

118TH CONGRESS
1ST SESSION

S. 120

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

JANUARY 26, 2023

Mr. CASSIDY (for himself, Mr. CORNYN, Mr. DAINES, Mr. TUBERVILLE, Mr. WICKER, Mr. BARRASSO, Mr. SCOTT of South Carolina, Mrs. BLACKBURN, Mr. BRAUN, Mr. SCOTT of Florida, Mr. YOUNG, Mr. BOOZMAN, Mr. HAWLEY, Mr. TILLIS, and Mrs. BRITT) 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”.

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

3 (a) CREDIT FOR INDIVIDUALS.—

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

8 **“SEC. 25F. QUALIFIED ELEMENTARY AND SECONDARY EDU-**
9 **CATION SCHOLARSHIPS.**

10 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
11 dividual who is a citizen or resident of the United States
12 (as defined in section 7701(a)(9)), there shall be allowed
13 as a credit against the tax imposed by this chapter for
14 the taxable year an amount equal to the amount of quali-
15 fied contributions made by the taxpayer during the taxable
16 year.

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

20 “(1) 10 percent of the adjusted gross income of
21 the taxpayer for the taxable year, or

22 “(2) \$5,000.

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

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

1 “(A) is a member of a household with an
2 income which is not greater than 300 percent
3 of the area median gross income (as such term
4 is used in section 42), and

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

7 “(2) QUALIFIED CONTRIBUTION.—The term
8 ‘qualified contribution’ means a charitable contribu-
9 tion (as defined by section 170(e)) to a scholarship
10 granting organization in the form of cash or market-
11 able securities for the purpose of providing scholar-
12 ships for qualified elementary or secondary edu-
13 cation expenses of eligible students.

14 “(3) QUALIFIED ELEMENTARY OR SECONDARY
15 EDUCATION EXPENSE.—The term ‘qualified elemen-
16 tary or secondary education expense’ has the same
17 meaning given the term ‘qualified higher education
18 expenses’ under paragraph (3) of section 529(e), ex-
19 cept that—

20 “(A) such paragraph shall be applied—

21 “(i) by substituting ‘elementary school
22 or secondary school (as such terms are de-
23 fined in section 8101 of the Elementary
24 and Secondary Education Act of 1965 (20

1 U.S.C. 7801))’ for ‘eligible educational in-
2 stitution’ each place it appears, and

3 “(ii) in subparagraph (B) thereof, by
4 substituting ‘such school’ for ‘such institu-
5 tion’ each place it appears, and

6 “(B) such term shall include tutoring ex-
7 penses for student academic needs, including
8 for learning loss.

9 “(4) SCHOLARSHIP GRANTING ORGANIZA-
10 TION.—The term ‘scholarship granting organization’
11 means any organization—

12 “(A) which—

13 “(i) is described in section 501(c)(3)
14 and exempt from tax under section 501(a),
15 and

16 “(ii) is not a private foundation,

17 “(B) whose substantial purpose is to pro-
18 vide scholarships for qualified elementary or
19 secondary education expenses of eligible stu-
20 dents,

21 “(C)(i) which meets the requirements of
22 subsection (d), or

23 “(ii) which, pursuant to State law, was
24 able, as of the date of the enactment of the
25 Educational Choice for Children Act, to receive

1 contributions that are eligible for a State tax
 2 credit if such contributions are used by the or-
 3 ganization to provide scholarships to individual
 4 elementary and secondary students, including
 5 scholarships for attending private schools, and

6 “(D) which, separate from any other funds
 7 or contributions received by such organization,
 8 maintains and accounts for any contributions
 9 made by any person for the purpose of pro-
 10 viding scholarships for qualified elementary or
 11 secondary education expenses of eligible stu-
 12 dents.

13 “(d) REQUIREMENTS FOR SCHOLARSHIP GRANTING
 14 ORGANIZATIONS.—

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

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

20 “(B) such organization does not provide
 21 scholarships for any expenses other than quali-
 22 fied elementary or secondary education ex-
 23 penses,

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

1 “(i) students awarded a scholarship
2 the previous school year, and

3 “(ii) after application of clause (i),
4 any such students who have a sibling who
5 was awarded a scholarship from such orga-
6 nization,

7 “(D) such organization does not earmark
8 or set aside contributions for scholarships on
9 behalf of any particular student,

10 “(E) such organization takes appropriate
11 steps to verify the annual household income and
12 family size of eligible students to whom it
13 awards scholarships, and limits them to a mem-
14 ber of a household for which the income does
15 not exceed the amount established under sub-
16 section (c)(1)(A),

17 “(F) such organization—

18 “(i) obtains from an independent cer-
19 tified public accountant annual financial
20 and compliance audits, and

21 “(ii) certifies to the Secretary (at such
22 time, and in such form and manner, as the
23 Secretary may prescribe) that the audit de-
24 scribed in clause (i) has been completed,
25 and

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

3 “(2) INDEPENDENT CERTIFIED PUBLIC AC-
4 COUNTANT.—For purposes of paragraph (1)(F), the
5 term ‘independent certified public accountant’
6 means, with respect to an organization, a certified
7 public accountant who is not a person described in
8 section 465(b)(3)(A) with respect to such organiza-
9 tion or any employee of such organization.

10 “(3) PROHIBITION ON SELF-DEALING.—

11 “(A) IN GENERAL.—A scholarship grant-
12 ing organization may not award a scholarship
13 to any disqualified person.

14 “(B) DISQUALIFIED PERSON.—For pur-
15 poses of this paragraph, a disqualified person
16 shall be determined pursuant to rules similar to
17 the rules of section 4946.

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

22 “(f) CARRYFORWARD OF UNUSED CREDIT.—

23 “(1) IN GENERAL.—If the credit allowable
24 under subsection (a) for any taxable year exceeds
25 the limitation imposed by section 26(a) for such tax-

1 able year reduced by the sum of the credits allowable
2 under this subpart (other than this section, section
3 23, and section 25D), such excess shall be carried to
4 the succeeding taxable year and added to the credit
5 allowable under subsection (a) for such taxable year.

6 “(2) LIMITATION.—No credit may be carried
7 forward under this subsection to any taxable year
8 following the fifth taxable year after the taxable year
9 in which the credit arose. For purposes of the pre-
10 ceding sentence, credits shall be treated as used on
11 a first-in first-out basis.

12 “(g) APPLICATION OF VOLUME CAP.—A qualified
13 contribution shall be taken into account under this section
14 only if such contribution is not in excess of the volume
15 cap established under section 3 of the Educational Choice
16 for Children Act.”.

17 (2) CLERICAL AMENDMENT.—The table of sec-
18 tions for subpart A of part IV of subchapter A of
19 chapter 1 of such Code is amended by inserting
20 after the item relating to section 25E the following
21 new item:

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

22 (b) CREDIT FOR CORPORATIONS.—

23 (1) IN GENERAL.—Subpart D of part IV of
24 subchapter A of chapter 1 of the Internal Revenue

1 Code of 1986 is amended by adding after section
2 45Z the following:

3 **“SEC. 45AA. CONTRIBUTIONS TO SCHOLARSHIP GRANTING**
4 **ORGANIZATIONS.**

5 “(a) GENERAL RULE.—For purposes of section 38,
6 in the case of a corporation, the education scholarship
7 credit determined under this section for the taxable year
8 is the aggregate amount of qualified contributions for the
9 taxable year.

10 “(b) AMOUNT OF CREDIT.—The credit allowed under
11 subsection (a) for any taxable year shall not exceed 5 per-
12 cent of the taxable income (as defined in section
13 170(b)(2)(D)) of the corporation for such taxable year.

14 “(c) QUALIFIED CONTRIBUTIONS.—For purposes of
15 this section, the term ‘qualified contribution’ has the
16 meaning given such term under section 25F.

17 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
18 shall be allowed under any provision of this chapter for
19 any expense for which a credit is allowed under this sec-
20 tion.

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

1 (2) CONFORMING AMENDMENTS.—Section
 2 38(b) of such Code is amended by striking “plus” at
 3 the end of paragraph (39), by striking the period
 4 and inserting “, plus” at the end of paragraph (40),
 5 and by adding at the end the following new para-
 6 graph:

7 “(41) the education scholarship credit deter-
 8 mined under section 45AA(a).”.

9 (3) CLERICAL AMENDMENT.—The table of sec-
 10 tions for subpart D of part IV of subchapter A of
 11 chapter 1 of such Code is amended by adding at the
 12 end the following new item:

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

13 (c) FAILURE OF SCHOLARSHIP GRANTING ORGANI-
 14 ZATIONS TO MAKE DISTRIBUTIONS.—

15 (1) IN GENERAL.—Chapter 42 of the Internal
 16 Revenue Code of 1986 is amended by adding at the
 17 end the following new subchapter:

18 **“Subchapter I—Scholarship Granting**
 19 **Organizations**

“Sec. 4969. Failure to distribute receipts.

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

21 “(a) IN GENERAL.—In the case of any scholarship
 22 granting organization (as defined in section 25F) which
 23 has been determined by the Secretary to have failed to
 24 satisfy the requirement under subsection (b) for any tax-

1 able year, any contribution made to such organization dur-
2 ing the first taxable year beginning after the date of such
3 determination shall not be treated as a qualified contribu-
4 tion (as defined in section 25F(c)(2)) for purposes of sec-
5 tions 25F and 45AA.

6 “(b) REQUIREMENT.—The requirement described in
7 this subsection is that the amount of receipts of the schol-
8 arship granting organization for the taxable year which
9 are distributed before the distribution deadline with re-
10 spect to such receipts shall not be less than the required
11 distribution amount with respect to such taxable year.

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

13 “(1) REQUIRED DISTRIBUTION AMOUNT.—

14 “(A) IN GENERAL.—The required distribu-
15 tion amount with respect to a taxable year is
16 the amount equal to 100 percent of the total re-
17 cepts of the scholarship granting organization
18 for such taxable year—

19 “(i) reduced by the sum of such re-
20 cepts that are retained for reasonable ad-
21 ministrative expenses for the taxable year
22 or are carried to the succeeding taxable
23 year under subparagraph (C), and

1 “(ii) increased by the amount of the
2 carryover under subparagraph (C) from
3 the preceding taxable year.

4 “(B) SAFE HARBOR FOR REASONABLE AD-
5 MINISTRATIVE EXPENSES.—For purposes of
6 subparagraph (A)(i), if the percentage of total
7 receipts of a scholarship granting organization
8 for a taxable year which are used for adminis-
9 trative purposes related to activities for pro-
10 viding scholarships for qualified elementary or
11 secondary education expenses of eligible stu-
12 dents (as such terms are defined in section
13 25F(c)) is equal to or less than 10 percent,
14 such expenses shall be deemed to be reasonable
15 for purposes of such subparagraph.

16 “(C) CARRYOVER.—With respect to the
17 amount of the total receipts of a scholarship
18 granting organization with respect to any tax-
19 able year, an amount not greater than 15 per-
20 cent of such amount may, at the election of
21 such organization, be carried to the succeeding
22 taxable year.

23 “(2) DISTRIBUTIONS.—The term ‘distribution’
24 includes amounts which are formally committed but
25 not distributed. A formal commitment described in

1 the preceding sentence may include contributions set
2 aside for eligible students for more than one year.

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

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

“SUBCHAPTER I. SCHOLARSHIP GRANTING ORGANIZATIONS”.

11 **SEC. 3. VOLUME CAP.**

12 (a) ALLOCATION.—

13 (1) IN GENERAL.—For purposes of sections
14 25F(g) and 45AA(e) of the Internal Revenue Code
15 of 1986 (as added by this Act), the volume cap ap-
16 plicable with respect to both such sections shall be
17 \$10,000,000,000 for calendar year 2024 and each
18 subsequent year thereafter, with such amount to be
19 allocated as follows:

20 (A) \$20,000,000 shall be allocated to each
21 State (as defined in section 7701(a)(10) of the
22 Internal Revenue Code of 1986), with such
23 amount to be made available, in the manner de-
24 scribed in subsection (b), for—

1 (i) any individual residing in such
2 State to claim the credit allowed under sec-
3 tion 25F of the Internal Revenue Code of
4 1986 with respect to any qualified con-
5 tributions (as defined in such section)
6 made by such individual during any tax-
7 able year beginning during such calendar
8 year, and

9 (ii) any corporation created or orga-
10 nized in such State to claim the credit de-
11 termined under section 45AA of such Code
12 with respect to any qualified contributions
13 made by such corporation during any tax-
14 able year beginning during such calendar
15 year.

16 (B) With respect to the amount remaining
17 after the allocation under subparagraph (A),
18 such amount (as adjusted pursuant to para-
19 graph (3)) shall be made available, in the man-
20 ner described in subsection (b), for—

21 (i) any individual to claim the credit
22 allowed under section 25F of the Internal
23 Revenue Code of 1986 with respect to any
24 qualified contributions made by such indi-

1 vidual during any taxable year beginning
2 during such calendar year, and

3 (ii) any corporation to claim the credit
4 determined under section 45AA of such
5 Code with respect to any qualified con-
6 tributions made by such corporation during
7 any taxable year beginning during such
8 calendar year.

9 (2) CARRYOVER.—The amount of any allotment
10 to a State under paragraph (1)(A) for any calendar
11 year which is not claimed by taxpayers described in
12 such paragraph during such calendar year shall be
13 added to the allotment provided under paragraph
14 (1)(B) for the subsequent calendar year.

15 (3) INCREASE IN NATIONWIDE VOLUME CAP.—
16 For purposes of paragraph (1)(B), if the Secretary
17 determines during any calendar year that the
18 amount of qualified contributions made during such
19 calendar year is equal to or greater than 90 percent
20 of the total amount made available under such para-
21 graph for such calendar year, such amount shall be
22 increased by an amount equal to 5 percent of the
23 total amount made available under such paragraph
24 as of January 1 of such calendar year, with such in-

1 **“SEC. 139J. SCHOLARSHIPS FOR QUALIFIED ELEMENTARY**
 2 **OR SECONDARY EDUCATION EXPENSES OF**
 3 **ELIGIBLE STUDENTS.**

4 “(a) IN GENERAL.—In the case of an individual,
 5 gross income shall not include any amounts provided to
 6 any dependent of such individual pursuant to a scholar-
 7 ship for qualified elementary or secondary education ex-
 8 penses of an eligible student which is provided by a schol-
 9 arship granting organization.

10 “(b) DEFINITIONS.—In this section, the terms ‘quali-
 11 fied elementary or secondary education expense’, ‘eligible
 12 student’, and ‘scholarship granting organization’ have the
 13 same meaning given such terms under section 25F(c).”.

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

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

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

20 (a) PROHIBITION OF CONTROL OVER SCHOLARSHIP
 21 ORGANIZATIONS.—

22 (1) IN GENERAL.—

23 (A) TREATMENT.—A scholarship granting
 24 organization shall not, by virtue of participation

1 under any provision of this Act or any amend-
2 ment made by this Act, be regarded as acting
3 on behalf of any governmental entity.

4 (B) NO GOVERNMENTAL CONTROL.—Noth-
5 ing in this Act, or any amendment made by this
6 Act, shall be construed to permit, allow, encour-
7 age, or authorize any Federal, State, or local
8 government entity, or officer or employee there-
9 of, to mandate, direct, or control any aspect of
10 any scholarship granting organization.

11 (C) MAXIMUM FREEDOM.—To the extent
12 permissible by law, this Act, and any amend-
13 ment made by this Act, shall be construed to
14 allow scholarship granting organizations max-
15 imum freedom to provide for the needs of the
16 participants without governmental control.

17 (2) PROHIBITION OF CONTROL OVER NON-PUB-
18 LIC SCHOOLS.—

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

1 any private or religious elementary or secondary
2 education institution.

3 (B) NO EXCLUSION OF PRIVATE OR RELI-
4 GIOUS SCHOOLS.—No Federal, State, or local
5 government entity, or officer or employee there-
6 of, shall impose or permit the imposition of any
7 conditions or requirements that would exclude
8 or operate to exclude educational expenses at
9 private or religious elementary and secondary
10 education institutions from being considered
11 qualified elementary or secondary education ex-
12 penses.

13 (C) NO EXCLUSION OF QUALIFIED EX-
14 PENSES DUE TO INSTITUTION’S RELIGIOUS
15 CHARACTER OR AFFILIATION.—No Federal,
16 State, or local government entity, or officer or
17 employee thereof, shall exclude, discriminate
18 against, or otherwise disadvantage any elemen-
19 tary or secondary education institution with re-
20 spect to qualified elementary or secondary edu-
21 cation expenses at that institution based in
22 whole or in part on the institution’s religious
23 character or affiliation, including religiously
24 based or mission-based policies or practices.

1 (3) PARENTAL RIGHTS TO USE SCHOLAR-
2 SHIPS.—No Federal, State, or local government en-
3 tity, or officer or employee thereof, shall disfavor or
4 discourage the use of scholarships granted by par-
5 ticipating scholarship granting organizations for
6 qualified elementary or secondary education ex-
7 penses at private or nonprofit elementary and sec-
8 ondary education institutions, including faith-based
9 schools.

10 (4) PARENTAL RIGHT TO INTERVENE.—In any
11 action filed in any State or Federal court which
12 challenges the constitutionality (under the constitu-
13 tion of such State or the Constitution of the United
14 States) of any provision of this Act (or any amend-
15 ment made by this Act), any parent of an eligible
16 student who has received a scholarship from a schol-
17 arship granting organization shall have the right to
18 intervene in support of the constitutionality of such
19 provision or amendment. To avoid duplication of ef-
20 forts and reduce the burdens placed on the parties
21 to the action, the court in any such action may re-
22 quire interveners taking similar positions to file joint
23 papers or to be represented by a single attorney at
24 oral argument, provided that the court does not re-
25 quire such interveners to join any brief filed on be-

1 half of any State which is a defendant in such ac-
2 tion.

3 (b) DEFINITIONS.—For purposes of this section, the
4 terms “eligible student”, “scholarship granting organiza-
5 tion”, and “qualified elementary or secondary education
6 expense” shall have the same meanings given such terms
7 under section 25F(c) of the Internal Revenue Code of
8 1986 (as added by section 2(a) of this Act).

9 **SEC. 6. EFFECTIVE DATE.**

10 The amendments made by this Act shall apply to tax-
11 able years beginning after December 31, 2023.

○