

Revenue Information Bulletin 18-024
August 27, 2018

Individual Income Tax
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Fiduciary Income Tax

**Changes to Tax Treatment of Donations Made to
School Tuition Organizations**

Act 377 of the 2017 Regular Session of the Louisiana Legislature amended the provisions relative to donations made to a school tuition organization that provides scholarships to qualified students to attend qualified schools. Prior to Act 377, LA R.S. 47:6301 provided a rebate to a donor who made a donation to a school tuition organization. Act 377 made three significant changes to LA R.S. 47:6301 for donations made on or after January 1, 2018:

1. Changes the rebate to a nonrefundable income tax credit with a three year carryforward;
2. Provides that, to qualify for the credit, the donor must be a taxpayer who is required to file a Louisiana income tax return; and
3. Stipulates that, if the credit is claimed and allowed, no other Louisiana tax benefit shall be allowed for the same donation.

Act 377 did not change the prior provisions relative to administrative costs. No more than 5% of the amount of a taxpayer's donation may be used for administrative or promotional costs and no less than 95% of the monies received for donations shall be used to provide scholarships to students. In general, a taxpayer may expect to receive a nonrefundable income tax credit valued at 95% or more of the taxpayer's donation amount.

Nonrefundable Income Tax Credit

The credit for donations to school tuition organizations is nonrefundable and may only be used to offset an income tax liability. If the credit amount exceeds the taxpayer's liability for the first year, the taxpayer may carry forward the unused portion of the credit to be used against subsequent income tax liabilities for no more than three consecutive tax years.

Furthermore, because the credit can only offset an income tax liability, the credit may only be claimed by individual, corporation, and fiduciary income taxpayers. The credit cannot offset other taxes such as the corporation franchise tax or sales tax.

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Example

John Smith, an individual income taxpayer, donates \$5,000 to a school tuition organization on March 1, 2018. After receiving a report of the donation from the school tuition organization, the Louisiana Department of Education (“LDE”) issues a receipt to the school tuition organization on December 1, 2018, and indicates that 5% of the donation was used for administrative costs. The school tuition organization sends the receipt directly to John Smith by December 10, 2018. John Smith may claim the \$4,750 credit on his 2018 individual income tax return [\$5,000 donation less \$250 (5% of \$5,000) for administrative costs].

Upon preparing his 2018 Louisiana individual income tax return, John Smith’s income tax liability is \$3,000. John Smith may apply only \$3,000 of the nonrefundable income tax credit for donations to school tuition organizations against the \$3,000 income tax liability. The remaining \$1,750 nonrefundable income tax credit may be carried forward to the 2019, 2020, and 2021 income tax years as appropriate. John Smith cannot receive a \$1,750 refund for the unused portion of the nonrefundable income tax credit for the 2018 income tax year.

Timing of Claiming the Credit

Act 377 provides that the credit is earned when the donation is made by the taxpayer. The amount of the credit is the actual amount of the taxpayer’s donation that is used by the school tuition organization to fund qualified scholarships (excluding administrative costs which is limited to five percent).

Although the credit is earned when the donation is made, the credit cannot be applied to offset a taxpayer’s income tax until the LDE issues a receipt to the taxpayer through the school tuition organization. The taxpayer must have the receipt on or before the due date of the return in order to claim the credit for the preceding tax year. When claiming the credit on the taxpayer’s Louisiana income tax return, the taxpayer must attach Form R-10604, *Receipt for Donations to School Tuition Organization Tax Credit*.

Example 1

If a taxpayer donates \$1,000 to a school tuition organization on January 15, 2018, and LDE issues a receipt through the school tuition organization to the taxpayer on February 15, 2018, the taxpayer may claim the credit on the taxpayer’s 2018 income tax return.

Example 2

If an individual income taxpayer donates \$1,000 to a school tuition organization on December 15, 2018, and LDE issues a receipt through the school tuition organization to the

taxpayer on March 20, 2019, the taxpayer may claim the credit on the taxpayer's 2018 Louisiana income tax return. However, if the taxpayer already filed the 2018 Louisiana income tax return, the taxpayer must file an amended return to claim the credit.

Example 3

A corporation income taxpayer donates \$2,000 to a school tuition organization on December 15, 2018, and LDE issues a receipt through the school tuition organization to the taxpayer on May 5, 2019. The corporation's 2018 income tax return is due on May 15, 2019.

The corporation may claim the appropriate credit amount on its 2018 income tax return because the corporation received the receipt prior to the due date of the corporation's income tax return. However, if the corporation did not receive the receipt until May 25, 2019, the corporation cannot claim the credit on the 2018 income tax return; instead, the corporation may claim the appropriate credit amount on its 2019 income tax return.

Requirement to File a Return

Act 377 provides that a donor must be a taxpayer who is required to file a Louisiana income tax return to qualify for the credit.

Individual income taxpayers are required to file a Louisiana income tax return under two circumstances depending on the type of individual:

1. For resident individuals¹, the individual is required to file a Louisiana individual income tax return if the individual was required to file a federal individual income tax return.² The requirements to file a federal individual income tax return vary based on filing status, income level, and other factors. Individuals may refer to IRS Publication 17 to determine if a federal return is required based on their circumstances.
2. For part year or nonresident individuals, the individual is required to file a Louisiana individual income tax return if the individual earns net income from property located in Louisiana, from services rendered in Louisiana, from business transacted in Louisiana, or from sources within Louisiana.³

¹ Resident individuals are defined by LA R.S. 47:31(1) as persons residing within Louisiana or the person's personal representative in the event of death. Residents include natural persons domiciled in Louisiana, natural persons who maintain a permanent place of abode within Louisiana, or natural persons who spend in the aggregate more than six months of the taxable year within Louisiana.

² See LA R.S. 47:101

³ See LA R.S. 47:31

Corporations subject to taxation pursuant to Title 47, Subtitle II, Chapter 1 are required to file a Louisiana corporation income tax return.⁴

Fiduciaries, such as estates and trusts, are subject to taxation pursuant to LA R.S. 47:300.1 *et seq.* and are required to file a Louisiana fiduciary income tax return if (1) the net income is \$2,500 or more; (2) if the gross income is \$6,000 or more, regardless of the amount of net income; or (3) the beneficiary of the fiduciary is a nonresident of Louisiana.

The three types of taxpayers (individuals, corporations, and fiduciaries) may donate to a school tuition organization, but the credit will be disallowed by the Department if the taxpayer is not required to file a return.

Example

Jane Doe, an individual income taxpayer, donates \$10,000 to a school tuition organization in 2018. Jane Doe's income for 2018 is \$100 and she is not required to file a federal individual income tax return based on Publication 17 because of her income amount. Because she is not required to file a federal individual income tax return, she is not required to file a Louisiana individual income tax return. Therefore, Jane Doe is not entitled to a credit for the \$10,000 donation made in 2018. Furthermore, the credit cannot be carried forward to a year in which Jane Doe is required to file a Louisiana individual income tax return.

Add Back to Prevent Double Benefit

Act 377 provides in LA R.S. 47:6301(A)(1)(a) that the "taxpayer shall not receive any other state tax credit, exemption, exclusion, deduction or any other tax benefit for which the taxpayer has received" the tax credit for donations to school tuition organizations. In Louisiana, the starting point for individual, corporation, and fiduciary income tax returns is federal taxable income (corporations and fiduciaries) or federal adjusted gross income (individuals). This prohibition on double benefits requires that, on the Louisiana return, taxpayers must add back certain deductions taken at the federal level otherwise deductible for state income tax purposes. If the taxpayer does not take a corresponding deduction related to the credit, then no add back is required.

The Louisiana tax returns and instructions for 2018 and future periods will account for the following guidance.

⁴ See LA R.S. 47:102

Individual Income Taxpayers

For federal income tax purposes, individuals may deduct charitable contributions as an itemized deduction on Federal Schedule A to arrive at federal taxable income in accordance with Internal Revenue Code Section 170.

In the year the individual claims the credit, the individual shall make an addition on Schedule E of the LA Form IT-540 or Non-Resident & Part-Year Resident Worksheet of the LA Form IT-540B⁵ if the following two conditions apply:

1. The individual's federal itemized deductions allowed by Internal Revenue Code Section 170 included the donation made by the individual to the school tuition organization as a charitable contribution on Schedule A attached to Federal Form 1040; and
2. The individual claimed the excess federal itemized personal deduction allowed by LA R.S. 47:293(3) for the tax year in which the donation was made by the individual to the school tuition organization.

The addition required on Schedule E of the LA Form IT-540 or LA Form IT-540B shall be the difference between the individual's excess federal itemized personal deduction and the recalculated excess federal itemized personal deduction after removing the donation from the individual's federal itemized personal deduction for the tax year in which the donation was made and receipt was issued by LDE. The addition is limited to the amount of the credit claimed.

Individual Income Taxpayer Example

On June 1, 2018, Michael Smith makes a \$1,000 donation to a school tuition organization. On 2018 Federal Form 1040, Mr. Smith claims itemized deductions on Federal Schedule A in the amount of \$15,800. Mr. Smith's standard deduction would have been \$12,000. Of the \$15,800 of itemized deductions, \$1,000 consisted of the donation to the school tuition organization. On 2018 LA Form IT-540, Mr. Smith claims the excess federal itemized personal deduction in the amount of \$3,800 (\$15,800 – \$12,000).

On July 15, 2018, LDE issues a receipt through the school tuition organization to Mr. Smith indicating that \$950 of his donation was used by the school tuition organization to fund qualified scholarships. The remaining \$50 was applied toward administrative costs.

⁵ LA Form IT-540 is the Louisiana tax return for resident individuals. LA Form IT-540B is the Louisiana tax return for part-year and non-resident individuals.

Therefore, Mr. Smith may only claim a \$950 nonrefundable credit on his 2018 LA Form IT-540 (\$1,000 donation less \$50 of administrative costs).

To satisfy the provisions of LA R.S. 47:6301(A)(1)(a), Mr. Smith must add back \$950 to arrive at Louisiana Adjusted Gross Income on Schedule E of the 2018 LA Form IT-540.

Assume Mr. Smith's tax liability is \$500. Mr. Smith may only claim a \$500 credit in 2018 and carryforward the remaining \$450 to 2019, 2020, and 2021 as applicable. In this example, Mr. Smith need only add back \$500 on the 2018 LA Schedule E which is the amount of the credit claimed as well as the amount of the tax liability.

Corporation Income Taxpayers

For federal tax purposes, corporations may generally deduct charitable contributions to arrive at federal taxable income in accordance with Internal Revenue Code Section 170.

In the year the corporation claims the credit, the corporation shall make an addition on Schedule F of the LA Form CIFT-620 if the following condition applies:

1. The corporation's federal deductions for charitable contributions allowed by Internal Revenue Code Section 170 included a deduction for the donation made by the corporation to the school tuition organization.

The addition required to be made on Schedule F of the LA Form CIFT-620 shall be the amount of the charitable contribution claimed on the corporation's federal return. The addition is limited to the amount of the credit claimed on the return.

Fiduciary Income Taxpayers

For federal tax purposes, fiduciaries such as estates and trusts may generally deduct charitable contributions to arrive at federal taxable income in accordance with Internal Revenue Code Section 170.

In the year the fiduciary claims the credit, the fiduciary shall make an addition on LA Form IT-541⁶ if the following condition applies:

⁶ At the time of publication of this bulletin, the current LA Form IT-541 for the 2017 tax year and earlier does not contain a line item for the add back required by the bulletin. A line item will be added beginning with the 2018 LA Form IT-541. Refer to the 2018 LA Form IT-541 Instructions in the "What's New for 2018" section for information on how to report the addback required by this bulletin.

1. The fiduciary's federal deductions for charitable contributions allowed by Internal Revenue Code Section 170 included a deduction for the donation made by the fiduciary to the school tuition organization.

The addition required to be made on LA Form IT-541 shall be the amount of the charitable contribution claimed on the fiduciary's federal return. The addition is limited to the amount of the credit claimed on the return.

Treasury Regulations Impact on Donations to School Tuition Organizations

On August 23, 2018, the United States Department of the Treasury and the Internal Revenue Service issued IR-2018-172⁷ and proposed regulations titled "Contributions in Exchange for State or Local Tax Credits." As explained in IR-2018-172, the proposed regulations are designed to clarify the relationship between state and local tax credits and the federal tax rules for charitable contributions. Under the proposed regulations, a taxpayer who makes payments or transfers property to an entity eligible to receive tax deductible contributions must reduce their charitable deduction by the amount of any state or local tax credit the taxpayer receives or expects to receive.

The proposed regulations may affect taxpayers claiming the nonrefundable income tax credit for donations to Louisiana's school tuition organizations. While the proposed regulations do not affect the amount of the nonrefundable income tax credit, the proposed regulations limit the amount of the federal deduction for charitable contributions by the amount of the nonrefundable income tax credit received or expected to be received by claiming the credit on a Louisiana income tax return. For individual income taxpayers, the limitation on the federal deduction for charitable contributions may decrease the Louisiana deduction for the excess federal itemized personal deductions and increase the Louisiana deduction for federal income tax liability. For corporations and fiduciary income taxpayers, the limitation on the federal deduction for charitable contributions may increase the Louisiana deduction for federal income tax paid. The amendments to the regulations are proposed to apply to contributions made after August 27, 2018.

Notwithstanding any other guidance contained in this bulletin, taxpayers shall adhere to limitations and other provisions contained in the proposed regulations when calculating the nonrefundable income tax credit as authorized by LA R.S. 47:6301 for donations to school tuition organizations made on or after August 28, 2018. For donations to school tuition organizations made from January 1, 2018, to August 27, 2018, the proposed regulations

⁷ <https://www.irs.gov/newsroom/treasury-irs-issue-proposed-regulations-on-charitable-contributions-and-state-and-local-tax-credits>

currently do not apply. However, taxpayers should be aware that the proposed regulations, including the applicability date, may be changed at a later date.

Additional guidance will be released as appropriate.

Example

Raymond, an individual income taxpayer, donates \$20,000 to a school tuition organization on September 1, 2018, and LDE issues a receipt through the school tuition organization to the Raymond on October 1, 2018. Raymond claims the nonrefundable income tax credit of \$19,000 (\$20,000 less \$1,000 of administrative costs) on his 2018 individual income tax return. The proposed regulations affect Raymond's federal itemized deductions. Raymond may only deduct \$1,000 as a federal itemized deduction for charitable contributions because Raymond receives, or expects to receive, a nonrefundable income tax credit of \$19,000. Raymond is not required to make any adjustment on his Schedule E of the LA Form IT-540 as otherwise required by the provisions of the "Add Back to Prevent Double Benefit" section above.

Additional Considerations

Treatment of Flow Through Entities

Entities that are not subject to Louisiana income tax, such as partnerships and Subchapter S corporations, may flow through the credit to partners and members in accordance with LA R.S. 47:1675(F).

Taxation of Credit Amount

Because the nonrefundable credit reduces income tax liability but cannot generate a refund to the taxpayer, the credit is not considered gross income for purposes of Internal Revenue Code Section 61.⁸ In other words, a taxpayer that claims a nonrefundable credit for donations to school tuition organizations is not required to include the credit in gross income for federal and state tax purposes.

However, rebates issued for donations to school tuition organizations prior to the enactment of Act 377 are considered a state subsidy to the taxpayer and are taxable as income for federal and state tax purposes.

⁸ See IRS Chief Counsel Advice Memorandum No. 200842002 and IRS Revenue Ruling 79-315, 1979-2 C.B. 27

Effect of Credit on Declaration of Estimated Tax

A taxpayer is generally required to pay declarations of estimated tax (commonly referred to as quarterly estimates) if the taxpayer's income tax liability exceeds the taxpayer's credits, including withholdings, allowable against the income tax liability. Taxpayers who donate to a school tuition organization and expect to receive a nonrefundable income tax credit may factor the presumptive credit amount into their calculation of declarations of estimated tax by reducing the declaration payments as appropriate. Taxpayers should refer to the Department's forms and instructions for Declarations of Estimated Tax and Underpayment of Tax Penalty Computation.

Administration of Credit

Form R-10604, *Receipt of Donation for Louisiana Tuition Donation Tax Credit*, must be attached to the taxpayer's Louisiana income tax return upon filing of the return. The Department may request additional copies of the form and documentation as necessary to verify the credit. If the credit is allowed, but the Department later determines that the credit should have been reduced or denied, the Department will recapture the credit pursuant to LA R.S. 47:1524(E) and bill the taxpayer accordingly.

Questions concerning this Revenue Information Bulletin should be directed by e-mail to Policy.Publications@La.gov.

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