Senate Engrossed House Bill

FILED

KEN BENNETT
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 293

HOUSE BILL 2664

AN ACT

AMENDING SECTION 43-1089, ARIZONA REVISED STATUTES; AMENDING TITLE 43, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 15; RELATING TO SCHOOL TUITION ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 43-1089, Arizona Revised Statutes, is amended to read:

43-1089. Credit for contributions to school tuition organization; definitions

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 ~~H~~ I during the taxable year to a school tuition organization~~, but not exceeding~~ THAT IS CERTIFIED PURSUANT TO CHAPTER 15 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 in any taxable year for a single individual or a head of household.

~~2. Eight hundred twenty-five dollars in taxable year 2005 for a married couple filing a joint return.~~

~~3.~~ 2. One thousand dollars in ~~taxable year 2006 and~~ any ~~subsequent~~ taxable year 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 ACCORDING TO THE AVERAGE ANNUAL CHANGE IN THE METROPOLITAN PHOENIX CONSUMER PRICE INDEX PUBLISHED BY THE UNITED STATES 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.

~~C.~~ 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.

~~D.~~ 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.

~~E.~~ 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.

~~F. A school tuition organization that receives a voluntary cash contribution pursuant to subsection A shall report electronically to the department, in a form prescribed by the department, by February 28 of each year the following information:~~

~~1. The name, address and contact name of the school tuition organization.~~

~~2. The total number of contributions received during the previous calendar year.~~

~~3. The total dollar amount of contributions received during the previous calendar year.~~

~~4. The total number of children awarded educational scholarships or tuition grants during the previous calendar year.~~

~~5. The total dollar amount of educational scholarships and tuition grants awarded during the previous calendar year.~~

~~6. 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 calendar year.~~

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

G. For the purposes of this section:

1. "Handicapped student" means a student who has any of the following conditions:

(a) Hearing impairment.

(b) Visual impairment.

(c) Developmental delay.

(d) Preschool severe delay.

(e) Speech/language impairment.

2. "Qualified school":

(a) Means a nongovernmental primary school or secondary school or a preschool for handicapped students that is located in this state, that does not discriminate on the basis of race, color, handicap, familial status or national origin and that satisfies the requirements prescribed by law for private schools in this state on January 1, 1997.

(b) DOES NOT INCLUDE A CHARTER SCHOOL OR PROGRAMS OPERATED BY CHARTER SCHOOLS.

~~3. "School tuition organization" means a charitable organization in this state that is exempt from federal taxation under section 501(c)(3) of the internal revenue code and that allocates at least ninety per cent of its annual revenue for educational scholarships or tuition grants to children to allow them to attend any qualified school of their parents' choice. In addition, to qualify as a school tuition organization the charitable organization shall provide educational scholarships or tuition grants to students without limiting availability to only students of one school.~~

Sec. 2. Title 43, Arizona Revised Statutes, is amended by adding chapter 15, to read:

CHAPTER 15

SCHOOL TUITION ORGANIZATIONS FOR INDIVIDUAL CONTRIBUTIONS

ARTICLE 1. GENERAL PROVISIONS

43-1501. Definitions

IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ALLOCATE" INCLUDES RESERVING MONEY FOR AN AWARD OF A MULTIYEAR EDUCATIONAL SCHOLARSHIP OR TUITION GRANT FOR A SPECIFIC STUDENT.

2. "FISCAL YEAR" MEANS THE FISCAL YEAR OF THE STATE AS PRESCRIBED IN SECTION 35-102.

3. "QUALIFIED SCHOOL" HAS THE SAME MEANING PRESCRIBED IN SECTION 43-1089.

43-1502. Certification as a school tuition organization

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 WRITTEN NOTICE BY CERTIFIED MAIL TO A SCHOOL TUITION ORGANIZATION IF THE DEPARTMENT DETERMINES THAT THE SCHOOL TUITION ORGANIZATION HAS ENGAGED IN ANY OF THE FOLLOWING ACTIVITIES:

1. FAILING OR REFUSING TO ALLOCATE AT LEAST NINETY PER CENT OF ANNUAL REVENUES FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS.

2. FAILING OR REFUSING TO FILE THE ANNUAL REPORTS REQUIRED BY SECTION 43-1504.

3. LIMITING AVAILABILITY OF SCHOLARSHIPS TO STUDENTS OF ONLY ONE SCHOOL.

4. ENCOURAGING, FACILITATING OR KNOWINGLY PERMITTING TAXPAYERS TO ENGAGE IN ACTIONS PROHIBITED BY THIS ARTICLE.

5. AWARDING, RESTRICTING OR RESERVING EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS FOR USE BY A PARTICULAR STUDENT BASED SOLELY ON THE RECOMMENDATION OF THE DONOR.

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.

43-1503. <u>Operational requirements for school tuition organizations; notice; qualified schools</u>

A. A CERTIFIED SCHOOL TUITION ORGANIZATION MUST BE ESTABLISHED TO RECEIVE CONTRIBUTIONS FROM TAXPAYERS FOR THE PURPOSES OF INCOME TAX CREDITS UNDER SECTION 43-1089 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 PER CENT OF ITS ANNUAL REVENUE 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.

C. A SCHOOL TUITION ORGANIZATION SHALL INCLUDE THE FOLLOWING NOTICE IN ANY PRINTED MATERIALS SOLICITING DONATIONS, IN APPLICATIONS FOR SCHOLARSHIPS AND ON ITS WEBSITE:

<u>NOTICE</u>

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 QUALIFIED SCHOOL SHALL NOT ACCEPT AN EDUCATIONAL SCHOLARSHIP OR TUITION GRANT FROM A SCHOOL TUITION ORGANIZATION IN AN AMOUNT THAT EXCEEDS THE SCHOOL'S TOTAL COST OF EDUCATING THE STUDENT IN WHOSE NAME THE SCHOLARSHIP OR GRANT IS RECEIVED.

43-1504. Annual report

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 SECTION 43-1089:

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 BEING HELD FOR IDENTIFIED STUDENTS' SCHOLARSHIPS AND TUITION GRANTS IN FUTURE YEARS.

6. THE COST OF AUDITS PURSUANT TO SECTION 43-1505 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 1785) 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 PER CENT OF THE ECONOMIC ELIGIBILITY REQUIREMENTS ESTABLISHED UNDER THE NATIONAL SCHOOL LUNCH AND CHILD NUTRITION ACTS (42 UNITED STATES CODE SECTIONS 1751 THROUGH 1785) 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.

43-1505. Audits and financial reviews

A. ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, EACH SCHOOL TUITION ORGANIZATION THAT RECEIVED ONE MILLION DOLLARS OR MORE IN TOTAL DONATIONS IN THE PREVIOUS FISCAL YEAR SHALL PROVIDE FOR A FINANCIAL AUDIT OF THE ORGANIZATION. THE AUDIT MUST BE CONDUCTED IN ACCORDANCE WITH GENERALLY ACCEPTED AUDITING STANDARDS AND MUST EVALUATE THE ORGANIZATION'S COMPLIANCE WITH THE FISCAL REQUIREMENTS OF THIS ARTICLE. THE AUDIT MUST BE CONDUCTED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE. THE CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS AFFILIATED WITH SHALL BE INDEPENDENT WITH RESPECT TO THE ORGANIZATION, ITS OFFICERS AND DIRECTORS, SERVICES PERFORMED AND ALL OTHER INDEPENDENT RELATIONSHIPS PRESCRIBED BY GENERALLY ACCEPTED AUDITING STANDARDS.

B. ON OR BEFORE SEPTEMBER 30 OF EACH YEAR, EACH SCHOOL TUITION ORGANIZATION THAT RECEIVED LESS THAN ONE MILLION DOLLARS IN TOTAL DONATIONS IN THE PREVIOUS FISCAL YEAR SHALL PROVIDE FOR A FINANCIAL REVIEW OF THE ORGANIZATION. THE REVIEW MUST BE CONDUCTED IN ACCORDANCE WITH STANDARDS FOR ACCOUNTING AND REVIEW SERVICES AND MUST EVALUATE THE ORGANIZATION'S COMPLIANCE WITH THE FISCAL REQUIREMENTS OF THIS ARTICLE. THE REVIEW MUST BE CONDUCTED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT LICENSED IN THIS STATE. THE CERTIFIED PUBLIC ACCOUNTANT AND THE FIRM THE CERTIFIED PUBLIC ACCOUNTANT IS AFFILIATED WITH SHALL BE INDEPENDENT WITH RESPECT TO THE ORGANIZATION, ITS OFFICERS AND DIRECTORS, SERVICES PERFORMED AND ALL OTHER INDEPENDENT RELATIONSHIPS PRESCRIBED BY GENERALLY ACCEPTED AUDITING STANDARDS.

C. WITHIN FIVE DAYS AFTER RECEIVING THE AUDIT OR FINANCIAL REVIEW THE SCHOOL TUITION ORGANIZATION SHALL FILE A SIGNED COPY OF THE AUDIT OR FINANCIAL REVIEW WITH THE DEPARTMENT.

D. THE SCHOOL TUITION ORGANIZATION SHALL PAY THE FEES AND COSTS OF THE CERTIFIED PUBLIC ACCOUNTANT UNDER THIS SECTION FROM THE ORGANIZATION'S OPERATING MONIES. THE FEES AND COSTS SHALL BE EXCLUDED FROM THE CALCULATION OF TOTAL REVENUES SPENT ON SCHOLARSHIPS AND TUITION GRANTS.

Sec. 3. School tuition organizations; transition reports

Notwithstanding the provisions of this act providing for school tuition organization annual reports on or before September 30, on or before February 28, 2011, each school tuition organization shall submit to the department of revenue the report required by section 43-1089, subsection F, Arizona Revised Statutes, as in effect before the effective date of this act, for the 2010 calendar year. Thereafter, the school tuition organization shall submit an annual fiscal year report as prescribed by section 43-1504, Arizona Revised Statutes, as added by this act.

Sec. 4. Effective date

This act is effective from and after December 31, 2010.

APPROVED BY THE GOVERNOR MAY 10, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.