SENATE BILL 1243

AN ACT

AMENDING SECTIONS 43-222, 43-401 AND 43-1089, ARIZONA REVISED STATUTES; REPEALING SECTION 43-1089.03, ARIZONA REVISED STATUTES; AMENDING SECTIONS 43-1602, 43-1603 AND 43-1604, ARIZONA REVISED STATUTES; RELATING TO TAXATION OF INCOME.

(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, 43-1088, 43-1089.04, 43-1167.01 and 43-1175.

2. For years ending in 1 and 6, sections 43-1072.02, 43-1074.02, 43-1075, 43-1076.01, 43-1077, 43-1078, 43-1083, 43-1083.02, 43-1162, 43-1164.03 and 43-1183.

3. For years ending in 2 and 7, sections 43-1073, 43-1082, 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1164, 43-1165 and 43-1181.

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

5. For years ending in 4 and 9, sections 43-1073.01, 43-1081.01, 43-1083.03, 43-1084, 43-1164.04, 43-1164.05 and 43-1184.

Sec. 2. Section 43-401, Arizona Revised Statutes, is amended to read:

43-401. Withholding tax; rates; election by employee

A. Except as provided by subsections B and H of this section, every employer at the time of the payment of wages, salary, bonus or other emolument to any employee whose compensation is for services performed within this state shall deduct and retain from the compensation an amount prescribed by tables adopted by the department.

B. An employer may voluntarily elect to not withhold tax during December by notifying:

1. The department on a form prescribed by the department.

2. The employer's employees in writing in a manner prescribed by the department.

C. If the amount collected and payable by the employer to the department in each of the preceding four calendar quarters did not exceed an average of one thousand five hundred dollars $1,500, the amount collected shall be paid to the department on or before April 30, July 31, October 31 and January 31 for the preceding calendar quarter. If the amount exceeded one thousand five hundred dollars $1,500 in each of the preceding four calendar quarters, the employer shall pay to the department the amount the employer deducts and retains pursuant to this section at the same time as the employer is required to make deposits of federal tax pursuant to section 6302 of the internal revenue code. On or before April 30, July 31, October 31 and January 31 each year, the employer shall reconcile the amounts payable during the preceding calendar quarter in a manner prescribed by the department, except that if the full amount collected and payable is paid timely to the department under this
subsection, the employer may reconcile the amounts on or before May 10, August 10, November 10 and February 10 each year. The department by rule may allow and determine which employers qualify for annual payments of withholding taxes, with an annual report by the employer pursuant to section 43-412, subsection B, if the qualifying employer has established sufficient payment history to indicate that the employer is current and in good standing pursuant to standards established by rule. For any business that has not had a withholding certificate for the four preceding consecutive quarters, the quarterly average shall be computed in a manner prescribed by the department.

D. If an employer fails to make a timely monthly payment because prior to BEFORE that reporting period it reported on a quarterly basis instead of on a monthly basis, the department shall notify the employer that it is out of compliance with this section. Notwithstanding section 42-1125, the department shall not assess a penalty against an employer for failing to make a timely monthly payment if the employer had filed and remitted all taxes due on a quarterly basis and brings all filings and payments into current compliance within thirty days after being notified by the department.

E. Each employee shall elect the amount authorized by subsection A of this section to be withheld for application to APPLY toward the employee's state income tax liability. The election provided under this subsection shall be exercised by each employee, in writing on a form prescribed by the department. The election shall be made within five days of AFTER STARTING employment. Each employer shall notify the employees of the election made available under this subsection and shall have election forms available at all times. Each form shall be completed in triplicate, with one copy each for the department, the employer and the employee. The employer shall file a copy of each completed form with the department. Any employee failing to complete an election form as prescribed shall be IS deemed to have elected the withholding percentage prescribed by the department.

F. Before July 1 of each year, each employer who chooses to not withhold tax pursuant to subsection B of this section shall notify each employee that:

1. State income taxes will not be withheld from compensation in December.

2. The employee may elect to change the rate of withholding tax prescribed by this section to compensate for the resulting change in annual withholdings from the employee's compensation.

G. At an employee's written request, the employer may agree to reduce the amount withheld under this section by the amount of credit that the employee represents to the employer that the employee will qualify for and be entitled to under sections 43-1088, 43-1089, AND 43-1089.01 and 43-1089.03. The employee's request must include the name and address of
the qualifying charitable organization, qualified school tuition
organization or public school. Within thirty days after agreeing to the
employee's request, the employer shall reduce the withholding amount by
the amount of the credit, but not below zero, prorated for the number of
pay periods remaining in the employee's taxable year after the employee
makes the request. If an employer agrees to reduce the withholding amount
pursuant to this subsection, the following apply:

1. Within fifteen days after the end of each calendar quarter, the
employer must pay the entire amount of the reduction in withholding tax
for that quarter to the designated charitable organization, school tuition
organization or public school. These payments are considered to be on the
employee's behalf, and not the employer's, for the purposes of qualifying
for the income tax credits under sections 43-1088, 43-1089, AND
43-1089.01 and 43-1089.03.

2. The employee is responsible and accountable for the accuracy and
the amount of reduction in withholding tax and the payments to the
charitable organization, school tuition organization or public school.

3. The employer is responsible and accountable to the charitable
organization, school tuition organization or public school, to the
employee and to the department for actually making the required payments.

4. Within thirty days after the end of each calendar year, or
within fifteen days after the termination of TERMINATING employment, the
employer must furnish to each electing employee a statement of the amount
withheld and paid on behalf of the employee during that year.

H. An employer shall not withhold tax on the wages of the
employer's nonresident employees who are in this state on a temporary
basis for the purpose of performing disaster recovery from a declared
disaster during a disaster period as defined in section 42-1130.

Sec. 3. Section 43-1089, Arizona Revised Statutes, is amended to
read:

43-1089. Credit for contributions to school tuition
organization

A. A credit is allowed against the taxes imposed by this title for
the amount of voluntary cash contributions by the taxpayer or on the
taxpayer's behalf pursuant to section 43-401, subsection G during the
taxable year to a school tuition organization that is certified pursuant
to chapter 16 of this title at the time of donation. Except as provided
by subsection C of this section, the amount of the credit shall not
exceed:

1. Five hundred dollars $500 in any taxable year THROUGH
DECEMBER 31, 2023 for a single individual or a head of household.

2. One thousand dollars $1,000 in any taxable year THROUGH
DECEMBER 31, 2023 for a married couple filing a joint return.

3. $1,456 IN ANY TAXABLE YEAR BEGINNING FROM AND AFTER DECEMBER 31,
2023 FOR A SINGLE INDIVIDUAL OR A HEAD OF HOUSEHOLD.
4. $2,902 IN ANY TAXABLE YEAR BEGINNING FROM AND AFTER DECEMBER 31, 2023 FOR A MARRIED COUPLE FILING A JOINT RETURN.

B. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

C. For each taxable year beginning on or after January 1, the department shall adjust the dollar amounts prescribed by subsection A, paragraphs 1 and 2 of this section through December 31, 2023 and subsection A, paragraphs 3 and 4 of this section beginning from and after December 31, 2024 according to the average annual change in the metropolitan Phoenix consumer price index published by the United States Department of Labor, bureau of labor statistics, except that the dollar amounts shall not be revised downward below the amounts allowed in the prior taxable year. The revised dollar amounts shall be raised to the nearest whole dollar.

D. 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.

E. 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.

F. 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 dependent of the taxpayer or if the taxpayer designates a student beneficiary as a condition of the taxpayer's contribution to the school tuition organization. The tax credit is not allowed if the taxpayer, with the intent to benefit the taxpayer's dependent, agrees with one or more other taxpayers to designate each taxpayer's contribution to the school tuition organization for the direct benefit of the other taxpayer's dependent.

G. For the purposes of this section, a contribution, for which a credit is claimed, that is made on or before the fifteenth day of the fourth month following the close of the taxable year may be applied to either the current or preceding taxable year and is considered to have been made on the last day of that taxable year.

Sec. 4. Repeal

Section 43-1089.03, Arizona Revised Statutes, is repealed.

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

43-1602. Certification; requirements; violations; hearing

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

B. The department shall:
1. Maintain a public registry of currently certified school tuition organizations.
2. Make the registry available to the public on request.
3. Post the registry on the department's official website.

C. The department shall send notice by certified mail or by e-mail to a school tuition organization if the department determines that the school tuition organization has engaged in any of the following activities:
1. Failed or refused to allocate at least ninety percent of annual revenues from contributions made for the purposes of sections SECTION 43-1089 and 43-1089.03 for educational scholarships or tuition grants.
2. Failed or refused to file the annual reports required by section 43-1604.
3. Limited the availability of scholarships to students of only one school.
4. Encouraged, facilitated or knowingly permitted ALLOWED taxpayers to engage in actions prohibited by this article.
5. Awarded, restricted or reserved educational scholarships or tuition grants for use by a particular student based solely on the recommendation of the donor.
6. Failed or refused to meet any of the requirements in section 43-1603, subsection B.
7. Failed or refused to include the notice required in section 43-1603, subsection C.
8. Failed or refused to comply with the audit or financial review requirements of section 43-1605.

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

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

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 SECTION 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 SECTION 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 allow the exchange of beneficiary student designations in violation of section 43-1089, subsection F, section 43-1089.03, subsection F and section 43-1089.04, subsection E.

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

   (a) Students whose family income meets the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1793) for free or reduced-price lunches.

   (b) Students whose family income exceeds the threshold prescribed by subdivision (a) of this paragraph but does not exceed one hundred eighty-five percent of the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1793) for free or reduced-price lunches.

6. 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, 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 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. Enroll in a qualified school in a kindergarten program or a preschool program that offers services to students with disabilities.

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

4. Are homeschooled before enrolling in a qualified school.

5. Moved to this state from out of state before enrolling in a qualified school.

6. Participated in an Arizona empowerment scholarship account and did not renew the account or accept the scholarship in order to accept a scholarship or tuition grant under this section.

7. Received an educational scholarship or tuition grant under paragraph 1, 2, 3, 4, 5 or 6 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. E. 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, subsection A, paragraph 5, subdivision (b) or may allocate the returned monies for educational scholarships or tuition grants for other students.

Sec. 7. Section 43-1604, Arizona Revised Statutes, is amended to read:

43-1604. Annual report; posting
A. On or before September 30 of each year, each school tuition organization shall report electronically to the department, in a form prescribed by the department, the following information, separately compiled and identified for the purposes of sections SECTION 43-1089 and 43-1089.03:
1. The name, address and contact person of the school tuition organization.
2. The total number of contributions received during the previous fiscal year.
3. The total dollar amount of contributions received during the previous fiscal year.
4. The total number of children awarded educational scholarships or tuition grants during the previous fiscal year.
5. The total dollar amount of:
   (a) Educational scholarships and tuition grants distributed during the previous fiscal year.
   (b) Money MONIES being held for identified students' scholarships and tuition grants in future years.
6. The cost of audits pursuant to section 43-1605 paid during the fiscal year.
7. The total dollar amount of educational scholarships and tuition grants awarded during the previous fiscal year to:
   (a) Students whose family income meets the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1793) for free or reduced-price lunches.
   (b) Students whose family income exceeds the threshold prescribed by subdivision (a) of this paragraph but does not exceed one hundred eighty-five percent of the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1793) for free or reduced-price lunches.
8. For each school to which educational scholarships or tuition grants were awarded:
   (a) The name and address of the school.
(b) The number of educational scholarships and tuition grants awarded during the previous fiscal year.

c) The total dollar amount of educational scholarships and tuition grants awarded during the previous fiscal year.

9. The names, job titles and annual salaries of the three employees who receive the highest annual salaries from the school tuition organization.

B. The department shall post on its website a report of the information it receives pursuant to subsection A of this section on or before March 31 of the calendar year following the year in which the information is received.

Sec. 8. Applicability; use of revenues; reporting
A. The repeal of section 43-1089.03, Arizona Revised Statutes, by this act, applies to taxable years beginning from and after December 31, 2023.

B. Any revenues from contributions made for the purposes of section 43-1089.03, Arizona Revised Statutes, as repealed by this act, that have not been allocated before January 1, 2024 are subject to the provisions of title 43, chapter 16, Arizona Revised Statutes, as if the contributions were made pursuant to section 43-1089, Arizona Revised Statutes, as amended by this act.

C. Each school tuition organization shall include in the annual report prepared pursuant to section 43-1604, Arizona Revised Statutes, as amended by this act, all of the information required by section 43-1604, Arizona Revised Statutes, as amended by this act, for the revenues relating to the contributions made for the purposes of section 43-1089.03, Arizona Revised Statutes, as repealed by this act, that have not been allocated before January 1, 2024.

Sec. 9. Effective date
This act is effective from and after December 31, 2023.

Sec. 10. Saving clause
The repeal of the income tax credit under section 43-1089.03, Arizona Revised Statutes, as repealed by this act, does not affect the continuing validity of any amount of the credit carried forward from previous taxable years for application against subsequent tax liabilities as allowed by prior law.