

REFERENCE TITLE: **ST0; income tax credit; repeal**

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **HB 2809**

Introduced by  
Representatives Pawlik: Aguilar, Blattman, Contreras P, De Los Santos,  
Gutierrez, Hernandez A, Hernandez C, Quiñonez, Sandoval, Schwiebert,  
Seaman; Senator Marsh

AN ACT

AMENDING SECTIONS 43-222 AND 43-401, 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, 43-1165,  
14 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, ~~43-1089.01~~  
14 ~~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. Repeal

30 Section 43-1089.03, Arizona Revised Statutes, is repealed.

31 Sec. 4. Section 43-1602, Arizona Revised Statutes, is amended to  
32 read:

33 43-1602. Certification; requirements; violations; hearing

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

41 B. The department shall:

42 1. Maintain a public registry of currently certified school tuition  
43 organizations.

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

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

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

5 1. Failed or refused to allocate at least ninety percent of annual  
6 revenues from contributions made for the purposes of ~~sections~~ SECTION  
7 43-1089 ~~and 43-1089.03~~ for educational scholarships or tuition grants.

8 2. Failed or refused to file the annual reports required by section  
9 43-1604.

10 3. Limited the availability of scholarships to students of only one  
11 school.

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

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

17 6. Failed or refused to meet any of the requirements in section  
18 43-1603, subsection B.

19 7. Failed or refused to include the notice required in section  
20 43-1603, subsection C.

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

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

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

39 Sec. 5. Section 43-1603, Arizona Revised Statutes, is amended to  
40 read:

41 43-1603. Operational requirements for school tuition  
42 organizations; notice; qualified schools

43 A. A certified school tuition organization must be established to  
44 receive contributions from taxpayers for the purposes of income tax  
45 ~~credits~~ CREDIT under ~~sections~~ SECTION 43-1089 ~~and 43-1089.03~~ and to pay

1 educational scholarships or tuition grants to allow students to attend any  
2 qualified school of their parents' choice.

3 B. To be eligible for certification and retain certification, the  
4 school tuition organization:

5 1. Must allocate at least ninety percent of its annual revenue from  
6 contributions made for the purposes of ~~sections~~ SECTION 43-1089 ~~and~~  
7 ~~43-1089.03~~ for educational scholarships or tuition grants.

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

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

13 4. Shall not allow donors to designate student beneficiaries as a  
14 condition of any contribution to the organization, or facilitate,  
15 encourage or knowingly allow the exchange of beneficiary student  
16 designations in violation of section 43-1089, subsection F, ~~section~~  
17 ~~43-1089.03, subsection F~~ and section 43-1089.04, subsection E.

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

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

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

30 6. Must not award educational scholarships or tuition grants to  
31 students who are simultaneously enrolled in a district school or charter  
32 school and a qualified school.

33 C. A school tuition organization shall include the following notice  
34 in any printed materials soliciting donations, in applications for  
35 scholarships and on its website, if one exists:

36 Notice

37 A school tuition organization cannot award, restrict or  
38 reserve scholarships solely on the basis of a donor's  
39 recommendation.

40 A taxpayer may not claim a tax credit if the taxpayer  
41 agrees to swap donations with another taxpayer to benefit  
42 either taxpayer's own dependent.

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

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

6 2. Shall consider the financial need of applicants.

7 ~~E. A taxpayer's contribution to a school tuition organization that  
8 exceeds the amount of the credit allowed by section 43-1089 but does not  
9 exceed the amount of the credit allowed by section 43-1089.03 is  
10 considered a contribution pursuant to section 43-1089.03. A school  
11 tuition organization must use at least ninety percent of contributions  
12 made pursuant to section 43-1089.03 for educational scholarships or  
13 tuition grants for students to whom any of the following applies:~~

14 ~~1. Attended a governmental primary or secondary school as a  
15 full-time student as defined in section 15-901 or attended a preschool  
16 program that offers services to students with disabilities at a  
17 governmental school for at least ninety days of the prior fiscal year and  
18 transferred from a governmental school to a qualified school.~~

19 ~~2. Enroll in a qualified school in a kindergarten program or a  
20 preschool program that offers services to students with disabilities.~~

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

23 ~~4. Are homeschooled before enrolling in a qualified school.~~

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

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

29 ~~7. Received an educational scholarship or tuition grant under  
30 paragraph 1, 2, 3, 4, 5 or 6 of this subsection or under chapter 15 of  
31 this title if the student continues to attend a qualified school in a  
32 subsequent year.~~

33 ~~F. In awarding educational scholarships or tuition grants from  
34 contributions made pursuant to section 43-1089.03, a school tuition  
35 organization shall give priority to students and siblings of students on a  
36 waiting list for scholarships if the school tuition organization maintains  
37 a waiting list.~~

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

1           Sec. 6. Section 43-1604, Arizona Revised Statutes, is amended to  
2 read:

3           43-1604. Annual report; posting

4           A. On or before September 30 of each year, each school tuition  
5 organization shall report electronically to the department, in a form  
6 prescribed by the department, the following information, separately  
7 compiled and identified for the purposes of ~~sections~~ SECTION 43-1089 ~~and~~  
8 ~~43-1089.03~~:

9           1. The name, address and contact person of the school tuition  
10 organization.

11           2. The total number of contributions received during the previous  
12 fiscal year.

13           3. The total dollar amount of contributions received during the  
14 previous fiscal year.

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

17           5. The total dollar amount of:

18           (a) Educational scholarships and tuition grants distributed during  
19 the previous fiscal year.

20           (b) ~~Money~~ MONIES being held for identified students' scholarships  
21 and tuition grants in future years.

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

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

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

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

35           8. For each school to which educational scholarships or tuition  
36 grants were awarded:

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

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

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

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



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

5 Sec. 7. Applicability; use of revenues; reporting

6 A. The repeal of section 43-1089.03, Arizona Revised Statutes, by  
7 this act, applies to taxable years beginning from and after December 31,  
8 2024.

9 B. Any revenues from contributions made for the purposes of section  
10 43-1089.03, Arizona Revised Statutes, as repealed by this act, that have  
11 not been allocated before January 1, 2025 are subject to the provisions of  
12 title 43, chapter 16, Arizona Revised Statutes, as if the contributions  
13 were made pursuant to section 43-1089, Arizona Revised Statutes.

14 C. Each school tuition organization shall include in the annual  
15 report prepared pursuant to section 43-1604, Arizona Revised Statutes, as  
16 amended by this act, all of the information required by section 43-1604,  
17 Arizona Revised Statutes, as amended by this act, for the revenues  
18 relating to the contributions made for the purposes of section 43-1089.03,  
19 Arizona Revised Statutes, as repealed by this act, that have not been  
20 allocated before January 1, 2025.

21 Sec. 8. Saving clause

22 The repeal of the individual income tax credit under section  
23 43-1089.03, Arizona Revised Statutes, as repealed by this act, does not  
24 affect the continuing validity of any amount of the credit carried forward  
25 from previous taxable years for application against subsequent tax  
26 liabilities as allowed by prior law.

27 Sec. 9. Requirements for enactment; two-thirds vote

28 Pursuant to article IX, section 22, Constitution of Arizona, this  
29 act is effective only on the affirmative vote of at least two-thirds of  
30 the members of each house of the legislature and is effective immediately  
31 on the signature of the governor or, if the governor vetoes this act, on  
32 the subsequent affirmative vote of at least three-fourths of the members  
33 of each house of the legislature.