

116TH CONGRESS  
1ST SESSION

# S. 5

To amend the Internal Revenue Code of 1986 to allow a credit against tax for qualified elementary and secondary education tuition.

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IN THE SENATE OF THE UNITED STATES

JANUARY 3, 2019

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a credit against tax for qualified elementary and secondary education tuition.

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 Opportu-  
5       nities Act”.

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

8       (a) CREDIT FOR INDIVIDUALS.—

9               (1) IN GENERAL.—Subpart A of part IV of sub-  
10       chapter A of chapter 1 of the Internal Revenue Code

1 of 1986 is amended by inserting after section 25D  
 2 the following new section:

3 **“SEC. 25E. CONTRIBUTIONS FOR QUALIFIED ELEMENTARY**  
 4 **AND SECONDARY EDUCATION TUITION.**

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

10 “(b) DOLLAR LIMITATION.—The amount allowed as  
 11 a credit under subsection (a) with respect to any taxpayer  
 12 shall not exceed—

13 “(1) \$2,250, in the case of a married individual  
 14 filing a separate return, and

15 “(2) \$4,500, in any other case.

16 “(c) QUALIFIED CONTRIBUTIONS; OTHER DEFINI-  
 17 TIONS.—For purposes of this section—

18 “(1) QUALIFIED CONTRIBUTION.—The term  
 19 ‘qualified contribution’ means a charitable contribu-  
 20 tion (as defined by section 170(c)) to a scholarship  
 21 granting organization.

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

1           “(A) which is described in section  
2           501(c)(3) and exempt from tax under section  
3           501(a),

4           “(B) whose exclusive purpose is to provide  
5           scholarships for the qualified elementary and  
6           secondary education expenses of eligible stu-  
7           dents, and

8           “(C) which meets the requirements of sub-  
9           section (d).

10           “(3) ELIGIBLE STUDENT.—The term ‘eligible  
11           student’ means an individual—

12           “(A) who is enrolled in a school (within the  
13           meaning of section 530(b)(3)(B), after the ap-  
14           plication of paragraph (4)(B)), and

15           “(B) who is a member of a household with  
16           a total annual household income which does not  
17           exceed 250 percent of the Federal poverty  
18           guidelines (as determined by the Secretary of  
19           Health and Human Services).

20           “(4) QUALIFIED ELEMENTARY AND SECONDARY  
21           EDUCATION EXPENSES.—The term ‘qualified ele-  
22           mentary and secondary education expenses’ has the  
23           meaning given such term by section 530(b)(3), ex-  
24           cept that—

1           “(A) ‘child’ shall be substituted for ‘bene-  
2           ficiary’ and ‘a child’ shall be substituted for  
3           ‘the designated beneficiary of the trust’ in  
4           clauses (i) and (iii) of subparagraph (A) there-  
5           of, and

6           “(B) in applying such paragraph, the term  
7           ‘school’ shall only include schools which—

8                   “(i) charge tuition for attendance,

9                   “(ii) comply with all applicable State  
10                  laws, including laws relating to unlawful  
11                  discrimination, health and safety require-  
12                  ments, and criminal background checks of  
13                  employees, and

14                  “(iii) agree to provide annual reports  
15                  as described in subsection (e) to the schol-  
16                  arship granting organization and to the  
17                  parents or guardians of eligible students  
18                  receiving a scholarship from the scholar-  
19                  ship granting organization.

20           “(5) SCHOLARSHIP.—The term ‘scholarship’  
21           does not include any payment to fulfill or fund any  
22           obligation or project of any school or school system  
23           to provide a free, appropriate public education.

1       “(d) REQUIREMENTS FOR SCHOLARSHIP GRANTING  
2 ORGANIZATIONS.—An organization meets the require-  
3 ments of this section if—

4           “(1) such organization does not provide grants  
5 to eligible students for any expenses other than  
6 qualified elementary and secondary education ex-  
7 penses,

8           “(2) such organization provides grants to—

9               “(A) more than 1 student, and

10               “(B) students attending more than 1  
11 school,

12           “(3) such organization does not earmark or set  
13 aside contributions for scholarships on behalf of any  
14 particular student or to any specific school or group  
15 of schools,

16           “(4) such organization takes appropriate steps  
17 to verify the annual household income and family  
18 size of eligible students to which it provides grants,

19           “(5) such organization obtains annual audits  
20 from an independent certified public accountant and  
21 submits such audits to the Secretary,

22           “(6) no employee of such organization has vio-  
23 lated any law relating to the audit described in para-  
24 graph (4), and

25           “(7) such organization—

1           “(A) requires any eligible student who re-  
2 ceives a scholarship—

3           “(i) to participate in the evaluation  
4 conducted by the Institute of Education  
5 Science under section 2(d) of the Edu-  
6 cational Opportunities Act, and

7           “(ii) to permit such organization to  
8 share assessment information and other  
9 data regarding the student with the Insti-  
10 tute in accordance with subparagraph (B),  
11 and

12           “(B) provides the reports described in sub-  
13 section (e)(1)(C) and such other information as  
14 necessary to the Director of the Institute of  
15 Education Science for the purposes of identi-  
16 fying eligible students receiving a scholarship  
17 from such organization and conducting the eval-  
18 uations and reports required under section 2(d)  
19 of the Educational Opportunities Act.

20 For purposes of paragraph (5), the term ‘inde-  
21 pendent certified public accountant’ means, with re-  
22 spect to an organization, a certified public account-  
23 ant which is not a related person (within the mean-  
24 ing of section 465(b)(3)(C)) with respect to such or-  
25 ganization or any employee of such organization.

1       “(e) ELIGIBLE SCHOOL REPORTING REQUIRE-  
2 MENT.—

3           “(1) IN GENERAL.—The reports described in  
4 this subsection include—

5           “(A) a report to the parents on the stu-  
6 dent’s academic achievement, including a com-  
7 parison with the aggregate academic achieve-  
8 ment of other students in the same grade or  
9 level at the school who receive a scholarship  
10 from a scholarship granting organization, if  
11 available, and

12           “(B) a report to each scholarship granting  
13 organization that provides scholarships to stu-  
14 dents at the school, including—

15           “(i) the test results, in the aggregate  
16 and disaggregated by race or ethnicity and  
17 grade level, of the students receiving such  
18 scholarships who are in grades 3 through  
19 12 on a grade-appropriate nationally norm-  
20 referenced standardized test, or a grade-  
21 appropriate State-recognized assessment,  
22 and

23           “(ii) any additional data requested by  
24 the Director of the Institute of Education  
25 Sciences in accordance with section

1                   2(d)(B) of the Educational Opportunities  
2                   Act.

3                   “(2) NO PERSONALLY IDENTIFIABLE INFORMA-  
4                   TION.—In preparing and submitting the report de-  
5                   scribed in paragraph (1)(B), a school shall not in-  
6                   clude any personally identifiable information regard-  
7                   ing a student.

8                   “(f) DENIAL OF DOUBLE BENEFIT.—No deduction  
9                   shall be allowed under any provision of this chapter for  
10                  any expense for which a credit is allowed under this sec-  
11                  tion.

12                  “(g) ELECTION.—This section shall apply to a tax-  
13                  payer for a taxable year only if such taxpayer elects to  
14                  have this section apply for such taxable year.”.

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

“Sec. 25E. Contributions for qualified elementary and secondary education tui-  
tion.”.

20                  (b) CREDIT FOR CORPORATIONS.—

21                  (1) IN GENERAL.—Subpart D of part IV of  
22                  subchapter A of chapter 1 of the Internal Revenue  
23                  Code of 1986 is amended by adding at the end the  
24                  following new section:



1 **“SEC. 45T. CONTRIBUTIONS TO SCHOLARSHIP GRANTING**  
2 **ORGANIZATIONS.**

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

8 “(b) LIMITATION.—The amount of the credit deter-  
9 mined under this section for any taxable year shall not  
10 exceed \$100,000.

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

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

18 “(e) ELECTION.—This section shall apply to a tax-  
19 payer for a taxable year only if such taxpayer elects to  
20 have this section apply for such taxable year.”.

21 (2) CONFORMING AMENDMENTS.—

22 (A) Section 38(b) of such Code is amended  
23 by striking “plus” at the end of paragraph  
24 (31), by striking the period at the end of para-  
25 graph (32) and inserting “, plus”, and by add-  
26 ing at the end the following new paragraph:

1 “(33) the education scholarship credit deter-  
2 mined under section 45T(a).”.

3 (B) The table of sections for subpart D of  
4 part IV of subchapter A of chapter 1 of such  
5 Code is amended by adding at the end the fol-  
6 lowing new item:

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

7 (c) **EXCISE TAX ON FAILURE OF SCHOLARSHIP**  
8 **GRANTING ORGANIZATIONS TO MAKE DISTRIBUTIONS.—**

9 (1) **IN GENERAL.—**Chapter 42 of the Internal  
10 Revenue Code of 1986 is amended by adding at the  
11 end the following new subchapter:

12 **“Subchapter I—Scholarship Granting**  
13 **Organizations**

“Sec. 4969. Tax on failure to distribute receipts.

14 **“SEC. 4969. TAX ON FAILURE TO DISTRIBUTE RECEIPTS.**

15 “(a) **TAX IMPOSED.—**There is hereby imposed a tax  
16 on the failure of an scholarship granting organization (as  
17 defined in section 25E(c)(2)) to make distributions in any  
18 taxable year in an amount equal to or in excess of the  
19 required distribution amount before the distribution dead-  
20 line.

21 “(b) **AMOUNT OF TAX.—**The tax imposed by sub-  
22 section (a) shall be equal to 15 percent of the excess (if  
23 any) of—

1           “(1) the required distribution amount with re-  
2           spect to the taxable year, over

3           “(2) the amount of receipts of the scholarship  
4           granting organization for such taxable year which  
5           are distributed before the distribution deadline with  
6           respect to such receipts.

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

8           “(1) REQUIRED DISTRIBUTION AMOUNT.—The  
9           required distribution amount with respect to a tax-  
10          able year is an amount equal to 90 percent of the  
11          total receipts of the scholarship granting organiza-  
12          tion for such taxable year.

13          “(2) DISTRIBUTIONS.—The term ‘distribution’  
14          includes amounts which are formally committed but  
15          not distributed.

16          “(3) DISTRIBUTION DEADLINE.—The distribu-  
17          tion deadline with respect to receipts for a taxable  
18          year is the first day of the second taxable year fol-  
19          lowing the taxable year in which such receipts are  
20          received by the scholarship granting organization.

21          “(d) REASONABLE CAUSE EXCEPTION.—The tax im-  
22          posed by subsection (a) shall not apply with respect to any  
23          failure to make required distributions before the distribu-  
24          tion deadline which is not willful and is due to reasonable  
25          cause.”.

1 (2) ABATEMENT OF TAX.—

2 (A) GENERAL RULE.—Subsection (b) of  
3 section 4962 of such Code is amended by strik-  
4 ing “or G” and inserting “G, or I”.

5 (B) FIRST TIER TAX.—Subsection (a) of  
6 section 4963 of such Code is amended by in-  
7 serting “4969,” after “4967,”.

8 (C) TAXABLE EVENT.—Subsection (c) of  
9 section 4963 of such Code is amended by in-  
10 serting “4969,” after “4967,”.

11 (3) CORRECTION PERIOD.—Subparagraph (A)  
12 of section 4963(e)(2) of such Code is amended by in-  
13 serting “or 4969” after “4942”.

14 (4) CONFORMING AMENDMENT.—The table of  
15 subchapters for chapter 42 of such Code is amended  
16 by adding at the end the following new item:

“SUBCHAPTER I—SCHOLARSHIP GRANTING ORGANIZATIONS”.

17 (d) EVALUATIONS.—

18 (1) DEFINITIONS.—In this section—

19 (A) the terms “eligible student”, “qualified  
20 elementary and secondary education expenses”,  
21 and “scholarship granting organization” have  
22 the meanings given such terms in section  
23 25E(c) of the Internal Revenue Code of 1986,  
24 as added by this Act;

1 (B) the term “Director” means the Direc-  
2 tor of the Institute of Education Sciences; and

3 (C) the term “participating student”  
4 means an eligible student who receives a schol-  
5 arship for qualified elementary and secondary  
6 education expenses from a scholarship granting  
7 organization.

8 (2) EVALUATIONS.—

9 (A) IN GENERAL.—By not later than April  
10 1 of the year following the year of the date of  
11 enactment of this Act, and by April 1 of each  
12 subsequent year, the Director shall conduct an  
13 annual evaluation to determine the effectiveness  
14 of scholarships provided by scholarship granting  
15 organizations to eligible students in improving  
16 the academic achievement and success of the el-  
17 igible students.

18 (B) CONTENTS OF THE EVALUATION.—In  
19 conducting the evaluation required under this  
20 subsection, the Director shall—

21 (i) request, from each scholarship  
22 granting organization, the reports provided  
23 to the scholarship granting organization by  
24 the schools accepting participating stu-

1 dents, in accordance with section  
2 25E(e)(1)(B);

3 (ii) using the reports described in  
4 clause (i), assess the academic achievement  
5 of all participating students in grades 3  
6 through 12, based on the nationally norm-  
7 referenced standardized test or State-rec-  
8 ognized assessment used by each school;

9 (iii) evaluate the school retention  
10 rates, secondary school graduation rates,  
11 and institution of higher education admis-  
12 sion rates of participating students;

13 (iv) evaluate the success of the tax  
14 credits allowed under section 25E and 45T  
15 of the Internal Revenue Code of 1986, as  
16 added by this Act, in expanding school  
17 choice options for parents of participating  
18 students, increasing the satisfaction of  
19 such parents and students, and increasing  
20 parental involvement of such parents in the  
21 education of their students; and

22 (v) evaluate such other issues with re-  
23 spect to the education of participating stu-  
24 dents as the Director considers appropriate  
25 for inclusion in the evaluation.

1           (3) REPORTS.—By not later than April 1 of the  
2 year after the year of the first evaluation under  
3 paragraph (2), and by April 1 of each subsequent  
4 year, the Director shall submit to the Committee on  
5 Finance and the Committee on Health, Education,  
6 Labor, and Pensions of the Senate, and the Com-  
7 mittee on Ways and Means and the Committee on  
8 Education and the Workforce of the House of Rep-  
9 resentatives, an annual report on scholarships pro-  
10 vided by scholarship granting organizations that in-  
11 corporates the results of the most recent evaluation  
12 described in paragraph (2).

13           (4) PROHIBITION.—No personally identifiable  
14 information shall be disclosed in the data, evalua-  
15 tions, and reports required under this subsection.

16           (5) PUBLIC AVAILABILITY.—The Director shall  
17 make all evaluations, reports, and underlying data  
18 gathered pursuant to this subsection available to the  
19 public, upon request and in a timely manner fol-  
20 lowing submission of the applicable report or evalua-  
21 tion under this subsection, subject to paragraph (4).

22           (e) EFFECTIVE DATE.—The amendments made by  
23 subsections (a), (b), and (c) shall apply to taxable years  
24 beginning after December 31, 2018.

○