

118TH CONGRESS
1ST SESSION

H. R. 531

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 HOUSE OF REPRESENTATIVES

JANUARY 26, 2023

Mr. SMITH of Nebraska (for himself, Mr. OWENS, Mr. KELLY of Pennsylvania, Ms. FOXX, Ms. STEFANIK, Mrs. MILLER-MEEKS, Mr. RESCHENTHALER, Mr. JORDAN, Mr. MCHENRY, Ms. MALLIOTAKIS, Mrs. STEEL, Mr. ALLEN, Mr. FLOOD, Mr. FRY, Mrs. HOUCHIN, Mr. LATURNER, Mr. LAWLER, Ms. LETLOW, Mr. LOUDERMILK, Ms. MACE, Mr. MEUSER, Mr. MOOLENAAR, Mr. RUTHERFORD, Ms. SALAZAR, Mr. WILSON of South Carolina, Mr. YAKYM, and Ms. TENNEY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Educational Choice
3 for Children Act”.

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

6 (a) CREDIT FOR INDIVIDUALS.—

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

11 **“SEC. 25F. QUALIFIED ELEMENTARY AND SECONDARY EDU-**
12 **CATION SCHOLARSHIPS.**

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

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

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

23 “(2) \$5,000.

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

25 “(1) ELIGIBLE STUDENT.—The term ‘eligible
26 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.

12 “(3) QUALIFIED ELEMENTARY OR SECONDARY
13 EDUCATION EXPENSE.—The term ‘qualified elemen-
14 tary or secondary education expense’ means—

15 “(A) expenses which would be described in
16 paragraph (3) of section 529(e) (relating to
17 qualified higher education expenses) if such
18 paragraph were applied—

19 “(i) by substituting ‘elementary school
20 or secondary school (as such terms are de-
21 fined in section 8101 of the Elementary
22 and Secondary Education Act of 1965 (20
23 U.S.C. 7801))’ for ‘eligible educational in-
24 stitution’ each place it appears, and

1 “(ii) by substituting ‘such school’ for
2 ‘such institution’ each place it appears in
3 subparagraph (B) thereof, and

4 “(B) expenses for tutoring to address aca-
5 demic needs (including learning loss) in connec-
6 tion with enrollment or attendance at an ele-
7 mentary school or secondary school (as so de-
8 fined).

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) substantially all of the activities of
18 which are providing scholarships for qualified
19 elementary or secondary education expenses of
20 eligible students,

21 “(C) which prevents the co-mingling of
22 qualified contributions with other amounts by
23 maintaining one or more separate accounts ex-
24 clusively for qualified contributions, and

1 “(D)(i) which meets the requirements of
2 subsection (d), or

3 “(ii) which, pursuant to State law, was
4 able, as of the date of the enactment of the
5 Educational Choice for Children Act, to receive
6 contributions that are eligible for a State tax
7 credit if such contributions are used by the or-
8 ganization to provide scholarships to individual
9 elementary and secondary students, including
10 scholarships for attending private schools.

11 “(d) REQUIREMENTS FOR SCHOLARSHIP GRANTING
12 ORGANIZATIONS.—

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

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

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

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

24 “(i) students awarded a scholarship
25 the previous school year, and

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

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

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

15 “(F) such organization—

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

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

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

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

8 “(3) PROHIBITION ON SELF-DEALING.—

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

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

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

20 “(f) CARRYFORWARD OF UNUSED CREDIT.—

21 “(1) IN GENERAL.—If the credit allowable
22 under subsection (a) for any taxable year exceeds
23 the limitation imposed by section 26(a) for such tax-
24 able year reduced by the sum of the credits allowable
25 under this subpart (other than this section, section

1 23, and section 25D), such excess shall be carried to
2 the succeeding taxable year and added to the credit
3 allowable under subsection (a) for such taxable year.

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

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

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 25E the following
19 new item:

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

20 (b) CREDIT FOR CORPORATIONS.—

21 (1) IN GENERAL.—Subpart D of part IV of
22 subchapter A of chapter 1 of such Code is amended
23 by adding after section 45Z the following:

1 **“SEC. 45AA. 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) AMOUNT OF CREDIT.—The credit allowed under
9 subsection (a) for any taxable year shall not exceed 5 per-
10 cent of the taxable income (as defined in section
11 170(b)(2)(D)) of the corporation for such taxable year.

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

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

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

24 (2) CONFORMING AMENDMENTS.—Section
25 38(b) of such Code is amended by striking “plus” at
26 the end of paragraph (39), by striking the period

1 and inserting “, plus” at the end of paragraph (40),
 2 and by adding at the end the following new para-
 3 graph:

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

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

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

10 (c) FAILURE OF SCHOLARSHIP GRANTING ORGANI-
 11 ZATIONS TO MAKE DISTRIBUTIONS.—

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

15 **“Subchapter I—Scholarship Granting**
 16 **Organizations**

“Sec. 4969. Failure to distribute receipts.

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

18 “(a) IN GENERAL.—In the case of any scholarship
 19 granting organization (as defined in section 25F) which
 20 has been determined by the Secretary to have failed to
 21 satisfy the requirement under subsection (b) for any tax-
 22 able year, any contribution made to such organization dur-
 23 ing the first taxable year beginning after the date of such
 24 determination shall not be treated as a qualified contribu-

1 tion (as defined in section 25F(c)(2)) for purposes of sec-
2 tions 25F and 45AA.

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

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

10 “(1) REQUIRED DISTRIBUTION AMOUNT.—

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

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

21 “(ii) increased by the amount of the
22 carryover under subparagraph (C) from
23 the preceding taxable year.

24 “(B) SAFE HARBOR FOR REASONABLE AD-
25 MINISTRATIVE EXPENSES.—For purposes of

1 subparagraph (A)(i), if the percentage of total
2 receipts of a scholarship granting organization
3 for a taxable year which are used for adminis-
4 trative purposes is equal to or less than 10 per-
5 cent, such expenses shall be deemed to be rea-
6 sonable for purposes of such subparagraph.

7 “(C) CARRYOVER.—With respect to the
8 amount of the total receipts of a scholarship
9 granting organization with respect to any tax-
10 able year, an amount not greater than 15 per-
11 cent of such amount may, at the election of
12 such organization, be carried to the succeeding
13 taxable year.

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

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

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

“SUBCHAPTER I. SCHOLARSHIP GRANTING ORGANIZATIONS”.

4 **SEC. 3. VOLUME CAP.**

5 (a) IN GENERAL.—For purposes of sections 25F(g)
6 and 45AA(e) of the Internal Revenue Code of 1986 (as
7 added by this Act), the volume cap applicable with respect
8 to both such sections (in the aggregate) shall be
9 \$10,000,000,000 for calendar year 2024 and each subse-
10 quent year thereafter. Such amount shall be allocated by
11 the Secretary of the Treasury (or the Secretary’s delegate)
12 as provided in subsection (b), except that—

13 (1) 10 percent of such amount shall be divided
14 evenly among the States, and shall be available with
15 respect to individuals residing in, and corporations
16 created or organized in, such States, and

17 (2) the amount of any allotment to a State
18 under paragraph (1) for any calendar year which is
19 not claimed by taxpayers described in such para-
20 graph during such calendar year shall be added to
21 the allotment provided to such State under such
22 paragraph for the subsequent calendar year.

23 (b) FIRST-COME, FIRST-SERVE.—For purposes of
24 applying the volume cap under this section, such volume
25 cap shall be applied based on a first-come, first-serve

1 basis, as determined based on the date on which the tax-
2 payer made the qualified contribution.

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

10 (d) ANNUAL INCREASES.—

11 (1) IN GENERAL.—In the case of the calendar
12 year after a high use calendar year, the dollar
13 amount otherwise in effect under subsection (a) for
14 such calendar year shall be equal to 105 percent of
15 the dollar amount in effect for such high use cal-
16 endar year.

17 (2) HIGH USE CALENDAR YEAR.—For purposes
18 of this subsection, the term “high use calendar
19 year” means any calendar year for which 90 percent
20 or more of the volume cap in effect for such cal-
21 endar year under subsection (a) is allocated to tax-
22 payers.

23 (3) PREVENTION OF DECREASES IN ANNUAL
24 VOLUME CAP.—The volume cap in effect under sub-
25 section (a) for any calendar year shall not be less

1 than the volume cap in effect under such subsection
2 for the preceding calendar year.

3 (4) PUBLICATION OF ANNUAL VOLUME CAP.—

4 The Secretary of the Treasury (or the Secretary’s
5 delegate) shall make publicly available the dollar
6 amount of the volume cap in effect under subsection
7 (a) for each calendar year.

8 (e) STATES.—For purposes of this section, the term
9 “State” includes the District of Columbia.

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

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

17 **“SEC. 139J. SCHOLARSHIPS FOR QUALIFIED ELEMENTARY**
18 **OR SECONDARY EDUCATION EXPENSES OF**
19 **ELIGIBLE STUDENTS.**

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

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

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

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

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

11 (a) PROHIBITION OF CONTROL OVER SCHOLARSHIP
 12 ORGANIZATIONS.—

13 (1) IN GENERAL.—

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

19 (B) 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-

1 of, to mandate, direct, or control any aspect of
2 any scholarship granting organization.

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

9 (2) PROHIBITION OF CONTROL OVER NON-PUB-
10 LIC SCHOOLS.—

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

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

1 education institutions from being considered
2 qualified elementary or secondary education ex-
3 penses.

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

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

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

19 (b) DEFINITIONS.—For purposes of this section, the
20 terms “eligible student”, “scholarship granting organiza-
21 tion”, and “qualified elementary or secondary education
22 expense” shall have the same meanings given such terms
23 under section 25F(c) of the Internal Revenue Code of
24 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, 2023.

○