

REVENUE DEPARTMENT[701]

Notice of Intended Action

Proposing rule making related to school tuition organization tax credit and providing an opportunity for public comment

The Revenue Department hereby proposes to amend Chapter 42, “Adjustments to Computed Tax and Tax Credits,” and Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 422.68.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 422.11S; 2020 Iowa Acts, House File 2641; 2019 Iowa Acts, House File 779; and 2018 Iowa Acts, Senate File 2417.

Purpose and Summary

This proposed rule making is primarily intended to implement statutory changes to the total school tuition organization tax credits that may be authorized each calendar year. 2020 Iowa Acts, House File 2641, provided a formula for an automatic increase to the total approved tax credits in future tax years if a certain threshold is met. This proposed rule making provides a process for the Department to administer this formula. The proposed rule making also implements the provision in 2020 Iowa Acts, House File 2641, which eliminated the cap on the percentage of total tax credits that could be approved each year for a corporation. Previously, not more than 25 percent of the total annual tax credits could be allocated to corporate taxpayers.

This proposed rule making also updates the rules to reflect recent legislative changes to the 2020 and 2021 tax credit caps and certain administrative terms, including the definition of “eligible student.” Finally, this proposed rule making clarifies that a taxpayer must take the credit in the tax year in which the contribution is made.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond the legislation it is intended to implement.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on June 8, 2021. Comments should be directed to:

Michael Mertens
Iowa Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306
Phone: 515.587.0458
Email: michael.mertens@iowa.gov

Public Hearing

If requested, a public hearing will be held on June 8, 2021, via video/conference call from 10 to 11 a.m. Persons who wish to participate in the video/conference call should contact Michael Mertens before 4:30 p.m. on June 7, 2021, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 701—42.32(422) as follows:

701—42.32(422) School tuition organization tax credit. ~~Effective for the tax year beginning on or after January 1, 2006, but beginning before January 1, 2007, a school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash contributions made by a taxpayer to a school tuition organization. For tax years beginning on or after January 1, 2007, the A~~ school tuition organization tax credit is available which is equal to 65 percent of the amount of voluntary cash or noncash contributions made by a taxpayer to a school tuition organization. There are numerous federal revenue regulations, rulings, court cases and other provisions relating to the determination of the value of a noncash contribution, and these are equally applicable to the determination of the amount of a school tuition organization tax credit ~~for tax years beginning on or after January 1, 2007.~~

42.32(1) Definitions. The following definitions are applicable to this rule:

“*Certified enrollment*” means the enrollment at schools served by school tuition organizations as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, of the appropriate year.

“*Contribution*” means a voluntary cash or noncash contribution to a school tuition organization that is not used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

“*Eligible student*” means a student residing in Iowa who is a member of a household whose total annual income during the calendar year prior to the school year in which the student receives a tuition grant from a school tuition organization does not exceed an amount equal to ~~three~~ four times the most recently published federal poverty guidelines in the Federal Register by the United States Department of Health and Human Services.

“*Qualified school*” means a nonpublic elementary or secondary school in Iowa which is accredited under Iowa Code section 256.11, including a prekindergarten program for students who are five years of age by September 15 of the appropriate year, and adheres to the provisions of the federal Civil Rights Act of 1964 and Iowa Code chapter 216, and which is represented by only one school tuition organization.

“*School tuition organization*” means a charitable organization in Iowa that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that does all of the following:

1. to 5. No change.

“*Tuition grant*” means a grant to a student to cover all or part of the student’s tuition at a qualified school.

42.32(2) No change.

42.32(3) *Participation forms.* Each qualified school that is served by a school tuition organization must annually submit a participation form to the department by November 1. The following information must be provided with this participation form:

a. The certified enrollment of the qualified school as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

b. The name of the school tuition organization that represents the qualified school.

~~For the tax year beginning in the 2006 calendar year only, each qualified school served by a school tuition organization must submit to the department a participation form postmarked on or before August 1, 2006, which provides the certified enrollment as of the third Friday of September 2005, along with the name of the school tuition organization that represents the qualified school.~~

42.32(4) *Authorization to issue tax credit certificates.*

a. For calendar years 2006 through 2021. By December 1 of each year, the department will authorize school tuition organizations to issue tax credit certificates for the following tax calendar year. ~~For the tax year beginning in the 2006 calendar year only, the department, by September 1, 2006, will authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year only.~~ The total amount of tax credit certificates that may be authorized is:

- (1) \$2.5 million for the 2006 calendar year,
- (2) \$5 million for the 2007 calendar year,
- (3) \$7.5 million for the 2008 through 2011 calendar years,
- (4) \$8.75 million for the 2012 and 2013 calendar years, ~~and~~
- (5) \$12 million for the 2014 ~~and subsequent~~ through 2018 calendar years,;
- (6) \$13 million for the 2019 calendar year, and
- (7) \$15 million for the 2020 and 2021 calendar years.

b. For calendar years 2022 and later. For 2022 and subsequent calendar years, the total authorized tax credits for a calendar year are computed according to a formula. By December 1 of each year, the department will make an initial authorization of tax credit certificates by school tuition organizations for the following calendar year. By February 1 following the initial authorization for a calendar year, the department will make a supplemental authorization of tax credit certificates by school tuition organizations for the same calendar year, if such supplemental authorization is available.

(1) Initial authorization. The initial authorization made by December 1 of each calendar year for the following calendar year will equal the sum of the previous calendar year’s initial authorization and the supplemental authorization for that same calendar year, if any. The initial authorization for calendar year 2022 is \$15 million.

(2) Supplemental authorization. If the amount of tax credits issued by school tuition organizations for the preceding calendar year is equal to or greater than 90 percent of the initial authorization for the current calendar year, the department will, by February 1 following the initial authorization, make a supplemental authorization of tax credits equal to 10 percent of the initial authorization for the same calendar year. If the amount of tax credits issued by school tuition organizations for the preceding calendar year is less than 90 percent of the initial authorization for the current calendar year, the department will not make a supplemental authorization of tax credits for the same calendar year.

EXAMPLE 1: For the 2022 calendar year, the department will make an initial authorization of \$15 million in tax credit certificates by school tuition organizations by December 1, 2021. If at the close of the 2021 calendar year it is determined that the amount of tax credits issued by school tuition organizations in 2021 was at least \$13,500,000 (90 percent of \$15 million, the initial authorization for 2022), then the department will, by February 1, 2022, make a supplemental authorization of \$1.5 million ($\$15 \text{ million} \times 10\%$) in tax credit certificates by school tuition organizations for the 2022 calendar year. Therefore, the total authorized tax credits for 2022 will be \$16,500,000 ($\$15 \text{ million} + \1.5 million).

EXAMPLE 2: Assume the same facts as Example 1, which means the initial authorization of tax credits for calendar year 2023 is \$16,500,000. In determining the total authorized tax credits for the 2023 calendar year, if the amount of tax credits issued by school tuition organizations in 2022 was \$14,685,000 (89% of \$16,500,000, the initial authorization for 2023), then there will be no supplemental authorization of tax credits for 2023 and the total authorized tax credits for 2023 will remain \$16,500,000.

(3) Maximum total authorization. The total authorized tax credits for a calendar year cannot exceed \$20 million.

EXAMPLE 3: Assume that the total authorized tax credits for the 2025 calendar year is \$19,965,000. Therefore, the initial authorization for the 2026 calendar year will be \$19,965,000. If the amount of tax credits issued by school tuition organizations in 2025 is \$17,968,500 (90 percent of \$19,965,000, the initial authorization for 2026), the school tuition organizations would be eligible for a supplemental authorization of \$1,996,600 ($\$19,965,000 \times 10\%$), but that supplemental authorization would cause the total authorized tax credits for calendar year 2026 to exceed \$20 million. Therefore, the department will, by February 1, 2026, make a supplemental authorization of \$35,000 in tax credit certificates by school tuition organizations for the 2026 calendar year and the total authorized tax credits for 2026 will be \$20 million ($\$19,965,000 + \$35,000$).

b. c. Formula for determining tax credit. The amount of authorized tax credit certificates for each school tuition organization is determined by dividing the total amount of tax credit available by the total certified enrollment of all qualified participating schools. This result, which is the per-student tax credit, is then multiplied by the certified enrollment of each school tuition organization to determine the tax credit authorized to each school tuition organization.

EXAMPLE 4: For determining the authorized tax credits for the 2008 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by November 1, 2007, was 37,500, the per-student tax credit would be \$200 ($\$7.5 \text{ million} \div 37,500$). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would be authorized to issue \$280,000 ($\$200 \times 1,400$) of tax credit certificates for the 2008 calendar year. The department would notify this school tuition organization by December 1, 2007, of the authorization to issue \$280,000 of tax credit certificates for the 2008 calendar year. This authorization would allow the school tuition organization to solicit contributions totaling \$430,769 ($\$280,000 \div 65\%$) during the 2008 calendar year which would be eligible for the tax credit.

EXAMPLE 5: For determining the authorized tax credits for the 2022 calendar year, if the certified enrollment of each qualified school in Iowa, as provided to the department by November 1, 2021, was 37,500, the per-student tax credit for the initial authorization would be \$400 ($\$15 \text{ million} \div 37,500$). If a school tuition organization located in Scott County represents four qualified schools with a certified enrollment of 1,400 students, the school tuition organization would receive an initial authorization to issue \$560,000 ($\$400 \times 1,400$) of tax credit certificates for the 2022 calendar year. The department would notify this school tuition organization by December 1, 2021, of the initial authorization to issue \$560,000 of tax credit certificates for the 2022 calendar year. This initial authorization would allow the school tuition organization to solicit contributions totaling \$861,538 ($\$560,000 \div 65\%$) during the 2022 calendar year which would be eligible for the tax credit.

Assuming that the school tuition organizations later qualify for a \$1.5 million supplemental authorization for the 2022 calendar year as described in Example 1 above, the per-student tax credit for the supplemental authorization would be \$40 ($\$1.5 \text{ million} \div 37,500$). The school tuition organization in Scott County representing four qualified schools with a certified enrollment of 1,400 students would receive a supplemental authorization to issue an additional \$56,000 ($\$40 \times 1,400$) of tax credit certificates for the 2022 calendar year. The department would notify this school tuition organization by February 1, 2022, of the supplemental authorization to issue \$56,000 of tax credit certificates for the 2022 calendar year. This supplemental authorization would allow the school tuition organization to solicit additional contributions of \$86,153 ($\$56,000 \div 65\%$) during the calendar year which would be eligible for the tax credit. In total, the Scott County school tuition organization would be allowed

to issue \$616,000 (\$560,000 initial authorization + \$56,000 supplemental authorization) of tax credit certificates for the 2022 calendar year.

42.32(5) Issuance of tax credit certificates.

a. The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate, ~~which will be~~ designed by the department, ~~will~~ shall contain the name, address and tax identification number of the taxpayer; the amount and date that the contribution was made; the amount of the credit; the tax year that the credit may be applied; the school tuition organization to which the contribution was made; and the tax credit certificate number.

b. ~~For tax years beginning on or after July 1, 2009, a tax credit certificate may be issued to corporation income taxpayers. For tax years beginning on or after January 1, 2013, a~~ A tax credit certificate may be issued to a partnership, limited liability company, S corporation, estate or trust. The amount of credit claimed by an individual shall be based on the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate or trust.

42.32(6) Claiming the tax credit. The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. The tax credit shall be claimed in the tax year during which the contribution is made. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier.

a. No change.

b. Married taxpayers who file separate returns or file separately on a combined return must allocate the school tuition organization tax credit to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa, including those who are claiming a tax credit of a partnership, limited liability company, S corporation, estate, or trust of which they are a member, must determine the school tuition organization tax credit in the ratio of their Iowa source net income to their total source net income. In addition, if nonresidents or part-year residents of Iowa are married and elect to file separate returns or to file separately on a combined return, the school tuition organization tax credit must be allocated between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income.

42.32(7) Reporting requirements. Each school tuition organization that issues tax credit certificates must report to the department, postmarked by January 12 of each ~~tax~~ calendar year, the following information:

a. No change.

b. The total number and dollar value of contributions received by the school tuition organization for the previous ~~tax~~ calendar year.

c. The total number and dollar value of tax credit certificates issued by the school tuition organization for the previous ~~tax~~ calendar year.

d. A list of each taxpayer who received a tax credit certificate for the previous ~~tax~~ calendar year, including the amount of the contribution and the amount of tax credit issued to each taxpayer for the previous ~~tax~~ calendar year. This list should also include the tax identification number of the taxpayer and the tax credit certificate number for each certificate.

e. to g. No change.

This rule is intended to implement Iowa Code section 422.11S as amended by 2013 Iowa Acts, House File 625.

ITEM 2. Amend rule 701—52.38(422) as follows:

701—52.38(422) School tuition organization tax credit. ~~Effective for tax years beginning on or after July 1, 2009, a~~ A school tuition organization tax credit is available which is equal to 65 percent of the amount of the voluntary cash or noncash contribution made by a corporation taxpayer to a school tuition organization. ~~For tax years beginning on or after January 1, 2013, the credit is available for S corporations, partnerships, limited liability companies, estates and trusts where the income is taxed directly to the individual shareholders, partners, members or beneficiaries, an individual may claim the credit.~~ The amount of credit claimed by an individual shall be based on the pro rata share of the

individual's earnings of the S corporation, partnership, limited liability company, estate or trust. For information on the initial registration, participation forms and reporting requirements for school tuition organizations, see rule 701—42.32(422).

52.38(1) Amount of tax credit authorized—additional limitation for corporations.

a. Of the \$7.5 million of school tuition organization tax credits authorized for the 2009 through 2011 calendar years, no more than 25 percent, or \$1,875,000, can be authorized for corporation income tax taxpayers.

b. Of the \$8.75 million of school tuition organization tax credits authorized for the 2012 and 2013 calendar years, no more than 25 percent, or \$2,187,500, can be authorized for corporation income tax taxpayers.

c. Of the \$12 million of school tuition organization tax credits authorized for the 2014 and subsequent through 2018 calendar years, no more than 25 percent, or \$3 million, can be authorized for corporation income tax taxpayers.

d. Of the \$13 million of school tuition organization tax credits authorized for the 2019 calendar year, no more than 25 percent, or \$3,250,000, can be authorized for corporation income tax taxpayers.

e. Effective July 1, 2020, the prohibition against authorizing more than 25 percent of the total authorized tax credits for corporation income tax purposes was repealed. On or after July 1, 2020, of the total school tuition organization tax credits authorized for a year, any amount can be authorized for corporation income taxpayers.

52.38(2) Issuance of tax credit certificates. The school tuition organization shall issue tax credit certificates to each taxpayer who made a cash or noncash contribution to the school tuition organization. The tax credit certificate ~~will~~ shall contain the name, address and tax identification number of the taxpayer; the amount and date that the contribution was made; the amount of the credit; the tax year that the credit may be applied; the school tuition organization to which the contribution was made; and the tax credit certificate number.

52.38(3) Claiming the tax credit. The taxpayer must include the tax credit certificate with the tax return for which the credit is claimed. The tax credit shall be claimed in the tax year during which the contribution is made. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The taxpayer may not claim a deduction for charitable contributions for Iowa corporation income tax purposes for the amount of the contribution made to the school tuition organization.

This rule is intended to implement Iowa Code section 422.33.