State of Arizona
House of Representatives
Fifty-second Legislature
First Regular Session
2015

HOUSE BILL 2153

AN ACT

AMENDING SECTION 43-222, 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)
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 43-1079.01, 43-1087, 43-1088, 43-1089.04, 43-1167.01 and 43-1175.
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, 43-1076.01, 43-1081.01, 43-1083.01, 43-1083.04, 43-1084, 43-1162, 43-1162.01, 43-1164.01, 43-1164.05, 43-1170.01 and 43-1184 and, beginning in 2019, sections 43-1083.03 and 43-1164.04.

Sec. 2. Title 43, chapter 10, article 5, Arizona Revised Statutes, is amended by adding section 43-1089.04, to read:

43-1089.04. Pro rata credit for business contributions by an S corporation school tuition organizations; definition

A. A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE PRO RATA AMOUNT OF CONTRIBUTIONS MADE BY AN S CORPORATION PURSUANT TO SECTION 43-1183, SUBSECTION F OR SECTION 43-1184, SUBSECTION F, OR BOTH. TO QUALIFY FOR THE CREDIT:

1. THE AGGREGATE CONTRIBUTION IN THE TAXABLE YEAR MUST BE AT LEAST FIVE THOUSAND DOLLARS.
2. ALL OTHER REQUIREMENTS OF SECTION 43-1183 OR 43-1184 AND THE APPLICABLE SECTIONS OF CHAPTER 15 OF THIS TITLE MUST BE MET.


C. 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.

D. 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.
E. The tax credit is not allowed if the S corporation or a shareholder designates the contribution to the school tuition organization for the direct benefit of any dependent of a shareholder of the corporation claiming a credit under this section or if the corporation or a shareholder designates a student beneficiary as a condition of the contribution to the school tuition organization. The tax credit is not allowed if the corporation or a shareholder, with the intent to benefit a shareholder's dependent, agrees with one or more other taxpayers to designate reciprocal contributions to school tuition organizations for the direct benefit of the other taxpayer's dependent.

F. For the purposes of this section, “S corporation” or “corporation” means an S corporation as defined in section 1361 of the internal revenue code.

Sec. 3. Section 43-1183, Arizona Revised Statutes, is amended to read:

43-1183. Credit for contributions to school tuition organization

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

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

C. The department of revenue:

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

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

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

D. For the purposes of subsection C, paragraph 2 of this section, before making a contribution to a school tuition organization, the taxpayer under this title or title 20 must notify the school tuition organization of the total amount of contributions that the taxpayer intends to make to the school tuition organization. Before accepting the contribution, the school tuition organization shall request preapproval from the department of revenue for the taxpayer's intended contribution amount. The department of revenue shall preapprove or deny the requested amount within twenty days after receiving the request from the school tuition organization. If the department of revenue preapproves the request, the school tuition organization...
organization shall immediately notify the taxpayer, and the department of
insurance in the case of a credit under section 20-224.06, that the requested
amount was preapproved by the department of revenue. In order to receive a
tax credit under this subsection, the taxpayer shall make the contribution to
the school tuition organization within twenty days after receiving notice
from the school tuition organization that the requested amount was
preapproved. If the school tuition organization does not receive the
preapproved contribution from the taxpayer within the required twenty days,
the school tuition organization shall immediately notify the department of
revenue, and the department of insurance in the case of a credit under
section 20-224.06, and the department of revenue shall no longer include this
preapproved contribution amount when calculating the limit prescribed in
subsection C, paragraph 1 of this section.

E. 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.

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

G. 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.

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

I. 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 specific student.

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

Sec. 4. Section 43-1184, Arizona Revised Statutes, is amended to read:

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

A. Beginning from and after June 30, 2009, a credit is allowed against
the taxes imposed by this title for the amount of voluntary cash
contributions made by the taxpayer during the taxable year to a school
tuition organization that is certified pursuant to chapter 15 of this title
at the time of donation.
B. The amount of the credit is the total amount of the taxpayer's contributions for the taxable year under subsection A of this section and is preapproved by the department of revenue pursuant to subsection D of this section.

C. The department of revenue:
   1. Shall not allow tax credits under this section and section 20-224.07 that exceed in the aggregate a combined total of five million dollars in any fiscal year.
   2. Shall preapprove tax credits under this section and section 20-224.07 subject to subsection D of this section.
   3. Shall allow the tax credits under this section and section 20-224.07 on a first come, first served basis.

D. For the purposes of subsection C, paragraph 2 of this section, before making a contribution to a school tuition organization, the taxpayer under this title or title 20 must notify the school tuition organization of the total amount of contributions that the taxpayer intends to make to the school tuition organization. Before accepting the contribution, the school tuition organization shall request preapproval from the department of revenue for the taxpayer's intended contribution amount. The department of revenue shall preapprove or deny the requested amount within twenty days after receiving the request from the school tuition organization. If the department of revenue preapproves the request, the school tuition organization shall immediately notify the taxpayer that the requested amount was preapproved by the department of revenue. In order to receive a tax credit under this subsection, the taxpayer shall make the contribution to the school tuition organization within twenty days after receiving the request from the school tuition organization. If the school tuition organization does not receive the preapproved contribution from the taxpayer within the required twenty days, the school tuition organization shall immediately notify the department of revenue and the department shall no longer include this preapproved contribution amount when calculating the limit prescribed in subsection C, paragraph 1 of this section.

E. 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.

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

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

I. 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 specific student.

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

Sec. 5. Section 43-1503, Arizona Revised Statutes, is amended to read:

43-1503. Operational requirements for school tuition organizations

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

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

1. Must allocate at least ninety percent of its annual revenue from contributions made for the purposes of sections 20-224.06, 20-224.07, 43-1183 and 43-1184 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. Must allow the department of revenue to verify that the educational scholarships and tuition grants that are issued are awarded to students who attend a qualified school.

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

5. MUST NOT AWARD EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO STUDENTS WHO ARE SIMULTANEOUSLY ENROLLED IN A DISTRICT SCHOOL OR CHARTER SCHOOL AND A QUALIFIED SCHOOL.

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 sections 43-1089 and 43-1089.03 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 percent 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.

5. MUST NOT AWARD EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS TO STUDENTS WHO ARE SIMULTANEOUSLY ENROLLED IN A DISTRICT SCHOOL OR CHARTER SCHOOL AND A QUALIFIED SCHOOL.

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 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 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.

Sec. 7. Purpose

Pursuant to section 43-223, Arizona Revised Statutes, the legislature enacts section 43-1089.04, Arizona Revised Statutes, to provide an individual credit for contributions made by, or on behalf of, shareholders of an S corporation to school tuition organizations.

Sec. 8. Retroactivity

This act is effective and applies retroactively to taxable years from and after December 31, 2014.