in 1 and 6, sections 43-1074.02, 43-1083,
10 43-1083.02, 43-1085.01, 43-1164.02, 43-1164.03 and 43-1183.

11 3. For years ending in 2 and 7, sections 43-1073, 43-1079, 43-1080,
12 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1090,
13 43-1164, 43-1167, 43-1169, 43-1176 and 43-1181.

14 4. For years ending in 3 and 8, sections 43-1074.01, 43-1081, 43-1168,
15 43-1170 and 43-1178.

16 5. For years ending in 4 and 9, sections 43-1076, 43-1076.01,
17 43-1081.01, 43-1083.01, 43-1084, 43-1089.04, 43-1162, 43-1162.01, 43-1164.01,
18 43-1170.01 and 43-1184 and, beginning in 2019, sections 43-1083.03 and
19 43-1164.04.

20 Sec. 2. Section 43-1021, Arizona Revised Statutes, is amended to read:

21 43-1021. Additions to Arizona gross income

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

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

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

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

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

43 5. The excess of a partner's share of partnership taxable income
44 required to be included under chapter 14, article 2 of this title over the

1 income required to be reported under section 702(a)(8) of the internal
2 revenue code.

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

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

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

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

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

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

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

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

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

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

1 16. The amount by which the adjusted basis computed under the internal
2 revenue code with respect to property for which a credit was claimed under
3 section 43-1080 and that is sold or otherwise disposed of during the taxable
4 year exceeds the adjusted basis of the property computed under section
5 43-1080.

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

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

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

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

24 21. Any amount deducted pursuant to section 170 of the internal revenue
25 code representing contributions to a school tuition organization or a public
26 school for which a credit is claimed under section 43-1089, 43-1089.01, ~~or~~
27 43-1089.03 OR 43-1089.04.

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

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

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

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

41 26. With respect to property for which an expense deduction was taken
42 pursuant to section 179 of the internal revenue code in a taxable year
43 beginning before January 1, 2013, the amount in excess of twenty-five
44 thousand dollars.

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

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

11 29. The amount of a nonqualified withdrawal, as defined in section
12 15-1871, from a college savings plan established pursuant to section 529 of
13 the internal revenue code that is made to a distributee to the extent the
14 amount is not included in computing federal adjusted gross income, except
15 that the amount added under this paragraph shall not exceed the difference
16 between the amount subtracted under section 43-1022 in prior taxable years
17 and the amount added under this section in any prior taxable years.

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

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

27 32. The amount of any previously deferred original issue discount that
28 was deducted in computing federal adjusted gross income or federal taxable
29 income in the current year pursuant to section 108(i) of the internal revenue
30 code as added by section 1231 of the American recovery and reinvestment act
31 of 2009 (P.L. 111-5), to the extent that the amount was previously subtracted
32 from Arizona gross income pursuant to section 43-1022, paragraph 31.

33 33. For taxable years beginning from and after December 31, 2011
34 through December 31, 2014, the amount of any deduction that is claimed in
35 computing federal adjusted gross income for health insurance premiums or
36 contributions to a health savings account for which a credit is claimed under
37 section 43-1087.01 or 43-1185.

38 Sec. 3. Title 43, chapter 10, article 5, Arizona Revised Statutes, is
39 amended by adding section 43-1089.04, to read:

40 43-1089.04. Pro rata tax credit for business contributions to
41 school tuition organizations; definition

42 A. A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE
43 PRO RATA AMOUNT OF CONTRIBUTIONS MADE BY A BUSINESS PURSUANT TO SECTION
44 43-1183, SUBSECTION F OR SECTION 43-1184, SUBSECTION F, OR BOTH. ALL OTHER

1 REQUIREMENTS OF SECTION 43-1183 OR 43-1184 AND THE APPLICABLE SECTIONS OF
2 CHAPTER 15 OF THIS TITLE MUST BE MET.

3 B. CO-OWNERS OF A BUSINESS MAY EACH CLAIM THE PRO RATA SHARE OF THE
4 CREDIT ALLOWED UNDER SECTIONS 43-1183 AND 43-1184 BASED ON THE TAXPAYER'S
5 OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL THE OWNERS OF A
6 BUSINESS MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED A SOLE OWNER
7 OF A BUSINESS.

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

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

16 E. THE TAX CREDIT IS NOT ALLOWED IF THE BUSINESS DESIGNATES THE
17 CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF ANY
18 DEPENDENT OF THE TAXPAYER CLAIMING A CREDIT UNDER THIS SECTION OR IF THE
19 BUSINESS DESIGNATES A STUDENT BENEFICIARY AS A CONDITION OF THE CONTRIBUTION
20 TO THE SCHOOL TUITION ORGANIZATION. THE TAX CREDIT IS NOT ALLOWED IF THE
21 BUSINESS, WITH THE INTENT TO BENEFIT THE TAXPAYER'S DEPENDENT, AGREES WITH
22 ONE OR MORE OTHER BUSINESSES OR TAXPAYERS TO DESIGNATE EACH CONTRIBUTION TO
23 THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF THE OTHER
24 TAXPAYER'S DEPENDENT.

25 F. FOR THE PURPOSES OF THIS SECTION, "BUSINESS" MEANS AN S CORPORATION
26 AS DEFINED IN SECTION 1361 OF THE INTERNAL REVENUE CODE.

27 Sec. 4. Section 43-1183, Arizona Revised Statutes, is amended to read:

28 43-1183. Credit for contributions to school tuition
29 organization

30 A. Beginning from and after June 30, 2006, a credit is allowed against
31 the taxes imposed by this title for the amount of voluntary cash
32 contributions made by the taxpayer during the taxable year to a school
33 tuition organization that is certified pursuant to chapter 15 of this title
34 at the time of donation.

35 B. The amount of the credit is the total amount of the taxpayer's
36 contributions for the taxable year under subsection A of this section and is
37 preapproved by the department of revenue pursuant to subsection D of this
38 section.

39 C. The department of revenue:

40 1. Shall not allow tax credits under this section and section
41 20-224.06 that exceed in the aggregate a combined total of ten million
42 dollars in any fiscal year. Beginning in fiscal year 2007-2008, the
43 aggregate dollar amount of the tax credit cap from the previous fiscal year
44 shall be annually increased by twenty per cent.

1 2. Shall preapprove tax credits under this section and section
2 20-224.06 subject to subsection D of this section.

3 3. Shall allow the tax credits under this section and section
4 20-224.06 on a first come, first served basis.

5 D. For the purposes of subsection C, paragraph 2 of this section,
6 before making a contribution to a school tuition organization, the taxpayer
7 under this title or title 20 must notify the school tuition organization of
8 the total amount of contributions that the taxpayer intends to make to the
9 school tuition organization. Before accepting the contribution, the school
10 tuition organization shall request preapproval from the department of revenue
11 for the taxpayer's intended contribution amount. The department of revenue
12 shall preapprove or deny the requested amount within twenty days after
13 receiving the request from the school tuition organization. If the
14 department of revenue preapproves the request, the school tuition
15 organization shall immediately notify the taxpayer, and the department of
16 insurance in the case of a credit under section 20-224.06, that the requested
17 amount was preapproved by the department of revenue. In order to receive a
18 tax credit under this subsection, the taxpayer shall make the contribution to
19 the school tuition organization within twenty days after receiving notice
20 from the school tuition organization that the requested amount was
21 preapproved. If the school tuition organization does not receive the
22 preapproved contribution from the taxpayer within the required twenty days,
23 the school tuition organization shall immediately notify the department of
24 revenue, and the department of insurance in the case of a credit under
25 section 20-224.06, and the department of revenue shall no longer include this
26 preapproved contribution amount when calculating the limit prescribed in
27 subsection C, paragraph 1 of this section.

28 E. If the allowable tax credit exceeds the taxes otherwise due under
29 this title on the claimant's income, or if there are no taxes due under this
30 title, the taxpayer may carry the amount of the claim not used to offset the
31 taxes under this title forward for not more than five consecutive taxable
32 years' income tax liability.

33 F. Co-owners of a business, including corporate partners in a
34 partnership, ~~AND STOCKHOLDERS OF AN S CORPORATION AS DEFINED IN SECTION 1361~~
35 ~~OF THE INTERNAL REVENUE CODE~~, may each claim only the pro rata share of the
36 credit allowed under this section based on the ownership interest. The total
37 of the credits allowed all such owners may not exceed the amount that would
38 have been allowed a sole owner.

39 G. The credit allowed by this section is in lieu of any deduction
40 pursuant to section 170 of the internal revenue code and taken for state tax
41 purposes.

42 H. A taxpayer shall not claim a credit under this section and also
43 under section 43-1184 with respect to the same contribution.

1 I. The tax credit is not allowed if the taxpayer designates the
2 taxpayer's contribution to the school tuition organization for the direct
3 benefit of any specific student.

4 J. The department of revenue, with the cooperation of the department
5 of insurance, shall adopt rules and publish and prescribe forms and
6 procedures necessary for the administration of this section.

7 Sec. 5. Section 43-1184, Arizona Revised Statutes, is amended to read:

8 43-1184. Credit for contributions to school tuition
9 organization; displaced students; students with
10 disabilities

11 A. Beginning from and after June 30, 2009, a credit is allowed against
12 the taxes imposed by this title for the amount of voluntary cash
13 contributions made by the taxpayer during the taxable year to a school
14 tuition organization that is certified pursuant to chapter 15 of this title
15 at the time of donation.

16 B. The amount of the credit is the total amount of the taxpayer's
17 contributions for the taxable year under subsection A of this section and is
18 preapproved by the department of revenue pursuant to subsection D of this
19 section.

20 C. The department of revenue:

21 1. Shall not allow tax credits under this section and section
22 20-224.07 that exceed in the aggregate a combined total of five million
23 dollars in any fiscal year.

24 2. Shall preapprove tax credits under this section and section
25 20-224.07 subject to subsection D of this section.

26 3. Shall allow the tax credits under this section and section
27 20-224.07 on a first come, first served basis.

28 D. For the purposes of subsection C, paragraph 2 of this section,
29 before making a contribution to a school tuition organization, the taxpayer
30 under this title or title 20 must notify the school tuition organization of
31 the total amount of contributions that the taxpayer intends to make to the
32 school tuition organization. Before accepting the contribution, the school
33 tuition organization shall request preapproval from the department of revenue
34 for the taxpayer's intended contribution amount. The department of revenue
35 shall preapprove or deny the requested amount within twenty days after
36 receiving the request from the school tuition organization. If the
37 department of revenue preapproves the request, the school tuition
38 organization shall immediately notify the taxpayer that the requested amount
39 was preapproved by the department of revenue. In order to receive a tax
40 credit under this subsection, the taxpayer shall make the contribution to the
41 school tuition organization within twenty days after receiving notice from
42 the school tuition organization that the requested amount was preapproved.
43 If the school tuition organization does not receive the preapproved
44 contribution from the taxpayer within the required twenty days, the school
45 tuition organization shall immediately notify the department of revenue and

1 the department shall no longer include this preapproved contribution amount
2 when calculating the limit prescribed in subsection C, paragraph 1 of this
3 section.

4 E. If the allowable tax credit exceeds the taxes otherwise due under
5 this title on the claimant's income, or if there are no taxes due under this
6 title, the taxpayer may carry the amount of the claim not used to offset the
7 taxes under this title forward for not more than five consecutive taxable
8 years' income tax liability.

9 F. Co-owners of a business, including corporate partners in a
10 partnership, ~~AND STOCKHOLDERS OF AN S CORPORATION AS DEFINED IN SECTION 1361~~
11 ~~OF THE INTERNAL REVENUE CODE~~, may each claim only the pro rata share of the
12 credit allowed under this section based on the ownership interest. The total
13 of the credits allowed all such owners may not exceed the amount that would
14 have been allowed a sole owner.

15 G. The credit allowed by this section is in lieu of any deduction
16 pursuant to section 170 of the internal revenue code and taken for state tax
17 purposes.

18 H. A taxpayer shall not claim a credit under this section and also
19 under section 43-1183 with respect to the same contribution.

20 I. The tax credit is not allowed if the taxpayer designates the
21 taxpayer's contribution to the school tuition organization for the direct
22 benefit of any specific student.

23 J. The department of revenue shall adopt rules necessary for the
24 administration of this section.

25 Sec. 6. Section 43-1503, Arizona Revised Statutes, is amended to read:
26 43-1503. Operational requirements for school tuition
27 organizations

28 A. A certified school tuition organization must be established to
29 receive contributions from taxpayers for the purposes of income tax credits
30 under sections 43-1183 and 43-1184 and insurance premium tax credits under
31 sections 20-224.06 and 20-224.07 and to pay educational scholarships or
32 tuition grants to allow students to attend any qualified school of their
33 parents' or custodians' choice.

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

36 1. Must allocate at least ninety per cent of its annual revenue from
37 contributions made for the purposes of sections 20-224.06, 20-224.07, 43-1183
38 and 43-1184 for educational scholarships or tuition grants.

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

41 3. Must allow the department of revenue to verify that the educational
42 scholarships and tuition grants that are issued are awarded to students who
43 attend a qualified school.

44 4. Must not knowingly collude with any other school tuition
45 organization to circumvent the limits of section 43-1504, subsection C.

1 E. A taxpayer's contribution to a school tuition organization that
2 exceeds the amount of the credit allowed by section 43-1089 but does not
3 exceed the amount of the credit allowed by section 43-1089.03 is considered a
4 contribution pursuant to section 43-1089.03. A school tuition organization
5 must use at least ninety per cent of contributions made pursuant to section
6 43-1089.03 for educational scholarships or tuition grants for students to
7 whom any of the following applies:

8 1. Attended a governmental primary or secondary school as a full-time
9 student as defined in section 15-901 or attended a preschool program that
10 offers services to students with disabilities at a governmental school for at
11 least ninety days of the prior fiscal year and transferred from a
12 governmental school to a qualified school.

13 2. Enrolls in a qualified school in a kindergarten program or a
14 preschool program that offers services to students with disabilities.

15 3. Is the dependent of a member of the armed forces of the United
16 States who is stationed in this state pursuant to military orders.

17 4. Received an educational scholarship or tuition grant under
18 paragraph 1, 2 or 3 of this subsection or under chapter 15 of this title if
19 the student continues to attend a qualified school in a subsequent year.

20 F. In awarding educational scholarships or tuition grants from
21 contributions made pursuant to section 43-1089.03, a school tuition
22 organization shall give priority to students and siblings of students on a
23 waiting list for scholarships if the school tuition organization maintains a
24 waiting list.

25 G. If an individual educational scholarship or tuition grant exceeds
26 the school's total cost of educating that student, the amount in excess shall
27 be returned to the school tuition organization that made the award or
28 grant. The school tuition organization may allocate the returned monies as a
29 multiyear award for that student and report the award pursuant to section
30 43-1604, paragraph 5, subdivision (b) or may allocate the returned monies for
31 educational scholarships or tuition grants for other students.

32 Sec. 8. Purpose

33 Pursuant to section 43-223, Arizona Revised Statutes, the legislature
34 enacts section 43-1089.04, Arizona Revised Statutes, as added by this act, to
35 provide an individual credit for contributions made by a business to school
36 tuition organizations.

37 Sec. 9. Retroactivity

38 This act is effective and applies retroactively to taxable years from
39 and after December 31, 2013.