

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through III pertaining to tax ) PROPOSED ADOPTION  
credits for contributions to qualified )  
education providers and student )  
scholarship organizations )

TO: All Concerned Persons

1. On November 5, 2015, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Fourth Floor East Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building facing Sanders Street.

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, advise the department of the nature of the accommodation needed, no later than 5 p.m. on October 26, 2015. Contact Laurie Logan, 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 lalogan@mt.gov.

3. The rules proposed to be adopted provide as follows:

NEW RULE I QUALIFIED EDUCATION PROVIDER (1) A "qualified education provider" has the meaning given in 15-30-3102, MCA, and pursuant to 15-30-3101, MCA, may not be:

(a) a church, school, academy, seminary, college, university, literary or scientific institution, or any other sectarian institution owned or controlled in whole or in part by any church, religious sect, or denomination; or

(b) an individual who is employed by a church, school, academy, seminary, college, university, literary or scientific institution, or any other sectarian institution owned or controlled in whole or in part by any church, religious sect, or denomination when providing those services.

(2) For the purposes of (1), "controlled in whole or in part by a church, religious sect, or denomination" includes accreditation by a faith-based organization.

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

IMP: Montana Constitution, Art. V, Section 11, Montana Constitution, Art. X Section 6, 15-30-3101, MCA

REASON: The department proposes adopting New Rule I based on the passage of Senate Bill (SB) 410, L. 2015, which generally revised laws related to tax credits for elementary and secondary education. SB 410, Section 7, was codified at

15-30-3101, MCA.

As proposed, New Rule I will conform to the requirements of 15-30-3101, MCA, which requires the department to administer the tax credit for taxpayer donations in accordance with Art. V, Section 11(5) and Art. X, Section 6(1) of the Montana Constitution, which prohibits the direct or indirect appropriations or payment from any public fund to any sectarian or religious purpose.

#### NEW RULE II STUDENT SCHOLARSHIP ORGANIZATION

REQUIREMENTS (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 will be located on the department's web site at revenue.mt.gov. 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;

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

(d) any other necessary information.

(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.

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

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

REASON: The department proposes adopting New Rule II based on the passage of Senate Bill (SB) 410, L. 2015, which generally revised laws related to tax credits for elementary and secondary education. SB 410, Section 9, was codified at 15-30-3103, MCA, Section 11 was codified at 15-30-3105, MCA, and Section 12 was codified at 15-30-3106, MCA.

As proposed, (1) will clarify the information a student scholarship organization must provide to register with the department, as set forth in 15-30-3105 and 15-30-3106, MCA. Section (2) clarifies the scholarships from which the credits originate can only be awarded to Montana students. Section (3) provides an example for the deadline for when a student scholarship organization must award scholarships relative to its receipt of contributions.

NEW RULE III CREDIT LIMITATIONS AND CLAIMS (1) A taxpayer may

claim a credit for contributions to an innovative educational program provided for in 20-9-901, MCA, and/or student scholarship organizations provided for in 15-30-3101, MCA.

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

(a) innovative education programs is \$150; and

(b) student scholarship organizations is \$150.

(3) In the case of a married couple that makes a joint contribution, unless specifically allocated by the taxpayers, the contribution will be split equally between each spouse. If each spouse makes a separate contribution, each may be allowed a credit up to the maximum amount.

(4) An allowable contribution from:

(a) an S corporation passes to its shareholders based on their ownership percentage; and

(b) a partnership or limited liability company taxed as a partnership passes to their partners and owners based on their share of profits and losses as reported for Montana income tax purposes.

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

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

REASON: The department proposes adopting New Rule III based on the passage of Senate Bill (SB) 410, L. 2015, which generally revised laws related to tax credits for elementary and secondary education. SB 410, Section 1, was codified at 20-9-901, MCA, and SB 410, Section 7, was codified at 15-30-3101, MCA.

As proposed, New Rule III outlines that the maximum credit amount applies to each taxpayer rather than each contribution. The proposed rule further provides that the tax credit is available to each partner, shareholder, or other owner of a pass-through entity based on allowable contributions made by the entity.

4. Following adoption, the department plans to apply the provisions of New Rule I effective January 1, 2016, when the legislative changes to 16-4-311, MCA, become effective.

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: Laurie Logan, 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 [lalogan@mt.gov](mailto:lalogan@mt.gov) and must be received no later than November 17, 2015.

6. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct this 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 that 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 a 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 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 [revenue.mt.gov/rules](http://revenue.mt.gov/rules). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 410, Senator Llew Jones, was contacted by letter on June 22, 2015, September 2, 2015, and September 21, 2015.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rules will not significantly and directly impact small businesses. Documentation of the department's determination is available at [revenue.mt.gov/rules](http://revenue.mt.gov/rules) or upon request from the person in 5.

/s/ Laurie Logan  
Laurie Logan  
Rule Reviewer

/s/ Mike Kadas  
Mike Kadas  
Director of Revenue

Certified to the Secretary of State October 5, 2015