

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)

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 43-1089.04, 43-1167.01 and 43-1175.
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, 43-1083.04, 43-1084, 43-1162, 43-1162.01, 43-1164.01,
18 43-1164.05, 43-1170.01 and 43-1184 and, beginning in 2019, sections
19 43-1083.03 and 43-1164.04.
20 Sec. 2. Title 43, chapter 10, article 5, Arizona Revised Statutes, is
21 amended by adding section 43-1089.04, to read:
22 43-1089.04. Pro rata credit for business contributions by an
23 S corporation school tuition organizations;
24 definition
25 A. A CREDIT IS ALLOWED AGAINST THE TAXES IMPOSED BY THIS TITLE FOR THE
26 PRO RATA AMOUNT OF CONTRIBUTIONS MADE BY AN S CORPORATION PURSUANT TO SECTION
27 43-1183, SUBSECTION F OR SECTION 43-1184, SUBSECTION F, OR BOTH. TO QUALIFY
28 FOR THE CREDIT:
29 1. THE AGGREGATE CONTRIBUTION IN THE TAXABLE YEAR MUST BE AT LEAST
30 FIVE THOUSAND DOLLARS.
31 2. ALL OTHER REQUIREMENTS OF SECTION 43-1183 OR 43-1184 AND THE
32 APPLICABLE SECTIONS OF CHAPTER 15 OF THIS TITLE MUST BE MET.
33 B. CO-OWNERS OF THE S CORPORATION MAY EACH CLAIM THE PRO RATA SHARE OF
34 THE CREDIT ALLOWED UNDER SECTIONS 43-1183 AND 43-1184 BASED ON THE TAXPAYER'S
35 OWNERSHIP INTEREST. THE TOTAL OF THE CREDITS ALLOWED ALL THE OWNERS OF THE
36 CORPORATION MAY NOT EXCEED THE AMOUNT THAT WOULD HAVE BEEN ALLOWED A SOLE
37 OWNER OF THE CORPORATION.
38 C. IF THE ALLOWABLE TAX CREDIT EXCEEDS THE TAXES OTHERWISE DUE UNDER
39 THIS TITLE ON THE CLAIMANT'S INCOME, OR IF THERE ARE NO TAXES DUE UNDER THIS
40 TITLE, THE TAXPAYER MAY CARRY THE AMOUNT OF THE CLAIM NOT USED TO OFFSET THE
41 TAXES UNDER THIS TITLE FORWARD FOR NOT MORE THAN FIVE CONSECUTIVE TAXABLE
42 YEARS' INCOME TAX LIABILITY.
43 D. THE CREDIT ALLOWED BY THIS SECTION IS IN LIEU OF ANY DEDUCTION
44 PURSUANT TO SECTION 170 OF THE INTERNAL REVENUE CODE AND TAKEN FOR STATE TAX
45 PURPOSES.

1 E. THE TAX CREDIT IS NOT ALLOWED IF THE S CORPORATION OR A SHAREHOLDER
2 DESIGNATES THE CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT
3 BENEFIT OF ANY DEPENDENT OF A SHAREHOLDER OF THE CORPORATION CLAIMING A
4 CREDIT UNDER THIS SECTION OR IF THE CORPORATION OR A SHAREHOLDER DESIGNATES A
5 STUDENT BENEFICIARY AS A CONDITION OF THE CONTRIBUTION TO THE SCHOOL TUITION
6 ORGANIZATION. THE TAX CREDIT IS NOT ALLOWED IF THE CORPORATION OR A
7 SHAREHOLDER, WITH THE INTENT TO BENEFIT A SHAREHOLDER'S DEPENDENT, AGREES
8 WITH ONE OR MORE OTHER TAXPAYERS TO DESIGNATE RECIPROCAL CONTRIBUTIONS TO
9 SCHOOL TUITION ORGANIZATIONS FOR THE DIRECT BENEFIT OF THE OTHER TAXPAYER'S
10 DEPENDENT.

11 F. FOR THE PURPOSES OF THIS SECTION, "S CORPORATION" OR "CORPORATION"
12 MEANS AN S CORPORATION AS DEFINED IN SECTION 1361 OF THE INTERNAL REVENUE
13 CODE.

14 Sec. 3. Section 43-1183, Arizona Revised Statutes, is amended to read:
15 43-1183. Credit for contributions to school tuition
16 organization

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

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

26 C. The department of revenue:

27 1. Shall not allow tax credits under this section and section
28 20-224.06 that exceed in the aggregate a combined total of ten million
29 dollars in any fiscal year. Beginning in fiscal year 2007-2008, the
30 aggregate dollar amount of the tax credit cap from the previous fiscal year
31 shall be annually increased by twenty ~~per cent~~ PERCENT.

32 2. Shall preapprove tax credits under this section and section
33 20-224.06 subject to subsection D of this section.

34 3. Shall allow the tax credits under this section and section
35 20-224.06 on a first come, first served basis.

36 D. For the purposes of subsection C, paragraph 2 of this section,
37 before making a contribution to a school tuition organization, the taxpayer
38 under this title or title 20 must notify the school tuition organization of
39 the total amount of contributions that the taxpayer intends to make to the
40 school tuition organization. Before accepting the contribution, the school
41 tuition organization shall request preapproval from the department of revenue
42 for the taxpayer's intended contribution amount. The department of revenue
43 shall preapprove or deny the requested amount within twenty days after
44 receiving the request from the school tuition organization. If the
45 department of revenue preapproves the request, the school tuition

1 organization shall immediately notify the taxpayer, and the department of
2 insurance in the case of a credit under section 20-224.06, that the requested
3 amount was preapproved by the department of revenue. In order to receive a
4 tax credit under this subsection, the taxpayer shall make the contribution to
5 the school tuition organization within twenty days after receiving notice
6 from the school tuition organization that the requested amount was
7 preapproved. If the school tuition organization does not receive the
8 preapproved contribution from the taxpayer within the required twenty days,
9 the school tuition organization shall immediately notify the department of
10 revenue, and the department of insurance in the case of a credit under
11 section 20-224.06, and the department of revenue shall no longer include this
12 preapproved contribution amount when calculating the limit prescribed in
13 subsection C, paragraph 1 of this section.

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

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

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

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

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

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

36 Sec. 4. Section 43-1184, Arizona Revised Statutes, is amended to read:
37 43-1184. Credit for contributions to school tuition
38 organization; displaced students; students with
39 disabilities

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

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

5 C. The department of revenue:

6 1. Shall not allow tax credits under this section and section
7 20-224.07 that exceed in the aggregate a combined total of five million
8 dollars in any fiscal year.

9 2. Shall preapprove tax credits under this section and section
10 20-224.07 subject to subsection D of this section.

11 3. Shall allow the tax credits under this section and section
12 20-224.07 on a first come, first served basis.

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

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

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

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

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

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

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

11 Sec. 5. Section 43-1503, Arizona Revised Statutes, is amended to read:
12 43-1503. Operational requirements for school tuition
13 organizations

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

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

22 1. Must allocate at least ninety ~~per-cent~~ PERCENT of its annual
23 revenue from contributions made for the purposes of sections 20-224.06,
24 20-224.07, 43-1183 and 43-1184 for educational scholarships or tuition
25 grants.

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

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

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

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

36 Sec. 6. Section 43-1603, Arizona Revised Statutes, is amended to read:
37 43-1603. Operational requirements for school tuition
38 organizations; notice; qualified schools

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

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

1 1. Must allocate at least ninety ~~per-cent~~ PERCENT of its annual
2 revenue from contributions made for the purposes of sections 43-1089 and
3 43-1089.03 for educational scholarships or tuition grants.

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

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

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

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

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

19 Notice

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

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

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

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

31 2. Shall consider the financial need of applicants.

32 E. A taxpayer's contribution to a school tuition organization that
33 exceeds the amount of the credit allowed by section 43-1089 but does not
34 exceed the amount of the credit allowed by section 43-1089.03 is considered a
35 contribution pursuant to section 43-1089.03. A school tuition organization
36 must use at least ninety ~~per-cent~~ PERCENT of contributions made pursuant to
37 section 43-1089.03 for educational scholarships or tuition grants for
38 students to whom any of the following applies:

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

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

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

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

6 F. In awarding educational scholarships or tuition grants from
7 contributions made pursuant to section 43-1089.03, a school tuition
8 organization shall give priority to students and siblings of students on a
9 waiting list for scholarships if the school tuition organization maintains a
10 waiting list.

11 G. If an individual educational scholarship or tuition grant exceeds
12 the school's tuition, the amount in excess shall be returned to the school
13 tuition organization that made the award or grant. The school tuition
14 organization may allocate the returned monies as a multiyear award for that
15 student and report the award pursuant to section 43-1604, paragraph 5,
16 subdivision (b) or may allocate the returned monies for educational
17 scholarships or tuition grants for other students.

18 Sec. 7. Purpose

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

23 Sec. 8. Retroactivity

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