

1 **TUITION TAX CREDITS AND PAYMENTS TO**
2 **SCHOOL DISTRICTS**
3 2002 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: D. Chris Buttars**

6 **This act modifies Corporate Franchise and Income Taxes and the Individual Income Tax Act**
7 **to provide for nonrefundable tax credits for contributions made to a scholarship granting**
8 **organization to be used for tuition grants for a qualifying student to attend a private school,**
9 **and nonrefundable tax credits for amounts paid for tuition to a private school on behalf of**
10 **a qualifying student. The act provides definitions and establishes procedures and**
11 **requirements for administering the tax credits. The act requires private schools to make**
12 **certain reports to the State Board of Education, authorizes certain payments to be made by**
13 **the State Board of Education to a student's school district of residency under certain**
14 **circumstances, and grants rulemaking authority to the State Board of Education. This act**
15 **takes effect on May 6, 2002, and provides that certain sections have retrospective operation**
16 **for taxable years beginning on or after January 1, 2002.**

17 This act affects sections of Utah Code Annotated 1953 as follows:

18 ENACTS:

19 **53A-2-214**, Utah Code Annotated 1953

20 **59-7-615**, Utah Code Annotated 1953

21 **59-7-616**, Utah Code Annotated 1953

22 **59-10-135**, Utah Code Annotated 1953

23 **59-10-136**, Utah Code Annotated 1953

24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **53A-2-214** is enacted to read:

26 **53A-2-214.** **Payment to school district of residence for designated qualifying students**
27 **enrolled in private schools -- Definitions.**



28 (1) As used in this section:
29 (a) "Designated qualifying student" means a qualifying student whose name is listed on:
30 (i) a receipt issued by a private school to a scholarship granting organization during the
31 12-month period beginning on the October 1 of the year immediately preceding the October 1
32 described in Subsection (2)(a) in accordance with:
33 (A) Section 59-7-615; or
34 (B) Section 59-10-135; or
35 (ii) a school tuition certificate issued by a private school to a taxpayer during the 12-month
36 period beginning on the October 1 of the year immediately preceding the October 1 described in
37 Subsection (2)(a) in accordance with:
38 (A) Section 59-7-616; or
39 (B) Section 59-10-136.
40 (b) "Private school" is as defined in Section 59-7-615.
41 (c) "Qualifying student" is as defined in Section 59-7-615.
42 (d) "Release of information form" means a form developed by a private school that:
43 (i) is signed by a parent of a qualifying student; and
44 (ii) states in writing:
45 (A) the date the parent signs the form;
46 (B) the name of the qualifying student;
47 (C) the Social Security number of the qualifying student;
48 (D) the qualifying student's district of residence; and
49 (E) that the parent grants consent to the release of the information:
50 (I) described in Subsections (1)(d)(ii)(A) through (D) to the State Board of Education or
51 a representative of the State Board of Education for purposes of making the report required by this
52 section; and
53 (II) described in Subsections (1)(d)(ii)(A) and (B) to a taxpayer to whom a private school
54 issues a school tuition certificate in accordance with Section 59-7-616 or 59-10-136 for the
55 purpose of allowing the taxpayer to claim a tax credit under Section 59-7-616 or 59-10-136.
56 (e) "School district of residence" is as defined in Section 59-7-615.
57 (f) "Value of the weighted pupil unit on October 1" means the dollar amount specified in
58 Subsection 53A-17a-103(1):

59 (i) before multiplying that dollar amount by the number of weighted pupil units for each
60 school district; and

61 (ii) on the October 1 described in Subsection (2)(a) of the year the private school makes
62 the report required by this section.

63 (2) (a) Beginning on November 1, 2003, each private school in the state shall report only
64 the following information to the State Board of Education on or before November 1 of each year:

65 (i) the name of each designated qualifying student enrolled in the private school as of
66 October 1 of that year;

67 (ii) the social security number of each designated qualifying student enrolled in the private
68 school as of October 1 of that year; and

69 (iii) the school district of residence of each designated qualifying student enrolled in the
70 private school as of October 1 of that year.

71 (b) The report required by Subsection (2)(a) shall be made on a form:

72 (i) developed by the State Board of Education;

73 (ii) provided by the State Board of Education to a private school at the request of the
74 private school; and

75 (iii) that may only require the private school to report the information required by
76 Subsection (2)(a).

77 (3) (a) Subject to Subsection (6), for fiscal years beginning on or after fiscal year 2003-04,
78 for each designated qualifying student the State Board of Education shall distribute to a school
79 district of residence of the designated qualifying student an amount not to exceed the lesser of:

80 (i) \$1,000; or

81 (ii) the product of:

82 (A) the value of the weighted pupil unit on October 1; and

83 (B) .5.

84 (b) The State Board of Education shall in making the distributions required by Subsection
85 (3)(a) use the procedures that are substantially similar to the procedures established in Chapter 17a,
86 Minimum School Program Act, for making distributions to provide for the minimum school
87 program.

88 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
89 State Board of Education shall make rules:

90 (a) subject to Subsection (4)(b), establishing procedures and requirements for making the
91 distributions required by Subsection (3)(a); and

92 (b) for years for which a report is made in accordance with Subsection (2), requiring
93 enrollment of designated qualifying students in private schools to be determined on the basis of
94 the information contained in the report required by Subsection (2)(a).

95 (5) A school district may not receive an amount that exceeds the amount calculated under
96 Subsection (3)(a) per year for a designated qualifying student, regardless of the number of times
97 that designated qualifying student's name was listed on:

98 (a) a receipt described in Subsection (1)(a)(i); or

99 (b) a school tuition certificate described in Subsection (1)(a)(ii).

100 (6) (a) A school district of residence may receive an amount not to exceed the amount
101 described in Subsection (3)(a) for each designated qualifying student only to the extent the
102 Legislature makes an appropriation to the State Board of Education to fund the distributions.

103 (b) If the Legislature makes an appropriation in accordance with Subsection (6)(a) that
104 does not allow the State Board of Education to distribute the full amount allowed by Subsection
105 (3), the State Board of Education shall on a pro rata basis reduce the distributions made to each
106 school district of residence under Subsection (3)(a).

107 Section 2. Section **59-7-615** is enacted to read:

108 **59-7-615. Tax credit for contributions to scholarship granting organizations --**

109 **Definitions.**

110 (1) As used in this section:

111 (a) "Parent" means a relationship described in Section 59-10-108.1.

112 (b) (i) "Private school" means an elementary or secondary school within this state that:

113 (A) provides instruction for one or more grades kindergarten through 12;

114 (B) is not subject to the control and supervision of the State Board of Education in
115 accordance with Section 53A-1-401; and

116 (C) satisfies the requirements of Title 53A, Chapter 11, Part 1, Compulsory Education
117 Requirements.

118 (ii) "Private school" does not include a home school.

119 (c) "Qualifying student" means an individual:

120 (i) who is enrolled at a private school as a full-time student as determined by the private

121 school;

122 (ii) who will be under 21 years of age on the last day of the school year as determined by
123 the private school;

124 (iii) who meets one or more of the following criteria:

125 (A) the individual was born on or after September 1, 1996;

126 (B) the individual was not enrolled at a private school on February 1, 2002; or

127 (C) the total federal adjusted gross income of all of the individuals who may claim the
128 individual described in Subsections (1)(c)(i) and (ii) as a dependent on those individuals' federal
129 individual income tax return is \$30,000 or less for the taxable year immediately preceding the
130 current taxable year; and

131 (iv) for which the private school described in Subsection (1)(c)(ii) has on file a release of
132 information form.

133 (d) "Release of information form" is as defined in Section 53A-2-214.

134 (e) "Scholarship granting organization" means an organization that:

135 (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;

136 (ii) subject to Subsections (1)(e)(iii) and (iv):

137 (A) expends at least 95% of each contribution the organization receives for which a tax
138 credit is allowed in accordance with this section:

139 (I) to make tuition grants to qualifying students to attend private schools in this state; and

140 (II) within a 12-month period after the day on which the organization receives the
141 contribution; and

142 (B) for each tuition grant the organization makes in accordance with Subsection
143 (1)(e)(ii)(A), obtains from the private school a receipt listing in writing the amount of the tuition
144 grant;

145 (iii) from contributions for which the organization issues a written statement in accordance
146 with Subsection (4) does not issue one or more tuition grants to a qualifying student the sum of
147 which in any 12-month period exceeds the greater of:

148 (A) \$2,116; or

149 (B) the value of the weighted pupil unit on the first day of the 12-month period; and

150 (iv) allows a qualifying student receiving a tuition grant from the organization to attend
151 any private school in this state as determined by a parent of the qualifying student.

152 (f) "School district of residence" is as described in Sections 53A-2-201 and 53A-2-202.

153 (g) "Value of the weighted pupil unit on the first day of the 12-month period" means the
154 dollar amount specified in Subsection 53A-17a-103(1):

155 (i) before multiplying that dollar amount by the number of weighted pupil units for each
156 school district; and

157 (ii) on the first day of the 12-month period described in Subsection (1)(e)(iii).

158 (2) For taxable years beginning on or after January 1, 2002, a taxpayer may claim a
159 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section for
160 amounts the taxpayer contributes during a taxable year to a scholarship granting organization.

161 (3) The tax credit provided for in this section may not be carried forward or carried back.

162 (4) A scholarship granting organization shall within 30 days after the day on which a
163 taxpayer seeking a tax credit under this section makes a contribution to the scholarship granting
164 organization, provide to the taxpayer a written statement:

165 (a) certifying that the scholarship granting organization is a scholarship granting
166 organization; and

167 (b) listing the amount of the contribution.

168 Section 3. Section **59-7-616** is enacted to read:

169 **59-7-616. Nonrefundable tuition tax credit -- Definitions.**

170 (1) As used in this section:

171 (a) "Parent" is as defined in Section 59-7-615.

172 (b) "Private school" is as defined in Section 59-7-615.

173 (c) "Qualifying student" is as defined in Section 59-7-615.

174 (d) "Release of information form" is as defined in Section 59-2-214.

175 (e) "School district of residence" is as defined in Section 59-7-615.

176 (f) "School tuition certificate" means a certificate that:

177 (i) is developed by a private school; and

178 (ii) is issued by the private school described in Subsection (1)(f)(i) to a taxpayer that pays
179 the private school tuition on behalf of a qualifying student for a taxable year.

180 (g) "Tax credit limit for a qualifying student" means an amount equal to the greater of:

181 (i) \$2,116; or

182 (ii) the value of the weighted pupil unit for the taxable year.

183 (h) "Value of the weighted pupil unit for the taxable year" means the dollar amount
184 specified in Subsection 53A-17a-103(1):

185 (i) before multiplying that dollar amount by the number of weighted pupil units for each
186 school district; and

187 (ii) on the first day of the taxable year for which a taxpayer claims a credit in accordance
188 with this section.

189 (2) For taxable years beginning on or after January 1, 2002, a taxpayer may claim a
190 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section for
191 amounts paid to a private school for tuition:

192 (a) on behalf of a qualifying student; and

193 (b) during the taxable year.

194 (3) Subject to Subsection (4), for a taxable year the amount of tax credit that a taxpayer
195 may claim under this section for a qualifying student on whose behalf the taxpayer paid tuition in
196 accordance with Subsection (2) may not exceed the lesser of:

197 (a) the amount of tuition the taxpayer paid on behalf of the qualifying student during the
198 taxable year;

199 (b) the tax credit limit for a qualifying student; or

200 (c) the total of the amounts listed on the school tuition certificates in accordance with
201 Subsections (6) and (7) issued to the taxpayer by the private school on behalf of that qualifying
202 student.

203 (4) (a) Subject to Subsection (4)(b), more than one taxpayer may claim a tax credit for
204 tuition paid in accordance with Subsection (2) on behalf of one qualifying student if each taxpayer
205 meets the requirements of this section.

206 (b) If more than one taxpayer may claim a tax credit under this section or Section
207 59-10-136 for a taxable year:

208 (i) subject to Subsection (4)(b)(ii), the total amount of tax credit that the taxpayers may
209 claim under this section and Section 59-10-136 for a qualifying student on whose behalf the
210 taxpayers paid tuition in accordance with Subsection (2) for that taxable year may not exceed the
211 lesser of:

212 (A) the sum of the amounts of tuition the taxpayers paid on behalf of the qualifying student
213 during the taxable year; or

214 (B) the tax credit limit for a qualifying student; and
215 (ii) the tax credit for each taxpayer shall be calculated in accordance with Subsection (7).

216 (5) A taxpayer may claim a tax credit under this section only if the taxpayer obtains from
217 a private school a school tuition certificate in accordance with this section.

218 (6) For each tuition payment a taxpayer makes in accordance with Subsection (2), a private
219 school shall issue to the taxpayer a school tuition certificate containing the information required
220 by Subsection (7) at the time the taxpayer pays the tuition if:

221 (a) the taxpayer requests the school tuition certificate from the private school; and

222 (b) the total amount of tuition paid that is listed on all of the school tuition certificates
223 issued on behalf of the qualifying student does not exceed the tax credit limit for a qualifying
224 student.

225 (7) A school tuition certificate described in Subsection (6) shall contain:

226 (a) the name of the qualifying student; and

227 (b) the lesser of:

228 (i) the amount of tuition the taxpayer paid to the private school; or

229 (ii) if the total amount of tuition paid that is listed on all of the school tuition certificates
230 issued on behalf of the qualifying student does not exceed the tax credit limit for a qualifying
231 student, but adding the amount of tuition described in Subsection (7)(b)(i) would result in that total
232 amount of tuition paid exceeding the tax credit limit for a qualifying student, the difference
233 between:

234 (A) the tax credit limit for a qualifying student; and

235 (B) the total amount of tuition paid in accordance with Subsection (2) that is listed on all
236 of the school tuition certificates issued on behalf of the qualifying student.

237 (8) The tax credit provided for in this section may not be carried forward or carried back.

238 Section 4. Section **59-10-135** is enacted to read:

239 **59-10-135. Tax credit for contributions to scholarship granting organizations --**

240 **Definitions.**

241 (1) As used in this section:

242 (a) "Parent" means a relationship described in Section 59-10-108.1.

243 (b) (i) "Private school" means an elementary or secondary school within this state that:

244 (A) provides instruction for one or more grades kindergarten through 12;

245 (B) is not subject to the control and supervision of the State Board of Education in
246 accordance with Section 53A-1-401; and

247 (C) satisfies the requirements of Title 53A, Chapter 11, Part 1, Compulsory Education
248 Requirements.

249 (ii) "Private school" does not include a home school.

250 (c) "Qualifying student" means an individual:

251 (i) who is enrolled at a private school as a full-time student as determined by the private
252 school;

253 (ii) who will be under 21 years of age on the last day of the school year as determined by
254 the private school;

255 (iii) who meets one or more of the following criteria:

256 (A) the individual was born on or after September 1, 1996;

257 (B) the individual was not enrolled at a private school on February 1, 2002; or

258 (C) the total federal adjusted gross income of all of the individuals who may claim the
259 individual described in Subsections (1)(c)(i) and (ii) as a dependent on those individuals' federal
260 individual income tax return is \$30,000 or less for the taxable year immediately preceding the
261 current taxable year; and

262 (iv) for which the private school described in Subsection (1)(c)(ii) has on file a release of
263 information form.

264 (d) "Release of information form" is as defined in Section 53A-2-214.

265 (e) "Scholarship granting organization" means an organization that:

266 (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code;

267 (ii) subject to Subsections (1)(e)(iii) and (iv):

268 (A) expends at least 95% of each contribution the organization receives for which a tax
269 credit is allowed in accordance with this section:

270 (I) to make tuition grants to qualifying students to attend private schools in this state; and

271 (II) within a 12-month period after the day on which the organization receives the
272 contribution; and

273 (B) for each tuition grant the organization makes in accordance with Subsection
274 (1)(e)(ii)(A), obtains from the private school a receipt listing in writing the amount of the tuition
275 grant;

276 (iii) from contributions for which the organization issues a written statement in accordance
277 with Subsection (4) does not issue one or more tuition grants to a qualifying student the sum of
278 which in any 12-month period exceeds the greater of:

279 (A) \$2,116; or

280 (B) the value of the weighted pupil unit on the first day of the 12-month period; and

281 (iv) allows a qualifying student receiving a tuition grant from the organization to attend
282 any private school in this state as determined by a parent of the qualifying student.

283 (f) "School district of residence" is as described in Sections 53A-2-201 and 53A-2-202.

284 (g) "Value of the weighted pupil unit on the first day of the 12-month period" means the
285 dollar amount specified in Subsection 53A-17a-103(1):

286 (i) before multiplying that dollar amount by the number of weighted pupil units for each
287 school district; and

288 (ii) on the first day of the 12-month period described in Subsection (1)(e)(iii).

289 (2) For taxable years beginning on or after January 1, 2002, a taxpayer may claim a
290 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section for
291 amounts the taxpayer contributes during a taxable year to a scholarship granting organization.

292 (3) The tax credit provided for in this section may not be carried forward or carried back.

293 (4) A scholarship granting organization shall within 30 days after the day on which a
294 taxpayer seeking a tax credit under this section makes a contribution to the scholarship granting
295 organization, provide to the taxpayer a written statement:

296 (a) certifying that the scholarship granting organization is a scholarship granting
297 organization; and

298 (b) listing the amount of the contribution.

299 Section 5. Section **59-10-136** is enacted to read:

300 **59-10-136. Nonrefundable tuition tax credit -- Definitions.**

301 (1) As used in this section:

302 (a) "Parent" is as defined in Section 59-7-615.

303 (b) "Private school" is as defined in Section 59-7-615.

304 (c) "Qualifying student" is as defined in Section 59-7-615.

305 (d) "Release of information form" is as defined in Section 59-2-214.

306 (e) "School district of residence" is as defined in Section 59-7-615.

- 307 (f) "School tuition certificate" means a certificate that:
308 (i) is developed by a private school; and
309 (ii) is issued by the private school described in Subsection (1)(f)(i) to a taxpayer that pays
310 the private school tuition on behalf of a qualifying student for a taxable year.
- 311 (g) "Tax credit limit for a qualifying student" means an amount equal to the greater of:
312 (i) \$2,116; or
313 (ii) the value of the weighted pupil unit for the taxable year.
- 314 (h) "Value of the weighted pupil unit for the taxable year" means the dollar amount
315 specified in Subsection 53A-17a-103(1):
316 (i) before multiplying that dollar amount by the number of weighted pupil units for each
317 school district; and
318 (ii) on the first day of the taxable year for which a taxpayer claims a credit in accordance
319 with this section.
- 320 (2) For taxable years beginning on or after January 1, 2002, a taxpayer may claim a
321 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section for
322 amounts paid to a private school for tuition:
323 (a) on behalf of a qualifying student; and
324 (b) during the taxable year.
- 325 (3) Subject to Subsection (4), for a taxable year the amount of tax credit that a taxpayer
326 may claim under this section for a qualifying student on whose behalf the taxpayer paid tuition in
327 accordance with Subsection (2) may not exceed the lesser of:
328 (a) the amount of tuition the taxpayer paid on behalf of the qualifying student during the
329 taxable year;
330 (b) the tax credit limit for a qualifying student; or
331 (c) the total of the amounts listed on the school tuition certificates in accordance with
332 Subsections (6) and (7) issued to the taxpayer by the private school on behalf of that qualifying
333 student.
- 334 (4) (a) Subject to Subsection (4)(b), more than one taxpayer may claim a tax credit for
335 tuition paid in accordance with Subsection (2) on behalf of one qualifying student if each taxpayer
336 meets the requirements of this section.
337 (b) If more than one taxpayer may claim a tax credit under this section or Section

338 59-10-136 for a taxable year:

339 (i) subject to Subsection (4)(b)(ii), the total amount of tax credit that the taxpayers may
340 claim under this section and Section 59-10-136 for a qualifying student on whose behalf the
341 taxpayers paid tuition in accordance with Subsection (2) for that taxable year may not exceed the
342 lesser of:

343 (A) the sum of the amounts of tuition the taxpayers paid on behalf of the qualifying student
344 during the taxable year; or

345 (B) the tax credit limit for a qualifying student; and

346 (ii) the tax credit for each taxpayer shall be calculated in accordance with Subsection (7).

347 (5) A taxpayer may claim a tax credit under this section only if the taxpayer obtains from
348 a private school a school tuition certificate in accordance with this section.

349 (6) For each tuition payment a taxpayer makes in accordance with Subsection (2), a private
350 school shall issue to the taxpayer a school tuition certificate containing the information required
351 by Subsection (7) at the time the taxpayer pays the tuition if:

352 (a) the taxpayer requests the school tuition certificate from the private school; and

353 (b) the total amount of tuition paid that is listed on all of the school tuition certificates
354 issued on behalf of the qualifying student does not exceed the tax credit limit for a qualifying
355 student.

356 (7) A school tuition certificate described in Subsection (6) shall contain:

357 (a) the name of the qualifying student; and

358 (b) the lesser of:

359 (i) the amount of tuition the taxpayer paid to the private school; or

360 (ii) if the total amount of tuition paid that is listed on all of the school tuition certificates

361 issued on behalf of the qualifying student does not exceed the tax credit limit for a qualifying

362 student, but adding the amount of tuition described in Subsection (7)(b)(i) would result in that total

363 amount of tuition paid exceeding the tax credit limit for a qualifying student, the difference

364 between:

365 (A) the tax credit limit for a qualifying student; and

366 (B) the total amount of tuition paid in accordance with Subsection (2) that is listed on all
367 of the school tuition certificates issued on behalf of the qualifying student.

368 (8) The tax credit provided for in this section may not be carried forward or carried back.

369 Section 6. **Effective date -- Retrospective operation.**
370 This act takes effect on May 6, 2002, and Sections 59-7-615 and 59-10-135 have
371 retrospective operation for taxable years beginning on or after January 1, 2002.

Legislative Review Note
as of 2-1-02 12:39 PM

This legislation provides tax credits for contributions made to a scholarship granting organization to fund tuition grants for qualifying students to attend private schools. The legislation also provides tax credits for amounts paid for tuition to a private school on behalf of a qualifying student. This legislation may raise constitutional issues. For example, the legislation does not prohibit the tax credits from being claimed for amounts that are used to pay tuition to parochial schools. The Constitution of the United States prohibits laws "respecting an establishment of religion or prohibiting the free exercise thereof." The Utah Constitution contains similar prohibitions, as well as prohibitions on "appropriation for the direct support of any school or educational institution controlled by any religious organization." Because case law is still developing in this area, it is unclear whether a court would interpret the tax credits authorized by this legislation as endorsing or supporting religion in violation of these constitutional prohibitions.

The legislation also defines the class of students on whose behalf tuition may be paid for which a tax credit may be claimed on the basis of factors such as the student's date of birth, the student's enrollment at a private school, or the student's parents' income. The legislation arguably creates classes of students, and these classifications impact a taxpayer's eligibility to claim a tax credit. If these classifications are challenged as being special legislation or a violation of equal protection or uniform operation of the laws principles, a court is likely to uphold these classifications if the court finds that the classifications are rational and related to a reasonable statutory objective.

Office of Legislative Research and General Counsel