

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

| | | |
|---|---|---|
| In the matter of the adoption of New Rule I and the amendment of ARM 42.4.803 and 42.4.804 pertaining to innovative educational program donations to school districts and student scholarship organizations (SSO) |) | NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |

TO: All Concerned Persons

1. On November 29, 2021, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 12, 2021. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I DEFINITIONS The following definitions apply to terms used in this subchapter:

(1) "School district," for the purposes of this rule, means a Montana public elementary school district or public high school district, or any of the three state-funded public schools: Montana School for the Deaf and Blind, the Department of Corrections – adult school, and the Department of Corrections – youth school.

AUTH: 15-1-201, 15-30-3114, MCA
IMP: 15-30-3101, 15-30-3111, MCA

REASONABLE NECESSITY: The department proposes to adopt New Rule I to implement statutory changes enacted by the 67th Montana Legislature under House Bill 279 (HB 279). HB 279 amended 15-30-3110, MCA, to include school districts as eligible recipients for innovative educational program donations. The department must provide a definition for "school district" for these rules which is applied somewhat differently than the term found in Title 20, MCA. The definition will provide persons applying for the educational tax credits with appropriate context and scope of applicability.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

42.4.803 SCHOOL DISTRICT AND STUDENT SCHOLARSHIP ORGANIZATION (SSO) REQUIREMENTS AND PREAPPROVAL PROCESS

~~(1) An organization seeking approval as a student scholarship organization shall complete and submit to the department an online application prior to accepting donations. This application is located on the department's web site at svc.mt.gov/dor/educationdonations. The student scholarship organization shall include the following information on the application:~~

~~(a) the student scholarship organization's name, address, and federal employer identification number;~~

~~(b) the student scholarship organization's representative's name, title, phone number, and e-mail address; and~~

~~(c) a list of all qualified education providers who may receive scholarships from the student scholarship organization on behalf of students.~~

~~(2) A student scholarship organization may provide scholarships only to an eligible student who attends a Montana school or is taught by a qualified education provider in Montana.~~

~~(3) Pursuant to 15-30-3103, MCA, a minimum of 90 percent of all contributions received by a student scholarship organization, after the cost of the fiscal review in 15-30-3105, MCA, must be awarded as scholarships within the three calendar years following the year of the contributions. For example, if a student scholarship organization received \$105,000 in contributions in 2017 and the cost of the fiscal review is \$5,000, the student scholarship organization must award at least \$90,000 of those contributions as scholarships before the end of 2020.~~

(1) Prior to registering a donation with the department, a school district or SSO shall submit a complete application to the department. The application is located on the department's website at the education donations portal. The application must include the following information:

(a) the school district or SSO name, address, and federal employer identification number; and

(b) the school district or SSO donation manager's name, title, phone number, and e-mail address.

(2) A school district or SSO must register each donation, upon receipt, in the department's registration system. Preapproval of the amount of donation eligible for the credit will be provided at the time the school district or SSO registers the donation in the department's registration system.

(3) With respect to the aggregate limit of tax credits allowed for a year, the priority of donations is based upon the date stamp issued by the department's registration system when a school district or SSO completes registration of the donation. Donations made in excess of the aggregate limits and credit cap, which is the amount of the credit provided under 15-30-3110 and 15-30-3111, MCA, will not be eligible for the tax credit.

(4) The department will certify to a school district or SSO the amount of credit available to the taxpayer when the school district or SSO completes the registration

of the donation in the department's registration system.

AUTH: 15-1-201, 15-30-3114, MCA

IMP: 15-30-3102, 15-30-3103, 15-30-3105, 15-30-3106, MCA

REASONABLE NECESSITY: As described in the statement of reasonable necessity for New Rule I, the department also proposes to amend ARM 42.4.803 to implement HB 279. To implement HB 279 in this rule, the department proposes to strike the existing provisions in current (1) through (3) to reflect the new donation preapproval and registration process. In proposed (1), the department would require a school district or student scholarship organization (SSO) to apply for recognition with the department prior to registering a prospective donation. Proposed (1)(a) and (b) detail the registration sought by the department from a school district or SSO.

Proposed (2) and (3) describe the preapproval procedure for the credit and donation registration system, how the department will determine priority for donations, and the certification that the department will provide to a school district or SSO upon registration of the donation. Proposed (4) provides procedural guidance as to what occurs after the school district or SSO completes the registration of the donation.

42.4.804 CREDIT LIMITATIONS AND CLAIMS (1) A taxpayer may claim a credit for contributions made in cash to an innovative educational program a school district provided for in 20-9-901, MCA, and/or a student scholarship organizations (SSO), provided for in ~~15-30-3104~~ 15-30-3110, MCA. A contribution made in cash means:

- (a) U.S. currency;
- (b) a personal check;
- (c) cashier's check;
- (d) money order;
- (e) bank draft; or
- (f) traveler's check.

(2) The maximum credit that may be claimed in a tax year by a taxpayer by an individual taxpayer or a corporation for allowable contributions to:

- (a) innovative education programs a school district is \$150 \$200,000; and
- (b) student scholarship organizations an SSO is \$150 \$200,000.

(3) and (4) remain the same.

AUTH: 15-1-201, 15-30-3114, MCA

IMP: 15-30-3101, 15-30-3111, MCA

REASONABLE NECESSITY: As described in the statement of reasonable necessity for New Rule I and ARM 42.4.803, the department also proposes to amend ARM 42.4.804 to implement HB 279. Section 15-30-3102(2), MCA, was amended to define a "donation" as a gift of cash. Proposed (1) enumerates those items included within the definition of cash to provide direction on the types of acceptable donor payments. In addition, HB 279 amended 15-30-3110 and 15-30-3111, MCA, to increase the credit per person for donations made to a school district

and/or an SSO from \$150 to \$200,000. The change proposed in (2) is to clarify that an individual or corporation cannot use a pass-through entity to reserve or claim more than \$200,000 of credit for a donation to a school district or SSO. The increased limit is reflected in proposed (2)(a) and (b).

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than December 6, 2021.

6. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at sosmt.gov/ARM/register.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email on October 20, 2021.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ David R. Stewart
David R. Stewart, authorized signor
for the Department of Revenue

Certified to the Secretary of State October 26, 2021.