

116TH CONGRESS
1ST SESSION

H. R. 1434

To amend the Internal Revenue Code of 1986 to establish tax credits to encourage individual and corporate taxpayers to contribute to scholarships for elementary and secondary students through eligible scholarship-granting organizations, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2019

Mr. BYRNE (for himself, Mr. WRIGHT, Mr. LAMALFA, Ms. FOXX of North Carolina, Mr. ROONEY of Florida, Mrs. LESKO, Mr. BANKS, Mr. GAETZ, Mr. MITCHELL, Mrs. WALORSKI, Mr. ALLEN, Mr. POSEY, Mr. BUDD, Mr. STIVERS, Mr. GOSAR, Mr. BISHOP of Utah, Mr. MOONEY of West Virginia, Mr. MEADOWS, Mr. HAGEDORN, Mr. GIANFORTE, Mr. HUIZENGA, Mr. BIGGS, Mr. WALBERG, Mr. TIMMONS, Mr. WEBER of Texas, Mr. NEWHOUSE, Mr. NORMAN, Mr. SCALISE, Mr. FLORES, Mr. ROGERS of Alabama, Mr. SMITH of Nebraska, Mr. HARRIS, Mrs. ROBY, Mr. WILSON of South Carolina, Mr. YOHO, Mr. LOUDERMILK, Mr. CHABOT, Mr. BABIN, Mr. BARR, and Mr. DUNCAN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, 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 establish tax credits to encourage individual and corporate taxpayers to contribute to scholarships for elementary and secondary students through eligible scholarship-granting organizations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Education Freedom
5 Scholarships and Opportunity Act”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to encourage individual
8 and corporate taxpayers to contribute to scholarships for
9 individual elementary and secondary students through eli-
10 gible scholarship-granting organizations, as identified by
11 States.

12 **TITLE I—AMENDMENTS TO THE**
13 **INTERNAL REVENUE CODE**
14 **OF 1986**

15 **SEC. 101. REFERENCES TO THE INTERNAL REVENUE CODE**
16 **OF 1986.**

17 Except as otherwise expressly provided, whenever in
18 this title an amendment or repeal is expressed in terms
19 of an amendment to, or repeal of, a section or other provi-
20 sion, the reference shall be considered to be made to a
21 section or other provision of the Internal Revenue Code
22 of 1986.

23 **SEC. 102. TAX CREDITS FOR CONTRIBUTIONS TO ELIGIBLE**
24 **SCHOLARSHIP-GRANTING ORGANIZATIONS.**

25 (a) CREDIT FOR INDIVIDUALS.—

1 “(B) for the secondary education compo-
2 nent of an individual elementary or secondary
3 student’s career and technical education, as de-
4 fined by section 3(5) of the Carl D. Perkins Ca-
5 reer and Technical Education Act of 2006 (20
6 U.S.C. 2302(5)).

7 “(3) SECRETARY.—The term ‘Secretary’ means
8 the Secretary of Education.

9 “(4) ELIGIBLE SCHOLARSHIP-GRANTING ORGA-
10 NIZATION.—The term ‘eligible scholarship-granting
11 organization’ means—

12 “(A) an organization that—

13 “(i) is described in section 501(c)(3)
14 and exempt from taxation under section
15 501(a);

16 “(ii) provides qualifying scholarships
17 to individual elementary and secondary
18 students who—

19 “(I) reside in the State in which
20 the eligible scholarship-granting orga-
21 nization is recognized; or

22 “(II) in the case of the Bureau of
23 Indian Education, are members of a
24 federally recognized tribe;

1 “(iii) a State reports to the Secretary
2 as an eligible scholarship-granting organi-
3 zation under subsection (e)(5)(B);

4 “(iv) allocates at least 90 percent of
5 qualified contributions to qualifying schol-
6 arships; and

7 “(v) provides scholarships to—

8 “(I) more than 1 eligible student;

9 “(II) more than 1 eligible family;

10 and

11 “(III) different eligible students
12 attending more than one education
13 provider; or

14 “(B) an organization that—

15 “(i) is described in section 501(c)(3)
16 and exempt from taxation under section
17 501(a); and

18 “(ii) pursuant to State law, was able,
19 as of the date of the enactment of the
20 Education Freedom Scholarships and Op-
21 portunity Act, to receive contributions that
22 are eligible for a State tax credit if such
23 contributions are used by the organization
24 to provide scholarships to individual ele-

1 mentary and secondary students, including
2 scholarships for attending private schools.

3 “(5) QUALIFYING SCHOLARSHIP.—The term
4 ‘qualifying scholarship’ means a scholarship granted
5 by an eligible scholarship-granting organization to
6 an individual elementary or secondary student under
7 this section or section 45T.

8 “(6) STATE.—The term ‘State’ means each of
9 the 50 States, the District of Columbia, the Com-
10 monwealth of Puerto Rico, the outlying areas (as de-
11 fined in section 1121(c) of the Elementary and Sec-
12 ondary Education Act of 1965), and the Department
13 of the Interior (acting through the Bureau of Indian
14 Education).

15 “(d) RULES OF CONSTRUCTION.—

16 “(1) IN GENERAL.—A scholarship awarded to a
17 student from the proceeds of a qualified contribution
18 under this section or section 45T shall not be con-
19 sidered assistance to the school or other educational
20 provider that enrolls, or provides educational services
21 to, the student or the student’s parents.

22 “(2) NOT TREATED AS INCOME.—The amount
23 of any such scholarship shall not be treated as in-
24 come of the child or his or her parents for purposes

1 of Federal tax laws or for determining eligibility for
2 any other Federal program.

3 “(3) PROHIBITION OF CONTROL OVER NON-
4 PUBLIC EDUCATION PROVIDERS.—

5 “(A) Nothing in this Act shall be con-
6 strued to permit, allow, encourage, or authorize
7 any Federal control over any aspect of any pri-
8 vate, religious, or home education provider,
9 whether or not a home education provider is
10 treated as a private school or home school
11 under State law. This Act shall not be con-
12 strued to exclude private, religious, or home
13 education providers from participation in pro-
14 grams or services under this Act.

15 “(B) Nothing in this Act shall be con-
16 strued to permit, allow, encourage, or authorize
17 an entity submitting a list of eligible scholar-
18 ship-granting organizations on behalf of a State
19 to mandate, direct, or control any aspect of a
20 private or home education provider, regardless
21 of whether or not a home education provider is
22 treated as a private school under State law.

23 “(C) No participating State or entity act-
24 ing on behalf of a State shall exclude, discrimi-
25 nate against, or otherwise disadvantage any

1 education provider with respect to programs or
2 services under this Act based in whole or in
3 part on the provider’s religious character or af-
4 filiation, including religiously or mission-based
5 policies or practices.

6 “(4) PARENTAL RIGHTS TO USE SCHOLAR-
7 SHIPS.—No participating State or entity acting on
8 behalf of a State shall disfavor or discourage the use
9 of such scholarships for the purchase of elementary
10 and secondary education services, including those
11 services provided by private or nonprofit entities,
12 such as faith-based providers.

13 “(5) STATE AND LOCAL AUTHORITY.—Nothing
14 in this section or section 45T shall be construed to
15 modify a State or local government’s authority and
16 responsibility to fund education.

17 “(e) LIMITATIONS.—

18 “(1) TAX LIABILITY.—No credit allowed under
19 this section or section 45T shall exceed the tax-
20 payer’s Federal income tax liability for the taxable
21 year.

22 “(2) PROHIBITIONS.—A taxpayer is prohibited
23 from selling or transferring any portion of a tax
24 credit allowed under this section or section 45T.

1 “(3) DENIAL OF DOUBLE BENEFIT.—The Sec-
2 retary of the Treasury shall prescribe such regula-
3 tions or other guidance to ensure that the sum of
4 the tax benefits provided by Federal, State, or local
5 law for a qualified contribution receiving a Federal
6 tax credit in any taxable year shall not exceed the
7 sum of the qualified contributions made by the tax-
8 payer for the taxable year.

9 “(f) CARRYOVER OF CREDIT.—If a tax credit allowed
10 under this section or section 45T is not fully used within
11 the applicable taxable year because of insufficient tax li-
12 ability on the part of the taxpayer, the unused amount
13 may be carried forward for a period not to exceed 5 years.

14 “(g) ELECTION.—This section shall apply to a tax-
15 payer for a taxable year only if the taxpayer elects to have
16 this section or section 45T apply for such taxable year.

17 “(h) ALTERNATIVE MINIMUM TAX.—For purposes of
18 calculating the alternative minimum tax under section 55,
19 a taxpayer may use any credit received for a qualified con-
20 tribution under this section.”.

21 (2) CLERICAL AMENDMENT.—The table of sec-
22 tions for subpart A of part IV of subchapter A of
23 chapter 1 is amended by inserting after the item re-
24 lating to section 25D the following new item:

“Sec. 25E. Contributions to eligible scholarship-granting organizations.”.

25 (b) CREDIT FOR CORPORATIONS.—

1 (B) by striking the period at the end of
2 paragraph (32) and inserting “, plus”, and

3 (C) by adding at the end the following new
4 paragraph:

5 “(33) the credit for qualified contributions de-
6 termined under section 45T(a).”.

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

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

11 **TITLE II—EDUCATION FREEDOM**
12 **SCHOLARSHIPS WEB PORTAL**
13 **AND ADMINISTRATION**

14 **SEC. 201. EDUCATION FREEDOM SCHOLARSHIPS WEB POR-**
15 **TAL AND ADMINISTRATION.**

16 (a) IN GENERAL.—The Secretary of Education shall,
17 in coordination with the Secretary of the Treasury, estab-
18 lish, host, and maintain a Web portal that—

19 (1) lists all scholarship-granting organizations
20 that are eligible under section 25E or 45T of the In-
21 ternal Revenue Code of 1986;

22 (2) enables a taxpayer to make a qualifying
23 contribution to one or more eligible scholarship-
24 granting organizations and to immediately obtain

1 both a pre-approval of a tax credit for that contribu-
2 tion and a receipt for tax filings;

3 (3) provides information about the tax benefits
4 of Education Freedom Scholarships under the Inter-
5 nal Revenue Code of 1986; and

6 (4) enables a State to submit and update infor-
7 mation about its programs and its eligible scholar-
8 ship-granting organizations for informational pur-
9 poses only, including information on—

10 (A) student eligibility;

11 (B) allowable educational expenses;

12 (C) the types of allowable education pro-
13 viders;

14 (D) the percentage of funds an organiza-
15 tion may use for program administration; and

16 (E) the percentage of total contributions
17 the organization awards in a calendar year.

18 (b) NONPORTAL CONTRIBUTIONS.—A taxpayer may
19 opt to make a contribution directly to an eligible scholar-
20 ship-granting organization, instead of through the Web
21 portal described in subsection (a), provided that the tax-
22 payer, or the eligible scholarship-granting organization on
23 behalf of the taxpayer, applies for, and receives pre-ap-
24 proval for a tax credit from the Secretary of Education
25 in coordination with the Secretary of the Treasury.

1 (c) NATIONAL AND STATE CAPS ON CREDITS.—

2 (1) NATIONAL CAP.—There is a cap of
3 \$5,000,000,000 on the sum of the contributions that
4 qualify for a credit under section 25E and section
5 45T of the Internal Revenue Code of 1986 for each
6 calendar year.

7 (2) ALLOCATION OF CAP.—

8 (A) INITIAL ALLOCATIONS.—For each cal-
9 endar year, the Secretary shall—

10 (i) first reserve, for each State, an
11 amount equal to the sum of the qualifying
12 contributions made in the State in the pre-
13 vious year; and

14 (ii) next, allocate the remaining
15 amount among the participating States by
16 allocating to each State the sum of—

17 (I) an amount that bears the
18 same relationship to 20 percent of
19 such remaining amount as the num-
20 ber of individuals aged 5 through 17
21 in the State, as determined by the
22 Secretary on the basis of the most re-
23 cent satisfactory data, bears to the
24 number of those individuals in all
25 such States, as so determined; and

1 (II) an amount that bears the
2 same relationship to 80 percent of
3 such remaining amount as the num-
4 ber of individuals aged 5 through 17
5 from families with incomes below the
6 poverty line in the State, as deter-
7 mined by the Secretary, on the basis
8 of the most recent satisfactory data,
9 bears to the number of those individ-
10 uals in all such States, as so deter-
11 mined.

12 (B) MINIMUM ALLOCATION.—Notwith-
13 standing subparagraph (A), no State receiving
14 an allotment under this section may receive less
15 than one-half of one percent of the amount al-
16 lotted for a fiscal year.

17 (C) ALTERNATIVE ALLOCATION.—

18 (i) IN GENERAL.—Not later than the
19 end of the fifth year of the program or one
20 year after the end of the first fiscal year
21 for which the total amount of credits
22 claimed under section 25E and section
23 45T of the Internal Revenue Code of 1986
24 is \$2,500,000,000 or more, whichever
25 comes first, the Secretary shall, by regula-

1 tion, provide for an alternative allocation
2 method that shall take effect beginning
3 with the first fiscal year after the regula-
4 tion takes effect.

5 (ii) ALTERNATIVE ALLOCATION METH-
6 OD.—The alternative allocation method
7 shall be expressed as a formula based on
8 a combination of the following data for
9 each State, as reported by the State to the
10 Secretary:

11 (I) The relative percentage of
12 students in the State who receive a el-
13 ementary or secondary scholarship
14 through a State program that is fi-
15 nanced through State tax-credited do-
16 nations or appropriations and that
17 permits the elementary or secondary
18 scholarship to be used to attend a pri-
19 vate school.

20 (II) The total amount of all ele-
21 mentary and secondary scholarships
22 awarded through a State program
23 that is financed through State tax-
24 credited donations or appropriations
25 compared to the total amount of cur-

1 rent State and local expenditures for
2 free public education in the State.

3 (iii) ALLOCATION FORMULA.—For any
4 fiscal year to which clause (i) applies, the
5 Secretary shall—

6 (I) first reserve, for each State,
7 an amount equal to the sum of the
8 qualifying contributions made in the
9 State in the previous year;

10 (II) next, allocate two-thirds of
11 the remaining amount of the national
12 cap for that year using the alternative
13 allocation method in clause (ii); and

14 (III) then, allocate one-third of
15 the remaining amount in accordance
16 with subparagraph (A)(ii).

17 (iv) INELIGIBILITY.—For any fiscal
18 year to which clause (i) applies, a State
19 that does not provide the Secretary with
20 information described in clause (ii) is not
21 eligible to receive an allocation through the
22 alternative allocation method under clause
23 (ii).

24 (3) ALLOWABLE PARTNERSHIPS.—A State may
25 choose to administer the allocation it receives under

1 paragraph (2) in partnership with 1 or more States,
2 provided that the eligible scholarship-granting orga-
3 nizations in each partner State serve students who
4 reside in all States in the partnership.

5 (4) TOTAL ALLOCATION.—A State’s allocation,
6 for any fiscal year, is the sum of the amount deter-
7 mined for it under subparagraphs (A) and (B) of
8 paragraph (2), except as provided in paragraph
9 (2)(C).

10 (5) ALLOCATION AND ADJUSTMENTS.—

11 (A) INITIAL ALLOCATION TO STATES.—No
12 later than November 1 of the year preceding a
13 year for which there is a national cap on credits
14 under paragraph (1) (hereafter in this section,
15 the “applicable year”), or as early as prac-
16 ticable with respect to the first year, the Sec-
17 retary shall announce the State allocations
18 under paragraph (2) for the applicable year.

19 (B) LIST OF ELIGIBLE SCHOLARSHIP-
20 GRANTING ORGANIZATIONS.—No later than
21 January 1 of each applicable year, or as early
22 as practicable with respect to the first year,
23 each State shall provide the Secretary a list of
24 eligible scholarship-granting organizations de-
25 scribed in section 25E(c)(4)(A) of the Internal

1 Revenue Code of 1986, including a certification
2 that the entity submitting the list on behalf of
3 the State has the authority to perform this
4 function. Neither this Act nor any other Fed-
5 eral law shall be construed as limiting the enti-
6 ties that may submit the list on behalf of a
7 State.

8 (C) REALLOCATION OF UNCLAIMED CRED-
9 ITS.—The Secretary shall reallocate a State’s
10 allocation to other States, in accordance with
11 paragraph (2), if the State—

12 (i) chooses not to identify scholarship-
13 granting organizations under subparagraph
14 (B) in any applicable year; or

15 (ii) does not have an existing eligible
16 scholarship-granting organization (as de-
17 fined in section 25E(c)(4)(B) of the Inter-
18 nal Revenue Code of 1986).

19 (D) REALLOCATION.—On or after April 1
20 of any applicable year, the Secretary may re-
21 allocate, to 1 or more other States that have el-
22 igible scholarship-granting organizations in the
23 States, without regard to paragraph (2), the al-
24 location of a State for which the State’s alloca-
25 tion has not been claimed.

1 (d) DEFINITIONS.—The definitions of terms in sec-
2 tion 25E(c) of the Internal Revenue Code of 1986 apply
3 to those terms as used in this title.

○