

## HOUSE BILL NO. 209

INTRODUCED BY G. OVERSTREET, T. SHARP

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A TAX CREDIT FOR NONPUBLIC SCHOOL EDUCATION EXPENSES; PROVIDING ELIGIBILITY REQUIREMENTS; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 15-30-2303, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Tax credit for nonpublic school education expenses -- definitions.**

As used in [section 2] and this section, the following definitions apply:

(1) "Additional expenses" means:

(a) educational therapies from a licensed or accredited practitioner or provider, including any amount not covered by health insurance for a policy benefiting a qualifying student;

(b) a licensed or accredited paraprofessional or educational aide;

(c) fees for vocational and life skills education and programs approved by the superintendent;

(d) fees for educational and psychological evaluations, assistive technology rentals, and braille translation goods and services programs approved by the superintendent;

(e) fees for a nationally standardized norm-referenced achievement test, an advanced placement examination, or any exam related to college or university admission;

(f) fees for items charged by a public school, including individual classes and extracurricular programs; or

(g) computer hardware and technological devices.

(2) (a) "Computer hardware and technological device" means a device used primarily for an educational purpose, including calculators, personal computers, laptops, tablet devices, microscopes, telescopes, and printers.

(b) The term does not include devices used for entertainment or other primarily noneducational

1 devices, such as televisions, telephones, video game consoles and accessories, and home theater and audio  
2 equipment.

3 (3) (a) "Extracurricular activity fee" means a fee for a sporting event, musical event, dramatic  
4 event, speech activity, driver's education, agricultural program, or program of a similar nature commonly offered  
5 by Montana public schools.

6 (b) The term includes but is not limited to:

7 (i) fees for participation in a sports activity, agricultural program, or field trip;

8 (ii) rental fees for an instrument for band or orchestra and items for maintenance of a musical  
9 instrument used in band or orchestra, including but not limited to trumpet grease, woodwind reeds, guitar picks,  
10 and violin strings;

11 (iii) driver's education fees;

12 (iv) the cost of an activity ticket or admission ticket to a sporting, music, or dramatic event;

13 (v) dues for a band booster club, an athletic booster club, or a club or organization such as a  
14 chess club, photography club, debate club, or similar organization that is commonly offered through public  
15 schools;

16 (vi) the cost for music used in music programs, including vocal music programs;

17 (vii) fees paid for required general materials for shop class, agriculture class, home economics  
18 class, or auto repair class and general fees for equivalent classes that are commonly offered at public schools;

19 (viii) rental fees for band or athletic uniforms; and

20 (ix) costs for instrument, singing, or choir lessons.

21 (c) The term does not include:

22 (i) the purchase of a musical instrument or athletic equipment or attire;

23 (ii) expenses for meals and travel to activities; or

24 (iii) any expense that would not commonly be provided for participation in extracurricular activities  
25 at a public school.

26 (4) "Full-time academic instruction" means attendance in a nonpublic education setting for at least  
27 one semester, or its equivalent, during the tax year for which a taxpayer claims a credit under this section.

28 (5) "Noncustodial parent" means, in cases of divorce or separation, a parent with whom a child

1 resides for less than 50% of the tax year.

2 (6) "Nonpublic education setting" means any legal education setting in the state that meets the  
3 compulsory attendance requirements provided in 20-5-109, excluding the traditional public school system,  
4 charter schools, or any educational option paid for by the state.

5 (7) "Nonpublic school education expense" means receipted expenses paid for a qualifying  
6 student's tuition, textbooks, extracurricular activities, and additional expenses.

7 (8) "Qualifying student" means a student who meets the definition of a dependent in 26 U.S.C. 152  
8 and who received full-time academic instruction during the tax year in a nonpublic education setting.

9 (9) "Superintendent" means the superintendent of public instruction.

10 (10) "Textbook" means a book or other instructional material used to teach subjects that are legally  
11 and commonly taught in public elementary and secondary schools in the state. The term includes:

12 (a) fees or charges for required supplies or materials for classes in art, home economics, shop, or  
13 similar courses offered at the local public school; and

14 (b) books and materials used for extracurricular activities.

15 (11) "Tuition" means:

16 (a) a fee charged for teaching or instruction in a nonpublic education setting;

17 (b) any charge for private instruction for the teaching of subjects that are legally and commonly  
18 taught in public elementary or secondary schools in the state;

19 (c) all associated materials, equipment, and textbooks needed for the teaching of subjects that are  
20 legally and commonly taught in public elementary and secondary schools; or

21 (d) private instruction, tutors, and special education instruction.

22

23 **NEW SECTION. Section 2. Tax credit for nonpublic school education expenses -- rulemaking.**

24 (1) A taxpayer is allowed a credit for nonpublic school education expenses as provided in this section.

25 (2) For each qualifying student, the credit is equal to the lesser of the nonpublic school education  
26 expenses paid by the taxpayer in the tax year or 44.7% of the applicable per-ANB maximum rate established in  
27 20-9-306. The credit may not exceed the taxpayer's tax liability and may not be carried forward or carried back.

28 (3) Only one taxpayer may claim the nonpublic school education expenses credit for a given

1 qualifying student in a tax year. In cases involving separation or divorce for which each parent resides in a  
2 different location, a noncustodial parent may claim the credit if:

3 (a) the child meets the definition of a qualifying student, except for the residency requirement  
4 specified in 26 U.S.C. 152(c)(1)(B); and

5 (b) (i) a court of competent jurisdiction has unconditionally awarded the noncustodial parent the tax  
6 benefits associated with a child tax credit if one is authorized by law and the noncustodial parent attaches a  
7 copy of the court order to their tax return; or

8 (ii) the custodial parent signs a written declaration that the custodial parent will not claim the credit  
9 for the tax year.

10 (4) (a) The department may adopt rules, prepare forms, and maintain records that are necessary  
11 to implement this credit. The rules may not require evidence of a taxpayer's compliance with the compulsory  
12 attendance requirement in 20-5-109 beyond applicable evidentiary requirements otherwise found in state law  
13 for proving compliance with the compulsory attendance requirement in 20-5-109.

14 (b) The superintendent of public instruction shall make rules establishing vocational and life skills  
15 education and programs, educational and psychological evaluations, assistive technology rentals, and braille  
16 translation goods and services programs eligible for the credit.

17 (5) Pursuant to 5-4-104, the legislature finds that the purpose of the tax credit provided for in this  
18 section is to provide an income tax credit to reimburse expenses for nonpublic schooling, such as private  
19 schools and home schooling.

20  
21 **Section 3.** Section 15-30-2303, MCA, is amended to read:

22 **"15-30-2303. Tax credits subject to review by interim committee.** (1) The following tax credits  
23 must be reviewed during the biennium commencing July 1, 2021, and during each biennium commencing 8  
24 years thereafter:

25 (a) the credit for donations to innovative educational programs provided for in 15-30-2334, 15-30-  
26 3110, and 15-31-158;

27 (b) the credit for donations to a student scholarship organization provided for in 15-30-2335, 15-  
28 30-3111, and 15-31-159; and

1 (c) the adoption tax credit provided for in 15-30-2321; and

2 (d) the tax credit for nonpublic school education expenses provided for in [section 2].

3 (2) The following tax credits must be reviewed during the biennium commencing July 1, 2023, and  
4 during each biennium commencing 8 years thereafter:

5 (a) the credit for infrastructure use fees provided for in 17-6-316;

6 (b) the credit for contributions to a qualified endowment provided for in 15-30-2327 through 15-30-  
7 2329, 15-31-161, and 15-31-162;

8 (c) the credit for property to recycle or manufacture using recycled material provided for in Title 15,  
9 chapter 32, part 6; and

10 (d) the credit for preservation of historic buildings provided for in 15-30-2342 and 15-31-151.

11 (3) The following tax credits must be reviewed during the biennium commencing July 1, 2025, and  
12 during each biennium commencing 8 years thereafter:

13 (a) the residential property tax credit for the elderly provided for in 15-30-2337 through 15-30-  
14 2341;

15 (b) the credit for unlocking state lands provided for in 15-30-2380;

16 (c) the job growth incentive tax credit provided for in 15-30-2361 and 15-31-175; and

17 (d) the credit for trades education and training provided for in 15-30-2359 and 15-31-174.

18 (4) The following tax credits must be reviewed during the biennium commencing July 1, 2027, and  
19 during each biennium commencing 8 years thereafter:

20 (a) the credit for hiring a registered apprentice or veteran apprentice provided for in 15-30-2357  
21 and 15-31-173;

22 (b) the earned income tax credit provided for in 15-30-2318;

23 (c) the media production and postproduction credits provided for in 15-31-1007 and 15-31-1009;  
24 and

25 (d) the credit for contractor's gross receipts provided for in 15-50-207.

26 (5) The revenue interim committee shall review the tax credits scheduled for review and make  
27 recommendations in accordance with 5-11-210 at the conclusion of the full review to the legislature about  
28 whether to eliminate or revise the credits. The committee shall also review any tax credit with an expiration date

1 or termination date that is not listed in this section in the biennium before the credit is scheduled to expire or  
2 terminate.

3 (6) The revenue interim committee shall review the credits using the following criteria:

4 (a) whether the credit changes taxpayer decisions, including whether the credit rewards decisions  
5 that may have been made regardless of the existence of the tax credit;

6 (b) to what extent the credit benefits some taxpayers at the expense of other taxpayers;

7 (c) whether the credit has out-of-state beneficiaries;

8 (d) the timing of costs and benefits of the credit and how long the credit is effective;

9 (e) any adverse impacts of the credit or its elimination and whether the benefits of continuance or  
10 elimination outweigh adverse impacts; and

11 (f) the extent to which benefits of the credit affect the larger economy. (Subsection (3)(c)  
12 terminates December 31, 2028--sec. 4, Ch. 391, L. 2023; subsection (3)(d) terminates December 31, 2028--  
13 sec. 2, Ch. 576, L. 2023; subsection (1)(c) terminates December 31, 2031--sec. 6, Ch. 493, L. 2023.)"

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15 NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified  
16 as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 and 2].

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18 NEW SECTION. Section 5. Applicability. [This act] applies to income tax years beginning after  
19 December 31, 2025.

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