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ADDENDUM A

**Montana Code Annotated
Title 15 Taxation (Chs. 1—72)
Chapter 30—Individual Income Tax (Pts. 1—33)
Part 31 Tax Credit for
Qualified Education Contributions
(§§ 15-30-3101—15-30-3114)**

15-30-3101—Purpose.

Pursuant to 5-4-104, the legislature finds that the purpose of student scholarship organizations is to provide parental and student choice in education with private contributions through tax replacement programs. The tax credit for taxpayer donations under this part must be administered in compliance with Article V, section 11(5), and Article X, section 6, of the Montana constitution.

15-30-3102—Definitions.

As used in this part, the following definitions apply:

- (1) “Department” means the department of revenue provided for in 2-15-1301.
- (2) “Eligible student” means a student who is a Montana resident and who is 5 years of age or older on or before September 10 of the year of attendance and has not yet reached 19 years of age.
- (3) “Geographic region” has the meaning provided in 20-9-903.
- (4) “Large district” has the meaning provided in 20-9-903.

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(5) “Partnership” has the meaning provided in 15-30-2101.

(6) “Pass-through entity” has the meaning provided in 15-30-2101.

(7) “Qualified education provider” means an education provider that:

(a) is not a public school;

(b)

(i) is accredited, has applied for accreditation, or is provisionally accredited by a state, regional, or national accreditation organization; or

(ii) is a nonaccredited provider or tutor and has informed the child’s parents or legal guardian in writing at the time of enrollment that the provider is not accredited and is not seeking accreditation;

(c) is not a home school as referred to in 20-5-102(2)(e);

(d) administers a nationally recognized standardized assessment test or criterion-referenced test and:

(i) makes the results available to the child’s parents or legal guardian; and

(ii) administers the test for all 8th grade and 11th grade students and provides the overall scores on a publicly accessible private website or provides the composite

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results of the test to the office of public instruction for posting on its website;

(e) satisfies the health and safety requirements prescribed by law for private schools in this state; and

(f) qualifies for an exemption from compulsory enrollment under 20-5-102(2)(e) and 20-5-109.

(8) “Small business corporation” has the meaning provided in 15-30-3301.

(9) “Student scholarship organization” means a charitable organization in this state that:

(a) is exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3);

(b) allocates not less than 90% of its annual revenue for scholarships to allow students to enroll with any qualified education provider; and

(c) provides educational scholarships to eligible students without limiting student access to only one education provider.

(10) “Taxpayer” has the meaning provided in 15-30-2101.

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15-30-3103—Requirements for student scholarship organizations.

- (1) A student scholarship organization:
 - (a) shall obligate at least 90% of its annual revenue for scholarships. For the purpose of this calculation:
 - (i) the cost of the annual fiscal review provided for in 15-30-3105(1)(b) may be paid out of the total contributions before calculation of the 90% minimum obligation amount; and
 - (ii) all contributions subject to the 90% minimum obligation amount that are received in 1 calendar year must be paid out in scholarships within the 3 calendar years following the contribution.
 - (b) may not restrict or reserve scholarships for use at a particular education provider or any particular type of education provider and shall allow an eligible student to enroll with any qualified education provider of the parents' or legal guardian's choice;
 - (c) shall provide scholarships to eligible students to attend instruction offered by a qualified education provider;
 - (d) may not provide a scholarship to an eligible student for an academic year that exceeds 50% of the per-pupil average of total public school expenditures calculated in 20-9-570;

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(e) shall ensure that the organization's average scholarship for an academic year does not exceed 30% of the per-pupil average of total public school expenditures calculated in 20-9-570;

(f) shall maintain separate accounts for scholarship funds and operating funds;

(g) may transfer funds to another student scholarship organization;

(h) shall maintain an application process under which scholarship applications are accepted, reviewed, approved, and denied; and

(i) shall comply with payment and reporting requirements in accordance with 15-30-3104 and 15-30-3105.

(2) An organization that fails to satisfy the conditions of this section is subject to termination as provided in 15-30-3113.

15-30-3104—Tuition payment limitation.

(1) A student scholarship organization shall deliver the scholarship funds directly to the qualified education provider selected by the parents or legal guardian of the child to whom the scholarship was awarded. The qualified education provider shall immediately notify the parents or legal guardian that the payment was received.

(2) A parent or legal guardian of an eligible student may not accept one or more scholarship awards from a student scholarship organization

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for an eligible student if the total amount of the awards exceeds 50% of the per-pupil average of total public school expenditures calculated in 20-9-570. This limitation applies to each eligible student of a parent or legal guardian.

15-30-3105—Reporting requirements for student scholarship organizations.

- (1) Each student scholarship organization shall:
 - (a) submit a notice to the department of its intent to operate as a student scholarship organization prior to accepting donations;
 - (b) complete an annual fiscal review of its accounts by an independent certified public accountant within 120 days after the close of the calendar year that discloses for each of the 3 most recently completed calendar years:
 - (i) the total number and dollar value of individual and corporate contributions;
 - (ii) the total number and dollar value of scholarships obligated to eligible students;
 - (iii) the total number and dollar value of scholarships awarded to eligible students; and
 - (iv) the cost of the annual fiscal review;
 - (c) submit the annual fiscal review report to the department within 150 days of the close of the calendar year.

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(2) The department shall provide written notice to a student scholarship organization that fails to submit the annual fiscal review report, and the organization has 30 days from receipt of the notice to submit the report.

(3) An organization that fails to satisfy the conditions of this section is subject to termination as provided in 15-30-3113.

15-30-3106—Student scholarship organizations—listing on website.

(1) The department shall maintain on its website a hyperlink to a current list of all:

(a) student scholarship organizations that have provided notice pursuant to 15-30-3105(1)(a); and

(b) qualified education providers that accepted scholarship funds from a student scholarship organization.

(2) The list must include:

(a) a statistical compilation of the information received from the student scholarship organizations; and

(b) a hyperlink to the qualified education provider's overall testing scores contained on a publicly accessible private website or to the office of public instruction's website pursuant to 15-30-3102(7)(d)(ii).

15-30-3107-3109—Reserved

15-30-3110—Credit for providing supplemental funding to public schools—innovative educational program.

(1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to the educational improvement account provided for in 20-9-905 for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The taxpayer may direct the donation to a geographic region or a large district as provided in 20-9-904(2)(b). The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150.

(2)

(a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A donation by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

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(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(5)

(a)

(i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine if \$3 million or the aggregate limit provided for in subsection (5)(a)(iii) in donations was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (5)(a)(ii).

(b) The department shall approve the amount of donations for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's

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return will be processed without regard to the credit.

(6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(7) After consultation with the superintendent of public instruction, the department may develop an internet-based registration system that provides taxpayers with the opportunity to obtain preapproval for a tax credit before making a donation.

15-30-3111—Qualified education tax credit for contributions to student scholarship organizations.

(1) Subject to subsection (5), a taxpayer or corporation is allowed a credit against the tax imposed by chapter 30 or 31 for donations made to a student scholarship organization. The donor may not direct or designate contributions to a parent, legal guardian, or specific qualified education provider.

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The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150.

(2)

(a) If the credit allowed under this section is claimed by a small business corporation, a pass-through entity, or a partnership, the credit must be attributed to shareholders, owners, or partners using the same proportion as used to report the entity's income or loss.

(b) A contribution by an estate or trust qualifies for the credit. Any credit not used by the estate or trust may be attributed to each beneficiary of the estate or trust in the same proportion used to report the beneficiary's income from the estate or trust for Montana income tax purposes.

(3) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(4) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the donation is made, as determined by the taxpayer's accounting method.

(5)

(a)

(i) The aggregate amount of tax credits allowed under this section is \$3 million beginning in tax year 2016.

(ii) Beginning in 2017, by August 1 of each year, the department shall determine

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if \$3 million or the aggregate limit provided for in subsection (5)(a)(iii) in tax credits was preapproved by the department. If this condition is satisfied, the aggregate amount of tax credits allowed must be increased by 10% for the succeeding tax years.

(iii) If the aggregate limit is increased in any tax year, the department shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregated limit is established under the provisions of subsection (5)(a)(ii).

(b) The department shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on its website advising taxpayers when the aggregate limit is in effect. If a taxpayer makes a donation after total donations claimed exceeds the aggregate limit, the taxpayer's return will be processed without regard to the credit.

(6) A credit is not allowed under this section with respect to any amount deducted by the taxpayer for state tax purposes as a charitable contribution to a charitable organization qualified under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3). This section does not prevent a taxpayer from:

(a) claiming a credit under this section instead of a deduction; or

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(b) claiming an exclusion, deduction, or credit for a charitable contribution that exceeds the amount for which the credit is allowed under this section.

(7) The department may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution.

15-30-3112—Report to revenue interim committee—student scholarship organizations.

Each biennium, the department shall provide to the revenue interim committee, in accordance with 5-11-210, a list of student scholarship organizations receiving contributions from businesses and individuals that are granted tax credits under 15-30-3111. The listing must detail the tax credits claimed under the individual income tax in chapter 30 and the corporate income tax in chapter 31.

15-30-3113—Review determination—termination—confidentiality.

(1) Subject to subsection (7), the department is authorized to examine any books, papers, records, or memoranda relevant to determining whether a student scholarship organization is in compliance with 15-30-3102, 15-30-3103, and 15-30-3105.

(2) If a student scholarship organization is not in compliance, the department shall provide to the organization written notice of the specific failures and the organization has 30 days from the date of

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the notice to correct deficiencies. If the organization fails to correct all deficiencies, the department shall provide a final written notice of the failure to the organization. The organization may appeal the department's determination of failure to comply according to the uniform dispute review procedure in 15-1-211 within 30 days of the date of the notice.

(3)

(a) If a student scholarship organization does not seek review under 15-1-211 or if the dispute is not resolved, the department shall issue a final department decision.

(b) The final department decision for a student scholarship organization must provide that the student scholarship organization:

(i) will be removed from the list of eligible student scholarship organizations provided in 15-30-3106 and notified of the removal; and

(ii) shall within 15 calendar days of receipt of notice from the department of removal from the eligible list cease all operations as a student scholarship organization and transfer all scholarship account funds to a properly operating student scholarship organization.

(4) A student scholarship organization that receives a final department decision may seek review of the decision from the state tax appeal board pursuant to 15-2-302.

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(5) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303.

(6) If a student scholarship organization files an appeal pursuant to this section, the organization may continue to operate until the decision of the court is final.

(7) The identity of donors who make donations to the educational improvement account provided for in 20-9-905 or donations to a student scholarship organization is confidential tax information that is subject to the provisions of 15-30-2618.

15-30-3114—Rulemaking.

The department may adopt rules, prepare forms, and maintain records that are necessary to implement and administer this part.

ADDENDUM B

Montana Administrative Rules

Title 42: Revenue

Chapter 4: Tax Credits

Sub-Chapter 8: Education Donation Credits

42.4.802—Qualified Education Provider

(1) A “qualified education provider” has the meaning given in 15-30-3102, MCA, and pursuant to 15-30-3101, MCA, may not be:

(a) a church, school, academy, seminary, college, university, literary or scientific institution, or any other sectarian institution owned or controlled in whole or in part by any church, religious sect, or denomination; or

(b) an individual who is employed by a church, school, academy, seminary, college, university, literary or scientific institution, or any other sectarian institution owned or controlled in whole or in part by any church, religious sect, or denomination when providing those services.

(2) For the purposes of (1), “controlled in whole or in part by a church, religious sect, or denomination” includes accreditation by a faith-based organization.
