

1 **TUITION TAX CREDITS**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: D. Chris Buttars**

5 **This act modifies Corporate Franchise and Income Taxes and the Individual Income Tax**
6 **Act to provide for nonrefundable tax credits for contributions made to a scholarship**
7 **granting organization to be used for tuition grants for a qualifying student to attend a**
8 **private school, or nonrefundable tax credits for amounts paid for tuition to a private**
9 **school on behalf of a qualifying student. The act provides definitions and establishes**
10 **procedures and requirements for administering the tax credits. The act establishes duties**
11 **of scholarship granting organizations and provides penalties. The act authorizes the**
12 **State Tax Commission to make rules. This act authorizes the Division of Consumer**
13 **Protection to enforce certain private school requirements. This act has retrospective**
14 **operation for taxable years beginning on or after January 1, 2003.**

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

16 AMENDS:

17 **13-2-1**, as last amended by Chapter 222, Laws of Utah 2002

18 ENACTS:

19 **59-7-616**, Utah Code Annotated 1953

20 **59-7-617**, Utah Code Annotated 1953

21 **59-7-618**, Utah Code Annotated 1953

22 **59-10-136**, Utah Code Annotated 1953

23 **59-10-137**, Utah Code Annotated 1953

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

25 Section 1. Section **13-2-1** is amended to read:

26 **13-2-1. Consumer protection division established -- Functions.**

27 (1) There is established within the Department of Commerce the Division of Consumer



28 Protection.

29 (2) The division shall administer and enforce the following:

30 (a) Chapter 5, Unfair Practices Act;

31 (b) Chapter 10a, Music Licensing Practices Act;

32 (c) Chapter 11, Utah Consumer Sales Practices Act;

33 (d) Chapter 15, Business Opportunity Disclosure Act;

34 (e) Chapter 20, New Motor Vehicles Warranties Act;

35 (f) Chapter 21, Credit Services Organizations Act;

36 (g) Chapter 22, Charitable Solicitations Act;

37 (h) Chapter 23, Health Spa Services Protection Act;

38 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

39 (j) Chapter 26, Telephone Fraud Prevention Act;

40 (k) Chapter 28, Prize Notices Regulation Act;

41 (l) Chapter 30, Utah Personal Introduction Services Protection Act; ~~and~~

42 (m) Chapter 34, Utah Postsecondary Proprietary School Act[-]; and

43 (n) Section 59-17-618, the requirements of private schools that issue school tuition

44 certificates.

45 Section 2. Section **59-7-616** is enacted to read:

46 **59-7-616. Tax credit for contributions to scholarship granting organizations --**

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

48 (1) As used in this section:

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

50 (A) is not owned and controlled by a governmental entity;

51 (B) provides instruction for one or more grades kindergarten through 12; and

52 (C) at which the compulsory attendance requirements of Section 53A-11-101 may be

53 met.

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

55 (b) "Qualifying student" means an individual:

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

57 private school;

58 (ii) who will be under 21 years of age on the last day of the school year as determined

59 by the private school:

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

61 (A) the individual was born on or after September 2, 1997;

62 (B) the individual was not enrolled at a private school on February 1, 2003; or

63 (C) the individual is a member of a household as defined in 7 C.F.R. Sec. 245.2 whose

64 household income as determined under 7 C.F.R. Part 245, Determining Eligibility for Free and

65 Reduced Price Meals and Free Milk in Schools, is less than 100% of the reduced price meals

66 income eligibility guideline for the applicable household size as published by the U.S.

67 Department of Agriculture by notice in the Federal Register; and

68 (iv) for which the private school described in Subsection (1)(b)(i) has on file a release

69 of information form.

70 (c) "Release of information form" means a form developed by a private school that:

71 (i) states that a parent of a qualifying student consents to the release of the information

72 contained in the school tuition certificate; and

73 (ii) is consistent with the requirements of 20 U.S.C. Sec. 1232g, Family Educational

74 Rights and Privacy Act of 1974.

75 (d) "Scholarship granting organization" means an organization that:

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

77 (ii) makes tuition grants to qualifying students to attend private schools in this state.

78 (e) "School tuition certificate" means a certificate developed by a private school that:

79 (i) is issued by the private school to the first taxpayer or scholarship granting

80 organization that during the calendar year:

81 (A) makes a:

82 (I) tuition grant to a qualifying student in accordance with this section or Section

83 59-10-136; or

84 (II) tuition payment on behalf of a qualifying student in accordance with Section

85 59-7-617 or 59-10-137; and

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

87 (ii) lists:

88 (A) the name of the qualifying student;

89 (I) receiving a tuition grant in accordance with this section or Section 59-10-136; or

90 (II) on behalf of whom a tuition payment is made in accordance with Section 59-7-617
91 or 59-10-137;

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

93 (C) the value of the weighted pupil unit on the first day of the calendar year described
94 in Subsection (1)(e)(ii)(B).

95 (f) "Value of the weighted pupil unit" means the amount specified in Section
96 53A-17a-103 that is multiplied by the number of weighted pupil units to yield the funding level
97 for the basic state-supported school program.

98 (2) For taxable years beginning on or after January 1, 2003, a taxpayer may claim a
99 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section
100 for monetary contributions:

101 (a) the taxpayer makes during a taxable year to a scholarship granting organization; and

102 (b) that will be used to make tuition grants, in accordance with Subsections (5) through
103 (7), to qualifying students to attend private school.

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

106 (4) A scholarship granting organization shall within 30 days after the day on which a
107 taxpayer seeking to claim a tax credit under this section or Section 59-10-136 makes a
108 contribution to the scholarship granting organization, provide to the taxpayer a written
109 statement:

110 (a) certifying that the contribution shall be used to make tuition grants, in accordance
111 with Subsections (5) through (7), to qualifying students to attend private schools; and

112 (b) listing the amount of the contribution.

113 (5) A scholarship granting organization shall make tuition payments for a qualifying
114 student receiving a tuition grant funded from a contribution for which the scholarship granting
115 organization issues a written statement in accordance with Subsection (4) to any private school
116 in this state that is not under an injunction from the Division of Consumer Protection in
117 accordance with Section 59-7-618, as selected by a parent of the qualifying student.

118 (6) (a) A scholarship granting organization may make a tuition grant during a calendar
119 year to a qualifying student from a contribution for which the scholarship granting organization
120 issues a written statement in accordance with Subsection (4) if the scholarship granting

121 organization during the calendar year:

122 (i) does not make tuition grants to that qualifying student from a contribution for which
123 the scholarship granting organization issues a written statement in accordance with Subsection
124 (4) the total amount of which exceed the greater of:

125 (A) \$2,132; or

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

128 (ii) obtains from the private school a school tuition certificate listing the name of that
129 qualifying student.

130 (b) A private school may not issue more than one school tuition certificate during a
131 calendar year that lists the name of a particular qualifying student.

132 (c) (i) A scholarship granting organization shall pay to the commission a penalty
133 calculated under Subsection (6)(c)(ii) if during a calendar year the scholarship granting
134 organization makes one or more tuition grants to a qualifying student:

135 (A) that exceed the total amount described in Subsection (6)(a); or

136 (B) without obtaining from the private school a school tuition certificate listing the
137 name of that qualifying student.

138 (ii) (A) The penalty for making tuition grants to a qualifying student that exceed the
139 total amount described in Subsection (6)(a) is an amount equal to the difference between:

140 (I) the total amount described in Subsection (6)(a); and

141 (II) the total amount of tuition grants the scholarship granting organization makes to
142 the qualifying student during a calendar year from a contribution for which the scholarship
143 granting organization issues a written statement in accordance with Subsection (4).

144 (B) The penalty for making tuition grants to a qualifying student without obtaining a
145 school tuition certificate for the student is an amount equal to the total amount of tuition grants
146 the scholarship granting organization makes to the qualifying student during a calendar year
147 from a contribution for which the scholarship granting organization issues a written statement
148 in accordance with Subsection (4).

149 (d) The commission shall deposit any penalties the commission collected under this
150 Subsection (6) into the Uniform School Fund.

151 (7) (a) A scholarship granting organization shall expend 100% of each contribution for

152 which the organization issues a written statement in accordance with Subsection (4):

153 (i) for tuition grants to qualifying students to attend private schools in this state; and

154 (ii) within a 12-month period after the day on which the organization receives the
155 contribution.

156 (b) A scholarship granting organization that fails to comply with the requirements of
157 Subsection (7)(a) shall pay to the commission a penalty equal to the sum of:

158 (i) the amount that is not spent in accordance with Subsection (7)(a); and

159 (ii) the interest or earnings the scholarship granting organization receives on the
160 amount that is not spent in accordance with Subsection (7)(a).

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

163 (8) A scholarship granting organization that receives contributions from taxpayers
164 seeking a tax credit pursuant to this section or Section 59-10-136 shall provide to the
165 commission an annual audit conducted by an independent certified public accountant that
166 includes a:

167 (a) financial audit of its accounts and records; and

168 (b) compliance audit of the requirements under this section and Section 59-10-136.

169 (9) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
170 commission may make rules requiring scholarship granting organizations to verify that each
171 tuition grant recipient meets the requirements of a qualifying student under Subsection (1)(b).

172 (10) In accordance with Title 63, Chapter 46b, Administrative Procedures Act, the
173 commission may enjoin a scholarship granting organization that fails to comply with this
174 section from accepting contributions from taxpayers seeking to claim a tax credit under this
175 section or Section 59-10-136 for a period of up to one year.

176 (11) Nothing in this section or Section 13-2-1, 59-7-617, 59-7-618, 59-10-136, or
177 59-10-137 grants additional authority to any state agency or school district to regulate private
178 schools, except as expressly set forth in these sections.

179 Section 3. Section **59-7-617** is enacted to read:

180 **59-7-617. Nonrefundable tuition tax credit -- Definitions.**

181 (1) As used in this section:

182 (a) "Private school" is as defined in Section 59-7-616.

- 183 (b) "Qualifying student" is as defined in Section 59-7-616.
- 184 (c) "School tuition certificate" is as defined in Section 59-7-616.
- 185 (d) "Value of the weighted pupil unit" is as defined in Section 59-7-616.
- 186 (2) For taxable years beginning on or after January 1, 2003, a taxpayer may claim a
187 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section
188 for amounts paid to a private school for tuition:
- 189 (a) on behalf of a qualifying student; and
- 190 (b) during the taxable year.
- 191 (3) For a taxable year the amount of tax credit that a taxpayer may claim under this
192 section for a qualifying student on whose behalf the taxpayer paid tuition in accordance with
193 Subsection (2) may not exceed the lesser of:
- 194 (a) the amount of tuition the taxpayer paid on behalf of the qualifying student during
195 the taxable year;
- 196 (b) the greater of:
- 197 (i) \$2,132; or
- 198 (ii) the value of the weighted pupil unit on the first day of the calendar year for which
199 the private school issues the school tuition certificate in accordance with this section; or
- 200 (c) .55 multiplied by the amount under Subsection (3)(b) if the qualifying student is
201 enrolled in kindergarten during the calendar year.
- 202 (4) The tax credit provided for in this section may not be carried forward or carried
203 back.
- 204 (5) A taxpayer may claim a tax credit under this section for a taxable year only if the
205 taxpayer obtains from a private school a school tuition certificate listing the name of the
206 qualifying student on whose behalf the taxpayer paid tuition in accordance with Subsection (2).
- 207 (6) A private school may not issue more than one school tuition certificate during a
208 calendar year that lists the name of a particular qualifying student.
- 209 Section 4. Section **59-7-618** is enacted to read:
- 210 **59-7-618. Private school requirements -- School tuition certificates -- Enforcement**
211 **-- Orders.**
- 212 (1) As used in this section:
- 213 (a) "Private school" is as defined in Section 59-7-616.

- 214 (b) "School tuition certificate" is as defined in Section 59-7-616.
215 (2) A private school may not issue a school tuition certificate unless it:
216 (a) (i) annually assesses the achievement of each student for which a tuition tax credit
217 certificate is issued by administering a standardized achievement test scored by an independent
218 party that provides a comparison of the student's performance to other students on a national
219 basis; and
220 (ii) reports the test results to the student's parents;
221 (b) provides to parents the relevant credentials of teachers who will be teaching their
222 children;
223 (c) provide to parents a statement indicating which, if any, organizations have certified
224 the private school; and
225 (d) has not been enjoined from issuing school tuition certificates in accordance with
226 Subsection (3).

- 227 (3) (a) The Division of Consumer Protection may use its enforcement powers to
228 investigate complaints and convene administrative hearings for a violation of Subsection (2).
229 (b) If the Division of Consumer Protection finds a violation of Subsection (2), it shall
230 issue an order that enjoins the private school from issuing a school tuition certificate for the
231 subsequent school year.

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

233 **59-10-136. Tax credit for contributions to scholarship granting organizations --**

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

- 235 (1) As used in this section:
236 (a) "Private school" is as defined in Section 59-7-616.
237 (b) "Qualifying student" is as defined in Section 59-7-616.
238 (c) "Scholarship granting organization" is as defined in Section 59-7-616.
239 (d) "School tuition certificate" is as defined in Section 59-7-616.
240 (e) "Value of the weighted pupil unit" is as defined in Section 59-7-616.
241 (2) For taxable years beginning on or after January 1, 2003, a taxpayer may claim a
242 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section
243 for monetary contributions:
244 (a) the taxpayer makes during a taxable year to a scholarship granting organization; and

245 (b) that will be used to make tuition grants, in accordance with Section 59-7-616 and
246 rules adopted by the commission under that section, to qualifying students to attend private
247 school.

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

250 (4) A scholarship granting organization shall provide a written statement to a taxpayer
251 seeking to claim a tax credit under this section in accordance with Section 59-7-616.

252 Section 6. Section **59-10-137** is enacted to read:

253 **59-10-137. Nonrefundable tuition tax credit -- Definitions.**

254 (1) As used in this section:

255 (a) "Private school" is as defined in Section 59-7-616.

256 (b) "Qualifying student" is as defined in Section 59-7-616.

257 (c) "School tuition certificate" is as defined in Section 59-7-616.

258 (d) "Value of the weighted pupil unit" is as defined in Section 59-7-616.

259 (2) For taxable years beginning on or after January 1, 2003, a taxpayer may claim a
260 nonrefundable tax credit against the taxes imposed by this chapter as provided in this section
261 for amounts paid to a private school for tuition:

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

263 (b) during the taxable year.

264 (3) For a taxable year the amount of tax credit that a taxpayer may claim under this
265 section for a qualifying student on whose behalf the taxpayer paid tuition in accordance with
266 Subsection (2) may not exceed the lesser of:

267 (a) the amount of tuition the taxpayer paid on behalf of the qualifying student during
268 the taxable year; or

269 (b) the greater of:

270 (i) \$2,132; or

271 (ii) the value of the weighted pupil unit on the first day of the calendar year for which
272 the private school issues the school tuition certificate in accordance with this section.

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

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

276 taxpayer obtains from a private school a school tuition certificate listing the name of the
277 qualifying student on whose behalf the taxpayer paid tuition in accordance with Subsection (2).

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

280 Section 7. **Retrospective operation.**

281 This act has retrospective operation to January 1, 2003.

Legislative Review Note

as of 12-5-02 12:11 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel