

117TH CONGRESS
2D SESSION

S. 4416

To amend the Internal Revenue Code of 1986 to allow a credit against tax for charitable donations to nonprofit organizations providing education scholarships to qualified elementary and secondary students.

IN THE SENATE OF THE UNITED STATES

JUNE 16, 2022

Mr. CASSIDY (for himself, Mr. SCOTT of South Carolina, Mr. DAINES, and Mr. YOUNG) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow a credit against tax for charitable donations to nonprofit organizations providing education scholarships to qualified elementary and secondary students.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Educational Choice
5 for Children Act”.

6 **SEC. 2. TAX CREDIT FOR CONTRIBUTIONS TO SCHOLAR-**
7 **SHIP GRANTING ORGANIZATIONS.**

8 (a) CREDIT FOR INDIVIDUALS.—

1 (1) IN GENERAL.—Subpart A of part IV of sub-
 2 chapter A of chapter 1 of the Internal Revenue Code
 3 of 1986 is amended by inserting after section 25D
 4 the following new section:

5 **“SEC. 25E. QUALIFIED ELEMENTARY AND SECONDARY EDU-**
 6 **CATION SCHOLARSHIPS.**

7 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
 8 dividual, there shall be allowed as a credit against the tax
 9 imposed by this chapter for the taxable year an amount
 10 equal to the amount of qualified contributions made by
 11 the taxpayer during the taxable year.

12 “(b) AMOUNT OF CREDIT.—The credit allowed under
 13 subsection (a) in any taxable year shall not exceed an
 14 amount equal to the greater of—

15 “(1) 10 percent of the adjusted gross income of
 16 the taxpayer for the taxable year, or

17 “(2) \$2,000.

18 “(c) DEFINITIONS.—For purposes of this section—

19 “(1) ELIGIBLE STUDENT.—The term ‘eligible
 20 student’ means an individual who—

21 “(A) is a member of a household with an
 22 income which is not greater than 300 percent
 23 of the area median gross income (as such term
 24 is used in section 42), and

1 “(B) is eligible to enroll in a public ele-
2 mentary or secondary school.

3 “(2) QUALIFIED CONTRIBUTION.—The term
4 ‘qualified contribution’ means a charitable contribu-
5 tion (as defined by section 170(c)) to a scholarship
6 granting organization in the form of cash or market-
7 able securities.

8 “(3) QUALIFIED ELEMENTARY OR SECONDARY
9 EDUCATION EXPENSE.—The term ‘qualified elemen-
10 tary or secondary education expense’ has the same
11 meaning given the term ‘qualified higher education
12 expenses’ under paragraph (3) of section 529(e), ex-
13 cept that such paragraph shall be applied—

14 “(A) by substituting ‘elementary school or
15 secondary school (as such terms are defined in
16 section 8101 of the Elementary and Secondary
17 Education Act of 1965 (20 U.S.C. 7801))’ for
18 ‘eligible educational institution’ each place it
19 appears, and

20 “(B) in subparagraph (B) thereof, by sub-
21 stituting ‘such school’ for ‘such institution’ each
22 place it appears.

23 “(4) SCHOLARSHIP GRANTING ORGANIZA-
24 TION.—The term ‘scholarship granting organization’
25 means any organization—

1 “(A) which—

2 “(i) is described in section 501(c)(3)
3 and exempt from tax under section 501(a),
4 and

5 “(ii) is not a private foundation,

6 “(B) whose exclusive purpose is to provide
7 scholarships for qualified elementary or sec-
8 ondary education expenses of eligible students,
9 and

10 “(C)(i) which meets the requirements of
11 subsection (d), or

12 “(ii) which, pursuant to State law, was
13 able, as of the date of the enactment of the
14 Educational Choice for Children Act, to receive
15 contributions that are eligible for a State tax
16 credit if such contributions are used by the or-
17 ganization to provide scholarships to individual
18 elementary and secondary students, including
19 scholarships for attending private schools.

20 “(d) REQUIREMENTS FOR SCHOLARSHIP GRANTING
21 ORGANIZATIONS.—

22 “(1) IN GENERAL.—An organization meets the
23 requirements of this subsection if—

1 “(A) such organization provides scholar-
2 ships to 2 or more students, provided that not
3 all such students attend the same school,

4 “(B) such organization does not provide
5 scholarships for any expenses other than quali-
6 fied elementary or secondary education ex-
7 penses,

8 “(C) such organization provides a scholar-
9 ship to eligible students with a priority for—

10 “(i) students awarded a scholarship
11 the previous school year, and

12 “(ii) after application of clause (i),
13 any such students who have a sibling who
14 was awarded a scholarship from such orga-
15 nization,

16 “(D) such organization does not earmark
17 or set aside contributions for scholarships on
18 behalf of any particular student,

19 “(E) such organization takes appropriate
20 steps to verify the annual household income and
21 family size of eligible students to whom it
22 awards scholarships, and limits them to a mem-
23 ber of a household for which the income does
24 not exceed the amount established under sub-
25 section (c)(1)(A),

1 “(F) such organization—

2 “(i) obtains from an independent cer-
3 tified public accountant annual financial
4 and compliance audits, and

5 “(ii) certifies to the Secretary (at such
6 time, and in such form and manner, as the
7 Secretary may prescribe) that the audit de-
8 scribed in clause (i) has been completed,
9 and

10 “(G) no officer or board member of such
11 organization has been convicted of a felony.

12 “(2) INDEPENDENT CERTIFIED PUBLIC AC-
13 COUNTANT.—For purposes of paragraph (1)(F), the
14 term ‘independent certified public accountant’
15 means, with respect to an organization, a certified
16 public accountant who is not a person described in
17 section 465(b)(3)(A) with respect to such organiza-
18 tion or any employee of such organization.

19 “(3) PROHIBITION ON SELF-DEALING.—

20 “(A) IN GENERAL.—A scholarship grant-
21 ing organization may not award a scholarship
22 to any disqualified person.

23 “(B) DISQUALIFIED PERSON.—For pur-
24 poses of this paragraph, a disqualified person

1 shall be determined pursuant to rules similar to
2 the rules of section 4946.

3 “(e) DENIAL OF DOUBLE BENEFIT.—Any qualified
4 contribution for which a credit is allowed under this sec-
5 tion shall not be taken into account as a charitable con-
6 tribution for purposes of section 170.

7 “(f) CARRYFORWARD OF UNUSED CREDIT.—

8 “(1) IN GENERAL.—If the credit allowable
9 under subsection (a) for any taxable year exceeds
10 the limitation imposed by section 26(a) for such tax-
11 able year reduced by the sum of the credits allowable
12 under this subpart (other than this section, section
13 23, and section 25D), such excess shall be carried to
14 the succeeding taxable year and added to the credit
15 allowable under subsection (a) for such taxable year.

16 “(2) LIMITATION.—No credit may be carried
17 forward under this subsection to any taxable year
18 following the fifth taxable year after the taxable year
19 in which the credit arose. For purposes of the pre-
20 ceding sentence, credits shall be treated as used on
21 a first-in first-out basis.

22 “(g) APPLICATION OF VOLUME CAP.—A qualified
23 contribution shall be taken into account under this section
24 only if such contribution is not in excess of the volume

1 cap established under section 3 of the Educational Choice
2 for Children Act.”.

3 (2) CLERICAL AMENDMENT.—The table of sec-
4 tions for subpart A of part IV of subchapter A of
5 chapter 1 of such Code is amended by inserting
6 after the item relating to section 25D the following
7 new item:

“Sec. 25E. Qualified elementary and secondary education scholarships.”.

8 (b) CREDIT FOR CORPORATIONS.—

9 (1) IN GENERAL.—Subpart D of part IV of
10 subchapter A of chapter 1 of such Code is amended
11 by adding after section 45T the following:

12 **“SEC. 45U. CONTRIBUTIONS TO SCHOLARSHIP GRANTING**
13 **ORGANIZATIONS.**

14 “(a) GENERAL RULE.—For purposes of section 38,
15 in the case of a corporation, the education scholarship
16 credit determined under this section for the taxable year
17 is the aggregate amount of qualified contributions for the
18 taxable year.

19 “(b) AMOUNT OF CREDIT.—The credit allowed under
20 subsection (a) for any taxable year shall not exceed 5 per-
21 cent of the taxable income (as defined in section
22 170(b)(2)(D)) of the corporation for such taxable year.

23 “(c) QUALIFIED CONTRIBUTIONS.—For purposes of
24 this section, the term ‘qualified contribution’ has the
25 meaning given such term under section 25E.

1 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
2 shall be allowed under any provision of this chapter for
3 any expense for which a credit is allowed under this sec-
4 tion.

5 “(e) APPLICATION OF VOLUME CAP.—A qualified
6 contribution shall be taken into account under this section
7 only if such contribution is not in excess of the volume
8 cap established under section 3 of the Educational Choice
9 for Children Act.”.

10 (2) CONFORMING AMENDMENTS.—Section
11 38(b) of such Code is amended by striking “plus” at
12 the end of paragraph (32), by striking the period
13 and inserting “, plus” at the end of paragraph (33),
14 and by adding at the end the following new para-
15 graph:

16 “(34) the education scholarship credit deter-
17 mined under section 45U(a).”.

18 (3) CLERICAL AMENDMENT.—The table of sec-
19 tions for subpart D of part IV of subchapter A of
20 chapter 1 of such Code, as amended by this Act, is
21 amended by adding at the end the following new
22 item:

“Sec. 45U. Contributions to scholarship granting organizations.”.

23 (c) FAILURE OF SCHOLARSHIP GRANTING ORGANI-
24 ZATIONS TO MAKE DISTRIBUTIONS.—

1 (1) IN GENERAL.—Chapter 42 of such Code is
 2 amended by adding at the end the following new
 3 subchapter:

4 **“Subchapter I—Scholarship Granting**
 5 **Organizations**

“Sec. 4969. Failure to distribute receipts.

6 **“SEC. 4969. FAILURE TO DISTRIBUTE RECEIPTS.**

7 “(a) IN GENERAL.—In the case of any scholarship
 8 granting organization (as defined in section 25E) which
 9 has been determined by the Secretary to have failed to
 10 satisfy the requirement under subsection (b) for any tax-
 11 able year, any contribution made to such organization dur-
 12 ing the first taxable year beginning after the date of such
 13 determination shall not be treated as a qualified contribu-
 14 tion (as defined in section 25E(c)(2)) for purposes of sec-
 15 tions 25E and 45U.

16 “(b) REQUIREMENT.—The requirement described in
 17 this subsection is that the amount of receipts of the schol-
 18 arship granting organization for the taxable year which
 19 are distributed before the distribution deadline with re-
 20 spect to such receipts shall not be less than the required
 21 distribution amount with respect to such taxable year.

22 “(c) DEFINITIONS.—For purposes of this section—

23 “(1) REQUIRED DISTRIBUTION AMOUNT.—

1 “(A) IN GENERAL.—The required distribu-
2 tion amount with respect to a taxable year is
3 the amount equal to 100 percent of the total re-
4 ceipts of the scholarship granting organization
5 for such taxable year—

6 “(i) reduced by the sum of such re-
7 ceipts that are retained for reasonable ad-
8 ministrative expenses for the taxable year
9 or are carried to the succeeding taxable
10 year under subparagraph (C), and

11 “(ii) increased by the amount of the
12 carryover under subparagraph (C) from
13 the preceding taxable year.

14 “(B) SAFE HARBOR FOR REASONABLE AD-
15 MINISTRATIVE EXPENSES.—For purposes of
16 subparagraph (A)(i), if the percentage of total
17 receipts of a scholarship granting organization
18 for a taxable year which are used for adminis-
19 trative purposes is equal to or less than 10 per-
20 cent, such expenses shall be deemed to be rea-
21 sonable for purposes of such subparagraph.

22 “(C) CARRYOVER.—With respect to the
23 amount of the total receipts of a scholarship
24 granting organization with respect to any tax-
25 able year, an amount not greater than 15 per-

1 cent of such amount may, at the election of
 2 such organization, be carried to the succeeding
 3 taxable year.

4 “(2) DISTRIBUTIONS.—The term ‘distribution’
 5 includes amounts which are formally committed but
 6 not distributed. A formal commitment described in
 7 the preceding sentence may include contributions set
 8 aside for eligible students for more than one year.

9 “(3) DISTRIBUTION DEADLINE.—The distribu-
 10 tion deadline with respect to receipts for a taxable
 11 year is the first day of the third taxable year fol-
 12 lowing the taxable year in which such receipts are
 13 received by the scholarship granting organization.”.

14 (2) CLERICAL AMENDMENT.—The table of sub-
 15 chapters for chapter 42 of such Code is amended by
 16 adding at the end the following new item:

“SUBCHAPTER I. SCHOLARSHIP GRANTING ORGANIZATIONS”.

17 **SEC. 3. VOLUME CAP.**

18 (a) ALLOCATION.—

19 (1) IN GENERAL.—For purposes of sections
 20 25E(g) and 45U(e) of the Internal Revenue Code of
 21 1986 (as added by this Act), the volume cap applica-
 22 ble with respect to both such sections shall be
 23 \$10,000,000,000 for calendar year 2023 and each
 24 subsequent year thereafter, with such amount to be
 25 allocated as follows:

1 (A) \$1,000,000,000 shall be allocated to
2 the States, with such amount to be allocated in
3 equal amounts to each State. With respect to
4 the amount which has been allocated to a State
5 for any calendar year—

6 (i) 50 percent of such amount shall be
7 made available for any individual residing
8 in such State to claim the credit allowed
9 under section 25E of the Internal Revenue
10 Code of 1986 with respect to any qualified
11 contributions (as defined in such section)
12 made by such individual during any tax-
13 able year beginning during such calendar
14 year, and

15 (ii) 50 percent of such amount shall
16 be made available for any corporation cre-
17 ated or organized in such State to claim
18 the credit determined under section 45U of
19 such Code with respect to any qualified
20 contributions made by such corporation
21 during any taxable year beginning during
22 such calendar year.

23 (B) With respect to the amount remaining
24 after the allocation under subparagraph (A)—

1 (i) 50 percent of such amount shall be
2 made available for any individual to claim
3 the credit allowed under section 25E of the
4 Internal Revenue Code of 1986 with re-
5 spect to any qualified contributions made
6 by such individual during any taxable year
7 beginning during such calendar year, and

8 (ii) 50 percent of such amount shall
9 be made available for any corporation to
10 claim the credit determined under section
11 45U of such Code with respect to any
12 qualified contributions made by such cor-
13 poration during any taxable year beginning
14 during such calendar year.

15 (2) CARRYOVER.—The amount of any allotment
16 to a State under paragraph (1)(A) for any calendar
17 year which is not claimed by taxpayers described in
18 such paragraph during such calendar year shall be
19 added to the allotment provided to such State under
20 such paragraph for the subsequent calendar year.

21 (b) FIRST-COME, FIRST-SERVE.—For purposes of
22 applying the volume cap under this section, such volume
23 cap shall be applied based on a first-come, first-serve
24 basis, as determined based on the date on which the tax-
25 payer made the qualified contribution.

1 (c) REAL-TIME INFORMATION.—For purposes of this
 2 section, the Secretary of the Treasury (or the Secretary’s
 3 delegate) shall develop a system to track the amount of
 4 qualified contributions made during the calendar year for
 5 which a credit may be claimed under section 25E or 45U
 6 of the Internal Revenue Code of 1986, with such informa-
 7 tion to be updated in real time.

8 **SEC. 4. EXEMPTION FROM GROSS INCOME FOR SCHOLAR-**
 9 **SHIPS FOR QUALIFIED ELEMENTARY OR SEC-**
 10 **ONDARY EDUCATION EXPENSES OF ELIGIBLE**
 11 **STUDENTS.**

12 (a) IN GENERAL.—Part III of subchapter B of chap-
 13 ter 1 of the Internal Revenue Code of 1986 is amended
 14 by inserting before section 140 the following new section:

15 **“SEC. 139I. SCHOLARSHIPS FOR QUALIFIED ELEMENTARY**
 16 **OR SECONDARY EDUCATION EXPENSES OF**
 17 **ELIGIBLE STUDENTS.**

18 “(a) IN GENERAL.—In the case of an individual,
 19 gross income shall not include any amounts provided to
 20 any dependent of such individual pursuant to a scholar-
 21 ship for qualified elementary or secondary education ex-
 22 penses of an eligible student which is provided by a schol-
 23 arship granting organization.

24 “(b) DEFINITIONS.—In this section, the terms ‘quali-
 25 fied elementary or secondary education expense’, ‘eligible

1 student’, and ‘scholarship granting organization’ have the
 2 same meaning given such terms under section 25E(c).”.

3 (b) CONFORMING AMENDMENT.—The table of sec-
 4 tions for part III of subchapter B of chapter 1 of the In-
 5 ternal Revenue Code of 1986 is amended by inserting be-
 6 fore the item relating to section 140 the following new
 7 item:

“Sec. 139I. Scholarships for qualified elementary or secondary education ex-
 penses of eligible students.”.

8 **SEC. 5. ORGANIZATIONAL AND PARENTAL AUTONOMY.**

9 (a) PROHIBITION OF CONTROL OVER SCHOLARSHIP
 10 ORGANIZATIONS.—

11 (1) IN GENERAL.—

12 (A) TREATMENT.—A scholarship granting
 13 organization shall not, by virtue of participation
 14 under any provision of this Act or any amend-
 15 ment made by this Act, be regarded as acting
 16 on behalf of any governmental entity.

17 (B) NO GOVERNMENTAL CONTROL.—Noth-
 18 ing in this Act, or any amendment made by this
 19 Act, shall be construed to permit, allow, encour-
 20 age, or authorize any Federal, State, or local
 21 government entity, or officer or employee there-
 22 of, to mandate, direct, or control any aspect of
 23 any scholarship granting organization.

1 (C) MAXIMUM FREEDOM.—To the extent
2 permissible by law, this Act, and any amend-
3 ment made by this Act, shall be construed to
4 allow scholarship granting organizations max-
5 imum freedom to provide for the needs of the
6 participants without governmental control.

7 (2) PROHIBITION OF CONTROL OVER NON-PUB-
8 LIC SCHOOLS.—

9 (A) NO GOVERNMENTAL CONTROL.—Noth-
10 ing in this Act, or any amendment made by this
11 Act, shall be construed to permit, allow, encour-
12 age, or authorize any Federal, State, or local
13 government entity, or officer or employee there-
14 of, to mandate, direct, or control any aspect of
15 any private or religious elementary or secondary
16 education institution.

17 (B) NO EXCLUSION OF PRIVATE OR RELI-
18 GIOUS SCHOOLS.—No Federal, State, or local
19 government entity, or officer or employee there-
20 of, shall impose or permit the imposition of any
21 conditions or requirements that would exclude
22 or operate to exclude educational expenses at
23 private or religious elementary and secondary
24 education institutions from being considered

1 qualified elementary or secondary education ex-
2 penses.

3 (C) NO EXCLUSION OF QUALIFIED EX-
4 PENSES DUE TO INSTITUTION'S RELIGIOUS
5 CHARACTER OR AFFILIATION.—No Federal,
6 State, or local government entity, or officer or
7 employee thereof, shall exclude, discriminate
8 against, or otherwise disadvantage any elemen-
9 tary or secondary education institution with re-
10 spect to qualified elementary or secondary edu-
11 cation expenses at that institution based in
12 whole or in part on the institution's religious
13 character or affiliation, including religiously
14 based or mission-based policies or practices.

15 (3) PARENTAL RIGHTS TO USE SCHOLAR-
16 SHIPS.—No Federal, State, or local government en-
17 tity, or officer or employee thereof, shall disfavor or
18 discourage the use of scholarships granted by par-
19 ticipating scholarship granting organizations for
20 qualified elementary or secondary education ex-
21 penses at private or nonprofit elementary and sec-
22 ondary education institutions, including faith-based
23 schools.

24 (4) PARENTAL RIGHT TO INTERVENE.—In any
25 action filed in any State or Federal court which

1 challenges the constitutionality (under the constitu-
2 tion of such State or the Constitution of the United
3 States) of any provision of this Act (or any amend-
4 ment made by this Act), any parent of an eligible
5 student who has received a scholarship from a schol-
6 arship granting organization shall have the right to
7 intervene in support of the constitutionality of such
8 provision or amendment. To avoid duplication of ef-
9 forts and reduce the burdens placed on the parties
10 to the action, the court in any such action may re-
11 quire interveners taking similar positions to file joint
12 papers or to be represented by a single attorney at
13 oral argument, provided that the court does not re-
14 quire such interveners to join any brief filed on be-
15 half of any State which is a defendant in such ac-
16 tion.

17 (b) DEFINITIONS.—For purposes of this section, the
18 terms “eligible student”, “scholarship granting organiza-
19 tion”, and “qualified elementary or secondary education
20 expense” shall have the same meanings given such terms
21 under section 25E(c) of the Internal Revenue Code of
22 1986 (as added by section 2(a) of this Act).

1 **SEC. 6. EFFECTIVE DATE.**

2 The amendments made by this Act shall apply to tax-
3 able years beginning after December 31, 2022.

○