

REFERENCE TITLE: STOs; administrative cost allocation

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

## HB 2209

Introduced by  
Representatives Friese, Alston, Cardenas, Fernandez, Gabaldón, Mendez,  
Otondo, Saldate: Andrade, Clark, Gonzales, Hale, Larkin, Mach, Velasquez

AN ACT

AMENDING SECTIONS 43-1502, 43-1503, 43-1504, 43-1505, 43-1602 AND 43-1603,  
ARIZONA REVISED STATUTES; 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 43-1502, Arizona Revised Statutes, is amended to  
3 read:

4 43-1502. Certification as a school tuition organization

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

12 B. The department shall:

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

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

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

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

20 1. ~~Failing~~ FAILED or ~~refusing~~ REFUSED to allocate at least ~~ninety-per~~  
21 ~~cent~~ NINETY-FIVE PERCENT of annual revenues from contributions made for the  
22 purposes of sections 20-224.06, 20-224.07, 43-1183 and 43-1184 for  
23 educational scholarships or tuition grants.

24 2. ~~Failing~~ FAILED or ~~refusing~~ REFUSED to file the annual reports  
25 required by section 43-1506.

26 3. ~~Limiting~~ LIMITED THE availability of scholarships to students of  
27 only one school.

28 4. ~~Encouraging~~ ENCOURAGED, ~~facilitating~~ FACILITATED or knowingly  
29 ~~permitting~~ PERMITTED taxpayers to engage in actions prohibited by this  
30 article.

31 5. Knowingly ~~colluding~~ COLLUDED with any other school tuition  
32 organization to circumvent the limits of section 43-1504, subsection C.

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

44 E. A school tuition organization may request an administrative hearing  
45 on the revocation of its certification as provided by title 41, chapter 6,

1 article 10. Except as provided in section 41-1092.08, subsection H, a  
2 decision of the department is subject to judicial review pursuant to title  
3 12, chapter 7, article 6.

4 Sec. 2. Section 43-1503, Arizona Revised Statutes, is amended to read:

5 43-1503. Operational requirements for school tuition  
6 organizations

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

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

15 1. Must allocate at least ~~ninety~~ NINETY-FIVE percent of its annual  
16 revenue from contributions made for the purposes of sections 20-224.06,  
17 20-224.07, 43-1183 and 43-1184 for educational scholarships or tuition  
18 grants.

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

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

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

26 5. Must not award educational scholarships or tuition grants to  
27 students who are simultaneously enrolled in a district school or charter  
28 school and a qualified school.

29 6. Shall include on the organization's website, if one exists, the  
30 percentage and total dollar amount of educational scholarships and tuition  
31 grants awarded during the previous fiscal year to:

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

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

41 Sec. 3. Section 43-1504, Arizona Revised Statutes, is amended to read:

42 43-1504. Special provisions; corporate donations for low-income  
43 scholarships; rules

44 A. A school tuition organization that receives contributions from a  
45 corporation for the purposes of section 20-224.06 or 43-1183 must use at

1 least ~~ninety per cent~~ NINETY-FIVE PERCENT of those contributions to provide  
2 educational scholarships or tuition grants only to children whose family  
3 income does not exceed one hundred eighty-five ~~per cent~~ PERCENT of the income  
4 limit required to qualify a child for ~~reduced-price~~ REDUCED-PRICE lunches  
5 under the national school lunch and child nutrition acts (42 United States  
6 Code sections 1751 through 1785) and to whom any of the following applies:

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

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

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

16 4. Received an educational scholarship or tuition grant under  
17 paragraph 1, 2 or 3 of this subsection or chapter 16, article 1 of this title  
18 if the children continue to attend a qualified school in a subsequent year.

19 B. A child is eligible to receive an educational scholarship or  
20 tuition grant under subsection A of this section if the child meets the  
21 criteria to receive a ~~reduced-price~~ REDUCED-PRICE lunch but does not actually  
22 claim that benefit.

23 C. In 2006, a school tuition organization shall not issue an  
24 educational scholarship or a tuition grant for the purposes of section  
25 20-224.06 or 43-1183 in an amount that exceeds four thousand two hundred  
26 dollars for students in a ~~disabled-preschool-or~~ kindergarten program, IN A  
27 PRESCHOOL PROGRAM THAT OFFERS SERVICES TO STUDENTS WITH DISABILITIES or IN  
28 grades one through eight or five thousand five hundred dollars for students  
29 in grades nine through twelve. In each year after 2006, the limitation  
30 amount for a scholarship or a grant under this subsection shall be increased  
31 by one hundred dollars.

32 D. A school tuition organization shall require that student  
33 beneficiaries use the educational scholarships or tuition grants on a  
34 full-time basis. If a child leaves the school before completing an entire  
35 school year, the school shall refund a prorated amount of the educational  
36 scholarship or tuition grant to the school tuition organization that issued  
37 the scholarship or grant. The school tuition organization shall allocate any  
38 refunds it receives under this subsection for educational scholarships or  
39 tuition grants.

40 E. Students who receive an educational scholarship or tuition grant  
41 under this section shall be allowed to attend any qualified school of their  
42 parents' choice.

43 F. The department of revenue, with the cooperation of the department  
44 of insurance, shall adopt rules and publish and prescribe forms and  
45 procedures necessary for the administration of this section.

1 Sec. 4. Section 43-1505, Arizona Revised Statutes, is amended to read:

2 43-1505. Special provisions; corporate donations for displaced  
 3 students and students with disabilities; definition

4 A. A school tuition organization that receives contributions for the  
 5 purposes of section 20-224.07 or 43-1184 must use at least ~~ninety per cent~~  
 6 **NINETY-FIVE PERCENT** of those contributions to provide educational  
 7 scholarships or tuition grants to qualified students.

8 B. The amount of an educational scholarship or a tuition grant that is  
 9 issued by a school tuition organization under this section shall not exceed  
 10 the cost of tuition for the student to attend the qualified school or ~~ninety~~  
 11 ~~per cent~~ **NINETY-FIVE PERCENT** of the amount of state aid that otherwise would  
 12 be computed for the student as provided in title 15, chapter 9, article 5,  
 13 whichever is less. On request from a school tuition organization, the  
 14 department of education shall provide to the school tuition organization in a  
 15 timely manner the amount computed for the student under this subsection that  
 16 represents the ~~ninety per cent~~ **NINETY-FIVE PERCENT** limitation prescribed in  
 17 this subsection.

18 C. A school tuition organization shall require that student  
 19 beneficiaries use the educational scholarships or tuition grants on a  
 20 full-time basis. If a child leaves the school before completing an entire  
 21 school year, the school shall refund a prorated amount of the educational  
 22 scholarship or tuition grant to the school tuition organization that issued  
 23 the scholarship or grant. The school tuition organization shall allocate any  
 24 refunds it receives under this subsection for educational scholarships or  
 25 tuition grants.

26 D. Qualified students who receive an educational scholarship or  
 27 tuition grant under this section shall be allowed to attend any qualified  
 28 school of their custodians' choice.

29 E. For the purposes of this section, "qualified student" means a  
 30 student, including a student who previously qualified for an educational  
 31 scholarship or tuition grant under this section and continues to attend a  
 32 qualified school, who has been either:

33 1. Placed in foster care pursuant to title 8, chapter 4 at any time  
 34 before the student graduates from high school or obtains a general  
 35 equivalency diploma.

36 2. Identified as having a disability under section 504 of the  
 37 rehabilitation act (29 United States Code section 794) or identified at any  
 38 time by a school district as a child with a disability as defined in section  
 39 15-761 or a child with a disability who is eligible to receive services from  
 40 a school district under section 15-763.

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

42 43-1602. Certification as a school tuition organization

43 A. A nonprofit organization in this state that is exempt or has  
 44 applied for exemption from federal taxation under section 501(c)(3) of the  
 45 internal revenue code may apply to the department of revenue for

1 certification as a school tuition organization, and the department shall  
2 certify the school tuition organization if it meets the requirements  
3 prescribed by this chapter. An organization must apply for certification on  
4 a form prescribed and furnished on request by the department.

5 B. The department shall:

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

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

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

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

13 1. ~~Failing~~ FAILED or ~~refusing~~ REFUSED to allocate at least ~~ninety per~~  
14 ~~cent~~ NINETY-FIVE PERCENT of annual revenues from contributions made for the  
15 purposes of sections 43-1089 and 43-1089.03 for educational scholarships or  
16 tuition grants.

17 2. ~~Failing~~ FAILED or ~~refusing~~ REFUSED to file the annual reports  
18 required by section 43-1604.

19 3. ~~Limiting~~ LIMITED THE availability of scholarships to students of  
20 only one school.

21 4. ~~Encouraging~~ ENCOURAGED, ~~facilitating~~ FACILITATED or knowingly  
22 ~~permitting~~ PERMITTED taxpayers to engage in actions prohibited by this  
23 article.

24 5. ~~Awarding~~ AWARDED, ~~restricting~~ RESTRICTED or ~~reserving~~ RESERVED  
25 educational scholarships or tuition grants for use by a particular student  
26 based solely on the recommendation of the donor.

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

38 E. A school tuition organization may request an administrative hearing  
39 on the revocation of its certification as provided by title 41, chapter 6,  
40 article 10. Except as provided in section 41-1092.08, subsection H, a  
41 decision of the department is subject to judicial review pursuant to title  
42 12, chapter 7, article 6.

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

2           43-1603. Operational requirements for school tuition  
3                 organizations; notice; qualified schools

4           A. A certified school tuition organization must be established to  
5 receive contributions from taxpayers for the purposes of income tax credits  
6 under sections 43-1089 and 43-1089.03 and to pay educational scholarships or  
7 tuition grants to allow students to attend any qualified school of their  
8 parents' choice.

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

11           1. Must allocate at least ~~ninety~~ NINETY-FIVE percent of its annual  
12 revenue from contributions made for the purposes of sections 43-1089 and  
13 43-1089.03 for educational scholarships or tuition grants.

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

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

19           4. Shall not allow donors to designate student beneficiaries as a  
20 condition of any contribution to the organization, or facilitate, encourage  
21 or knowingly permit the exchange of beneficiary student designations in  
22 violation of section 43-1089, subsection F.

23           5. Shall include on the organization's website, if one exists, the  
24 percentage and total dollar amount of educational scholarships and tuition  
25 grants awarded during the previous fiscal year to:

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

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

35           6. Must not award educational scholarships or tuition grants to  
36 students who are simultaneously enrolled in a district school or charter  
37 school and a qualified school.

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

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 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~~ NINETY-FIVE percent 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.

G. If an individual educational scholarship or tuition grant exceeds the school's tuition, 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.