

**BILL ANALYSIS AND FISCAL IMPACT REPORT**  
**Taxation and Revenue Department**

**March 3, 2025**

**Bill:** HB-324

**Sponsor:** Representatives Rod Montoya, Jonathan A. Henry and Mark Duncan

**Short Title:** Educational Scholarships & Tax Credit

**Description:** This bill gives authorization for school tuition organizations to award educational scholarships to certain low-income students to give opportunities to attend private schools. In relation to the Taxation and Revenue Department, the bill creates the educational scholarship income tax and corporate income tax credits for taxpayers who contribute to a school tuition organization. The credit is equal to their contribution, up to \$700 for single individuals or married individuals filing separately, and up to \$1,400 for heads of household, surviving spouses, married individuals filing jointly or corporate income tax filers. A taxpayer must apply for certification of eligibility for the credit with the Public Education Department (PED). Any portion of the credit that exceeds the taxpayer’s liability will not be refunded but may be carried forward for three consecutive taxable years.

**Effective Date:** Not specified; 90 days following adjournment (June 20, 2025). Sections 2 and 3 are applicable to taxable years beginning on or after January 1, 2025.

**Taxation and Revenue Department Analyst:** Sara Grubbs

Estimated Revenue Impact*					R or NR**	Fund(s) Affected
FY2025	FY2026	FY2027	FY2028	FY2029		
--	(\$2,900)	(\$3,200)	(\$3,500)	(\$3,900)	R	General Fund

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

**Methodology for Estimated Revenue Impact:** Tax & Rev cannot anticipate how many taxpayers will contribute and how much they will contribute, since it depends on whether organizations can provide eligible educational scholarships and if the credit will incentivize contributions. Tax & Rev identified over 15,000 organizations in New Mexico that have been granted an exemption from federal income tax as described in section 501(c)(3) of the Internal Revenue Code of 1986. However, it is unknown how many of these organizations will seek certification from the Public Education Department (PED) as a tuition scholarship organization, or how many new 501(c)(3) organizations may be created for that purpose.

Tax & Rev therefore estimated the impact using two sources of data on students at private schools, starting with the most recent data from the National Center for Education Statistics’ Private School Universe Survey. This survey tabulates the annual number of private school students by state. In the 2021-2022 academic year, the most recent year available, there were 16,909 private school students in New Mexico.

The nonprofit organization EdChoice<sup>1</sup> provides information on five tax programs that aid in reducing private school cost, including tax credit tuition scholarship programs. Nineteen states currently offer a tuition scholarship credit program. Using these states’ education scholarship tuition credit activity from 2020 to 2023 as a proxy, Tax & Rev assumes an annual increase in the number of students served of 10%.

<sup>1</sup> www.edchoice.org  
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Tax & Rev also used both sources to calculate a ratio between the number of low-income students attending private school receiving a tuition scholarship compared to the total number of private school students in the state to estimate the number of low-income private school students receiving scholarships in New Mexico. It is assumed these students and school tuition organizations are eligible and certified when applicable.

Tax & Rev assumes that the taxpayers claiming this credit will be higher income taxpayers or corporations that will contribute to a school tuition organization. Tax & Rev assumed the amount of donations needed and in turn credits to support a growth rate of 10% of low-income students attending private schools with a tuition scholarship. Tax & Rev assumed the maximum credit per taxpayer, ranging from \$700 to \$1,400 depending on filing status or applicable tax credit, will be used against the taxpayers' tax liability. The maximum credit is adjusted starting in tax year 2026 using the Congressional Budget Office's (CBO) May 2024 forecast of the consumer price index (CPI-U).

Eligible taxpayers are assumed to have personal income tax (PIT) liability amounts that can absorb their associated credit amounts (\$700 or \$1,400 depending on filing status) leaving a minimal amount to be carried over.

**Policy Issues:** Personal income tax (PIT) represents a consistent source of revenue for many states. For New Mexico, PIT is approximately 16 percent of the state's recurring general fund revenue. While this revenue source is susceptible to economic downturns, it is also positively responsive to economic expansions. New Mexico is one of 41 states, along with the District of Columbia, that impose a broad-based PIT (New Hampshire and Washington do not tax wage and salary income). Like several states, New Mexico computes its income tax based on the federal definition of taxable income and ties to other statutes in the federal tax code. This is referred to as "conformity" to the federal tax code. The PIT is an important tax policy tool that has the potential to further both horizontal equity by ensuring the same statutes apply to all taxpayers, and vertical equity, by ensuring the tax burden is based on taxpayers' ability to pay.

Investing in education through this credit may positively impact communities and improve lives. The bill may foster educational opportunities for lower-income children and youth with the option of attending private school. Nineteen states offer an education scholarship income tax credit. In most states, the number of low-income students served has steadily increased. Of particular interest is Rhode Island's program, which increases the amount of the tax incentive donors may receive over sequential years of continued donation.

While the bill provides educational opportunities to lower-income students, the tax benefits will likely accrue solely to higher-income taxpayers and corporations, as lower-income taxpayers are less likely have disposable income to contribute or to have income tax liability against which to offset the credit.

This bill subsidizes the demand for education instead of the supply of quality education services. An alternative to fostering education opportunities would be to finance the supply of education services by investing in improving access and quality of public education. The effect of this bill will be to reduce revenues from Personal Income Tax (PIT) and Corporate Income Tax (CIT), which fund public education and other critical government services, and instead divert those resources to private education.

It is unusual to provide a credit for a charitable contribution; under the Internal Revenue Code (IRC), such charitable contributions are usually deductible for federal tax purposes. Credits are more valuable than deductions, because they are a dollar-for-dollar reduction in a taxpayer's tax liability, whereas deductions only reduce taxable income, and therefore result in only a percentage of the contribution reducing overall tax liability. Under the IRC, taxpayers will likely be able to deduct the amount of their contributions

under this law from their federal taxable income, for taxpayers who itemize their federal deductions, as the “school tuition organizations” must be a nonprofit organization. Because New Mexico taxable income is based on federal taxable income, a taxpayer who itemizes their federal deductions and who makes a contribution under this act will receive two tax benefits: first, the deduction of the contribution amount from federal, and therefore New Mexico, taxable income, and then a credit against New Mexico income tax liability. Tax & Rev recommends disallowing the credit for any taxpayer claiming a deduction with respect to the same contribution to prevent double dipping.

This credit does not have a sunset date. Tax & Rev recommends a sunset date for policymakers to review the impact of tax expenditures before extending them.

**Technical Issues: [Section 1]:** The State provides free lunches to all New Mexico public and charter school students regardless of income under Section 22-13C-4 NMSA 1978, universal school meals for children. This bill specifies that an eligible student is defined as a New Mexico resident whose household qualifies for a reduced-price lunch through the federal school lunch program established pursuant to 42 USCA Sections 1751 through 1769. For clarification, Tax & Rev recommends including “free or” before “reduced-price lunch” to ensure all low-income students are eligible in subsection I, page 6, line 22.

**[Sections 2 and 3]:** The bill should identify what inflation index is to be used to adjust the credit amount to avoid ambiguity. On page 8, line 20 and page 10, line 16 after the period, the following is suggested: “For the 2025 taxable year and each subsequent taxable year, the amount of credit shown in the table in Subsection B of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying each amount of credit by a fraction, the numerator of which is the consumer price index ending during the prior taxable year and the denominator of which is the consumer price index ending in tax year 2025. The result of the multiplication shall be rounded down to the nearest one dollar (\$1.00), except that if the result would be an amount less than the corresponding amount for the preceding taxable year, then no adjustment shall be made.” Then a new section to define “consumer price index” should be added on page 9, and page 11, as follows: “As used in this section, “consumer price index” means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30”

Tax & Rev suggests the addition of a new subsection on page 9, below line 11 and on page 11, below line 7: “The public education department shall provide to the taxation and revenue department electronic certification information for all taxpayers to whom certificates are issued in a secure and regular manner as agreed upon by both departments.” This will ensure Tax & Rev receives credit certificates electronically from PED, and Tax & Rev does not need to manually enter certificates.

On Page 9, lines 4-11, and Page 10, line 25 – Page 11, lines 1-7: In Subsection D, the first sentence requires that the credit be claimed for the taxable year in which the contribution is made. But the following sentence allows the taxpayer to apply to the department for the credit within 12 months following the calendar year the contribution was made. Example: the taxpayer contributes in 2025, which can be claimed on the taxpayer’s 2025 return filed in April 2026. Applying the second sentence, the taxpayer has 12 months, until December 2026, to apply for the 2025 credit. It is unknown if the taxpayer must file an amended 2025 return or can claim the credit on the 2025 return filed in 2027. To address this, Tax & Rev suggests the following adjustment: “A taxpayer may claim the tax credit allowed by this section for in the taxable year in which the taxpayer makes a contribution to a school tuition organization. To receive the tax credit, a taxpayer shall claim the credit on forms and in the manner prescribed by the department within twelve months following the calendar year in which the contribution is made. The application shall include a certification made pursuant to Subsection C of this section.”

**Other Issues:** Section 1 uses federal reduced lunch criteria as guidance for eligible students. There are

not any provisions that address what happens if that section of law is repealed for federal reduced lunch programs. Tax & Rev recommends a set specific income threshold that defines eligibility based on the federal poverty level (e.g., 200% of the federal poverty line). This can ensure support is directed toward low to middle-income families without directly linking to federal programs. This recommended threshold language will also change with inflation.

**Administrative & Compliance Impact:** Tax & Rev will update forms, instructions and publications and make information system changes. Staff training to administer the credit will take place. This implementation will be included in the annual tax year changes.

Tax & Rev’s Administrative Services Division (ASD) will test credit sourcing and perform other systems testing. It is anticipated this work will take approximately 40 hours split between 2 FTE of a pay band 70 and a pay band 80 at a cost of approximately \$5,100. Pay band 70 hours are estimated at time and ½ due to extra hours worked required for implementation.

Tax & Rev’s Revenue Processing Division (RPD) will review credit certifications to assure compliance. Tax & Rev will enter an MOU with PED to share certification information. Implementing recommended data sharing will enable RPD to absorb additional inventories into current workloads. Tax & Rev assumes that electronic transfer of credit information will not occur before the effective date of the bill without required statutory language (See Technical Issues). Without the update, RPD may need to add an FTE given the increase in added tax credits in the last five years. The FTE is based on a payband 60.

This bill will have a moderate impact on Tax & Rev’s Information Technology Division (ITD), requiring approximately 680 hours or about 4 months for an estimated staff workload cost of \$45,315. The estimate includes an electronic data exchange between Tax & Rev and Public Education Department (PED). The data exchange will require coordination with the PED and should be implemented shortly after PED begins issuing certificates of eligibility so that Tax & Rev will have a record of the certificates of eligibility in GenTax, the tax system of record, when the taxpayer claims the credit on their income tax return.

Estimated Additional Operating Budget Impact*				R or NR**	Fund(s) or Agency Affected
FY2025	FY2026	FY2027	3 Year Total Cost		
--	\$5.1	--	\$5.1	NR	ACD – FTE
--	\$76	\$76	\$152	R	RPD – FTE
--	\$45.3	--	\$45.3	NR	ITD – Staff workload

\* In thousands of dollars. Parentheses ( ) indicate a cost saving. \*\* Recurring (R) or Non-Recurring (NR).

**Related Bills:** Similar to HB-105 (2024 Regular Session)