

REFERENCE TITLE: school tuition organizations; preapproval; entities

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

## **HB 2617**

Introduced by

Representatives Olson, Allen, Boyer, Gowan, Kavanagh, Kwasman, Lesko,  
Mitchell, Montenegro, Orr, Seel, Smith, Stevens, Senators Burges, Murphy:  
Representatives Barton, Borrelli, Fann, Farnsworth, Forese, Gray,  
Livingston, Mesnard, Petersen, Pierce J, Pratt, Thorpe, Townsend, Senators  
Barto, McGuire, Melvin, Ward, Yee

AN ACT

AMENDING SECTIONS 43-1183 AND 43-1184, ARIZONA REVISED STATUTES; RELATING TO  
CORPORATE 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 43-1183, Arizona Revised Statutes, is amended to  
3 read:

4 43-1183. Credit for contributions to school tuition  
5 organization; definitions

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

11 B. The amount of the credit is the total amount of the taxpayer's  
12 contributions for the taxable year under subsection A of this section and is  
13 preapproved by the department of revenue pursuant to subsection D of this  
14 section.

15 C. The department of revenue:

16 1. Shall not allow tax credits under this section and section  
17 20-224.06 that exceed in the aggregate a combined total of ten million  
18 dollars in any fiscal year. Beginning in fiscal year 2007-2008, the  
19 aggregate dollar amount of the tax credit cap from the previous fiscal year  
20 shall be annually increased by twenty per cent.

21 2. Shall preapprove tax credits under this section and section  
22 20-224.06 subject to subsection D of this section.

23 3. Shall allow the tax credits under this section and section  
24 20-224.06 on a first come, first served basis.

25 D. For the purposes of subsection C, paragraph 2 of this section,  
26 before making a contribution to a school tuition organization, the taxpayer  
27 under this title or title 20 must notify the school tuition organization of  
28 the total amount of contributions that the taxpayer intends to make to the  
29 school tuition organization. Before accepting the contribution, the school  
30 tuition organization shall request preapproval from the department of revenue  
31 for the taxpayer's intended contribution amount. **THE DEPARTMENT SHALL**  
32 **ESTABLISH A WEBSITE TO ACCEPT AND PROCESS THESE REQUESTS ELECTRONICALLY.** The  
33 department of revenue shall preapprove or deny the requested amount ~~within~~  
34 ~~twenty days~~ after receiving the request from the school tuition organization  
35 **AND SHALL ISSUE A PRINTABLE NOTICE THAT THE REQUEST WAS APPROVED OR DENIED.**  
36 If the department of revenue preapproves the request, the school tuition  
37 organization shall immediately notify the taxpayer, and the department of  
38 insurance in the case of a credit under section 20-224.06, that the requested  
39 amount was preapproved by the department of revenue. In order to receive a  
40 tax credit under this subsection, the taxpayer shall make the contribution to  
41 the school tuition organization within twenty days after receiving notice  
42 from the school tuition organization that the requested amount was  
43 preapproved. If the school tuition organization does not receive the  
44 preapproved contribution from the taxpayer within the required twenty days,  
45 the school tuition organization shall immediately notify the department of  
46 revenue, and the department of insurance in the case of a credit under

1 section 20-224.06, and the department of revenue shall no longer include this  
2 preapproved contribution amount when calculating the limit prescribed in  
3 subsection C, paragraph 1 of this 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, may each claim only the pro rata share of the credit allowed  
11 under this section based on the ownership interest. The total of the credits  
12 allowed all such owners may not exceed the amount that would have been  
13 allowed a sole owner.

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

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

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

22 J. FOR A TAXPAYER THAT IS A LIMITED LIABILITY COMPANY, THE ALLOWABLE  
23 TAX CREDIT THAT MAY BE APPORTIONED TO A MEMBER IS THE AMOUNT OF TAX LIABILITY  
24 FOR THE MEMBER'S SHARE OF PROFITS CALCULATED AT THE EFFECTIVE TAX RATE FOR  
25 THE MEMBER'S TOTAL INCOME. THE LIMITED LIABILITY COMPANY SHALL ALLOCATE THE  
26 CREDIT AS PRESCRIBED IN SECTION 29-709.

27 K. FOR A TAXPAYER THAT IS A SMALL BUSINESS CORPORATION THAT MAKES AN  
28 ELECTION FOR THE TAXABLE YEAR PURSUANT TO SUBTITLE A, CHAPTER 1, SUBSECTION S  
29 OF THE INTERNAL REVENUE CODE, THE ALLOWABLE TAX CREDIT THAT MAY BE  
30 APPORTIONED TO A STOCKHOLDER IS THE AMOUNT OF TAX LIABILITY FOR THE  
31 STOCKHOLDER'S SHARE OF INCOME CALCULATED AT THE EFFECTIVE TAX RATE FOR THE  
32 STOCKHOLDER'S TOTAL INCOME.

33 L. A MEMBER OR STOCKHOLDER WHO IS APPORTIONED A CREDIT ALLOWED FOR A  
34 TAXPAYER UNDER THIS SECTION MAY TAKE ANY ADDITIONAL CREDITS ALLOWED AGAINST  
35 TAXABLE INDIVIDUAL INCOME PURSUANT TO CHAPTER 10, ARTICLE 5 OF THIS TITLE.

36 ~~J~~ M. The department of revenue, with the cooperation of the  
37 department of insurance, shall adopt rules and publish and prescribe forms  
38 and procedures necessary for the administration of this section.

39 N. FOR THE PURPOSES OF THIS SECTION:

40 1. "EFFECTIVE TAX RATE" MEANS THE ACTUAL TAX RATE PAID WHEN THE  
41 TAXPAYER'S AMOUNT OF TAX DUE IS DIVIDED BY THE TAXPAYER'S TOTAL INCOME.

42 2. "TAXPAYER" INCLUDES:

43 (a) NOTWITHSTANDING SECTION 43-1126, A SMALL BUSINESS CORPORATION THAT  
44 MAKES AN ELECTION FOR THE TAXABLE YEAR PURSUANT TO SUBTITLE A, CHAPTER 1,  
45 SUBSECTION S OF THE INTERNAL REVENUE CODE. THE CORPORATION SHALL APPORTION  
46 THE CREDIT AS PRESCRIBED IN SECTION 43-1126, SUBSECTION B.

1 (b) A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A  
2 CORPORATION FOR FEDERAL INCOME TAX PURPOSES.

3 Sec. 2. Section 43-1184, Arizona Revised Statutes, is amended to read:

4 43-1184. Credit for contributions to school tuition  
5 organization; displaced students; students with  
6 disabilities; definitions

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

12 B. The amount of the credit is the total amount of the taxpayer's  
13 contributions for the taxable year under subsection A of this section and is  
14 preapproved by the department of revenue pursuant to subsection D of this  
15 section.

16 C. The department of revenue:

17 1. Shall not allow tax credits under this section and section  
18 20-224.07 that exceed in the aggregate a combined total of five million  
19 dollars in any fiscal year.

20 2. Shall preapprove tax credits under this section and section  
21 20-224.07 subject to subsection D of this section.

22 3. Shall allow the tax credits under this section and section  
23 20-224.07 on a first come, first served basis.

24 D. For the purposes of subsection C, paragraph 2 of this section,  
25 before making a contribution to a school tuition organization, the taxpayer  
26 under this title or title 20 must notify the school tuition organization of  
27 the total amount of contributions that the taxpayer intends to make to the  
28 school tuition organization. Before accepting the contribution, the school  
29 tuition organization shall request preapproval from the department of revenue  
30 for the taxpayer's intended contribution amount. **THE DEPARTMENT SHALL**  
31 **ESTABLISH A WEBSITE TO ACCEPT AND PROCESS THESE REQUESTS ELECTRONICALLY.** The  
32 department of revenue shall preapprove or deny the requested amount ~~within~~  
33 ~~twenty days~~ after receiving the request from the school tuition organization  
34 **AND SHALL ISSUE A PRINTABLE NOTICE THAT THE REQUEST WAS APPROVED OR DENIED.**  
35 If the department of revenue preapproves the request, the school tuition  
36 organization shall immediately notify the taxpayer that the requested amount  
37 was preapproved by the department of revenue. In order to receive a tax  
38 credit under this subsection, the taxpayer shall make the contribution to the  
39 school tuition organization within twenty days after receiving notice from  
40 the school tuition organization that the requested amount was preapproved.  
41 If the school tuition organization does not receive the preapproved  
42 contribution from the taxpayer within the required twenty days, the school  
43 tuition organization shall immediately notify the department of revenue and  
44 the department shall no longer include this preapproved contribution amount  
45 when calculating the limit prescribed in subsection C, paragraph 1 of this  
46 section.

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

6 F. Co-owners of a business, including corporate partners in a  
7 partnership, may each claim only the pro rata share of the credit allowed  
8 under this section based on the ownership interest. The total of the credits  
9 allowed all such owners may not exceed the amount that would have been  
10 allowed a sole owner.

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

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

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

19 J. FOR A TAXPAYER THAT IS A LIMITED LIABILITY COMPANY, THE ALLOWABLE  
20 TAX CREDIT THAT MAY BE APPORTIONED TO A MEMBER IS THE AMOUNT OF TAX LIABILITY  
21 CALCULATED AT THAT MEMBER'S EFFECTIVE TAX RATE FOR THE MEMBER'S TOTAL  
22 INCOME. THE LIMITED LIABILITY COMPANY SHALL ALLOCATE THE CREDIT AS  
23 PRESCRIBED IN SECTION 29-709.

24 K. FOR A TAXPAYER THAT IS A SMALL BUSINESS CORPORATION THAT MAKES AN  
25 ELECTION FOR THE TAXABLE YEAR PURSUANT TO SUBTITLE A, CHAPTER 1, SUBSECTION S  
26 OF THE INTERNAL REVENUE CODE, THE ALLOWABLE TAX CREDIT THAT MAY BE  
27 APPORTIONED TO A STOCKHOLDER IS THE AMOUNT OF TAX LIABILITY CALCULATED AT  
28 THAT STOCKHOLDER'S EFFECTIVE TAX RATE FOR THE STOCKHOLDER'S TOTAL INCOME.

29 L. A MEMBER OR STOCKHOLDER WHO IS APPORTIONED A CREDIT ALLOWED FOR A  
30 TAXPAYER UNDER THIS SECTION MAY TAKE ANY ADDITIONAL CREDITS ALLOWED AGAINST  
31 TAXABLE INDIVIDUAL INCOME PURSUANT TO CHAPTER 10, ARTICLE 5 OF THIS TITLE.

32 ~~J~~ M. The department of revenue shall adopt rules necessary for the  
33 administration of this section.

34 N. FOR THE PURPOSES OF THIS SECTION:

35 1. "EFFECTIVE TAX RATE" MEANS THE ACTUAL TAX RATE PAID WHEN THE  
36 TAXPAYER'S AMOUNT OF TAX DUE IS DIVIDED BY THE TAXPAYER'S TOTAL INCOME.

37 2. "TAXPAYER" INCLUDES:

38 (a) NOTWITHSTANDING SECTION 43-1126, A SMALL BUSINESS CORPORATION THAT  
39 MAKES AN ELECTION FOR THE TAXABLE YEAR PURSUANT TO SUBTITLE A, CHAPTER 1,  
40 SUBSECTION S OF THE INTERNAL REVENUE CODE. THE CORPORATION SHALL APPORTION  
41 THE CREDIT AS PRESCRIBED IN SECTION 43-1126, SUBSECTION B.

42 (b) A LIMITED LIABILITY COMPANY THAT ELECTS TO BE TREATED AS A  
43 CORPORATION FOR FEDERAL INCOME TAX PURPOSES.