

REFERENCE TITLE: STOs; individual income tax credits

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1243

Introduced by
Senator Mesnard

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)

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
6 review the following income tax credits:

7 1. For years ending in 0 and 5, sections 43-1079.01, 43-1088,
8 43-1089.04, 43-1167.01 and 43-1175.

9 2. For years ending in 1 and 6, sections 43-1072.02, 43-1074.02,
10 43-1075, 43-1076.01, 43-1077, 43-1078, 43-1083, 43-1083.02, 43-1162,
11 43-1164.03 and 43-1183.

12 3. For years ending in 2 and 7, sections 43-1073, 43-1082, 43-1085,
13 43-1086, 43-1089, 43-1089.01, 43-1089.02, ~~43-1089.03,~~ 43-1164,
14 43-1165, and 43-1181.

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

17 5. For years ending in 4 and 9, sections 43-1073.01, 43-1081.01,
18 43-1083.03, 43-1084, 43-1164.04, 43-1164.05 and 43-1184.

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

21 43-401. Withholding tax; rates; election by employee

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

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

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

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

32 C. If the amount collected and payable by the employer to the
33 department in each of the preceding four calendar quarters did not exceed
34 an average of ~~one thousand five hundred dollars~~ \$1,500, the amount
35 collected shall be paid to the department on or before April 30, July 31,
36 October 31 and January 31 for the preceding calendar quarter. If the
37 amount exceeded ~~one thousand five hundred dollars~~ \$1,500 in each of the
38 preceding four calendar quarters, the employer shall pay to the department
39 the amount the employer deducts and retains pursuant to this section at
40 the same time ~~as~~ the employer is required to ~~make deposits of~~ DEPOSIT
41 federal tax pursuant to section 6302 of the internal revenue code. On or
42 before April 30, July 31, October 31 and January 31 each year, the
43 employer shall reconcile the amounts payable during the preceding calendar
44 quarter in a manner prescribed by the department, except that if the full
45 amount collected and payable is paid timely to the department under this

1 subsection, the employer may reconcile the amounts on or before May 10,
2 August 10, November 10 and February 10 each year. The department by rule
3 may allow and determine which employers qualify for annual payments of
4 withholding taxes, with an annual report by the employer pursuant to
5 section 43-412, subsection B, if the qualifying employer has established
6 sufficient payment history to indicate that the employer is current and in
7 good standing pursuant to standards established by rule. For any business
8 that has not had a withholding certificate for the four preceding
9 consecutive quarters, the quarterly average shall be computed in a manner
10 prescribed by the department.

11 D. If an employer fails to make a timely monthly payment because
12 ~~prior to~~ BEFORE that reporting period it reported on a quarterly basis
13 instead of on a monthly basis, the department shall notify the employer
14 that it is out of compliance with this section. Notwithstanding section
15 42-1125, the department shall not assess a penalty against an employer for
16 failing to make a timely monthly payment if the employer had filed and
17 remitted all taxes due on a quarterly basis and brings all filings and
18 payments into current compliance within thirty days after being notified
19 by the department.

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

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

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

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

41 G. At an employee's written request, the employer may agree to
42 reduce the amount withheld under this section by the amount of credit that
43 the employee represents to the employer that the employee will qualify for
44 and be entitled to under sections 43-1088, 43-1089, ~~AND~~ 43-1089.01 ~~and~~
45 ~~43-1089.03~~. The employee's request must include the name and address of

1 the qualifying charitable organization, qualified school tuition
2 organization or public school. Within thirty days after agreeing to the
3 employee's request, the employer shall reduce the withholding amount by
4 the amount of the credit, but not below zero, prorated for the number of
5 pay periods remaining in the employee's taxable year after the employee
6 makes the request. If an employer agrees to reduce the withholding amount
7 pursuant to this subsection, the following apply:

8 1. Within fifteen days after the end of each calendar quarter, the
9 employer must pay the entire amount of the reduction in withholding tax
10 for that quarter to the designated charitable organization, school tuition
11 organization or public school. These payments are considered to be on the
12 employee's behalf, and not the employer's, for the purposes of qualifying
13 for the income tax credits under sections 43-1088, 43-1089, ~~AND~~
14 43-1089.01 ~~and 43-1089.03~~.

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

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

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

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

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

31 43-1089. Credit for contributions to school tuition
32 organization

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

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

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

44 3. \$1,456 IN ANY TAXABLE YEAR BEGINNING FROM AND AFTER DECEMBER 31,
45 2023 FOR A SINGLE INDIVIDUAL OR A HEAD OF HOUSEHOLD.

1 4. \$2,902 IN ANY TAXABLE YEAR BEGINNING FROM AND AFTER DECEMBER 31,
2 2023 FOR A MARRIED COUPLE FILING A JOINT RETURN.

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

6 C. For each taxable year ~~beginning on or after January 1~~, the
7 department shall adjust the dollar amounts prescribed by subsection A,
8 paragraphs 1 and 2 of this section THROUGH DECEMBER 31, 2023 AND
9 SUBSECTION A, PARAGRAPHS 3 AND 4 OF THIS SECTION BEGINNING FROM AND AFTER
10 DECEMBER 31, 2024 according to the average annual change in the
11 metropolitan Phoenix consumer price index published by the United States
12 DEPARTMENT OF LABOR, bureau of labor statistics, except that the dollar
13 amounts shall not be revised downward below the amounts allowed in the
14 prior taxable year. The revised dollar amounts shall be raised to the
15 nearest whole dollar.

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

21 E. The credit allowed by this section is in lieu of any deduction
22 pursuant to section 170 of the internal revenue code and taken for state
23 tax purposes.

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

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

38 Sec. 4. Repeal

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

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

42 43-1602. Certification; requirements; violations; hearing

43 A. A nonprofit organization in this state that is exempt or has
44 applied for exemption from federal taxation under section 501(c)(3) of the
45 internal revenue code may apply to the department of revenue for

1 certification as a school tuition organization, and the department shall
2 certify the school tuition organization if it meets the requirements
3 prescribed by this chapter. An organization must apply for certification
4 on a form prescribed and furnished on request by the department.

5 B. The department shall:

6 1. Maintain a public registry of currently certified school tuition
7 organizations.

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

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

10 C. The department shall send notice by certified mail or by ~~e-mail~~
11 ~~EMAIL~~ to a school tuition organization if the department determines that
12 the school tuition organization has engaged in any of the following
13 activities:

14 1. Failed or refused to allocate at least ninety percent of annual
15 revenues from contributions made for the purposes of ~~sections~~ SECTION
16 43-1089 ~~and 43-1089.03~~ for educational scholarships or tuition grants.

17 2. Failed or refused to file the annual reports required by section
18 43-1604.

19 3. Limited the availability of scholarships to students of only one
20 school.

21 4. Encouraged, facilitated or knowingly ~~permitted~~ ALLOWED taxpayers
22 to engage in actions prohibited by this article.

23 5. Awarded, restricted or reserved educational scholarships or
24 tuition grants for use by a particular student based solely on the
25 recommendation of the donor.

26 6. Failed or refused to meet any of the requirements in section
27 43-1603, subsection B.

28 7. Failed or refused to include the notice required in section
29 43-1603, subsection C.

30 8. Failed or refused to comply with the audit or financial review
31 requirements of section 43-1605.

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

43 E. A school tuition organization may request an administrative
44 hearing on the revocation of its certification as provided by title 41,
45 chapter 6, article 10. Except as provided in section 41-1092.08,

1 subsection H, a decision of the department is subject to judicial review
2 pursuant to title 12, chapter 7, article 6.

3 Sec. 6. Section 43-1603, Arizona Revised Statutes, is amended to
4 read:

5 43-1603. Operational requirements for school tuition
6 organizations; notice; qualified schools

7 A. A certified school tuition organization must be established to
8 receive contributions from taxpayers for the purposes of income tax
9 credits under ~~sections~~ SECTION 43-1089 ~~and 43-1089.03~~ and to pay
10 educational scholarships or tuition grants to allow students to attend any
11 qualified school of their parents' choice.

12 B. To be eligible for certification and retain certification, the
13 school tuition organization:

14 1. Must allocate at least ninety percent of its annual revenue from
15 contributions made for the purposes of ~~sections~~ SECTION 43-1089 ~~and~~
16 ~~43-1089.03~~ for educational scholarships or tuition grants.

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

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

22 4. Shall not allow donors to designate student beneficiaries as a
23 condition of any contribution to the organization, or facilitate,
24 encourage or knowingly allow the exchange of beneficiary student
25 designations in violation of section 43-1089, subsection F, ~~section~~
26 ~~43-1089.03, subsection F~~ and section 43-1089.04, subsection E.

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

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

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

39 6. Must not award educational scholarships or tuition grants to
40 students who are simultaneously enrolled in a district school or charter
41 school and a qualified school.

42 C. A school tuition organization shall include the following notice
43 in any printed materials soliciting donations, in applications for
44 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.~~

1 ~~E.~~ E. If an individual educational scholarship or tuition grant
2 exceeds the school's tuition, the amount in excess shall be returned to
3 the school tuition organization that made the award or grant. The school
4 tuition organization may allocate the returned monies as a multiyear award
5 for that student and report the award pursuant to section 43-1604,
6 subsection A, paragraph 5, subdivision (b) or may allocate the returned
7 monies for educational scholarships or tuition grants for other students.

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

10 43-1604. Annual report; posting

11 A. On or before September 30 of each year, each school tuition
12 organization shall report electronically to the department, in a form
13 prescribed by the department, the following information, separately
14 compiled and identified for the purposes of ~~sections~~ SECTION 43-1089 ~~and~~
15 ~~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
26 the previous fiscal year.

27 (b) ~~Money~~ MONIES being held for identified students' scholarships
28 and tuition 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
35 nutrition acts (42 United States Code sections 1751 through 1793) for free
36 or reduced-price lunches.

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

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

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

1 (b) The number of educational scholarships and tuition grants
2 awarded 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
7 organization.

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

12 Sec. 8. Applicability; use of revenues; reporting

13 A. The repeal of section 43-1089.03, Arizona Revised Statutes, by
14 this act, applies to taxable years beginning from and after December 31,
15 2023.

16 B. Any revenues from contributions made for the purposes of section
17 43-1089.03, Arizona Revised Statutes, as repealed by this act, that have
18 not been allocated before January 1, 2024 are subject to the provisions of
19 title 43, chapter 16, Arizona Revised Statutes, as if the contributions
20 were made pursuant to section 43-1089, Arizona Revised Statutes, as
21 amended by this act.

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

29 Sec. 9. Effective date

30 This act is effective from and after December 31, 2023.

31 Sec. 10. Saving clause

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