A Scholarship Tax Credit Program for Colorado

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Executive Summary

Scholarship tax credits increase the opportunity for K-12 students to access non-public educational options. Such a tax code modification increases the incentive for persons and businesses to contribute funds to qualified non-profit scholarship granting organizations. In turn, the organizations use most of the incoming funds to assist low- and middle-income families with private school tuition expenses.

Currently, 11 states operate a total of 14 different scholarship tax credit programs. No two programs are alike, with different criteria for student eligibility, scholarship sizes, limits on the size or value of tax credits, and requirements for scholarship organizations. Though research has been limited, strong evidence exists that such programs yield academic and competitive benefits, generate a positive fiscal impact on the state, and improve parental satisfaction. No scholarship tax credit program has been overturned by a state or federal court.

Colorado has a great need to adopt a scholarship tax credit program. Important measures of achievement and attainment, especially among disadvantaged groups, continue to lag below expectations. Even the highest-performing schools do not serve every student well. Parents should be empowered to choose different educational settings that serve their children's needs.

By harnessing the power of voluntary contributions, a scholarship tax credit program could open the doors of learning opportunity for thousands of Colorado students with no negative fiscal impact on the State. A model program would provide dollar-for-dollar tax credits to persons and businesses that contribute to qualified non-profit organizations that provide scholarships for K-12 non-public school tuition, as follows:

- All children from families with incomes at or below 300 percent of federal poverty level should be eligible for a scholarship
- To promote cost savings, scholarship eligibility during the program's first three years also should be limited to students previously enrolled in public school, incoming kindergarteners, and students already receiving a privately-funded scholarship
- The maximum scholarship amount should be set at 50 percent of state average Per Pupil Revenue for K-8 students and 60 percent of PPR for high school students
- The program should operate without a total annual program cap
- The program should limit credits for individual contributions to 50 percent of the taxpayer's liability
- Participating non-profit organizations must abide by basic financial accountability standards and must disburse at least 90 percent of their funds as scholarships, though the General Assembly also could consider a relaxed standard for startup organizations

Colorado policymakers should give careful consideration to providing many of the state's families an important benefit through the adoption of scholarship tax credits.

What Is a Scholarship Tax Credit Program?

Scholarship tax credits enhance educational choice through use of the state tax code. Persons or businesses receive significant tax benefits for making contributions to nonprofit groups that provide scholarships to K-12 students, assisting families with private school tuition expenses. States that have adopted such programs expand learning opportunities for eligible students. Many of these states' existing programs further preserve more dollars for each student who stays enrolled in the public system.

In its basic form, a scholarship tax credit program provides a benefit to students and families by changing how state revenue collectors recognize charitable giving to qualified groups. Under current law, a person or business who donates money to a K-12 tuition scholarship organization generally receives a tax *deduction*, or a decrease in the amount of his income subject to taxation. Under a tax *credit* program, the amount of tax dollars owed to the state is directly reduced according to the donation amount.

The ultimate beneficiary of the policy change is the student who receives one of the greater number of available scholarships.

Example: *With $100,000 in annual taxable income,* ***John Smith*** *pays 5 percent in state income taxes, or $5,000. He makes a $1,000 donation to ABC Scholarships. The currently offered tax* ***deduction*** *reduces his taxable income by $1,000 to $99,000, and his 5 percent tax bill to $4,950. A 100% tax* ***credit*** *on his donation would reduce his tax bill by $1,000 to $4,000.*

Offering a tax credit rather than a deduction strengthens the incentive to give to organizations that administer and grant scholarships to K-12 students. In fact, new organizations well may emerge to help fill the demand for tuition scholarships. With more funds available, the opportunity exists to serve more students.

The ultimate beneficiary of the policy change is the student who receives one of the greater number of available scholarships. Typically, the scholarship amount covers a significant portion of total tuition costs. Many families of limited means thus are enabled to afford a non-public education they choose to fulfill their children's potential. A new school setting may be desired for stronger academics, a safer environment, values that better resonate with parents, or many other reasons.

Example: *The* ***Jones Family*** *cannot afford to send daughter* ***Alicia*** *and son* ***Alex*** *to a private school that would better serve their needs. Mr. and Mrs. Jones both work to make ends meet. Annual tuition for two students is $10,000. With each student receiving a $3,000 scholarship from ABC Scholarships, the school bill is cut by more than half, and the family can exercise an educational choice previously unavailable.*

History

In 1997 Arizona became the first state to enact a scholarship tax credit program. As of today, 11 states have established 14 different programs (see table 1 below). Most have been adopted within the past five years, four of them in 2012 alone. Texas legislators are considering the adoption of the nation's 15th scholarship tax credit program.[1]

Table 1. K-12 Scholarship Tax Credit Programs, By Year Enacted

State	Program	Year Enacted
Arizona	Personal Credit for School Tuition Organizations	1997
Florida	Tax Credit Scholarship Program	2001
Pennsylvania	Educational Improvement Tax Credit Program	2001
Arizona	Corporate Credit for School Tuition Organizations	2006
Iowa	School Tuition Organization Tax Credit	2006
Rhode Island	Tax Credits for Contributions to Scholarship Organizations	2006
Georgia	Private School Tax Credit for Donations to Student Scholarship Organizations	2008
Arizona	Disabled/Displaced Pupils Corporate Tax Credit Program	2009
Indiana	School Scholarship Tax Credit	2009
Oklahoma	Equal Opportunity Education Scholarships	2011
Louisiana	Tax Credit for Donations to School Tuition Organizations	2012
New Hampshire	Corporate Education Tax Credit	2012
Pennsylvania	Educational Opportunity Scholarship Tax Credit	2012
Virginia	Education Improvement Scholarships Tax Credits	2012

Source: Friedman Foundation for Educational Choice, http://edchoice.org

No two scholarship tax credit programs are exactly alike. Variations include not only how much of the contribution qualifies for a credit, but also which students are eligible to receive a scholarship. Many states cap the annual amount of tax credits for individual contributors or for total contributions statewide. Maximum tuition scholarship amounts often are set, while some programs place guidelines and reporting requirements on scholarship-granting organizations in order to participate.

Benefits of Scholarship Tax Credits

Though little high-quality research on the student and school impacts from scholarship tax credits has been done, the results consistently have been positive. Led by Northwestern University economist David Figlio, two major analyses of Florida's Tax Credit Scholarship Program present key evidence for consideration. First, multiple years of test scores show "modestly but consistently positive" math and reading achievement gains for thousands of participating low-income students.[2] Second, the program demonstrated competitive benefits by yielding similar gains from public schools. The closer a private school that could accept a scholarship student, as well as the greater the number or diversity of surrounding private schools, the more pronounced a public school's academic improvement.[3]

The academic benefits of scholarship tax credits align closely with the broader body of gold-standard research findings on vouchers.[4] Indeed, both vouchers and scholarship tax credits offer greater choice in the private educational sector. Yet the two types of programs fundamentally differ. Voucher funds pass through government coffers, have a mixed record in the state courts, and are associated with more regulatory burdens on private schools.[5] By contrast, tax credit programs utilize private funds and have been consistently ruled constitutional at both the state and federal level.[6]

A 2009 Arizona Supreme Court decision shut down a voucher program designed to serve special-needs students, while explicitly stating that a tax credit mechanism would survive scrutiny.[7] Lawmakers quickly amended "Lexie's Law" to meet the court's concern. In a case stemming from a different Arizona choice program, the U.S. Supreme Court ruled two years later that state residents have no standing to challenge the constitutionality of a tax credit program because they utilize private, not public funds.[8]

Research also has confirmed that the nation's three oldest scholarship tax credit programs all have resulted in significant savings to state budgets. Two of the three states (Arizona and Florida) spend less per pupil on K-12 education than Colorado does. In all cases, average scholarship amounts remain far less than public school per pupil expenditures. Spending reductions thus substantially outweigh revenue that state treasuries have forgone due to tax credits:

…tax credit programs utilize private funds and have been consistently ruled constitutional at both the state and federal level.

- A 2009 independent economic analysis of Arizona's Personal Credit estimated K-12 public expenditures fell anywhere from \$99.8 to \$241.5 million per year as students switched to private schools, while the state only lost \$55.3 million in tax revenue.[9] The wide range of the estimate is based in trying to determine whether students would have enrolled in non-public school without scholarship aid provided by tax benefits.
- In 2010, Florida legislative research staff identified \$118.4 million in education spending reductions compared to \$82.2 million in tax revenue forgone, resulting in a \$36.2 million net benefit to taxpayers.[10] By law, all students in the program are low-income and have to transfer from a public school, unless they are entering kindergarten.
- A 2011 Commonwealth Foundation analysis of Pennsylvania's Educational Improvement Tax Credit program recorded \$512 million in annual spending reductions versus \$40 million in lost tax revenue. While the report did not distinguish students who would have attended private school anyway, the average scholarship size and number of low-income students serve suggest a substantial annual net savings.[11]

Florida is the only state with scholarship tax credits to measure systematically parental satisfaction with the program. More than 95 percent of scholarship parents rated their child's new school as "excellent" or "good" on an official state survey.[12] A 2009 poll sponsored by the Friedman Foundation for Educational Choice found similarly overwhelming levels of satisfaction. The numbers of parents "very satisfied" with various aspects of the new private schools were 10 to 20 times greater than those who reported satisfaction with the old public school.[13]

Finally, scholarship tax credits garner significantly greater support in scientific opinion polling than do private school vouchers or even public charter schools. A 2012 national survey found 53 percent of Americans favor, and only 16 percent oppose, “a tax credit for individual and corporate donations that pay for scholarships to help low-income parents send their children to private schools.” When no neutral option was offered, scholarship tax credits won support from 72 percent of respondents, compared to 62 percent for charters and 50 percent for vouchers.[14]

Colorado Students Need More Opportunities

Despite a number of education reforms that have been enacted and implemented in Colorado, the potential of far too many students is being lost. Achievement scores, as measured by the battery of state tests, have registered progress in some areas but still fall short of desired outcomes. The highest level of Transitional Colorado Assessment Program (TCAP) proficiency was recorded on the critical benchmark of third grade reading, yet one in four students are not reading capably at grade level. Roughly half of eighth-graders do not perform proficiently in math, science, or writing.[15]

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The on-time graduation rate for Colorado students stands at 74 percent, placing the state among the lowest third in the nation. Results are even worse for students who are Black or African American (65 percent), Hispanic / Latino (60 percent), or Economically Disadvantaged (62 percent).[16] Among students who do graduate high school, the need for extra academic help at college remains high. During the 2010-11 school year, more than one in three Colorado public high school graduates enrolled at Colorado two-year or four-year postsecondary institutions needed remediation in reading, writing, or math.[17]

Nonetheless, even high-performing schools and districts are unable to serve all students most effectively. Parents are best situated to determine the individual needs and abilities of their children. Expanded scholarship assistance could open doors for families with one or more children who are not being adequately served in their current learning environment.

Several non-profit K-12 scholarship organizations operate in Colorado, but their capacity to accept funds that serve families is exceeded by the demand for private educational options. While the dynamic of expanded choice could allow for the entry of new non-public schools into the market to serve the greater number of families seeking scholarships, existing institutions still have a significant amount of space to serve more students. Cumulatively, the 135 Colorado private schools that partner with the state’s largest scholarship organization report running at 77 percent of capacity, with a total of 9,500 open seats.[18]

A Scholarship Tax Credit Program for Colorado

In adopting a scholarship tax credit program, Colorado should embrace a policy that maximizes learning opportunities and provides direct accountability to program beneficiaries, while also affording fiscal benefits to the State and local education agencies. Parental choice, student equity, and procedural transparency should be guiding principles. See **Appendix C** for proposed model legislation.

Student Eligibility and Scholarship Size

Tax credit scholarships primarily should be available to families with the least financial means, but not made so restrictive as to exclude others who cannot reasonably afford private school tuition. The program should allow broad eligibility for students from low- and middle-income families to be able to receive scholarships for non-public school tuition. Therefore, scholarships should be extended to families earning as much as 300 percent of the federal poverty rate, currently $69,150 a year for a family of four.[19] That figure is almost identical to Colorado's reported median family income of $69,110, which means roughly half of families—the least affluent—would be eligible to receive the benefit.[20]

Additionally, to promote fiscal savings at the state level, the benefit should be phased in for the first two or three years to include only current public school students and incoming kindergarteners before ending the "switcher" requirement.[21] Eight of the 14 existing scholarship tax credit programs incorporate a "prior public" requirement on scholarship recipients. Even without the requirement, Arizona and Pennsylvania have shown evidence of substantial savings.

Virginia exempts special needs students from family means testing to receive one of the state's newly-enacted Education Improvement Scholarships Tax Credits. One of Arizona's three scholarship tax credit programs exclusively benefits students who have an Individual Education Plan or are served by the state's foster care system. Other programs are aimed exclusively at (Pennsylvania's 2012 program)—or give priority to (Louisiana)—students who attend schools deemed to be failing by the state's accountability system.[22]

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Most existing tax credit programs cap the scholarship size, usually at full tuition value or to some amount that approximates average non-public school tuition. Only in Florida does the average scholarship amount distributed even approach this value. K-12 scholarships granted through many non-profit organizations typically cover less than full tuition value to ensure families have some direct investment in the education decision.

The experience of other states offers no evidence to suggest this trend would change under a tax credit program. Louisiana indexes the maximum scholarship amount to 80 percent (K-8 schools) or 90 percent (high school) of Per Pupil Revenue (PPR)'s state share.[23] Similarly, Colorado could cap the scholarship amount at 50 percent of state average PPR for K-8 scholarships and 60 percent of PPR for high school scholarships. In 2012-13, the state's average PPR is $6,463, which would effectively cap individual scholarships at $3,232 (K-8) and $3,878 (high school).[24]

For more on student eligibility in existing scholarship tax credit programs, see **Appendix A**.

Setting Boundaries: Tax Credit Amounts and Program Caps

Seven of the 11 states with scholarship tax credit programs make the benefit available both for personal and corporate income taxes, an approach Colorado should follow. In the other four states, including Pennsylvania and Rhode Island, the credit only applies to corporate taxes. Neither Florida nor New Hampshire levies a personal income tax.

Typically, a state can limit the scope of scholarship tax credit programs in three ways:
1. *Establish a total program cap* that limits the amount of tax credits that can be offered statewide in a given year, creating an artificial barrier to program demand;
2. *Lower the tax credit value* so only a portion of the scholarship donation is written off the tax bill, reducing the incentive for taxpayers to make donations; or
3. *Limit the size of the tax credit* a person or business can receive each year in real dollars or as a share of tax liability.

Establishing a total program cap would not be ideal for Colorado. The approach could limit the demand to fund or receive scholarships, affecting certain regions or sectors unevenly. To be acceptable, though, any total program cap contemplated ought to escalate automatically to provide for future demand. If the cap is set too low, consumer demand will trigger an adjustment. Requiring legislative authorization to increase available program dollars could needlessly thwart students' attempts to access available educational opportunities.

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Arizona's 1997 personal tax credits and Louisiana's newly-enacted scholarship tax credits are the only two existing programs that do not operate under a fixed cap of total program contributions. All the monetary caps are less than (and most of them significantly so) 2 percent of annual state tax revenues for K-12 public education.[25]

Four states use an "escalator" approach that allows the total program cap to grow without additional legislative action. The cap of Arizona's corporate credit grows annually by 20 percent, while Georgia's cap will increase automatically each year until 2018 based on inflationary values in the Consumer Price Index.[26] Once a contribution threshold is reached in New Hampshire (80 percent) or Florida (90 percent), the cap is triggered to rise by 25 percent for the following year.[27]

The second option, lowering the value of the tax credit, is equally unappealing to a model Colorado program. Most corporate donors in Pennsylvania pledge to make consecutive years of contributions in order to receive a 90 percent credit, as opposed to only 75 percent for making a single year's contribution. Some programs provide even stronger deterrents with values of 65 percent (Iowa and Virginia) or even 50 percent (Indiana and Oklahoma).[28]

Instead, Colorado should grant a dollar-for-dollar tax credit to match the amount of the individual or corporate scholarship donation. Six of the 14 programs—all three in Arizona, along with Florida, Georgia, and Louisiana—provide the 100 percent credit.

Of the three ways to limit the scope of a Colorado scholarship tax credit program, the last is the most acceptable. Limiting the amount of tax credit by itself does not restrain the number of contributors nor weaken the incentive to participate by adding a "cost" to giving. Fully half of the existing programs place a hard limit on how much an individual or business can donate and still receive the tax write-off.[29]

To treat taxpayers more equitably, individual tax credit limits would be better set as a share of income tax liability. Corporate contributors to Georgia's Private School Tax Credit can give no more than 75 percent of their total liability in a given year.[30] For Colorado, 50 percent would be a reasonable limit to place on both personal and corporate donors. Nearly 50 percent of General Fund income tax revenues are used for K-12 education, refuting the argument that tax credits could be used to divert non-education program funding. An individual who owes $5,000 in taxes to the State of Colorado then could donate as much as $2,500 to an eligible scholarship organization. Persons or businesses with higher tax burdens could make larger donations.

For more on design features of existing tax credit scholarship programs, see **Appendix B**.

Scholarship-Granting Organizations

Policy changes should create minimal interference with the operations of scholarship-granting organizations except to ensure that funds are effectively and transparently serving student needs. Organizations ought to have recognized non-profit status and offer scholarships to more than one qualified private school. They would be authorized to issue checks to beneficiary parents, who then must endorse the check over to the school.

An individual who owes $5,000 in taxes to the State of Colorado then could donate as much as $2,500 to an eligible scholarship organization.

Generally speaking, most tax credit programs require participating scholarship organizations to "disburse at least 90 percent of their funds in the form of scholarships."[31] Pennsylvania more generously allows the organizations to spend as much as 20 percent of their budgets on administrative costs, while Florida (3 percent) and Virginia (5 percent) have more stringent requirements.[32]

An informal survey of 44 Pennsylvania scholarship organizations found that 27 were satisfied with the 80 percent disbursement requirement, while 13 respondents favored a more stringent mandate. Among 60 organizations surveyed in five different tax credit states, the "average disbursement rate was 92 percent."[33] A 90 percent requirement thus should be suitable for existing Colorado organizations. Yet policymakers could provide an exception for new organizations that incur more overhead expenses during a startup phase, temporarily lowering the disbursement requirement to 80 percent.

To protect contributors and recipients, scholarship organizations should demonstrate financial viability, report basic information regarding contributions, and conduct employee background checks to prevent inappropriate use of funds. Private schools likewise ought to comply with local health and safety codes, as well as anti-discrimination laws, and to provide regular reports to parents concerning their students' academic progress.

However, policymakers should avoid imposing excessive regulations in order to help ensure schools and scholarship organizations are directed to serve students' genuine needs rather than bureaucratic priorities. Based on the experience of other states with scholarship tax credits, such a program in Colorado likely would foster an expanded number of diverse organizations available to connect families to sought-after educational services. Organizations may specialize in serving students based on income, region, or special learning needs.[34]

Conclusion

In recent years, Colorado policymakers have initiated reforms to deepen academic standards, to raise the bar of accountability, and to improve educator effectiveness. Yet despite pockets of improvement and signs of modest progress, a significant number of K-12 students are not reaching their full potential.

...policymakers should avoid imposing excessive regulations in order to… serve students' genuine needs rather than bureaucratic priorities.

The track record of established scholarship tax credit programs indicates many of the promised benefits of this approach. The recent addition of many new programs further helps show the way to expanding educational freedom and opportunity in a highly-cost effective way. The time has come for Colorado leaders to consider carefully the adoption of tax credit scholarships.

Acknowledgments

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Appendix A: Student Eligibility in Existing Scholarship Tax Credit Programs[35]

State	Program	Student Eligibility							
		Means-Tested	*Special Needs*	*Prior Public (or K)*	*OR 1st Grade*	*OR Prior Schol.*	*OR New Resident*	*OR Home school*	*Failing school*
AZ	Personal STO Credit	No	No	No	N/A	N/A	N/A	N/A	No
AZ	Corporate STO Credit	185% Red. Lunch	No	Yes	No	No	No	No	No
AZ	Disabled / Displaced Pupils STO Credit ("Lexie's Law")	No	IEP (IDEA) / Foster care	No	N/A	N/A	N/A	N/A	N/A
FL	Tax Credit Scholarship	FRL	No	Yes	Yes	No	No	No	No
GA	Private School Tax Credit	No	No	Yes	Yes	No	No	No	No
IN	School Scholarship Tax Credit	200% FRL	No	Yes	No	Yes	No	No	No
IA	STO Tax Credit	300% Poverty	No	No	N/A	N/A	N/A	N/A	N/A
LA	Tax Credit for Donations to STOs	250% Poverty	No	Yes	No	Yes	No	No	Priority
NH	Corporate Education Tax Credit	300% Poverty	No	Yes	No	Yes	No	Yes	No
OK	Equal Opportunity Education Scholarships	300% FRL*	No	No	N/A	N/A	N/A	N/A	Yes
PA	Educational Improvement Tax Credit	$60,000 household income**	No	No	N/A	N/A	N/A	N/A	No
PA	Educational Opportunity Scholarship	$60,000 household income**	No	Yes	No	No	No	No	Yes
RI	Tax Credits for Contributions to STOs	250% FRL	No	No	N/A	N/A	N/A	N/A	No
VA	Education Improvement Scholarships	300% Poverty***	Yes	Yes	Yes	Yes	Yes	No	No

Legend
FRL: Free and Reduced Lunch federal eligibility guidelines
* Students who live in zone of failing school exempt from means testing
** For each additional child in the family the figure is raised $12,000
*** Special needs students exempt from family means testing

Appendix B: Design Features of Existing Scholarship Tax Credit Programs[36]

State	Program	Program Cap		Tax Credit		Scholarship Cap
		Amount	*Type*	*Cap*	*Value*	
AZ	Personal STO Credit	None	N/A	$500 ($1,000 married)	100%	$4,700 (K-8); $6,000 (HS)
AZ	Corporate STO Credit	$10,000,000	Escalator: up to 20% annum	None	100%	$4,600 (K-8); $5,900 (HS)
AZ	Disabled / Displaced Pupils STO Credit ("Lexie's Law")	$5,000,000	Fixed	None	100%	Lesser of full tuition or 90% of state pupil formula funding
FL	Tax Credit Scholarship	$140,000,000	Escalator: 25% rise if 90% reached	None	100%	$4,106*
GA	Private School Tax Credit	$50,000,000	Escalator (CPI) through 2018	Personal: $1,000 ($2,500 married); Corporate: 75% of tax liability	100%	Full tuition
IN	School Scholarship Tax Credit	$5,000,000	Fixed	None	50%	Full tuition
IA	STO Tax Credit	$8,750,000 (corp. may not exceed 25% of total)	Fixed	None	65%	Full tuition
LA	Tax Credit for Donations to STOs	None	N/A	None	100%	Lesser of full tuition OR 80% (K-8) / 90% (HS) of state pupil formula funding
NH	Corporate Education Tax Credit	$3,400,000 (Yr 1); $5,100,000 (Yr 2)	Escalator: 25% rise if 80% reached	No business can receive >10% total	85%	Avg value: $2,500 ($4,375 spec ed / $625 homeschool)
OK	Equal Opportunity Education Scholarships	$3,500,000 ($1.75M ea. for personal & corporate)	Fixed	$1,000 ($2,000 married); $100K business	50%	$5,000 ($25,000 spec ed) OR 80% of state pupil formula funding
PA	Educational Improvement Tax Credit	$44,666,667	Fixed	$300,000	75% (1-yr); 90% (2-yr)	Full tuition

PA	Educational Opportunity Scholarship	$50,000,000	Fixed	$400,000	75% (1-yr); 90% (2-yr)	$8,500 ($15,000 spec ed)
RI	Tax Credits for Contributions to STOs	$1,000,000	Fixed	$100,000	75% (1-yr); 90% (2-yr)	None
VA	Education Improvement Scholarships	$25,000,000	Fixed	$50,000 (indiv. / married only); $500 minimum	65%	Lesser of full tuition or 100% of state pupil formula funding

* May not exceed actual private school costs; at least 75% must go to tuition; transportation grants available up to $500.

Appendix C: Model Colorado Scholarship Tax Credit Legislation[37]

The Educational Success Tax Credit Program Act

SECTION 1. Short Title. This act shall be known and may be cited as the "Educational Success Tax Credit Program Act."

SECTION 2. Legislative Declaration. The general assembly hereby declares that

SECTION 3. Educational Success Tax Credit Program – Definitions – Rules. In Colorado Revised Statutes, **add** a section as follows:

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

(b) "EDUCATIONAL SCHOLARSHIP" MEANS A GRANT TO A STUDENT TO COVER ALL OR PART OF THE TUITION AND FEES AT A PRIVATE SCHOOL.

(c) "PRIVATE SCHOOL" HAS THE SAME MEANING AS SET FORTH IN SECTION 22-30.5-103 (6.5), C.R.S.

(d) "PROGRAM" MEANS THE EDUCATIONAL SUCCESS TAX CREDIT PROGRAM.

(e) (I) "QUALIFIED CHILD" MEANS A CHILD WHO WAS ELIGIBLE TO ATTEND A PUBLIC SCHOOL IN THE STATE IN THE PRECEDING SEMESTER OR IS STARTING SCHOOL IN THE STATE FOR THE FIRST TIME, AND HAS AN ANNUAL HOUSEHOLD INCOME OF LESS THAN OR EQUAL TO THREE HUNDRED PERCENT OF THE FEDERAL POVERTY LINE AS UPDATED ANNUALLY IN THE FEDERAL REGISTER BY THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES UNDER THE AUTHORITY OF 42 U.S.C. SECTION 9902(2).

(II) DURING THE FIRST THREE FISCAL YEARS OF THE PROGRAM ONLY, A "QUALIFIED CHILD" IS FURTHER LIMITED TO:

(A) A CHILD ENROLLED ON A FULL-TIME BASIS AS DESCRIBED IN THE STATE BOARD OF EDUCATION RULES IN A PUBLIC SCHOOL IN THE STATE FOR THE SCHOOL YEAR PRIOR TO ENROLLMENT IN A PRIVATE SCHOOL; OR

(B) A CHILD STARTING SCHOOL IN THE STATE FOR THE FIRST TIME; OR

(C) A CHILD WHO RECEIVED AN EDUCATIONAL SCHOLARSHIP FROM A SCHOLARSHIP GRANTING ORGANIZATION AND WAS ENROLLED IN A PRIVATE SCHOOL IN THE STATE.

(f) "SCHOLARSHIP GRANTING ORGANIZATION" MEANS AN ORGANIZATION THAT COMPLIES WITH THE REQUIREMENTS OF THIS PROGRAM AND PROVIDES EDUCATIONAL SCHOLARSHIPS TO STUDENTS ATTENDING PRIVATE SCHOOLS.

(g) "STATE AVERAGE PER PUPIL REVENUE" HAS THE SAME MEANING AS SET FORTH IN SECTION 22-54-103 (12), C.R.S.

(h) "TAXPAYER" MEANS A RESIDENT INDIVIDUAL, A MARRIED COUPLE FILING JOINTLY, OR A DOMESTIC OR FOREIGN CORPORATION SUBJECT TO THE PROVISIONS OF PART 3 OF ARTICLE 39, A PARTNERSHIP, S CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY, ESTATE, OR TRUST, AND A PARTNER, MEMBER, AND SUBCHAPTER S SHAREHOLDER OF SUCH PASS-THROUGH ENTITY.

(2) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY 1, 20__, A TAXPAYER MAY CLAIM A CREDIT FOR A CONTRIBUTION MADE TO A SCHOLARSHIP GRANTING ORGANIZATION.

(b) THE CREDIT MAY BE CLAIMED BY A TAXPAYER IN AN AMOUNT EQUAL TO THE TOTAL CONTRIBUTIONS MADE TO A SCHOLARSHIP GRANTING ORGANIZATION DURING THE TAXABLE YEAR FOR WHICH THE CREDIT IS CLAIMED UP TO 50 PERCENT OF THE TAXPAYER'S TAX LIABILITY.

(c) A TAXPAYER MAY CARRY FORWARD A TAX CREDIT UNDER THIS PROGRAM FOR THREE YEARS.

(3) AN EDUCATIONAL SCHOLARSHIP AWARDED TO A QUALIFIED CHILD IN A GIVEN SCHOOL YEAR:

(a) IF THAT CHILD IS ENROLLED IN GRADES KINDERGARTEN THROUGH EIGHT, THE EDUCATIONAL SCHOLARSHIP MAY NOT EXCEED FIFTY PERCENT OF THE PREVIOUS SCHOOL YEAR'S STATE AVERAGE PER PUPIL REVENUE.

(b) IF THAT CHILD IS ENROLLED IN GRADES NINE THROUGH TWELVE, THE EDUCATIONAL SCHOLARSHIP MAY NOT EXCEED SIXTY PERCENT OF THE PREVIOUS SCHOOL YEAR'S STATE AVERAGE PER PUPIL REVENUE.

(4) EACH SCHOLARSHIP GRANTING ORGANIZATION SHALL:

(a) NOTIFY THE DEPARTMENT OF ITS INTENT TO PROVIDE EDUCATIONAL SCHOLARSHIPS TO QUALIFIED CHILDREN ATTENDING PRIVATE SCHOOLS.

(b) DEMONSTRATE TO THE DEPARTMENT THAT IT HAS BEEN GRANTED EXEMPTION FROM THE FEDERAL INCOME TAX AS AN ORGANIZATION DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE.

(c) PROVIDE A DEPARTMENT-APPROVED RECEIPT TO TAXPAYERS FOR CONTRIBUTIONS MADE TO THE ORGANIZATION.

(d) (I) ENSURE THAT AT LEAST NINETY PERCENT OF ITS REVENUE FROM PROGRAM DONATIONS IS SPENT ON EDUCATIONAL SCHOLARSHIPS, AND THAT ALL REVENUE FROM INTEREST OR INVESTMENTS IS SPENT ON EDUCATIONAL SCHOLARSHIPS.

(II) FOR ANY CALENDAR YEAR IN WHICH AN ORGANIZATION HAS BEEN INCORPORATED LESS THAN TWO YEARS, ENSURE THAT AT LEAST EIGHTY PERCENT OF ITS REVENUE FROM DONATIONS IS SPENT ON EDUCATIONAL SCHOLARSHIPS, AND THAT ALL REVENUE FROM INTEREST OR INVESTMENTS IS SPENT ON EDUCATIONAL SCHOLARSHIPS.

(e) ENSURE THAT, DURING THE FIRST THREE FISCAL YEARS OF THE PROGRAM, FIRST-TIME RECIPIENTS OF EDUCATIONAL SCHOLARSHIPS WERE NOT CONTINUOUSLY ENROLLED IN A PRIVATE SCHOOL DURING THE PREVIOUS YEAR.

(f) DISTRIBUTE PERIODIC SCHOLARSHIP PAYMENTS AS CHECKS MADE OUT TO A STUDENT'S PARENT OR LEGAL GUARDIAN AND MAILED TO THE PRIVATE SCHOOL WHERE THE STUDENT IS ENROLLED. THE PARENT OR GUARDIAN MUST ENDORSE THE CHECK BEFORE IT CAN BE DEPOSITED.

(g) COOPERATE WITH THE DEPARTMENT TO CONDUCT CRIMINAL BACKGROUND CHECKS ON ALL OF ITS EMPLOYEES AND EXCLUDE FROM EMPLOYMENT OR GOVERNANCE ANY INDIVIDUAL OR INDIVIDUALS THAT MIGHT REASONABLY POSE A RISK TO THE APPROPRIATED USE OF CONTRIBUTED FUNDS.

(h) DEMONSTRATE ITS FINANCIAL VIABILITY, IF IT IS TO RECEIVE DONATIONS OF $50,000 OR MORE DURING THE SCHOOL YEAR, BY:

(I) FILING WITH THE DEPARTMENT PRIOR TO THE START OF THE SCHOOL YEAR A SURETY BOND PAYABLE TO THE STATE IN AN AMOUNT EQUAL TO THE AGGREGATE AMOUNT OF CONTRIBUTIONS EXPECTED TO BE RECEIVED DURING THE SCHOOL YEAR; OR

(II) FILING WITH THE DEPARTMENT PRIOR TO THE START OF THE SCHOOL YEAR FINANCIAL INFORMATION THAT DEMONSTRATES THE FINANCIAL VIABILITY OF THE SCHOLARSHIP GRANTING ORGANIZATION.

(i) ENSURE THAT PARTICIPATING SCHOOLS THAT ACCEPT ITS SCHOLARSHIP STUDENTS WILL:

(I) COMPLY WITH ALL HEALTH AND SAFETY LAWS OR CODES THAT APPLY TO PRIVATE SCHOOLS;

(II) HOLD A VALID OCCUPANCY PERMIT IF REQUIRED BY THEIR MUNICIPALITY; AND

(III) PROVIDE ACADEMIC ACCOUNTABILITY TO PARENTS OR LEGAL GUARDIANS OF THE STUDENTS IN THE PROGRAM BY REGULARLY REPORTING TO THE PARENT ON THE STUDENT'S PROGRESS.

(j) PUBLICLY REPORT TO THE DEPARTMENT BY JUNE 1 OF EACH YEAR THE FOLLOWING INFORMATION PREPARED BY A CERTIFIED PUBLIC ACCOUNTANT REGARDING THEIR PROGRAM DONATIONS IN THE PREVIOUS CALENDAR YEAR:

(I) THE NAME AND ADDRESS OF THE SCHOLARSHIP GRANTING ORGANIZATION;

(II) THE TOTAL NUMBER AND TOTAL DOLLAR AMOUNT OF CONTRIBUTIONS RECEIVED DURING THE PREVIOUS CALENDAR YEAR; AND

(III) THE TOTAL NUMBER AND TOTAL DOLLAR AMOUNT OF EDUCATIONAL SCHOLARSHIPS AWARDED DURING THE PREVIOUS CALENDAR YEAR, AND THE PERCENTAGE OF FIRST-TIME RECIPIENTS OF EDUCATIONAL SCHOLARSHIPS WHO WERE CONTINUOUSLY ENROLLED IN A PUBLIC SCHOOL DURING THE PREVIOUS YEAR.

(5) (a) THE DEPARTMENT SHALL ADOPT RULES AND PROCEDURES CONSISTENT WITH THIS ACT AS NECESSARY TO IMPLEMENT THE PROGRAM.

(b) THE DEPARTMENT SHALL PROVIDE A STANDARDIZED FORMAT FOR A RECEIPT TO BE ISSUED BY A SCHOLARSHIP GRANTING ORGANIZATION TO A TAXPAYER TO INDICATE THE VALUE OF A CONTRIBUTION RECEIVED. THE DEPARTMENT SHALL REQUIRE A TAXPAYER TO PROVIDE A COPY OF THIS RECEIPT WHEN CLAIMING THE EDUCATIONAL SUCCESS TAX CREDIT.

(c) THE DEPARTMENT SHALL HAVE THE AUTHORITY TO CONDUCT EITHER A FINANCIAL REVIEW OR AUDIT OF A SCHOLARSHIP GRANTING ORGANIZATION IF POSSESSING EVIDENCE OF FRAUD.

(d) THE DEPARTMENT MAY BAR A SCHOLARSHIP GRANTING ORGANIZATION FROM PARTICIPATING IN THE PROGRAM IF THE DEPARTMENT ESTABLISHES THAT THE SCHOLARSHIP GRANTING ORGANIZATION HAS INTENTIONALLY AND SUBSTANTIALLY FAILED TO COMPLY WITH THE REQUIREMENTS IN SUBSECTION (4) OF THIS SECTION.

(e) IF THE DEPARTMENT DECIDES TO BAR A SCHOLARSHIP GRANTING ORGANIZATION FROM THE PROGRAM, IT SHALL NOTIFY AFFECTED SCHOLARSHIP STUDENTS AND THEIR PARENTS OR LEGAL GUARDIANS OF THIS DECISION AS QUICKLY AS POSSIBLE.

(f) THE DEPARTMENT SHALL ALLOW A TAXPAYER TO DIVERT A PRORATED AMOUNT OF STATE INCOME TAX WITHHOLDINGS TO A SCHOLARSHIP GRANTING ORGANIZATION OF

THE TAXPAYER'S CHOICE UP TO THE MAXIMUM CREDIT ALLOWED BY LAW, INCLUDING CARRY-OVER CREDITS. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO DEVELOP A PROCEDURE TO FACILITATE THIS PROCESS.

Notes

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[1] Katie Ash, "Tax-Credit Vouchers to Be Pushed by Texas Senate," *Education Week*, December 20, 2012, http://blogs.edweek.org/edweek/charterschoice/2012/12/tax-credit_vouchers_to_be_pushed_in_texas.html.

[2] David N. Figlio, "Evaluation of the Florida Tax Credit Scholarship Program: Participation, Compliance and Test Scores, 2009-10," report to the Florida Department of Education (August 2011), http://www.floridaschoolchoice.org/pdf/FTC_Research_2009-10_report.pdf.

[3] David N. Figlio and Cassandra Hart, "Competitive Effects of Means-Tested School Vouchers," (April 2010), http://www.stanford.edu/group/irepp/cgi-bin/joomla/docman/figlio-irepp-presentation-paper-/download.html.

[4] For a detailed summary of random-assignment study findings of school voucher programs' academic and competitive benefits, see Greg Forster, *A Win-Win Solution: The Empirical Evidence on School Vouchers*, Friedman Foundation for Educational Choice (March 2011), http://www.edchoice.org/Research/Reports/A-Win-Win-Solution--The-Empirical-Evidence-on-School-Vouchers.aspx.

[5] Andrew Coulson, "Do Vouchers and Tax Credits Increase Private School Regulation?" Cato Institute Working Paper No. 1 (October 4, 2010), http://www.cato.org/sites/cato.org/files/pubs/pdf/WorkingPaper-1-Coulson.pdf.

[6] Federal cases include Arizona Christian Sch. Tuition Org. v. Winn, 131 S. Ct. 1436, 179 L. Ed. 2d 523 (2011). State cases include Kotterman v. Killian, 972 P. 2d 606 (Arizona 1999); Green v. Garriott, 212 P. 3d 96 - 2009; Toney v. Bower, 744 N.E. 2d 351 (Ill. App. 4th Dist. 2001), appeal denied, 195 Ill. 2d 573 (Ill. 2001); and *Griffith v. Bower*, 747 N.E.2d 423 (Ill. App. 5th Dist. 2001), appeal denied, 258 Ill. Dec. 94, 755 N.E. 2d 477 (Ill. 2001).

[7] *Cain v. Horne*, 220 Ariz. 77, 202 P.3d 1178 (2009).

[8] *Arizona Christian Sch. Tuition Org. v. Winn* (2011). See also Supreme Court of the United States blog, http://www.scotusblog.com/case-files/cases/arizona-christian-school-tuition-organization-v-winn-garriott-v-winn/.

[9] Charles M. North, "Estimating the Savings to Arizona Taxpayers of the Private School Tuition Tax Credit," Center for Arizona Policy (2009), http://www.azpolicy.org/sites/azpolicy.org/files/downloads/ArizonaSTOTaxCreditCMNorth.pdf.

[10] The Florida Legislature, Office of Program Policy Analysis and Government Accountability, "Florida Tax Credit Scholarship Program Fiscal Year 2008-09 Fiscal Impact," Research Memorandum (March 1, 2010), http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0868_1rpt.pdf.

[11] Andrew LeFevre, "A Decade of Success: Pennsylvania's Educational Improvement Tax Credit," Commonwealth Institute Policy Brief 23, no. 8 (August 2011). Jason Bedrick, "Choosing to Learn: Scholarship Tax Credit Programs in the United States and Their Implications for New Hampshire," Josiah Bartlett Center for Public Policy (March 21, 2012), p. 15, http://www.jbartlett.org/schoolchoiceweek.

[12] David N. Figlio, "Evaluation of the Florida Tax Credit Scholarship Program: Participation, Compliance, Test Scores and Parental Satisfaction," University of Florida (June 2010. See also Bedrick, "Choosing to Learn," p. 10.

[13] Greg Forster and Christian D'Andrea, "An Empirical Evaluation of the Florida Tax Credit Scholarship Program," Friedman Foundation for Educational Choice (August 2009), http://www.edchoice.org/CMSModules/EdChoice/FileLibrary/383/FL%20Poll%200709.pdf.

[14] *Education Next* / PEPG Survey of Public Opinion, April 27-May 11, 2012, http://educationnext.org/files/EN_PEPG_Survey_2012_Tables1.pdf. See also William Howells, Martin

West, and Paul E. Peterson, "Reform Agenda Gains Strength," *Education Next* 13, no. 1 (Winter 2013): 10-19, http://educationnext.org/reform-agenda-gains-strength/.
[15] Colorado Department of Education, Unit of Student Assessment, CSAP / TCAP Data and Results, http://www.cde.state.co.us/assessment/CoAssess-DataAndResults.asp.
[16] U.S. Department of Education, "Provisional Data File: SY2010-11 Regulatory Adjusted Four-Year Cohort Graduation Rates," November 26, 2012, http://www2.ed.gov/documents/press-releases/state-2010-11-graduation-rate-data.pdf.
[17] Colorado Commission on Higher Education, 2011 Legislative Report on Remedial Education, February 7, 2012, http://highered.colorado.gov/Publications/Reports/Remedial/FY2011/2011_Remedial_relfeb12.pdf.
[18] ACE Scholarships, unpublished data.
[19] U.S. Department of Health and Human Services, 2012 Poverty Guidelines, http://aspe.hhs.gov/poverty/12poverty.shtml (accessed January 30, 2013).
[20] U.S. Census Bureau, American Community Survey data, http://www.census.gov/acs/www/.
[21] Each student that switches from public school to private school enrollment reduces state expenditures to a greater extent than revenues are forgone to tax credits. The result is a net savings in state funds. For more, see Benjamin DeGrow, "K-12 Tuition Tax Credits," in *Citizens' Budget: Road Map for Sustainable Government in Colorado*, Independence Institute Issue Paper 6-2010 (November 2010), pp. 63-65, http://tax.i2i.org/files/2010/12/CB_K_12.pdf.
[22] Friedman Foundation for Educational Choice, School Choice Programs, http://www.edchoice.org/School-Choice/School-Choice-Programs.aspx.
[23] Ibid.
[24] PPR figures derived from Colorado Department of Education, Public School Finance Data, http://www.cde.state.co.us/index_finance.htm.
[25] Revenue figures derived from Mark Dixon, *Public Education Finances: 2010*, United States Census Bureau (June 2012), p. 1, Table 1, "Summary of Public Elementary-Secondary School System Finances by State: 2009-2010," http://www2.census.gov/govs/school/10f33pub.pdf.
[26] National Conference of State Legislatures, "Tuition Tax Credits," http://www.ncsl.org/issues-research/educ/school-choice-scholarship-tax-credits.aspx (accessed January 8, 2013); Friedman Foundation for Educational Choice, School Choice Programs.
[27] Friedman Foundation for Educational Choice, School Choice Programs.
[28] Ibid.; Bedrick, "Choosing to Learn," p. 35.
[29] Friedman Foundation for Educational Choice, School Choice Programs.
[30] Ibid.
[31] Bedrick, "Choosing to Learn," p. 32.
[32] Ibid.; Friedman Foundation for Educational Choice, School Choice Programs.
[33] Bedrick, "Choosing to Learn," pp. 32-33.
[34] Ibid., p. 7.
[35] Data compiled from Friedman Foundation for Educational Choice, School Choice Programs.
[36] Ibid.
[37] Some language borrowed from American Legislative Exchange Council, Great Schools Tax Credit Program Act.

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