

State of Arizona  
Senate  
Fiftieth Legislature  
Second Regular Session  
2012

# SENATE BILL 1047

AN ACT

AMENDING SECTIONS 43-222, 43-401 AND 43-1021, ARIZONA REVISED STATUTES; AMENDING TITLE 43, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 43-1089.03; AMENDING SECTIONS 43-1602, 43-1603 AND 43-1604, ARIZONA REVISED STATUTES; RELATING TO TAX CREDITS FOR CONTRIBUTIONS TO SCHOOL TUITION ORGANIZATIONS.

(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 43-1075, 43-1075.01,  
8 43-1079.01, 43-1087, 43-1088, 43-1090.01, 43-1163, 43-1163.01, 43-1167.01,  
9 43-1175 and 43-1182.

10 2. For years ending in 1 and 6, sections 43-1074.02, 43-1083,  
11 43-1083.02, 43-1085.01, 43-1164.02, 43-1164.03 and 43-1183.

12 3. For years ending in 2 and 7, sections 43-1073, 43-1079, 43-1080,  
13 43-1085, 43-1086, 43-1089, 43-1089.01, 43-1089.02, 43-1089.03, 43-1090,  
14 43-1164, 43-1167, 43-1169, 43-1176 and 43-1181.

15 4. For years ending in 3 and 8, sections 43-1074.01, 43-1081, 43-1168,  
16 43-1170 and 43-1178.

17 5. For years ending in 4 and 9, sections 43-1076, 43-1081.01,  
18 43-1083.01, 43-1084, 43-1162, 43-1164.01, 43-1170.01 and 43-1184.

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

20 43-401. Withholding tax; rates; election by employee

21 A. Except as provided by subsection B of this section, every employer  
22 at the time of the payment of wages, salary, bonus or other emolument to any  
23 employee whose compensation is for services performed within this state shall  
24 deduct and retain from the compensation an amount that is determined by the  
25 department pursuant to subsection D of this section or that is equal to a  
26 percentage, determined pursuant to subsection C of this section, of the total  
27 amount of the federal income tax deducted and withheld by an employer from  
28 the total value of such wages, bonus or other emolument of an employee under  
29 the provisions of the United States internal revenue code computed without  
30 deductions for any amount withheld.

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

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

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

36 C. The percentage deducted and retained under subsection A of this  
37 section:

38 1. Through April 30, 2009 shall be:

39 (a) If the employee's annual compensation is less than fifteen  
40 thousand dollars, ten per cent, nineteen per cent, twenty-three per cent,  
41 twenty-five per cent, thirty-one per cent or thirty-seven per cent, at the  
42 employee's election pursuant to subsection G of this section.

43 (b) If the employee's annual compensation is fifteen thousand dollars  
44 or more, nineteen per cent, twenty-three per cent, twenty-five per cent,

1 thirty-one per cent or thirty-seven per cent, at the employee's election  
2 pursuant to subsection G of this section.

3 (c) Zero per cent at the election of an employee who had no state  
4 income tax liability in the prior taxable year and expects to have no state  
5 income tax liability for the current taxable year.

6 2. Beginning from and after April 30, 2009 through December 31, 2009,  
7 if an employee's rate of withholding under paragraph 1 of this subsection  
8 immediately before May 1, 2009 was:

9 (a) Zero per cent at the election of an employee who had no state  
10 income tax liability in the prior taxable year and expects to have no state  
11 income tax liability for the current taxable year, the withholding tax rate  
12 shall remain zero per cent.

13 (b) Ten per cent, the withholding tax rate shall be increased to 11.5  
14 per cent.

15 (c) Nineteen per cent, the withholding tax rate shall be increased to  
16 21.9 per cent.

17 (d) Twenty-three per cent, the withholding tax rate shall be increased  
18 to 26.5 per cent.

19 (e) Twenty-five per cent, the withholding tax rate shall be increased  
20 to 28.8 per cent.

21 (f) Thirty-one per cent, the withholding tax rate shall be increased  
22 to 35.7 per cent.

23 (g) Thirty-seven per cent, the withholding tax rate shall be increased  
24 to 42.6 per cent.

25 3. Beginning from and after December 31, 2009 through June 30, 2010,  
26 if an employee's rate of withholding under paragraph 2 of this subsection  
27 immediately before January 1, 2010 was:

28 (a) Zero per cent at the election of an employee who had no state  
29 income tax liability in the prior taxable year and expects to have no state  
30 income tax liability for the current taxable year, the withholding tax rate  
31 shall remain zero per cent.

32 (b) 11.5 per cent, the withholding tax rate shall be decreased to 10.7  
33 per cent.

34 (c) 21.9 per cent, the withholding tax rate shall be decreased to 20.3  
35 per cent.

36 (d) 26.5 per cent, the withholding tax rate shall be decreased to 24.5  
37 per cent.

38 (e) 28.8 per cent, the withholding tax rate shall be decreased to 26.7  
39 per cent.

40 (f) 35.7 per cent, the withholding tax rate shall be decreased to 33.1  
41 per cent.

42 (g) 42.6 per cent, the withholding tax rate shall be decreased to 39.5  
43 per cent.

44 D. Beginning from and after June 30, 2010, the amount deducted and  
45 retained under subsection A of this section shall be prescribed by tables

1 adopted by the department. On or before March 15, 2010, the department shall  
2 submit to the joint legislative budget committee a copy of the table.

3 E. If the amount collected and payable by the employer to the  
4 department in each of the preceding four calendar quarters did not exceed an  
5 average of one thousand five hundred dollars, the amount collected shall be  
6 paid to the department on or before April 30, July 31, October 31 and January  
7 31 for the preceding calendar quarter. If such amount exceeded one thousand  
8 five hundred dollars in each of the preceding four calendar quarters, the  
9 employer shall pay to the department the amount the employer deducts and  
10 retains pursuant to this section at the same time as the employer is required  
11 to make deposits of federal tax pursuant to section 6302 of the internal  
12 revenue code. On or before April 30, July 31, October 31 and January 31 each  
13 year the employer shall reconcile the amounts payable during the preceding  
14 calendar quarter in a manner prescribed by the department, except that if the  
15 full amount collected and payable is paid timely to the department under this  
16 subsection, the employer may reconcile the amounts on or before May 10,  
17 August 10, November 10 and February 10 each year. The department by rule may  
18 allow and determine which employers qualify for annual payments of  
19 withholding taxes, with an annual report by the employer pursuant to section  
20 43-412, subsection B, if the qualifying employer has established sufficient  
21 payment history to indicate that the employer is current and in good standing  
22 pursuant to standards established by rule. For any business which has not  
23 had a withholding certificate for the four preceding consecutive quarters,  
24 the quarterly average shall be computed in a manner prescribed by the  
25 department.

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

34 G. Each employee shall elect the amount authorized by subsection C of  
35 this section to be withheld for application toward the employee's state  
36 income tax liability. The election provided under this subsection shall be  
37 exercised by each employee, in writing on a form prescribed by the  
38 department. The election shall be made within five days of employment. Each  
39 employer shall notify the employees of the election made available under this  
40 subsection and shall have election forms available at all times. Each form  
41 shall be completed in triplicate, with one copy each for the department, the  
42 employer and the employee. The employer shall file a copy of each completed  
43 form with the department. Any employee failing to complete an election form  
44 as prescribed shall be deemed to have elected the smallest applicable  
45 withholding percentage.

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

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

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

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

21 1. Within fifteen days after the end of each calendar quarter, the  
22 employer must pay the entire amount of the reduction in withholding tax for  
23 that quarter to the designated charitable organization, school tuition  
24 organization or public school. These payments are considered to be on the  
25 employee's behalf, and not the employer's, for the purposes of qualifying for  
26 the income tax credits under sections 43-1088, 43-1089, ~~and~~ 43-1089.01 **AND**  
27 **43-1089.03**.

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

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

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

38 Sec. 3. Section 43-1021, Arizona Revised Statutes, is amended to read:  
39 **43-1021. Additions to Arizona gross income**

40 In computing Arizona adjusted gross income, the following amounts shall  
41 be added to Arizona gross income:

42 1. A beneficiary's share of the fiduciary adjustment to the extent  
43 that the amount determined by section 43-1333 increases the beneficiary's  
44 Arizona gross income.

1           2. An amount equal to the "ordinary income portion" of a lump sum  
2 distribution that was excluded from federal adjusted gross income pursuant to  
3 section 402(d) of the internal revenue code.

4           3. The amount of interest income received on obligations of any state,  
5 territory or possession of the United States, or any political subdivision  
6 thereof, located outside the state of Arizona, reduced, for tax years  
7 beginning from and after December 31, 1996, by the amount of any interest on  
8 indebtedness and other related expenses that were incurred or continued to  
9 purchase or carry those obligations and that are not otherwise deducted or  
10 subtracted in arriving at Arizona gross income.

11           4. Annuity income received during the taxable year to the extent that  
12 the sum of the proceeds received from such annuity in all taxable years prior  
13 to and including the current taxable year exceeds the total consideration and  
14 premiums paid by the taxpayer. This paragraph applies only to those  
15 annuities with respect to which the first payment was received prior to  
16 December 31, 1978.

17           5. The excess of a partner's share of partnership taxable income  
18 required to be included under chapter 14, article 2 of this title over the  
19 income required to be reported under section 702(a)(8) of the internal  
20 revenue code.

21           6. The excess of a partner's share of partnership losses determined  
22 pursuant to section 702(a)(8) of the internal revenue code over the losses  
23 allowable under chapter 14, article 2 of this title.

24           7. The amount by which the adjusted basis of property described in  
25 this paragraph and computed pursuant to the internal revenue code exceeds the  
26 adjusted basis of such property computed pursuant to this title and the  
27 income tax act of 1954, as amended. This paragraph shall apply to all  
28 property which is held for the production of income and which is sold or  
29 otherwise disposed of during the taxable year, except depreciable property  
30 used in a trade or business.

31           8. The amount of depreciation or amortization of costs of any capital  
32 investment that is deducted pursuant to section 167 or 179 of the internal  
33 revenue code by a qualified defense contractor with respect to which an  
34 election is made to amortize pursuant to section 43-1024.

35           9. The amount of gain from the sale or other disposition of a capital  
36 investment which a qualified defense contractor has elected to amortize  
37 pursuant to section 43-1024.

38           10. Amounts withdrawn from the Arizona state retirement system, the  
39 corrections officer retirement plan, the public safety personnel retirement  
40 system, the elected officials' retirement plan or a county or city retirement  
41 plan by an employee upon termination of employment before retirement to the  
42 extent they were deducted in arriving at Arizona taxable income in any year.

1           11. That portion of the net operating loss included in federal adjusted  
2 gross income which has already been taken as a net operating loss for Arizona  
3 purposes or which is separately taken as a subtraction under the special net  
4 operating loss transition rule.

5           12. Any nonitemized amount deducted pursuant to section 170 of the  
6 internal revenue code representing contributions to an educational  
7 institution which denies admission, enrollment or board and room  
8 accommodations on the basis of race, color or ethnic background except those  
9 institutions primarily established for the education of American Indians.

10           13. The amount paid as taxes on property in this state with respect to  
11 which a credit is claimed under section 43-1078.

12           14. Amounts withdrawn from a medical savings account by the individual  
13 during the taxable year computed pursuant to section 220(f) of the internal  
14 revenue code and not included in federal adjusted gross income.

15           15. Any amount of agricultural water conservation expenses that were  
16 deducted pursuant to the internal revenue code for which a credit is claimed  
17 under section 43-1084.

18           16. The amount by which the depreciation or amortization computed under  
19 the internal revenue code with respect to property for which a credit was  
20 taken under section 43-1080 exceeds the amount of depreciation or  
21 amortization computed pursuant to the internal revenue code on the Arizona  
22 adjusted basis of the property.

23           17. The amount by which the adjusted basis computed under the internal  
24 revenue code with respect to property for which a credit was claimed under  
25 section 43-1080 and which is sold or otherwise disposed of during the taxable  
26 year exceeds the adjusted basis of the property computed under section  
27 43-1080.

28           18. The amount by which the depreciation or amortization computed under  
29 the internal revenue code with respect to property for which a credit was  
30 taken under either section 43-1081 or 43-1081.01 exceeds the amount of  
31 depreciation or amortization computed pursuant to the internal revenue code  
32 on the Arizona adjusted basis of the property.

33           19. The amount by which the adjusted basis computed under the internal  
34 revenue code with respect to property for which a credit was claimed under  
35 section 43-1074.02, 43-1081 or 43-1081.01 and which is sold or otherwise  
36 disposed of during the taxable year exceeds the adjusted basis of the  
37 property computed under section 43-1074.02, 43-1081 or 43-1081.01, as  
38 applicable.

39           20. The deduction referred to in section 1341(a)(4) of the internal  
40 revenue code for restoration of a substantial amount held under a claim of  
41 right.

42           21. The amount by which a net operating loss carryover or capital loss  
43 carryover allowable pursuant to section 1341(b)(5) of the internal revenue  
44 code exceeds the net operating loss carryover or capital loss carryover  
45 allowable pursuant to section 43-1029, subsection F.

1           22. Any amount deducted pursuant to section 170 of the internal revenue  
2 code representing contributions to a school tuition organization or a public  
3 school for which a credit is claimed under section 43-1089, ~~or~~ 43-1089.01 OR  
4 43-1089.03.

5           23. Any amount deducted in computing Arizona gross income as expenses  
6 for installing solar stub outs or electric vehicle recharge outlets in this  
7 state with respect to which a credit is claimed pursuant to section 43-1090.

8           24. Any wage expenses deducted pursuant to the internal revenue code  
9 for which a credit is claimed under section 43-1087 and representing net  
10 increases in qualified employment positions for employment of temporary  
11 assistance for needy families recipients.

12           25. Any amount deducted for conveying ownership or development rights  
13 of property to an agricultural preservation district under section 48-5702  
14 for which a credit is claimed under section 43-1081.02.

15           26. The amount of any depreciation allowance allowed pursuant to  
16 section 167(a) of the internal revenue code to the extent not previously  
17 added.

18           27. With respect to property for which an expense deduction was taken  
19 pursuant to section 179 of the internal revenue code, the amount in excess of  
20 twenty-five thousand dollars.

21           28. The amount of any deductions that are claimed in computing federal  
22 adjusted gross income representing expenses for which a credit is claimed  
23 under either section 43-1075 or 43-1075.01 or both.

24           29. The amount by which the depreciation or amortization computed under  
25 the internal revenue code with respect to property for which a credit was  
26 taken under section 43-1090.01 exceeds the amount of depreciation or  
27 amortization computed pursuant to the internal revenue code on the Arizona  
28 adjusted basis of the property.

29           30. The amount by which the adjusted basis computed under the internal  
30 revenue code with respect to property for which a credit was claimed under  
31 section 43-1090.01 and which is sold or otherwise disposed of during the  
32 taxable year exceeds the adjusted basis of the property computed under  
33 section 43-1090.01.

34           31. The amount of a nonqualified withdrawal, as defined in section  
35 15-1871, from a college savings plan established pursuant to section 529 of  
36 the internal revenue code that is made to a distributee to the extent the  
37 amount is not included in computing federal adjusted gross income, except  
38 that the amount added under this paragraph shall not exceed the difference  
39 between the amount subtracted under section 43-1022 in prior taxable years  
40 and the amount added under this section in any prior taxable years.

41           32. The amount of unemployment compensation that is excluded from  
42 federal adjusted gross income pursuant to section 85(c) of the internal  
43 revenue code as added by section 1007 of the American recovery and  
44 reinvestment act of 2009 (P.L. 111-5).



1 E. 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 F. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER DESIGNATES THE  
5 TAXPAYER'S CONTRIBUTION TO THE SCHOOL TUITION ORGANIZATION FOR THE DIRECT  
6 BENEFIT OF ANY DEPENDENT OF THE TAXPAYER OR IF THE TAXPAYER DESIGNATES A  
7 STUDENT BENEFICIARY AS A CONDITION OF THE TAXPAYER'S CONTRIBUTION TO THE  
8 SCHOOL TUITION ORGANIZATION. THE TAX CREDIT IS NOT ALLOWED IF THE TAXPAYER,  
9 WITH THE INTENT TO BENEFIT THE TAXPAYER'S DEPENDENT, AGREES WITH ONE OR MORE  
10 OTHER TAXPAYERS TO DESIGNATE EACH TAXPAYER'S CONTRIBUTION TO THE SCHOOL  
11 TUITION ORGANIZATION FOR THE DIRECT BENEFIT OF THE OTHER TAXPAYER'S  
12 DEPENDENT.

13 G. FOR THE PURPOSES OF THIS SECTION, A CONTRIBUTION, FOR WHICH A  
14 CREDIT IS CLAIMED, THAT IS MADE ON OR BEFORE THE FIFTEENTH DAY OF THE FOURTH  
15 MONTH FOLLOWING THE CLOSE OF THE TAXABLE YEAR MAY BE APPLIED TO EITHER THE  
16 CURRENT OR PRECEDING TAXABLE YEAR AND IS CONSIDERED TO HAVE BEEN MADE ON THE  
17 LAST DAY OF THAT TAXABLE YEAR.

18 H. A TAXPAYER MAY NOT CLAIM A CREDIT UNDER THIS SECTION AND ALSO UNDER  
19 SECTION 43-1089 WITH RESPECT TO THE SAME CONTRIBUTION. IF A TAXPAYER'S  
20 CONTRIBUTION TO A SCHOOL TUITION ORGANIZATION EXCEEDS THE AMOUNT OF THE  
21 CREDIT ALLOWED UNDER SECTION 43-1089, A TAXPAYER MAY CLAIM A CREDIT UNDER  
22 THIS SECTION AND ALSO UNDER SECTION 43-1089. IF A TAXPAYER'S CONTRIBUTION TO  
23 A SCHOOL TUITION ORGANIZATION DOES NOT EXCEED THE AMOUNT OF THE CREDIT  
24 ALLOWED BY SECTION 43-1089, THE CONTRIBUTION IS CONSIDERED TO HAVE BEEN MADE  
25 PURSUANT TO SECTION 43-1089.

26 Sec. 5. Section 43-1602, Arizona Revised Statutes, is amended to read:  
27 43-1602. Certification as a school tuition organization

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

35 B. The department shall:

36 1. Maintain a public registry of currently certified school tuition  
37 organizations.

38 2. Make the registry available to the public on request.

39 3. Post the registry on the department's official website.

40 C. The department shall send written notice by certified mail to a  
41 school tuition organization if the department determines that the school  
42 tuition organization has engaged in any of the following activities:

43 1. Failing or refusing to allocate at least ninety per cent of annual  
44 revenues FROM CONTRIBUTIONS MADE FOR THE PURPOSES OF SECTIONS 43-1089 AND  
45 43-1089.03 for educational scholarships or tuition grants.

1           2. Failing or refusing to file the annual reports required by section  
2 43-1604.

3           3. Limiting availability of scholarships to students of only one  
4 school.

5           4. Encouraging, facilitating or knowingly permitting taxpayers to  
6 engage in actions prohibited by this article.

7           5. Awarding, restricting or reserving educational scholarships or  
8 tuition grants for use by a particular student based solely on the  
9 recommendation of the donor.

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

21          E. A school tuition organization may request an administrative hearing  
22 on the revocation of its certification as provided by title 41, chapter 6,  
23 article 10. Except as provided in section 41-1092.08, subsection H, a  
24 decision of the department is subject to judicial review pursuant to title  
25 12, chapter 7, article 6.

26          Sec. 6. Section 43-1603, Arizona Revised Statutes, is amended to read:  
27 43-1603. Operational requirements for school tuition  
28 organizations; notice; qualified schools

29          A. A certified school tuition organization must be established to  
30 receive contributions from taxpayers for the purposes of income tax credits  
31 under ~~section~~ SECTIONS 43-1089 AND 43-1089.03 and to pay educational  
32 scholarships or tuition grants to allow students to attend any qualified  
33 school of their parents' choice.

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

36           1. Must allocate at least ninety per cent of its annual revenue FROM  
37 CONTRIBUTIONS MADE FOR THE PURPOSES OF SECTIONS 43-1089 AND 43-1089.03 for  
38 educational scholarships or tuition grants.

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

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

44           4. Shall not allow donors to designate student beneficiaries as a  
45 condition of any contribution to the organization, or facilitate, encourage

1 or knowingly permit the exchange of beneficiary student designations in  
2 violation of section 43-1089, subsection F.

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

6 Notice

7 A school tuition organization cannot award, restrict or  
8 reserve scholarships solely on the basis of a donor's  
9 recommendation.

10 A taxpayer may not claim a tax credit if the taxpayer  
11 agrees to swap donations with another taxpayer to benefit either  
12 taxpayer's own dependent.

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

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

18 2. Shall consider the financial need of applicants.

19 ~~E. A qualified school shall not accept an educational scholarship or~~  
20 ~~tuition grant from a school tuition organization in an amount that exceeds~~  
21 ~~the school's total cost of educating the student in whose name the~~  
22 ~~scholarship or grant is received.~~

23 E. A TAXPAYER'S CONTRIBUTION TO A SCHOOL TUITION ORGANIZATION THAT  
24 EXCEEDS THE AMOUNT OF THE CREDIT ALLOWED BY SECTION 43-1089 BUT DOES NOT  
25 EXCEED THE AMOUNT OF THE CREDIT ALLOWED BY SECTION 43-1089.03 IS CONSIDERED A  
26 CONTRIBUTION PURSUANT TO SECTION 43-1089.03. A SCHOOL TUITION ORGANIZATION  
27 MUST USE AT LEAST NINETY PER CENT OF CONTRIBUTIONS MADE PURSUANT TO SECTION  
28 43-1089.03 FOR EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS FOR STUDENTS TO  
29 WHOM ANY OF THE FOLLOWING APPLIES:

30 1. ATTENDED A GOVERNMENTAL PRIMARY OR SECONDARY SCHOOL AS A FULL-TIME  
31 STUDENT AS DEFINED IN SECTION 15-901 OR ATTENDED A PRESCHOOL PROGRAM THAT  
32 OFFERS SERVICES TO STUDENTS WITH DISABILITIES AT A GOVERNMENTAL SCHOOL FOR AT  
33 LEAST NINETY DAYS OF THE PRIOR FISCAL YEAR AND TRANSFERRED FROM A  
34 GOVERNMENTAL SCHOOL TO A QUALIFIED SCHOOL.

35 2. ENROLLS IN A QUALIFIED SCHOOL IN A KINDERGARTEN PROGRAM OR A  
36 PRESCHOOL PROGRAM THAT OFFERS SERVICES TO STUDENTS WITH DISABILITIES.

37 3. IS THE DEPENDENT OF A MEMBER OF THE ARMED FORCES OF THE UNITED  
38 STATES WHO IS STATIONED IN THIS STATE PURSUANT TO MILITARY ORDERS.

39 4. RECEIVED AN EDUCATIONAL SCHOLARSHIP OR TUITION GRANT UNDER  
40 PARAGRAPH 1, 2 OR 3 OF THIS SUBSECTION OR UNDER CHAPTER 15 OF THIS TITLE IF  
41 THE STUDENT CONTINUES TO ATTEND A QUALIFIED SCHOOL IN A SUBSEQUENT YEAR.

42 F. IN AWARDING EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS FROM  
43 CONTRIBUTIONS MADE PURSUANT TO SECTION 43-1089.03, A SCHOOL TUITION  
44 ORGANIZATION SHALL GIVE PRIORITY TO STUDENTS AND SIBLINGS OF STUDENTS ON A

1 WAITING LIST FOR SCHOLARSHIPS IF THE SCHOOL TUITION ORGANIZATION MAINTAINS A  
2 WAITING LIST.

3 G. IF AN INDIVIDUAL EDUCATIONAL SCHOLARSHIP OR TUITION GRANT EXCEEDS  
4 THE SCHOOL'S TOTAL COST OF EDUCATING THAT STUDENT, THE AMOUNT IN EXCESS SHALL  
5 BE RETURNED TO THE SCHOOL TUITION ORGANIZATION THAT MADE THE AWARD OR  
6 GRANT. THE SCHOOL TUITION ORGANIZATION MAY ALLOCATE THE RETURNED MONIES AS A  
7 MULTIYEAR AWARD FOR THAT STUDENT AND REPORT THE AWARD PURSUANT TO SECTION  
8 43-1604, PARAGRAPH 5, SUBDIVISION (b) OR MAY ALLOCATE THE RETURNED MONIES FOR  
9 EDUCATIONAL SCHOLARSHIPS OR TUITION GRANTS FOR OTHER STUDENTS.

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

11 43-1604. Annual report

12 On or before September 30 of each year, each school tuition  
13 organization shall report electronically to the department, in a form  
14 prescribed by the department, the following information, separately compiled  
15 and identified for the purposes of ~~section~~ SECTIONS 43-1089 AND 43-1089.03:

16 1. The name, address and contact person of the school tuition  
17 organization.

18 2. The total number of contributions received during the previous  
19 fiscal year.

20 3. The total dollar amount of contributions received during the  
21 previous fiscal year.

22 4. The total number of children awarded educational scholarships or  
23 tuition grants during the previous fiscal year.

24 5. The total dollar amount of:

25 (a) Educational scholarships and tuition grants distributed during the  
26 previous fiscal year.

27 (b) Money being held for identified students' scholarships and tuition  
28 grants in future years.

29 6. The cost of audits pursuant to section 43-1605 paid during the  
30 fiscal year.

31 7. The total dollar amount of educational scholarships and tuition  
32 grants awarded during the previous fiscal year to:

33 (a) Students whose family income meets the economic eligibility  
34 requirements established under the national school lunch and child nutrition  
35 acts (42 United States Code sections 1751 through 1785) for free or reduced  
36 price lunches.

37 (b) Students whose family income exceeds the threshold prescribed by  
38 subdivision (a) of this paragraph but does not exceed one hundred eighty-five  
39 per cent of the economic eligibility requirements established under the  
40 national school lunch and child nutrition acts (42 United States Code  
41 sections 1751 through 1785) for free or reduced price lunches.

42 8. For each school to which educational scholarships or tuition grants  
43 were awarded:

44 (a) The name and address of the school.

1 (b) The number of educational scholarships and tuition grants awarded  
2 during the previous fiscal year.

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

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

7 Sec. 8. Purpose

8 Pursuant to section 43-223, Arizona Revised Statutes, the legislature  
9 enacts section 43-1089.03, Arizona Revised Statutes, as added by this act, to  
10 encourage individuals to make charitable contributions to school tuition  
11 organizations in order to improve education by raising tuition scholarships  
12 for children in this state.

13 Sec. 9. Retroactivity

14 This act applies retroactively to taxable years beginning from and  
15 after December 31, 2011.