

Senator D. Chris Buttars proposes the following substitute bill:

TUITION TAX CREDITS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Buttars

This act modifies Corporate Franchise and Income Taxes and the Individual Income Tax Act to provide for nonrefundable tax credits for contributions made to a scholarship granting organization to be used for tuition grants for a qualifying student to attend a private school, or nonrefundable tax credits for amounts paid for tuition to a private school on behalf of a qualifying student. The act provides definitions and establishes procedures and requirements for administering the tax credits. The act establishes duties of scholarship granting organizations and provides penalties. This act has retrospective operation for taxable years beginning on or after January 1, 2002.

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

ENACTS:

59-7-615, Utah Code Annotated 1953

59-7-616, Utah Code Annotated 1953

59-10-135, Utah Code Annotated 1953

59-10-136, Utah Code Annotated 1953

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

Section 1. Section **59-7-615** is enacted to read:

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

Definitions -- Duties of scholarship granting organizations -- Penalties.

(1) As used in this section:

(a) "Parent" means an individual who is a parent as described in Section 59-10-108.1 of a qualifying student.



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

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

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

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

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

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

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

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

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

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

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

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

45 (iv) for which the private school described in Subsection (1)(c)(i) has on file a release of
46 information form.

47 (d) "Release of information form" means a form developed by a private school that:

48 (i) states that a parent of a qualifying student consents to the release of the information
49 contained in the school tuition certificate; and

50 (ii) is consistent with the requirements of 20 U.S.C. Sec. 1232g, Family Educational
51 Rights and Privacy Act of 1974.

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

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

54 (ii) subject to Subsection (1)(e)(iii), expends 100% of each contribution for which the
55 organization issues a written statement in accordance with Subsection (4):

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

57 (B) within a 12-month period after the day on which the organization receives the
58 contribution; and

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

61 (f) Subject to Subsection (6), "school tuition certificate" means a certificate developed by
62 a private school that:

63 (i) is issued by the private school to the first taxpayer or scholarship granting organization
64 that during the calendar year:

65 (A) makes a:

66 (I) tuition payment on behalf of a qualifying student in accordance with Section 59-10-135
67 or Section 59-10-136; or

68 (II) tuition grant to a qualifying student in accordance with Section 59-7-615 or Section
69 59-7-616; and

70 (B) requests the certificate from the private school; and

71 (ii) lists the:

72 (A) name of the qualifying student:

73 (I) on behalf of whom a tuition payment is made in accordance with Section 59-10-135
74 or Section 59-10-136; or

75 (II) receiving a tuition grant in accordance with Section 59-7-615 or Section 59-7-616;

76 (B) calendar year for which the school tuition certificate is issued; and

77 (C) value of the weighted pupil unit on the first day of the calendar year described in
78 Subsection (1)(f)(ii)(B).

79 (g) "Value of the weighted pupil unit" means the dollar amount specified in Subsection
80 53A-17a-103(1) before multiplying that dollar amount by the number of weighted pupil units for
81 each school district.

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

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

86 (4) A scholarship granting organization shall within 30 days after the day on which a
87 taxpayer seeking to claim a tax credit under this section makes a contribution to the scholarship

88 granting organization, provide to the taxpayer a written statement:

89 (a) certifying that the scholarship granting organization is a scholarship granting
90 organization; and

91 (b) listing the amount of the contribution.

92 (5) A scholarship granting organization may make a tuition grant during a calendar year
93 to a qualifying student from a contribution for which the scholarship granting organization issues
94 a written statement in accordance with Subsection (4) if the scholarship granting organization
95 during the calendar year:

96 (a) does not make tuition grants to that qualifying student the total amount of which exceed
97 the greater of:

98 (i) \$2,116; or

99 (ii) the value of the weighted pupil unit on the first day of the calendar year for which the
100 private school issues the school tuition certificate in accordance with this section; and

101 (b) obtains from the private school a school tuition certificate listing the name of that
102 qualifying student.

103 (6) A private school may not issue more than one school tuition certificate during a
104 calendar year that lists the name of one qualifying student.

105 (7) (a) A scholarship granting organization shall pay to the commission a penalty
106 calculated under Subsection (7)(b) if the scholarship granting organization makes one or more
107 tuition grants to a qualifying student:

108 (i) that exceed the total amount described in Subsection (5)(a); or

109 (ii) without obtaining from the private school a school tuition certificate listing the name
110 of that qualifying student.

111 (b) For purposes of Subsection (7)(a), the penalty is an amount equal to the total amount
112 of tuition grants the scholarship granting organization makes to the qualifying student described
113 in Subsection (7)(a) during a calendar year from a contribution for which the scholarship granting
114 organization issues a written statement in accordance with Subsection (4).

115 (c) The commission shall deposit any penalties the commission collects under this
116 Subsection (7) into the Uniform School Fund.

117 (8) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
118 commission may make rules providing procedures for:

- 119 (a) imposing the penalty described in Subsections (7)(a) and (b); or
- 120 (b) depositing the penalty described in Subsection (7)(c) into the Uniform School Fund.

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

122 **59-7-616. Nonrefundable tuition tax credit -- Definitions.**

123 (1) As used in this section:

- 124 (a) "Private school" is as defined in Section 59-7-615.
- 125 (b) "Qualifying student" is as defined in Section 59-7-615.
- 126 (c) "School tuition certificate" is as defined in Section 59-7-615.
- 127 (d) "Value of the weighted pupil unit" is as defined in Section 59-7-615.

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

- 131 (a) on behalf of a qualifying student; and
- 132 (b) during the taxable year.

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

- 136 (a) the amount of tuition the taxpayer paid on behalf of the qualifying student during the
137 taxable year; or
- 138 (b) the greater of:
 - 139 (i) \$2,116; or
 - 140 (ii) the value of the weighted pupil unit on the first day of the calendar year for which the
141 private school issues the school tuition certificate in accordance with this section.

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

143 (5) A taxpayer may claim a tax credit under this section for a taxable year only if the
144 taxpayer obtains from a private school a school tuition certificate listing the name of the qualifying
145 student on whose behalf the taxpayer paid tuition in accordance with Subsection (2).

146 (6) A private school may not issue more than one school tuition certificate during a
147 calendar year that lists the name of one qualifying student.

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

149 **59-10-135. Tax credit for contributions to scholarship granting organizations --**

150 **Definitions -- Duties of scholarship granting organizations -- Penalties.**151 (1) As used in this section:152 (a) "Private school" is as defined in Section 59-7-615.153 (b) "Qualifying student" is as defined in Section 59-7-615.154 (c) "Scholarship granting organization" is as defined in Section 59-7-615.155 (d) "School tuition certificate" is as defined in Section 59-7-615.156 (e) "Value of the weighted pupil unit" is as defined in Section 59-7-615.157 (2) For taxable years beginning on or after January 1, 2002, a taxpayer may claim a158 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section for159 amounts the taxpayer contributes during a taxable year to a scholarship granting organization.160 (3) The tax credit provided for in this section may not be carried forward or carried back.161 (4) A scholarship granting organization shall within 30 days after the day on which a162 taxpayer seeking to claim a tax credit under this section makes a contribution to the scholarship163 granting organization, provide to the taxpayer a written statement:164 (a) certifying that the scholarship granting organization is a scholarship granting165 organization; and166 (b) listing the amount of the contribution.167 (5) A scholarship granting organization may make a tuition grant during a calendar year168 to a qualifying student from a contribution for which the scholarship granting organization issues169 a written statement in accordance with Subsection (4) if the scholarship granting organization170 during the calendar year:171 (a) does not make tuition grants to that qualifying student the total amount of which exceed172 the greater of:173 (i) \$2,116; or174 (ii) the value of the weighted pupil unit on the first day of the calendar year for which the175 private school issues the school tuition certificate in accordance with this section; and176 (b) obtains from the private school a school tuition certificate listing the name of that177 qualifying student.178 (6) A private school may not issue more than one school tuition certificate during a179 calendar year that lists the name of one qualifying student.180 (7) (a) A scholarship granting organization shall pay to the commission a penalty

181 calculated under Subsection (7)(b) if the scholarship granting organization makes one or more
182 tuition grants to a qualifying student:

183 (i) that exceed the total amount described in Subsection (5)(a); or

184 (ii) without obtaining from the private school a school tuition certificate listing the name
185 of that qualifying student.

186 (b) For purposes of Subsection (7)(a), the penalty is an amount equal to the total amount
187 of tuition grants the scholarship granting organization makes to the qualifying student described
188 in Subsection (7)(a) during a calendar year from a contribution for which the scholarship granting
189 organization issues a written statement in accordance with Subsection (4).

190 (c) The commission shall deposit any penalties the commission collects under this
191 Subsection (7) into the Uniform School Fund.

192 (8) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
193 commission may make rules providing procedures for:

194 (a) imposing the penalty described in Subsections (7)(a) and (b); or

195 (b) depositing the penalty described in Subsection (7)(c) into the Uniform School Fund.

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

197 **59-10-136. Nonrefundable tuition tax credit -- Definitions.**

198 (1) As used in this section:

199 (a) "Private school" is as defined in Section 59-7-615.

200 (b) "Qualifying student" is as defined in Section 59-7-615.

201 (c) "School tuition certificate" is as defined in Section 59-7-615.

202 (d) "Value of the weighted pupil unit" is as defined in Section 59-7-615.

203 (2) For taxable years beginning on or after January 1, 2002, a taxpayer may claim a

204 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section for
205 amounts paid to a private school for tuition:

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

207 (b) during the taxable year.

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

211 (a) the amount of tuition the taxpayer paid on behalf of the qualifying student during the

212 taxable year; or

213 (b) the greater of:

214 (i) \$2,116; or

215 (ii) the value of the weighted pupil unit on the first day of the calendar year for which the

216 private school issues the school tuition certificate in accordance with this section.

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

218 (5) A taxpayer may claim a tax credit under this section for a taxable year only if the

219 taxpayer obtains from a private school a school tuition certificate listing the name of the qualifying

220 student on whose behalf the taxpayer paid tuition in accordance with Subsection (2).

221 (6) A private school may not issue more than one school tuition certificate during a

222 calendar year that lists the name of one qualifying student.

223 **Section 6. Retrospective operation.**

224 This act has retrospective operation for taxable years beginning on or after January 1, 2002.

Legislative Review Note**as of 2-21-02 9:12 AM**

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