United States Government Accountability Office

Report to Congressional Requesters

September 2018

PRIVATE SCHOOL CHOICE

Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs

Accessible Version

GAO-18-679

GAO Highlights

Highlights of GAO-18-679, a report to congressional requesters

Why GAO Did This Study

TCS programs offer state tax credits to individuals or businesses that donate to scholarship funds for students to attend private elementary and secondary schools. Through these credits, donors may reduce the amount they owe in state taxes by the full or a partial amount of their donation, depending on each program's rules. Designing a TCS program requires that many decisions be made, such as which students will be eligible to receive scholarships and the effect donations will have on donors' state taxes. GAO was asked to review key characteristics of TCS programs.

This report examines (1) state TCS programs' policies regarding student eligibility and scholarship awards, and (2) how donating to a TCS program could affect the amount of state and federal taxes owed by donors.

For both objectives, GAO reviewed publicly-available documents about student eligibility and tax provisions for all 22 programs authorized as of January 2018 and verified the accuracy of the information with state program officials. GAO did not conduct an independent legal review of state laws and regulations. GAO also interviewed federal officials and reviewed relevant federal guidance and policy documents.

View GAO-18-679. For more information, contact Jacqueline M. Nowicki at (617) 788-0580 or nowickij@gao.gov.

September 2018

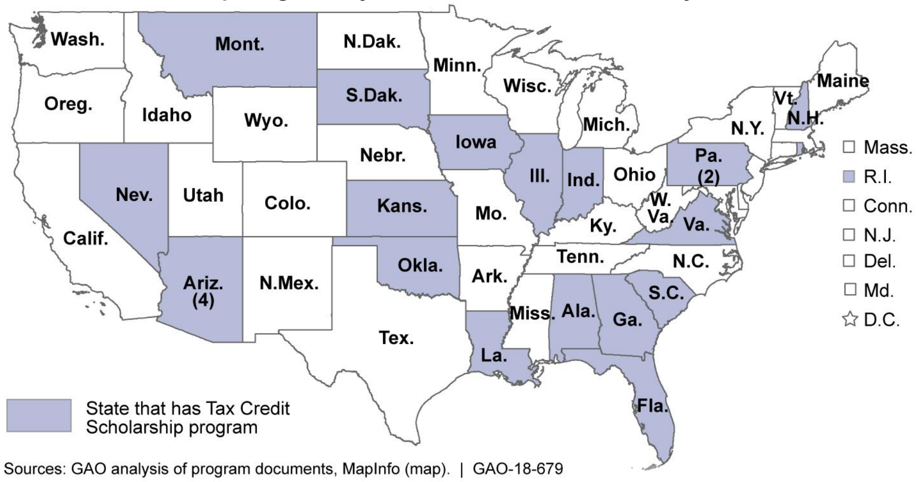
PRIVATE SCHOOL CHOICE

Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs

What GAO Found

In 2018, there were 22 tax credit scholarship (TCS) programs authorized across 18 states, which provide state tax credits for individual and business donations that fund scholarships for students to attend elementary and secondary private schools (see figure).

Tax Credit Scholarship Programs by State, Authorized as of January 2018



Sources: GAO analysis of program documents, MapInfo (map). | GAO-18-679

Note: Each state has one program, except for Pennsylvania and Arizona, which have two and four programs, respectively. Alaska and Hawaii are not included in the map because neither has a program. Florida authorized a second program which was set to go into effect on July 1, 2018 and that program is outside the scope of GAO's review.

To determine the eligibility of students for these scholarships, most TCS programs use household income and have various approaches to determine scholarship award amounts. Income limits vary widely among programs, ranging from approximately $32,000 to $136,500 per year for students from a four-person household in school year 2017-2018. Programs have different requirements for how students can use their scholarships and different methods for calculating scholarship amounts. More than half of the programs (13 of 22) allow students to use their scholarship money for costs like transportation and books in addition to tuition, whereas the remaining programs (9 of 22) require scholarships funds to be used for tuition only. Average scholarship awards in school year 2016-2017 ranged from $500 to $5,468 per student among the 16 programs that published or provided GAO with such information.

The effect of TCS donations on donors' tax liability depends on program characteristics and donors' financial circumstances. Specifically, half of the 22 programs allow eligible donors to claim 100 percent of their donations as state tax credits, meaning that for each dollar donated, state taxes owed are reduced by a dollar, up to any maximum set by the state. The remaining 11 programs allow donors to claim from 50 to 85 percent of their donations as state tax credits. Programs often specify a maximum tax credit that may be claimed each year by a donor, by all donors combined, or both. Individual donors may also reduce their federal tax liabilities through the federal deduction for charitable contributions, depending on their financial circumstances and applicable tax provisions.

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Abbreviations

ACS	American Community Survey
CY	calendar year
IRS	Internal Revenue Service
SGO	scholarship granting organization
SY	school year
TCS	tax credit scholarship

U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

September 18, 2018

The Honorable Patty Murray
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Sheldon Whitehouse
United States Senate

State tax credit scholarship (TCS) programs offer tax credits to individuals or businesses that donate to scholarship funds for students to attend private elementary and secondary schools. Through these credits, donors may reduce the amount they owe in state taxes by the full or a partial amount of their donation, depending on each program's rules. In some cases, TCS program donations may also affect the amount of federal taxes donors owe, through the federal deduction for charitable contributions. TCS programs are one type of private school choice program that states have established to help fund students' attendance at private schools. Other types of private school choice programs include school voucher and education savings account programs.[1] As of January

[1] School voucher programs generally provide interested parents with funds for tuition at a participating private school. Education savings account programs can fund a broader set of educational expenses, such as online learning programs, private tutoring, or education therapies. More than one-third of the states with TCS programs also had one or both of these types of private school choice programs as of the start of school year 2017-2018. As we previously reported, except for the federally funded District of Columbia voucher program, all voucher and education savings account programs are administered and funded by states. For GAO work on voucher and education savings account programs, see GAO, *School Choice: Private School Choice Programs are Growing and Can Complicate Providing Certain Federally Funded Services to Eligible Students,* GAO-16-712 (Washington D.C.: August 11, 2016) and *Private School Choice: Federal Actions Needed to Ensure Parents are Notified about Changes in Rights for Students with Disabilities,* GAO-18-94 (Washington D.C.: November 16, 2017).

2018, there were 22 TCS programs authorized across 18 states,[2] with an additional program enacted later in the year.[3] In school year (SY) 2016-2017 (the most recent year for which information was available), TCS programs collectively awarded scholarships totaling more than $856 million, according to state-reported data.[4]

Designing a TCS program requires that many decisions be made, such as who will be eligible to receive scholarships and the effect donations will have on the amount donors owe in state taxes. You asked us to review key characteristics of state-administered TCS programs.

This report examines (1) state TCS programs' policies regarding student eligibility and scholarship awards, and (2) how donating to a TCS program could affect the amount of state and federal taxes owed by donors.

To complete our work for both objectives, we reviewed publicly-available information about student eligibility, scholarship awards, and tax provisions for the 22 TCS programs that were authorized by the beginning of 2018. We verified the accuracy of this information with state officials from each program.[5] We did not conduct an independent review of state

[2] For purposes of this report, we considered a program to be authorized in the year state officials reported state legislation was enacted to create the program, regardless of when the program became operational.

[3] Florida's new Hope Scholarship Program was created by law in March 2018 with an effective date of July 1, 2018 and will provide scholarships to students who were subjected to an incident of violence or bullying at school. The program will offer vehicle sales tax credits to donors. This report focuses on the 22 programs that were authorized by the beginning of 2018, and as a result, Florida's Hope Scholarship Program is not included in the scope of this report.

[4] In SY 2016-2017, 21 programs provided scholarships; one program (in Illinois) was authorized in 2017, but had not yet begun awarding scholarships. The total scholarship amount presented in this report ($856 million) is based on information for 18 programs that published or provided GAO with information. Among the 18 programs included, Nevada provided information for the first half of SY 2016-2017 only; the four Arizona programs provided information by state fiscal year (July 1, 2016-June 30, 2017); and Rhode Island provided information by the 2016 calendar year, rather than the school year.

[5] For all programs, our process of obtaining and verifying program information involved collecting publicly-available documents from state agency websites using a standardized data collection instrument. After one analyst compiled and documented this information, a second analyst verified the accuracy of the information compiled in the data collection instrument. We then sent a summary of our findings to relevant state agencies for verification and incorporated any additions or clarifications and received responses from each state. In cases where state officials did not complete some sections of the verification document, we ensured that an additional GAO analyst reviewed the state documents used to support our findings.

laws and regulations. Throughout the report, we provide the most recent and complete information available for the various types of information. Specifically, unless otherwise noted, student eligibility requirements are as of SY 2017-2018 and tax provisions are as of calendar year (CY) 2018.[6] Scholarship amount information is from SY 2016-2017 and program donations made by taxpayers are from CY 2016.

We also used economic data from the 2012-2016 American Community Survey (ACS) 5-year estimates administered by the U.S. Census Bureau.[7] ACS is a national survey that collects information about social, economic, demographic, and housing characteristics from a sample of households. For this report, we used ACS estimates of the state level median income for a four-person household to provide context for TCS program income eligibility requirements in relation to state income distributions. For the TCS programs with income eligibility requirements, we calculated program income limits for a four-person household based on each TCS program’s income eligibility requirements for SY 2016-2017 and 2017-2018. We then compared these limits to 2012-2016 5-year ACS estimates of state median household income for four-person households.[8] In addition to verifying the program data we collected with state officials, we reviewed ACS documentation on survey design and methodology used to produce the estimates of state median household income. We concluded that the data presented in this report were sufficiently reliable for the purposes of our reporting objectives.

In addition, we spoke with officials at the U.S. Department of Education to obtain their observations about the state programs, and identify whether the department had conducted research related to TCS programs. We also spoke with other stakeholders such as TCS program researchers to understand current research and emerging issues regarding these programs.

[6] Although we report program requirements for Illinois as of SY 2017-2018, the program will not begin awarding scholarships until SY 2018-2019.

[7] All of the ACS estimates presented in this report have 95 percent margins of error that are within 2.6 percent of the estimate itself.

[8] To assess whether differences between income limits and median income were real and not likely due to sampling error, we conducted tests of significance at the 0.05 significance level. The differences were significant in all states except for Nevada. We used statistical methods to adjust for multiple comparisons. Our results did not change after adjusting for multiple comparisons.

For the second objective, in addition to reviewing program documents and verifying the information with state officials, we developed illustrative examples of how TCS donations may affect state and federal tax liabilities for donors with varying tax circumstances—including examples that assume different percentages of a donation that donors are allowed to claim as a state tax credit (referred to in this report as tax credit percentages). Specifically we developed examples that assume a 50 percent TCS program tax credit and examples that assume a 100 percent TCS program tax credit, which represent the smallest and largest tax credit percentages offered by existing TCS programs. In August 2018, the Internal Revenue Service (IRS) and Treasury published proposed regulations that, if finalized without modification, would change the extent to which individuals who make TCS program donations can reduce their federal tax liability.[9] We did not address the proposed regulations in our analysis because they were not final at the time this report was published and are therefore subject to change. We also reviewed relevant federal laws, regulations, and other documents related to federal tax policy and spoke with the IRS regarding federal deductions for charitable contributions and state and local taxes.

We conducted this performance audit from January 2018 to September 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

As of January 2018, there were 22 TCS programs authorized across 18 states (see fig. 1).[10] All TCS programs are state programs; there are no federal TCS programs. Decisions about whether to develop and operate a

[9] Under the proposed regulations, if a taxpayer makes a charitable contribution and receives or expects to receive a state or local tax credit in return, the taxpayer would be required to reduce any federal deduction for the contribution by the tax credit amount, subject to certain exceptions. Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43,563 (Aug. 27, 2018). IRS has indicated that the applicability date of the regulation, once finalized, could be as early as August 28, 2018.

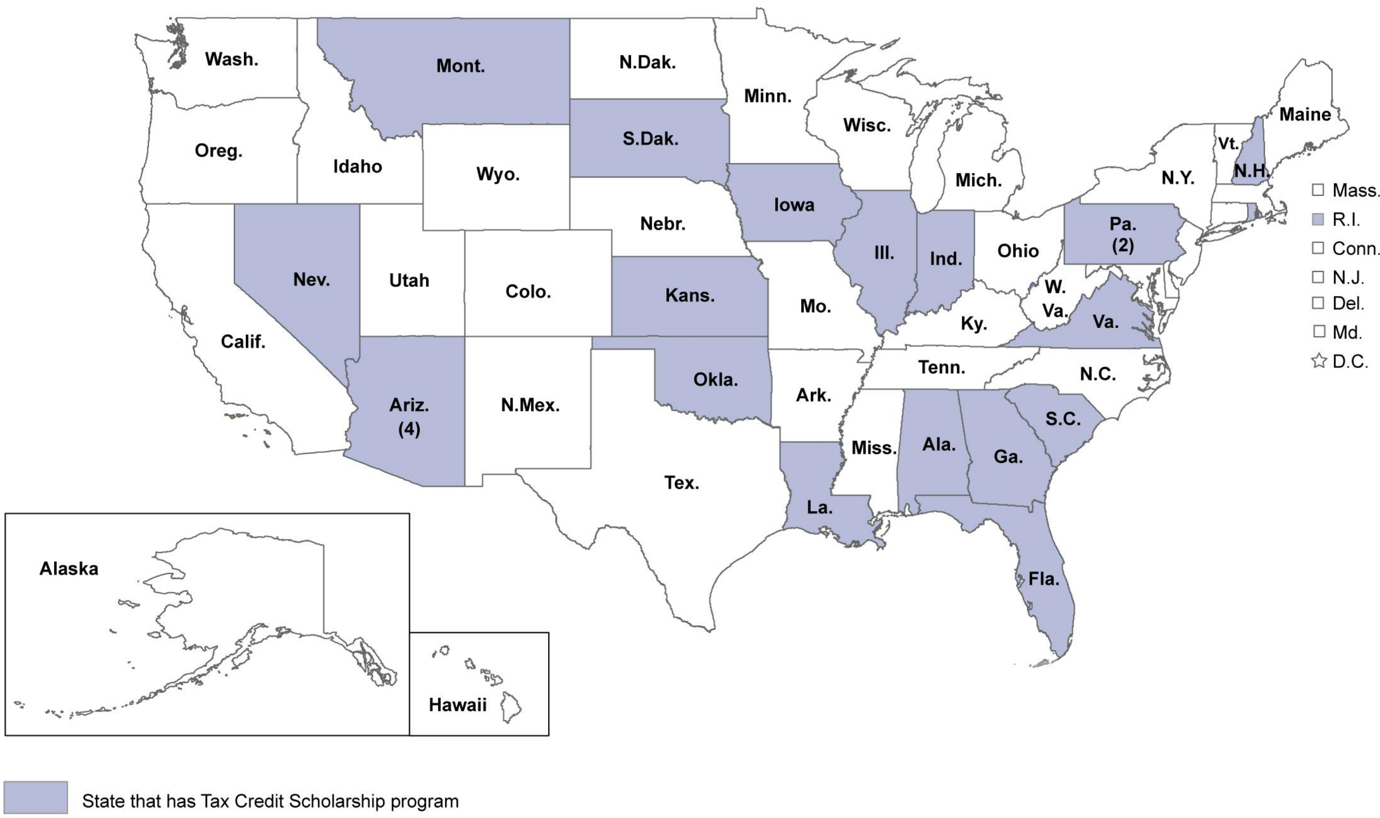
[10] Most of these 18 states have one tax credit scholarship program each, whereas Arizona has four programs and Pennsylvania has two programs.

TCS program (and how to structure the program) are completely at the discretion of each state; there is no federal role in establishing these programs.[11] Most TCS programs began within the last 10 years; the first TCS program awarded scholarships in Arizona in 1998 and Florida created the newest program in 2018, according to state program documents and officials.[12]

[11] The U.S. Department of Education has no role in developing, operating, or overseeing TCS programs. The U.S. Department of Education does have some responsibilities related to students attending private schools. For example, Education is responsible for ensuring that states meet requirements under two key federal grant programs that require public school districts to provide "equitable services," which may include services such as speech therapy or reading tutors, to eligible private school students with disabilities or from low-income areas. See GAO-16-712 and GAO-18-94.

[12] This report focuses on the 22 programs that were authorized as of January 2018 and, therefore, does not provide detailed information about the Florida Hope Scholarship Program which was created by law in March 2018, with an effective date of July 1, 2018.

Figure 1: Tax Credit Scholarship Programs by State, Authorized as of January 2018



Sources: GAO analysis of program documents, MapInfo (map). | GAO-18-679

Note: Each state has one program, except for Pennsylvania and Arizona, which have two and four programs, respectively. Florida authorized a second program which was set to go into effect on July 1, 2018 and that program is outside the scope of our review.

Scholarships are funded through donations from private individuals and businesses, and the financial impact to states from TCS programs primarily occurs through forgone revenue resulting from the associated tax credits.[13] In all 22 programs, state agencies and nonprofit organizations both play a role in administering the programs, with the specific responsibilities varying by program:

- **State departments or agencies** responsible for tax administration, education, or both, generally administer these programs. For

[13] States may also be responsible for the costs of some tasks related to administering the program.

example, they may approve schools or nonprofit scholarship granting organizations or disseminate program information or guidance to potential donors, scholarship students, or the public.

- **Nonprofit scholarship granting organizations (SGO)** are generally responsible for managing some aspects of the donation process—such as collecting donations—as well as awarding scholarships to students.[14]

Most Programs Use Income to Determine Student Eligibility and Consider Various Factors When Setting Scholarship Award Amounts

States' TCS programs often determine student eligibility for scholarships based on household income and use a range of factors to determine scholarship award amounts.[15]

Eligibility Requirements

Income requirements: Seventeen of the 22 TCS programs have income limits (i.e., the maximum amount of household income a student can have and still be eligible for a scholarship).[16] As shown in figure 2, income limits varied widely among programs, ranging from just under $32,000 to about $136,500 per year for students from a four-person household in SY 2017-2018.[17] For context, we compared these income limits to the 2012-2016 5-year ACS estimates of state median household income for four-person

[14] Different states use different terminology for these nonprofit organizations, such as "Scholarship Granting Organizations" and "School Tuition Organizations." For the purposes of this report, we use the term "Scholarship Granting Organizations" or its acronym "SGO" to refer to all such nonprofit organizations.

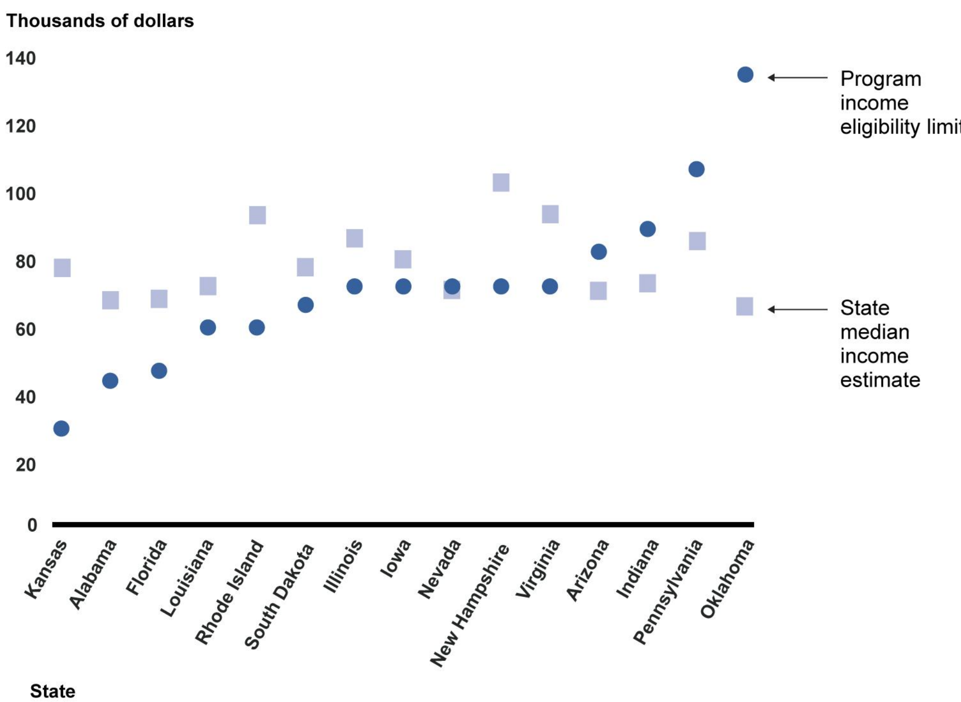
[15] As described in the introduction section of this report, the information we present about program requirements was gathered from our review of publicly-available program documents and provided to state officials for verification. We did not conduct an independent review of state laws and regulations.

[16] In 4 of the 17 programs with household income limits, these limits may not apply in all cases. For example, in Florida's tax credit scholarship program included in our review, the income limit may not apply for students who are or have previously been placed in foster care.

[17] We calculated TCS program income limits according to each program's requirements and verified the accuracy of this information with state officials.

households. Six of the 17 programs had household income limits in SY 2017-2018 above their state's median income. This included two programs each in Arizona and Pennsylvania which collectively accounted for about one-third of all TCS scholarships awarded to students in SY 2016-2017, according to state-reported data.[18] Of the 17 programs that have household income limits, 6 also require SGOs to further consider income when selecting scholarship recipients among eligible students. Such requirements include giving preference to scholarship applicants from lower-income households or ensuring that a certain percentage of scholarship recipients come from lower-income households.

Figure 2: Household Income Eligibility Limits for Tax Credit Scholarship Programs Relative to State Median Household Income Estimates for a Four-Person Household



Source: GAO analysis of Census data and program documents provided to state officials for verification. | GAO-18-679

Notes: GAO did not conduct an independent review of state laws and regulations.

[18] Arizona's two TCS programs with income eligibility requirements awarded over 43,000 scholarships in SY 2016-2017. Pennsylvania's two TCS programs also have income requirements and awarded almost 49,000 scholarships in SY 2016-2017. Combined, TCS programs awarded more than 258,000 scholarships in SY 2016-2017, according to the 19 programs that published or provided GAO with such information. See appendix II for more information on scholarship awards.

There are a total of 17 tax credit scholarship programs in the 15 states shown here. Pennsylvania has two programs with the same household income limit. Arizona has four programs in total (two of which have income eligibility criteria). The Illinois TCS program was authorized in 2017, and had not yet begun issuing scholarships in school year 2017-2018. According to officials, as of August 2018, the program was in the process of issuing scholarships for school year 2018-2019.

Income eligibility limit information is current as of school year 2017-2018; the estimated median annual income information is based on the 2012-2016 American Community Survey (ACS) 5-year estimates. GAO used ACS estimates of median household income for four-person households. All of the ACS estimates in this figure have 95 percent margins of errors that are within 2.6 percent of the estimate itself. To assess whether differences between income limits and median income estimates were real and not likely due to sampling error, we conducted tests of significance at the 0.05 significance level. The differences were statistically significant for all states except for Nevada. We used statistical methods to adjust for multiple comparisons. Our results did not change after adjusting for multiple comparisons.

Of the remaining five TCS programs that do not use income to determine eligibility, three use one or more other types of eligibility criteria, such as whether the student has a disability, and two—Montana's TCS program and Arizona's Original Individual Income Tax Credit program—are open to all school-aged residents.[19]

TCS programs collected limited information on the household incomes of scholarship recipients. The 11 programs that had income information on recipient families collected and reported it in different ways. For example, the Alabama program requires SGOs to report the total number and amount of scholarships awarded to students qualifying for the federal free and reduced-price lunch program and makes the information publicly available.[20] Arizona makes an annual report publicly available on the state's four TCS programs, including breakdowns of the number of students receiving scholarships from various income levels.

Other eligibility requirements: Some TCS programs' eligibility criteria for student scholarship recipients include other factors, such as students' disability status or previous schooling.[21] Specifically, 7 of 22 programs are limited to students with disabilities or allow students with disabilities to qualify for a scholarship even if they do not meet some requirements for students without disabilities. For example, to be eligible for Virginia's

[19] While Arizona's Original Individual Income Tax Credit program does not have a household income limit for eligibility, SGOs are required to consider financial need when selecting scholarship recipients among eligible students.

[20] The Department of Agriculture's National School Lunch Program provides low-cost or free lunches to children in schools. Children are eligible for free or reduced-price lunches if their household income is below a certain amount or if they meet certain automatic eligibility criteria, such as eligibility for the Supplemental Nutrition Assistance Program.

[21] Programs generally also require that eligible students be within a specific age or grade range (e.g., enrolled in kindergarten through 12th grade) and that they reside in the state.

program, all students must have a household income below a certain amount, but that amount is higher for students with disabilities.[22] South Carolina's program is limited to students with disabilities.[23] In addition, some programs may require students to have previously attended a public school (9 of 22) or live in the attendance area of a public school with performance challenges (5 of 22).[24] See appendix II for more information on the eligibility criteria of TCS programs.

Scholarship Uses and Amounts

TCS programs have different requirements for how students can use their scholarships and different methods for calculating scholarship amounts. More than half of the programs (13 of 22) allow students to use their scholarship money for costs like transportation and books in addition to tuition, whereas the remaining programs (9 of 22) require scholarships funds to be used for tuition only.[25] Four programs allow donors to recommend that their donations fund scholarships for specific students.[26] Average scholarship awards in SY 2016-2017 ranged from $500 to $5,468 per student among the 16 programs that published such information or provided it to us. (See appendix II for more information).

Most programs require SGOs to consider one or more factors related to student or school characteristics when determining scholarship award amounts. As shown in table 1, these factors may include the cost of

[22] To be eligible for Virginia's program, students without a disability must reside in a household with income that does not exceed 300 percent of the current federal poverty guidelines, or $73,800 for a four-person household in SY 2017-2018. For students with a disability, household income must not exceed 400 percent of the current federal poverty guidelines, or $98,400 for a four-person household in SY 2017-2018.

[23] All applicants are required to provide evidence of a disability such as an individualized education plan issued by a public school district or other documentation.

[24] Some programs allow SGOs to set additional eligibility criteria beyond the program's general requirements.

[25] Among the programs that allowed students to use scholarship money for costs other than tuition, some allow students to use their scholarship money for public school expenses, such as school fees or transportation costs to attend a school in another district. In New Hampshire, students may also use scholarship funds to cover homeschooling expenses with the exception of paying for parents' time.

[26] For example, the Arizona Original and Switcher Individual Income Tax Credit programs permit donors to recommend that a scholarship be given to a specific individual, as long as that individual is not the donor's dependent. The SGO cannot make its scholarship decision purely based on the donor's recommendation.

private school tuition or the state funding amounts for public school students, among other factors.

Table 1: Types of Factors Tax Credit Scholarship Programs Used to Determine Scholarship Award Amounts as of School Year 2017-2018

Factor	Number of programs that use this factor	Example
Cost of school tuition	13	In Pennsylvania's two programs, scholarship award amounts may not exceed the actual amount of tuition charged by the school to non-scholarship students.
State funding amounts for public school students	10	In Virginia, the scholarship cannot exceed the state's per-pupil funding for the public school where the student resides.
Disability	5	In Arizona's Disabled/Displaced Corporate Income Tax Credit program, students with disabilities may receive an adjusted award amount based on the category of their disabilities.
Grade level	5	In Louisiana, maximum allowable scholarship award amounts range from about $4,185 for students in kindergarten through 8th grade to $4,708 for high school students.
Household income	2	In Florida, the student's household income at the time of application is considered when setting the scholarship award amount (students from lower income households may receive greater scholarship amounts).
Scholarship granting organizations (SGO) may set additional scholarship award criteria	14	In Rhode Island, as long as students meet the eligibility requirements, SGOs may determine award amounts using additional criteria such as financial need, academic potential, or an even division of awards among students.

Source: GAO analysis of program documents provided to state officials for verification. | GAO-18-679

Notes: GAO did not conduct an independent review of state laws and regulations. This table includes programs that were authorized as of January 2018. Programs may use multiple factors when determining scholarship amounts. Programs established their own definition(s) for these factors, such as how to calculate household income or the state's per-pupil funding for public school students.

See appendix II for more information on program requirements related to scholarship amounts.

Effect of TCS Donations on Taxes Owed Depends on Factors Such as Tax Credit Percentages and Individual Circumstances

The extent to which TCS program donations affect the amount that donors owe in state and federal taxes depends on program characteristics—such as the percentage of the donation that the rules of the program allow donors to claim as a state tax credit (referred to in this report as "tax credit percentages") and limits on donation amounts—along with donors' financial circumstances.[27] Almost all of the TCS programs (20 of 22) offer tax credits to businesses for income or other types of taxes, while more than half offer tax credits to individuals for their income taxes (13 of 22).[28] More than half of programs (13 of 22) offer tax credits for cash donations only, while the remaining 9 programs also allow for at least one type of "in kind" donation, such as a property donation.

Tax Credit Percentages

Eleven of the 22 programs allow eligible donors (either individuals, businesses, or both) to claim 100 percent of their donations as state tax credits, meaning that, for each dollar donated, the amount of state taxes owed (i.e., the donor's tax liability) is reduced by a dollar, up to any maximum donation limits set by the program. The other 11 programs offer tax credits of 50 percent to 85 percent of donations (see table 2).[29] For example, Indiana and Oklahoma offer tax credits of 50 percent of the donation value, meaning that donors can reduce their state tax liability by 50 cents for every dollar donated.[30] All but one of the programs prohibit donors from receiving a tax credit greater than their tax liability in a given year, although two thirds of the programs allow donors to carry forward portions of the credits to use in future years.[31]

[27] As described in the introduction section of this report, the information we present about program requirements was gathered from our review of publicly-available program documents and provided to state officials for verification. We did not conduct an independent review of state laws and regulations.

[28] Programs almost always allow donors to use the credits to reduce the amount of income taxes that they owe. Twelve of the 22 programs allow business donors to use the credits to reduce other types of taxes instead, most commonly taxes related to corporate insurance premiums. Programs vary in terms of the types of businesses eligible for tax credits. For individual donors, tax credits may only be applied to state income taxes, except in South Carolina where they may also be applied to state taxes related to bankruptcy.

[29] In Pennsylvania and Rhode Island donors may receive 90 percent tax credits if the donor commits to donating to the program for multiple consecutive years.

[30] In Oklahoma donors may receive 75 percent tax credits if the donor commits to donating to the program for multiple consecutive years.

[31] Indiana's program is the only program in which donors may claim a tax credit greater than their tax liability in a given year (i.e., where the tax credit is "refundable"). Louisiana's program offered rebates through CY 2017 that were not limited by the amount of the donor's tax liability, but changed to nonrefundable income tax credits in CY 2018, according to program officials.

Table 2: Maximum Percentage of Their Donation That Donors Are Allowed to Claim as a Tax Credit under State Tax Credit Scholarship Programs, as of Calendar Year 2018

Maximum tax credit percentage	Location of programs
100 percent	Alabama, Arizona (4 programs), Florida, Georgia, Louisiana[a], Montana, Nevada, and South Carolina
85 percent	New Hampshire
80 percent	South Dakota
75 percent	Illinois, Pennsylvania (2 programs)[a], and Rhode Island[a]
70 percent	Kansas
65 percent	Iowa and Virginia
50 percent	Indiana and Oklahoma[a]

Source: GAO analysis of program documents provided to state officials for verification.| GAO-18-679

Note: GAO did not conduct an independent review of state laws and regulations. This table includes programs that were authorized as of January 2018.

[a]Louisiana only offers tax credits on the portion of donations that are used for scholarships, rather than administrative expenses. Such administrative expenses are limited to 5 percent of the donation amount. Therefore, a state official said that, in practice, the tax credit percentage is generally 95 percent. Pennsylvania, Rhode Island, and Oklahoma offer donors larger tax credit percentages if the donor commits to donating to the program for multiple consecutive years; the tax credit percentage increases from 75 to 90 percent in Pennsylvania and Rhode Island, and from 50 to 75 percent in Oklahoma.

Limits on Tax Credit Amounts

Sixteen of the 22 programs limit the amount of tax credits each donor may claim per year and programs vary in how they structure these limits.[32] The programs that set annual limits for donors generally do so in one or both of the following ways:

- **Dollar amount limits:** Thirteen programs limit the dollar amount of TCS program tax credits that donors can claim in a given year. These limits ranged from a maximum tax credit of $150 for either individuals or businesses in Montana's program, to a maximum tax credit of $1 million for either individuals or businesses in Illinois' program in CY 2018.[33]

[32] One of the 16 programs (Virginia) sets limits for individuals but not for businesses.

[33] Some programs allowed individuals who were married and jointly filed tax returns, or who are owners of a passthrough entity such as a partnership, to contribute a combined amount that was larger than the limit for individuals or businesses. For example, in Montana, married individuals may contribute a combined $300.

- **Limits based on percentage of tax liability:** Four programs limit the amount of the TCS program tax credits a donor can claim to a percentage of the donor's total income tax liability.[34] These limits ranged from 50 to 90 percent of a donor's income tax liability in CY 2018. For example, in South Carolina donors could receive a tax credit up to 60 percent of their total income tax liability for the year of the donation.[35]

All but three programs specify a maximum total amount, or cap, of TCS program tax credits[36] that may be claimed each year for the program as a whole (see table 3).[37] Programs' procedures vary if the cap is reached in a given year. For example, in Rhode Island, potential donors may apply for credits on a "first come, first served" basis once the application period starts until all credits are taken. In 2018, all of the credits were claimed on the first day of the application period and a drawing was held to determine who would receive credits among those who applied on that first day. Georgia's TCS program offers a maximum tax credit percentage of 100 percent when total donations do not exceed the donation cap. However, if total donations exceed the program cap, the allowable tax credit percentage is prorated among donors who apply on the day the program-wide cap on tax credits is reached.

[34] Alabama's program includes both types of donor limits; donors may claim credits up to $50,000 or 50 percent of their annual tax liability, whichever is lower. Georgia's program includes a monetary limit for individual donors and a percentage-based limit for businesses. Florida sets limits for some types of business taxes, but not for others. Nevada's program sets percentage-based limits but is not included in this total because its program requirements are different than other programs' percentage-based limits. This program offers tax credits on modified business taxes, which are calculated based on wages paid. Specifically, the program limits the donation amount to the equivalent of 2 percent of wages paid by the business. New Hampshire's program limited donations to $510,000 or no more than 10 percent of program credits; this program is also not included in the total count of programs that have limits based on a percentage of donors' tax liability.

[35] In South Carolina, tax credits may also be claimed against taxes related to bankruptcy.

[36] In programs where the allowable tax credit percentage is 100 percent, the annual program-wide tax credit cap is the same as the limit on the amount of eligible donations for the program. However, in programs where the tax credit percentage is less than 100 percent, the maximum amount of program-wide eligible donations would be higher. For example, a $10 million annual program-wide tax credit cap for a program with a 50 percent tax credit would result in a limit of $20 million in annual eligible donations.

[37] Three programs—in Arizona (two programs for individual donors) and Louisiana—do not have a program-wide cap. The total donations for each of those programs in CY 2016 ranged from $6.7 million to $65.3 million, according to state-reported data.

Table 3: Tax Credit Scholarship Program-wide Caps on Tax Credits Offered in Calendar Year 2018

Program name	Annual program-wide cap on tax credits
Programs available for both individual and business donors	
Alabama Educational Scholarship Program	$30 million
Georgia Tax Credit Program	$58 million
Iowa School Tuition Organization Tax Credit	$12 million
Illinois Invest In Kids Scholarship Tax Credit Program	$75 million
Indiana School Scholarship Program	$12.5 million
Kansas Tax Credit for Low Income Students Scholarship Program	$10 million
Louisiana Tuition Donation Credit Program	No program-wide cap
Montana Education Tax Credit Program	$3 million
Oklahoma Equal Opportunity Education Scholarship Credit	$3.5 million
South Carolina Exceptional SC Scholarship Fund	$11 million[a]
Virginia Education Improvement Scholarships Tax Credits Program	$25 million[a]
Programs available for individual donors only	
Arizona Original Individual Income Tax Credit Program	No program-wide cap
Arizona Switcher Individual Income Tax Credit Program	No program-wide cap
Programs available for business donors only	
Arizona Disabled/Displaced Corporate Income Tax Credit Program	$5 million
Arizona Low-Income Corporate Income Tax Credit Program	$74.3 million
Florida Tax Credit Scholarship Program	$698.9 million
New Hampshire Education Tax Credit Program	$5.1 million
Nevada Educational Choice Scholarship Program	$26.1 million
Pennsylvania Educational Improvement Tax Credit Program	$110 million[a]
Pennsylvania Opportunity Scholarship Tax Credit Program	$50 million[a]
Rhode Island Tax Credits for Contributions to Scholarship Organizations	$1.5 million[a]
South Dakota Partners in Education Tax Credit Program	$2 million

Source: GAO analysis of program documents provided to state officials for verification | GAO-18-679

Note: GAO did not conduct an independent review of state laws and regulations. This table includes programs that were authorized as of January 2018.

[a]Information reported by state fiscal year rather than calendar year.

Twenty programs published or provided us with information on donation amounts, such as total donations and average donations. Among these programs, total program-wide donation amounts in CY 2016 ranged from

$43,865 to $553 million.[38] (See appendix III for more information about donation amounts.)

TCS Donations and Federal Taxes for Individual Donors

In addition to reducing their state tax liabilities, some individuals who make TCS program donations may also be able to reduce their federal income tax liabilities through the federal tax deduction for charitable contributions.[39] In August 2018, IRS and Treasury published proposed regulations that, if finalized without modification, would change the extent to which individuals who make TCS program donations can reduce their federal tax liability.[40] However, the proposed regulations were not final at the time this report was published and are therefore subject to change. As a result, the information we present below does not address the proposed regulations.

Currently, the extent to which individuals may reduce their federal income tax liabilities as a result of their TCS donation depends on their specific circumstances, such as whether they itemize their deductions (versus taking the standard deduction), the federal rates at which their income is taxed, and the amount of federal deductions they take for state and local

[38] In six of these programs, total donations were collected by state fiscal year, school year, or did not include a full year of donations. For example, Florida reports donation amounts by state fiscal year and represents the highest total donation in this range. One additional program did not have donation information available and the Illinois program was not operating in 2016.

[39] See 26 U.S.C. § 170. The federal deduction for charitable contributions is generally limited to no more than 60 percent of the taxpayer's adjusted gross income for tax years 2018-2025, for cash donations made to eligible charities. Not all donations made through TCS programs are deductible. For example, the Illinois program prohibits donors from taking a tax credit on donations for which they also claim a federal income tax deduction.

[40] Under the proposed regulations, if a taxpayer makes a charitable contribution and receives or expects to receive a state or local tax credit in return, the taxpayer would be required to reduce any federal deduction for the contribution by the amount of the tax credit, subject to certain exceptions. Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43,563 (Aug. 27, 2018). IRS has indicated that the applicability date of the regulation, once finalized, could be as early as August 28, 2018.

taxes.[41] More specifically, the effect of a TCS donation on an individual donor's federal tax liability depends on the following:

- **Itemizing federal deductions and taking the deduction for charitable contributions:** Taxpayers benefit from itemizing deductions—such as those for state and local taxes, mortgage interest, and charitable contributions—if they exceed the standard deduction.[42] Taxpayers, including TCS donors, may only claim a federal deduction for charitable contributions if they itemize.
- **Federal tax rate:** The reduction in federal taxes owed as a result of the federal deduction for charitable contributions depends on the donor's applicable federal tax rate. Given the same deduction amount, taxpayers subject to higher tax rates will generally reduce their tax liabilities by larger amounts than taxpayers subject to lower tax rates.
- **Deduction for state and local taxes:** When filing federal taxes, taxpayers who itemize may take a deduction for state and local taxes they have paid during the tax year. Beginning in tax year 2018, individual taxpayers may deduct no more than $10,000 in state and local taxes on their federal tax returns.[43] Taxpayers who claim state tax credits for TCS program donations reduce their state tax liability, which may in turn reduce the amount they may deduct on their federal tax return for state and local taxes paid.
- **Interaction between the federal deduction for charitable contributions and the federal deduction for state and local**

[41] Our analysis of the federal deduction for charitable contributions is limited to individual donors; we did not analyze the federal deduction for charitable contributions for corporate donors. The federal requirements for deducting charitable contributions differ for corporations compared to individuals. In addition, according to IRS, business taxpayers who make business-related payments to charities or government entities for which the taxpayers receive state or local tax credits can generally deduct the payments as business expenses. See IRS, *Clarification for business taxpayers: Payments under state or local tax credit programs may be deductible as business expenses,* IR-2018-178 (September 5, 2018).

[42] For tax year 2018, the basic standard deduction is $12,000 for single taxpayers and married taxpayers filing separately, $18,000 for heads of households, and $24,000 for married taxpayers filing jointly.

[43] The limit is $5,000 in the case of a married individual filing a separate return. This limit on the amount of state and local taxes that are eligible for the federal deduction for state and local taxes paid was established by legislation enacted in December 2017 and is effective for tax years 2018 through 2025. See Pub. L. No. 115-97, § 11042, 131 Stat. 2054 (2017) (codified at 26 U.S.C. § 164(b)(6)).

taxes:[44] Generally, if a donor pays $10,000 or less in state and local taxes, the amount of the deduction for charitable contributions may be fully or partially offset (i.e., canceled out) by a decrease in the deduction for state and local taxes paid as a result of the TCS program tax credit.[45] Conversely, taxpayers who pay more than $10,000 in state and local taxes cannot deduct the full amount of state and local taxes they paid. Therefore, the reduced state and local taxes paid as a result of the tax credit generally may not offset the amount of the deduction for charitable contributions for these taxpayers.[46]

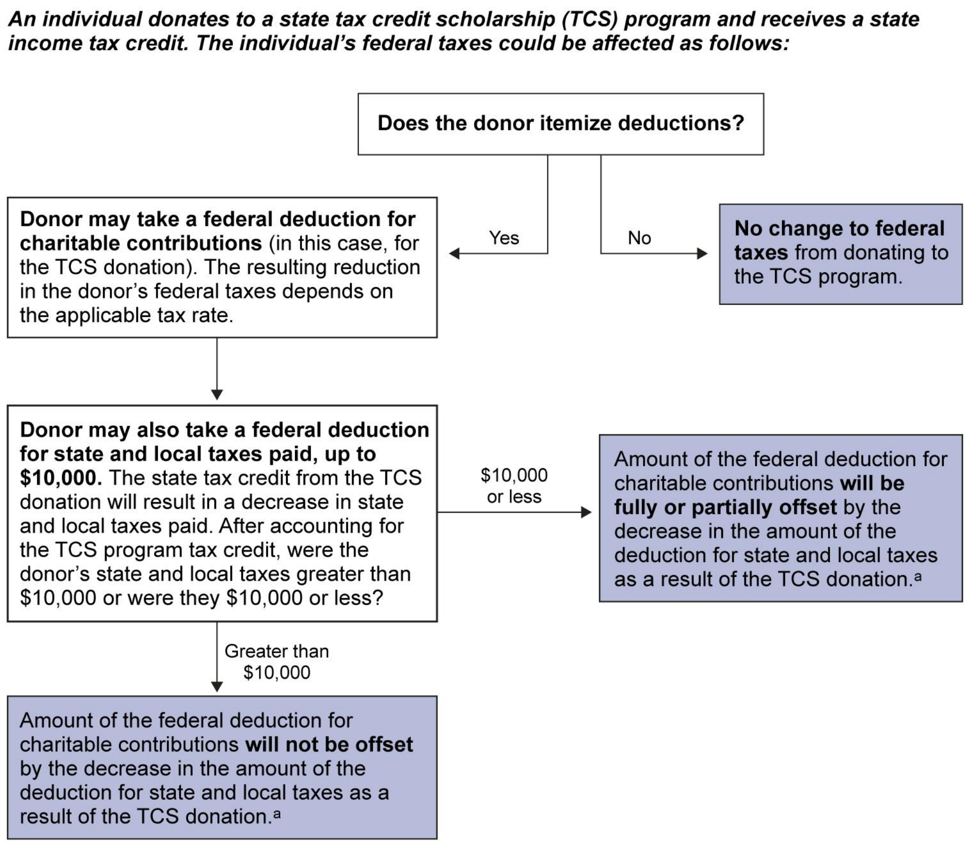
See figure 3 for a description of how individuals' TCS program donations could affect their federal tax liabilities.

[44] The actual interaction between charitable contributions and state and local tax deductions depends on various factors. Our analysis of this interaction applies to tax years 2018-2025 and assumes that the donation is eligible for a federal charitable deduction, and assumes that the full value of the state credit accrues to the taxpayer in the year the donation is made.

[45] Specifically, it may be completely offset if the TCS program provided a 100 percent tax credit and partially offset if the TCS program provided a lower tax credit percentage. Outcomes for individual donors may also depend on whether they are subject to the Alternative Minimum Tax.

[46] In some cases, taxpayers would pay more than $10,000 in state taxes absent the credit for a TCS donation but would pay $10,000 or less in state taxes when accounting for the credit. Such taxpayers may also experience a partial offset in the federal tax benefit received through their deduction for charitable contributions.

Figure 3: Illustrative Example of How Federal Income Tax Liabilities Could Change for Individuals Who Donate to Tax Credit Scholarship Programs



Source: GAO analysis. | GAO-18-679

Note: The analysis in this figure is applicable to tax years 2018 through 2025. This figure provides a high-level description of key factors that could affect a taxpayer's federal tax liability as a result of making a TCS program donation. This analysis assumes that the TCS program donation is eligible for a federal deduction for charitable contributions. In addition, this analysis assumes that the full value of the state credit accrued to the taxpayer in the year the donation was made. The actual effect of a donation on an individual's federal liability will depend on the taxpayer's circumstances and any relevant tax credit scholarship program rules. Corporate donors are not included in this analysis because they are subject to different federal tax requirements than individual donors. In August 2018, IRS and Treasury published proposed regulations that, if finalized without modification, would change the extent to which individuals who make TCS program donations can reduce their federal tax liability. Specifically, with certain exceptions, under the proposed regulations, if a taxpayer makes a charitable contribution and receives or expects to receive a state or local tax credit in return, the taxpayer would be required to reduce any federal deduction for the contribution by the amount of the tax credit. Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43,563 (Aug. 27, 2018).The information we present in this figure does not address the proposed regulations because they were not final at the time this report was published and are therefore subject to change.

[a]In some cases, taxpayers would pay more than $10,000 in state taxes absent the credit for a TCS donation but would pay $10,000 or less in state and local taxes when accounting for the credit. Such taxpayers may also experience a partial offset in the federal tax benefit received through their

deduction for charitable contributions. Outcomes for individual donors may also depend on whether they are subject to the Alternative Minimum Tax.

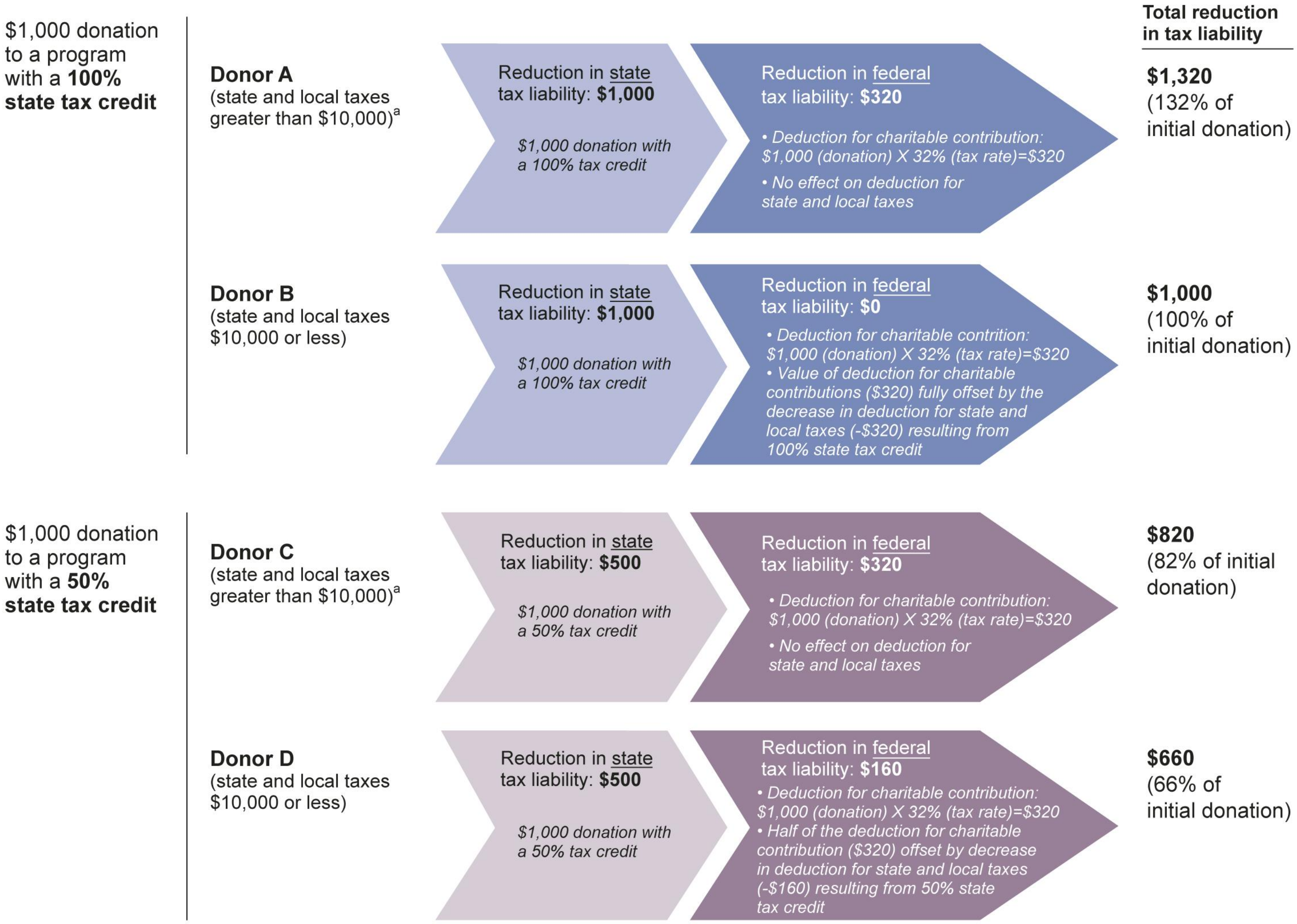
Combined Reduction in State and Federal Tax Liability

TCS program donations can lead to a range of possible changes to an individual's state and federal income tax liabilities, including some scenarios where donors could reduce their combined state and federal tax liability by an amount that is greater than the amount of their donation (see for example, Donor A in figure 4). Figure 4 shows four examples of how state and federal income taxes may be reduced for hypothetical individual donors in states with 100 percent and 50 percent tax credit scholarship programs.[47]

[47] We selected these tax percentages for our examples because they represent the highest and lowest tax credit percentages used by state tax credit scholarship programs in 2018.

Figure 4: Change in Amount of Federal and State Income Taxes Owed as a Result of a Tax Credit Scholarship Donation, for Hypothetical Individual Donors

In this figure we assume: Each donor has a federal tax rate of 32 percent and itemizes federal deductions. Each donor donated $1,000 to a tax credit scholarship program and the donation is eligible for a federal tax deduction for charitable contributions.



Source: GAO analysis of hypothetical scenarios. | GAO-18-679

Note: This figure identifies changes in state and federal income tax liability for hypothetical donors who are filing as single, after accounting for federal deductions for charitable contributions for their tax credit scholarship (TCS) program donation, and federal deductions for state and local taxes paid (compared to the deductions that the taxpayers would otherwise take absent the donation). This analysis assumes that the full value of the state credit accrued to the taxpayer in the year the donation was made and the taxpayer is not subject to the Alternative Minimum Tax. Donors A and B are assumed to owe at least $1,000 in state tax and donors C and D are assumed to owe at least $500 in state tax, before taking the TCS program credit into account. The value of the federal deduction is affected by a taxpayer's tax rate, while our analysis assumed that the amount of the state tax credit does not vary by income level or other factors. These examples are not based on a specific state. We selected 50 percent and 100 percent state tax credits because these represent the smallest and largest state tax credits offered in TCS programs during 2018. Corporate donors are not included in this analysis because they are subject to different federal tax requirements than individual donors. Not all state TCS donations may be eligible for a federal charitable deduction. In August 2018, IRS and Treasury published proposed regulations that, if finalized without modification, would change the extent to which individuals who make TCS program donations can reduce their federal tax liability. Specifically, with certain exceptions, under the proposed regulations, if a taxpayer makes a charitable contribution and receives or expects to receive a state or local tax credit in return, the taxpayer would be required to reduce any federal deduction for the contribution by the amount of the tax credit. Contributions in Exchange for State or Local Tax Credits, 83 Fed. Reg. 43,563 (Aug. 27, 2018). The information we present in this figure does not address the proposed regulations because they were not final at the time this report was published and are therefore subject to change.

[a]Specifically, we assumed that Donor A and Donor C had state and local taxes totaling at least $11,000. Therefore, these donors would have a state and local tax liability of at least $10,000 regardless of whether they donated $1,000 to a TCS program.

Agency Comments and Our Evaluation

We provided a draft of this report to Education and IRS for review and comment. While the draft was under review at these agencies, IRS and Treasury issued proposed regulations related to state tax credits and the federal deduction for charitable contributions. We updated the report to include information about these proposed regulations but did not alter our analysis to reflect the proposed regulations because they were not final at the time this report was published and are therefore subject to change. We provided a revised draft to IRS as the revisions directly relate to IRS's areas of responsibility, and informed Education about our approach to addressing the proposed regulations.

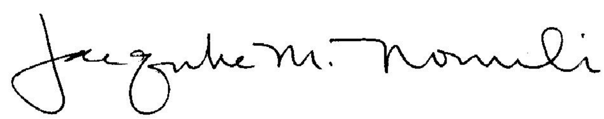
IRS did not provide formal comments on the draft report.

Education's comments are reproduced in appendix I. Education also provided technical comments, which we incorporated as appropriate. In its comments, Education noted that it has no role in developing, operating, or overseeing TCS programs, and provided a variety of comments and observations on the draft report. For example, Education suggested that we add additional details about certain TCS program requirements, such as more information about state tax rules and permissible uses of scholarship funds. We incorporated these comments as appropriate.

Education also suggested that we delay publication of this report until the IRS regulations are finalized, as Education thought that the report could be more helpful at that time. GAO policy is to communicate audit and evaluation results in a timely manner to decision makers and others who either requested the work or may need the information to bring about needed changes. Therefore, we are issuing the report as planned.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Education, and the Commissioner of Internal Revenue. In addition, the report is available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (617) 788-0580 or nowickij@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Jacqueline M. Nowicki
Director
Education, Workforce, and Income Security

Appendix I: Comments from the Department of Education

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INNOVATION AND IMPROVEMENT

September 5, 2018

Ms. Jacqueline Nowicki
Director, Education, Workforce
and Income Security Issues
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Nowicki:

I am pleased to provide the U.S. Department of Education's (ED's) response to the Government Accountability Office's (GAO's) draft report GAO-18-679, *Private School Choice: Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs*. We understand that GAO conducted this report to examine (1) state tax credit scholarship (TCS) programs' policies regarding student eligibility and scholarship awards, and (2) how donating to a TCS program could affect the amount of state and federal taxes owed by donors. While the draft report offers no recommendations for ED, we offer the following comments and responses for consideration:

1. The IRS's Notice of Proposed Rulemaking (NPRM) published in the Federal Register on August 27, 2018, could meaningfully impact this draft report and could have particular impact on the material in Figures 3 ("Illustrative Example of How Federal Income Tax Liabilities Could Change for Individuals who Donate to Tax Credit Scholarship Programs") and 4 ("Change in Amount of Federal and State Income Taxes Owed as a Result of a Tax Credit Scholarship Donation, for Hypothetical Individual Donors"). At a minimum, updates in the final report regarding the NPRM would be needed. It may be prudent to delay publication of this report until the final IRS rule is published, so that the substance of the final rule can be taken into account in the report, and the report could be more helpful.

2. It is important to note that, of the seven states with TCS programs offering tax credits only to businesses (Arizona, Florida, Kansas, Nevada, Pennsylvania, Rhode Island and South Dakota), three states have no state individual income tax (Florida, Nevada and South Dakota). Additionally, Arizona has programs offering tax credits to individuals, and Florida has a program offering tax credits for vehicle sales tax. Although it does not have a state individual income tax, New Hampshire has a program offering tax credits for interest and dividends income tax.

3. The executive summary states that tax-credit scholarships are "for students to attend private elementary and secondary schools," and the draft report reflects this throughout. Many TCS programs, in fact, also provide scholarships for students to attend public schools that are not residentially assigned. For example:

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

- New Hampshire's program defines "educational expenses" as "the tuition cost of an eligible student to attend a public or nonpublic school, excluding students who were placed into a nonpublic school by their school district, the cost of college or university, accredited tutor or tutoring facility, or distance education program." (N.H. Rev. Stat. §§ 77-G:1 through 10)
- Alabama's program provides income tax credits for "costs associated with transferring the student from a failing school to a nonfailing public school," meaning scholarships also fund out-of-district public school tuition/fees. (Ala. Code § 16-6D-8(b)(1))
- Florida's program provides funds for transportation to out-of-district public schools. (Fla. Stat. § 1002.395(6)(d)2)
  - Note that Florida has mandatory intradistrict and interdistrict open enrollment, meaning that, subject to capacity, all public schools must enroll any student.

4. The executive summary states, "Individual donors may also reduce their federal tax liabilities through the federal deduction for charitable contributions, depending on their financial circumstances and applicable tax provisions." It is important to note throughout the draft report that, at the federal level, charitable contributions to TCS programs are treated no differently than any other charitable contribution eligible for a state or local tax credit.
   - Additionally, two programs have provisions specifically disallowing or limiting the state tax credit for a contribution that receives any federal income tax deduction.
     - Illinois (individual and corporate): "No credit shall be taken under this Act for any qualified contribution for which the taxpayer claims a federal income tax deduction." (35 Ill. Comp. Stat. 40/10(d))
     - Florida (corporate): "The credit granted by this section shall be reduced by the difference between the amount of federal corporate income tax taking into account the credit granted by this section and the amount of federal corporate income tax without application of the credit granted by this section." (Fla. Stat. § 220.1875)

5. When analyzing eligibility in the draft report, it is important to discuss how scholarship amounts are weighted based on student need.
   - Also, there are additional types of eligibility not listed in the draft report. For example:
     - Programs in Alabama, Kansas, Louisiana, Oklahoma and Pennsylvania require students to be means-tested and in a failing school to be eligible, or prioritize serving students in failing schools. (noted in Appendix III)
     - Florida's new program is for students who have been "subjected to an incident of battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, harassment, assault, or battery; threat or intimidation; or fighting at school."

In addition to these responses, ED has outlined additional technical comments in the appendix.

You may direct your questions to me at (202) 453-6048 or at Jason.Botel@ed.gov. We appreciate the work that went into this draft report and the opportunity to comment.

Sincerely,

Jason Botel
Acting Assistant Deputy Secretary for the Office of Innovation and Improvement
Principal Deputy Assistant Secretary for the Office of Elementary and Secondary Education

Appendix II: State Tax Credit Scholarship Program Eligibility and Scholarship Award Characteristics

Table 4: Tax Credit Program Eligibility Criteria as of School Year 2017-2018

Program name	Household income may be considered for eligibility	Disability may be considered for eligibility	Previous attendance at a public school may be considered for eligibility	Performance of public school where student lives may be considered for eligibility	Involvement in foster care may be considered for eligibility
Alabama Educational Scholarship Program	Yes	N/A	Yes	Yes	N/A
Arizona Switcher Individual Income Tax Credit Program[a]	Yes	Yes	Yes	N/A	Yes
Arizona Disabled/Displaced Corporate Income Tax Credit Program	N/A	Yes	N/A	N/A	Yes
Arizona Low-Income Corporate Income Tax Credit Program	Yes	N/A	Yes	N/A	N/A
Arizona Original Individual Income Tax Credit Program	N/A	N/A	N/A	N/A	N/A
Florida Tax Credit Scholarship Program	Yes	N/A	N/A	N/A	Yes
Georgia Tax Credit Program	N/A	N/A	Yes	Yes	N/A
Iowa School Tuition Organization Tax Credit	Yes	N/A	N/A	N/A	N/A
Illinois Invest In Kids Scholarship Tax Credit Program[b]	Yes	N/A	N/A	N/A	N/A
Indiana School Scholarship Program	Yes	N/A	N/A	N/A	N/A
Kansas Tax Credit for Low Income Students Scholarship Program	Yes	N/A	Yes	Yes	N/A
Louisiana Tuition Donation Credit Program	Yes	N/A	Yes	N/A	N/A
Montana Education Tax Credit Program	N/A	N/A	N/A	N/A	N/A
New Hampshire Education Tax Credit Program	Yes	N/A	Yes	N/A	N/A
Nevada Educational Choice Scholarship Program	Yes	N/A	N/A	N/A	N/A
Oklahoma Equal Opportunity Education Scholarship Credit	Yes	Yes	N/A	Yes	N/A

Program name	Household income may be considered for eligibility	Disability may be considered for eligibility	Previous attendance at a public school may be considered for eligibility	Performance of public school where student lives may be considered for eligibility	Involvement in foster care may be considered for eligibility
Pennsylvania Educational Improvement Tax Credit Program	Yes	Yes	N/A	N/A	N/A
Pennsylvania Opportunity Scholarship Tax Credit Program	Yes	Yes	N/A	Yes	N/A
Rhode Island Tax Credits for Contributions to Scholarship Organizations	Yes	N/A	N/A	N/A	N/A
South Carolina Exceptional SC Scholarship Fund	N/A	Yes	N/A	N/A	N/A
South Dakota Partners in Education Tax Credit Program	Yes	N/A	Yes	N/A	N/A
Virginia Education Improvement Scholarships Tax Credits Program	Yes	Yes	Yes	N/A	N/A
Totals	**17**	**7**	**9**	**5**	**3**

Source: GAO analysis of program documents and information from state officials. | GAO-18-679

Note: GAO gathered information on program requirements by reviewing publicly-available program documents and providing the information to state officials for verification. GAO did not conduct an independent review of state laws and regulations. This table includes programs that were authorized as of January 2018. Check marks indicate criteria that are sometimes or always used to determine eligibility, depending on the student's specific circumstances. "N/A" indicates that a potential eligibility criterion is not a program requirement. In addition to the eligibility criteria listed above, programs generally had requirements about students' age or grade range (e.g., to be eligible, students must be in grades kindergarten through 12th grade). Programs also generally required that the student reside in their state.

[a]The Arizona Switcher Individual Income Tax Credit Program allows students who do not meet other eligibility requirements to be eligible for the program if they previously received a scholarship from the state's Disabled/Displaced Corporate Income Tax Credit Program or its Low-Income Corporate Income Tax Credit Program. Therefore, household income, disability, or involvement in foster care are sometimes eligibility requirements for this program.

[b]Illinois did not start awarding scholarships in SY 2017-2018, therefore, for Illinois only, information in this table is as of SY 2018-2019 rather than SY 2017-2018.

Table 5: Tax Credit Scholarship Award Characteristics (SY 2016-2017) and Factors Programs Consider to Determine Award Amounts (as of SY 2017-2018)

Program name	Number of scholarships	Total amount of scholarships	Average scholarship award amount	Cost of private school tuition is a factor	State funding for public school students is a factor	Disability is a factor	Grade level is a factor	Household income is a factor	Scholarship Granting Organization may set additional award criteria
Alabama Educational Scholarship Program	4,092	$22,373,593	$5,468	Yes	Yes	N/A	Yes	N/A	Yes
Arizona Switcher Individual Income Tax Credit Program	22,348	$32,988,733	$1,476	Yes	N/A	N/A	N/A	N/A	Yes
Arizona Disabled/Displaced Corporate Income Tax Credit Program	1,105	$5,750,839	$5,204	Yes	Yes	Yes	Yes	N/A	Yes
Arizona Low-Income Corporate Income Tax Credit Program	20,964	$51,746,384	$2,468	Yes	N/A	N/A	Yes	N/A	Yes
Arizona Original Individual Income Tax Credit Program	32,585	$57,999,199	$1,780	Yes	N/A	N/A	N/A	N/A	Yes
Florida Tax Credit Scholarship Program	98,936	$539,252,526	n/a	Yes	Yes	N/A	Yes	Yes	N/A
Georgia Tax Credit Program	n/a	n/a	n/a	N/A	Yes	N/A	N/A	N/A	n/a
Iowa School Tuition Organization Tax Credit	10,771	$17,046,608	$1,583	N/A	N/A	N/A	N/A	N/A	Yes
Illinois Invest In Kids Scholarship Tax Credit Program[a]	n/a	n/a	n/a	Yes	Yes	Yes	N/A	Yes	N/A
Indiana School Scholarship Program	9,349	$16,811,950	$1,798	Yes	N/A	N/A	N/A	N/A	Yes
Kansas Tax Credit for Low Income Students Scholarship Program	204	$687,254	$3,369	N/A	N/A	N/A	N/A	N/A	Yes

Program name	Number of scholarships	Total amount of scholarships	Average scholarship award amount	Cost of private school tuition is a factor	State funding for public school students is a factor	Disability is a factor	Grade level is a factor	Household income is a factor	Scholarship Granting Organization may set additional award criteria
Louisiana Tuition Donation Credit Program	n/a	$7,194,434	$4,085	Yes	Yes	N/A	Yes	N/A	Yes
Montana Education Tax Credit Program	20	$10,000	$500	N/A	Yes	N/A	N/A	N/A	N/A
New Hampshire Education Tax Credit Program	178	$347,095	$1,950	N/A	N/A	Yes	N/A	N/A	N/A
Nevada Educational Choice Scholarship Program	1,153	n/a	n/a	N/A	N/A	N/A	N/A	N/A	Yes
Oklahoma Equal Opportunity Education Scholarship Credit	1,459	n/a	n/a	N/A	Yes	Yes	N/A	N/A	N/A
Pennsylvania Educational Improvement Tax Credit Program	34,400	$57,100,000	$1,660	Yes	N/A	N/A	N/A	N/A	Yes
Pennsylvania Opportunity Scholarship Tax Credit Program	14,550	$35,200,000	$2,419	Yes	N/A	Yes	N/A	N/A	N/A
Rhode Island Tax Credits for Contributions to Scholarship Organizations	405	$1,551,454	$3,589	N/A	N/A	N/A	N/A	N/A	Yes
South Carolina Exceptional SC Scholarship Fund	1,951	$9,701,005	$4,800	Yes	N/A	N/A	N/A	N/A	Yes
South Dakota Partners in Education Tax Credit Program	275	$204,002	n/a	N/A	Yes	N/A	N/A	N/A	n/a
Virginia Education Improvement Scholarships Tax Credits Program	3,433	$10,641,356	$3,243	Yes	Yes	N/A	N/A	N/A	Yes

Source: GAO analysis of program documents and information from state officials. | GAO-18-679

Note: GAO gathered information on program requirements by reviewing publicly-available program documents and providing the information to state officials for verification. GAO did not conduct an independent review of state laws and regulations. This table includes programs that were authorized as of January 2018. Check marks indicate that GAO found information to confirm that a tax credit scholarship program requires scholarship granting organizations to consider the specific factor when determining award amounts. “N/A“ indicates that a given factor is not a program requirement and “n/a” indicates that the program does not have this information available. For scholarship award numbers and amount information, the Nevada program provided information for the first half of school year (SY) 2016-2017, the four Arizona programs provided information by state fiscal year (July 1, 2016-June 30, 2017), and the Rhode Island program provided information by the 2016 calendar year instead of by school year.

[a]Illinois did not start awarding scholarships in SY 2017-2018. Therefore, for Illinois only, information in this table pertaining to the factors considered in determining award amounts is as of SY 2018-2019 rather than SY 2017-2018.

Appendix III: Information About Tax Credit Scholarship Program Tax Provisions

Table 6: Key Tax Credit Scholarship Program Tax Provisions, as of Calendar Year (CY) 2018

Program name	Percent of donation that may be claimed as a credit	Limits on size of annual tax credit per individual and/or business donor[a]	Program-wide cap on tax credits offered per year	Program allows at least one type of in-kind donation such as property or stock donations	Portions of the tax credit can be carried forward for use in future years
Programs available for both individual and business donors					
Alabama Educational Scholarship Program	100%	$50,000 or 50% of tax liability, whichever is lower (individual) 50% of business tax liability	$30 million	no	yes
Georgia Tax Credit Program	100%	$1,000 (individual) 75% of business tax liability	$58 million	no	yes
Iowa School Tuition Organization Tax Credit	65%	No limits per donor	$12 million	yes	yes
Illinois Invest In Kids Scholarship Tax Credit Program	75%	$1 million (individual and business)	$75 million	yes	yes
Indiana School Scholarship Program	50%	No limits per donor	$12.5 million	yes	yes
Kansas Tax Credit for Low Income Students Scholarship Program	70%	$350,000 (Individual and business)	$10 million	yes	yes
Louisiana Tuition Donation Credit Program	100%[b]	No limits per donor[b]	No program-wide cap	yes	yes
Montana Education Tax Credit Program	100%	$150 (Individual and business)	$3 million	no	no
Oklahoma Equal Opportunity Education Scholarship Credit	50%-75%[c]	$1,000 (individual) $100,000 (business)	$3.5 million	no	yes
South Carolina Exceptional SC Scholarship Fund	100%	60% of tax liability (Individual and business)	$11 million[d]	yes	no

Program name	Percent of donation that may be claimed as a credit	Limits on size of annual tax credit per individual and/or business donor[a]	Program-wide cap on tax credits offered per year	Program allows at least one type of in-kind donation such as property or stock donations	Portions of the tax credit can be carried forward for use in future years
Virginia Education Improvement Scholarships Tax Credits Program	65%	$81,250 (individual) No limit for business donors	$25 million[d]	yes	yes
Programs available for individual donors only					
Arizona Original Individual Income Tax Credit Program	100%	$555 (individual)	No program-wide cap	no	yes
Arizona Switcher Individual Income Tax Credit Program	100%	$552 (individual)	No program-wide cap	no	yes
Programs available for business donors only					
Arizona Disabled/Displaced Corporate Income Tax Credit Program	100%	No limits per donor	$5 million	no	yes
Arizona Low-Income Corporate Income Tax Credit Program	100%	No limits per donor	$74.3 million	no	yes
Florida Tax Credit Scholarship Program	100%	Maximum donation amounts vary from 50% to 100% of tax liability[e]	$698.9 million	no	yes
New Hampshire Education Tax Credit Program	85%	$510,000 or no more than 10% of program credits	$5.1 million	no	no
Nevada Educational Choice Scholarship Program	100%	2 percent of wages paid[f]	$26.1 million	no	yes
Pennsylvania Educational Improvement Tax Credit Program	75%-90%[c]	$750,000[g]	$110 million[d]	yes	no
Pennsylvania Opportunity Scholarship Tax Credit Program	75%-90%[c]	$750,000[g]	$50 million[d]	yes	no
Rhode Island Tax Credits for Contributions to Scholarship Organizations	75%-90%[c]	$100,000	$1.5 million[d]	no	no
South Dakota Partners in Education Tax Credit Program	80%	No limits per donor	$2 million	no	no

Source: GAO analysis of state program documents provided to state officials for verification. | GAO-18-679

Note: GAO did not conduct an independent review of state laws and regulations. This table includes programs that were authorized as of January 2018.

[a]Limits for "individuals" listed above are for taxpayers filing as single. Programs sometimes have separate limits for taxpayers filing as "married, filing separately," "single," and "married, filing jointly," or for individuals who are owners of a passthrough entity such as a partnership. Programs vary in terms of the types of businesses eligible for the tax credit as well as whether the tax credits are available for types of taxes other than income taxes.

[b]In Louisiana, there is no limit on the size of a donation that is eligible for a tax credit, however tax credits may only be claimed for the portion of the donation that is used for scholarships rather than other uses like administrative expenses. A state official said that, in practice, the tax credit percentage received by donors is generally 95 percent because administrative costs are limited to 5 percent of donation amounts.

[c]In Oklahoma, Pennsylvania, and Rhode Island, the percentage of donations that can be claimed as a tax credit increases if donors commit to donating for 2 years. In Oklahoma, that percentage increases from 50 percent to 75 percent. In the two Pennsylvania programs and the Rhode Island program, the percentage increases from 75 percent to 90 percent.

[d]Information reported by state fiscal year rather than calendar year.

[e]In Florida's program included in this review, donors may claim credits up to their full tax liability for credits taken for corporate income tax, insurance premium tax, and sales and use tax due under a direct pay permit holder. Donors may claim credits of up to 90 and 50 percent of taxes due for credits on alcoholic beverage excise taxes and oil and gas production severance taxes, respectively.

[f]Nevada's limit per donor is related to wages paid by the business donor.

[g]Donation limit lifted from October 1-November 30 if credits remain.

Table 7: Information About Tax Credit Scholarship Donations Received During Calendar Year (CY) 2016

Program name	Total donations in CY 2016 (rounded)	Number of donors in CY 2016	Average donation amount per donor
Programs available for both individual and business donors			
Alabama Educational Scholarship Program	$19.9 million	1,571[a]	n/a
Georgia Tax Credit Program	$52.2 million	21,730[a]	n/a
Iowa School Tuition Organization Tax Credit	$12 million	3,484	$3,444
Illinois Invest In Kids Scholarship Tax Credit Program[b]	n/a	n/a	n/a
Indiana School Scholarship Program	$19.6 million[d]	4,722[a, d]	n/a
Kansas Tax Credit for Low Income Students Scholarship Program	$865,000	7	$123,571
Louisiana Tuition Donation Credit Program	$6.7 million	n/a	n/a
Montana Education Tax Credit Program	$43,865	248	$177[c]
Oklahoma Equal Opportunity Education Scholarship Credit	n/a	n/a	n/a
South Carolina Exceptional SC Scholarship Fund	$10 million[d]	667[d]	$14,993
Virginia Education Improvement Scholarships Tax Credits Program	$13.8 million	1,081	$12,787
Programs available for individual donors only			

Program name	Total donations in CY 2016 (rounded)	Number of donors in CY 2016	Average donation amount per donor
Arizona Original Individual Income Tax Credit Program	$65.3 million	85,370[a]	n/a
Arizona Switcher Individual Income Tax Credit Program	$36.8 million	43,368[a]	n/a
Programs available for business donors only			
Arizona Disabled/Displaced Corporate Income Tax Credit Program	$5 million	38[d]	$131,579
Arizona Low-Income Corporate Income Tax Credit Program	$61.9 million	203[d]	$304,901
Florida Tax Credit Scholarship Program	$553 million[d]	n/a	n/a
New Hampshire Education Tax Credit Program	$385,662	n/a	n/a
Nevada Educational Choice Scholarship Program	$5.5 million[d]	51[d]	$107,843
Pennsylvania Educational Improvement Tax Credit Program	$77.1 million[d]	2,690[d, e]	n/a
Pennsylvania Opportunity Scholarship Tax Credit Program	$40.2 million[d]	780[d]	$51,538
Rhode Island Tax Credits for Contributions to Scholarship Organizations	$1.6 million	46	$34,783
South Dakota Partners in Education Tax Credit Program	$325,000	4	$81,250

Source: GAO analysis of state program documents provided to state officials for verification. | GAO-18-679

Note: This table includes programs that were authorized as of January 2018. "n/a" indicates that the program does not have this information available. Programs vary in terms of the types of businesses eligible for the tax credit.

[a]Program reports number of donations rather than number of donors.

[b]The Illinois program was not yet authorized during calendar year 2016.

[c]According to a Montana program official, information about donation amount may include donations that exceeded the $150 that would be eligible for a tax credit. This, plus the ability of married individuals to claim $300 in tax credit scholarship program tax credits, may explain why the average donation amount is larger than the donor tax credit limit for the program.

[d]Information reported by state fiscal year or school year rather than calendar year. Nevada only had information available for January 2016-July 2016.

[e]This program also allows for donations to preschool programs. The total donation amount is for K-12 donations only. The number of donors provided may include some donors who contributed to preschool programs rather than solely to K-12 programs.

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact:

Jacqueline M. Nowicki, (617) 788-0580, nowickij@gao.gov

Staff Acknowledgments:

In addition to the individual named above, Nagla'a El-Hodiri (Assistant Director), Barbara Steel-Lowney (Analyst-in-Charge), Jeff Arkin, and Jessica L. Yutzy made key contributions to this report. Also contributing to this report were Deborah Bland, Lilia Chaidez, Sarah Cornetto, Caitlin Cusati, Paulissa Earl, Alison Grantham, Kirsten Lauber, Sheila R. McCoy, Mimi Nguyen, Jessica Orr, Michelle Philpott, Paul Schearf, and Andrew J. Stephens.

Appendix V: Accessible Data

Data Tables

Data Table for Figure 2: Household Income Eligibility Limits for Tax Credit Scholarship Programs Relative to State Median Household Income Estimates for a Four-Person Household

Thousands of dollars.

State	State median income estimate	Program income eligibility limit
Kansas	79,194	31,980
Alabama	69,679	45,510
Florida	69,836	49,200
Louisiana	73,759	61,500
Rhode Island	94,923	61,500
South Dakota	79,358	68,265
Illinois	87,908	73,800
Iowa	81,786	73,800
Nevada	72,665	73,800
New Hampshire	104,210	73,800
Virginia	95,047	73,800
Arizona	72,121	84,194
Indiana	74,788	91,020
Pennsylvania	86,965	108,708
Oklahoma	67,814	136,530

Agency Comment Letter

Text of Appendix I: Comments from the Department of Education

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Dear Ms. Nowicki:

Iam pleased to provide the U.S. Department of Education's (ED's) response to the Government Accountability Office's {GAO's) draft report GAO-18-679, Private School Choice: Requirements for Students and Donors Participating in State Tax Credit Scholarship Programs. We understand that GAO conducted this report to examine (1) state tax credit scholarship {TCS) programs' policies regarding student eligibility and scholarship awards, and (2) how donating to a TCS program could affect the amount of state and federal taxes owed by donors. While the draft report offers no recommendations for ED, we offer the following comments and responses for consideration:

1. The IRS's Notice of Proposed Rulemakin g (NPRM) published in the Federal Register on August 27, 2018, could meaningfully impact this draft report and could have particular impact on the material in Figures 3 ("Illustrative Example of How Federal Income Tax Liabilities Could Change for Individuals who Donate to Tax Credit Scholarship Programs") and 4 ("Change in Amount of Federal and State Income Taxes Owed as a Result of a Tax Credit Scholarship Donation, for Hypothetical Individual Donors"). At a minimum, updates in the final report regarding the NPRM would be needed. It may be prudent to delay publication of this report until the final IRS rule is published, so that the substance of the final rule can be taken into account in the report, and the report could be more helpful.
2. It is important to note that, of the seven states with TCS programs offering tax credits only to businesses (Arizona, Florida, Kansas, Nevada, Pennsylvania, Rhode Island and South Dakota), three states have no state individual income tax (Florida, Nevada and South Dakota). Additionally, Arizona has programs offering tax credits to individuals, and Florida has a program offering tax credits for vehicle sales tax. Although it does not have a state individual income tax, New Hampshire has a program offering tax credits for interest and dividends income tax.
3. The executive summary states that tax-credit scholarships are "for students to attend private elementary and secondary schools," and the draft report reflects this throughout. Many TCS programs, in fact, also provide scholarships for students to attend public schools that are not residentially assigned. For example:

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- New Hampshire's program defines "educational expenses" as "the tuition cost of an eligible student to attend a public or nonpublic school, excluding students who were placed into a nonpublic school by their school district, the cost of college or university, accredited tutor or tutoring facility, or distance education program." (N.H. Rev. Stat.§§ 77-G:l through 10)

- Alabama's program provides income tax credits for "costs associated with transferring the student from a failing school to a nonfailing public school," meaning scholarships also fund out-of-district public school tuition/fees. (Ala. Code § I 6-6D-8(b)(I))
- Florida ' s program provides funds for transportation to out-of-district public schools. (Fla. Stat. § 1002.395(6)(d)2)
- Note that Florida has mandatory intradistrict and interdistrict open enrollment, meaning that, subject to capacity, all public schools must enroll any student.

4. The executive summary states, "Individual donors may also reduce their federal tax liabilities through the federal deduction for charitable contributions, depending on their financial circumstances and applicable tax provisions." It is important to note throughout the draft report that, at the federal level, charitable contributions to TCS programs are treated no differently than any other charitable contribution eligible for a state or local tax credit.
   - Additionally, two programs have provisions specifically disallowing or limiting the state tax credit for a contribution that receives any federal income tax deduction.
   - Illinois (individual and corporate): "No credit shall be taken under this Act for any qualified contribution for which the taxpayer claims a federal income tax deduction." (35 Ill. Comp. Stat. 40/I0(d))
   - Florida (corporate): "The credit granted by this section shall be reduced by the difference between the amount of federal corporate income tax taking into account the credit granted by this section and the amount of federal corporate income tax without application of the credit granted by this section." (Fla. Stat. § 220.1875)
5. When analyzing eligibility in the draft report, it is important to discuss how scholarship amounts are weighted based on student need.
   - Also, there are additional types of eligibility not listed in the draft report. For example:
   - Programs in Alabama, Kansas, Louisiana, Oklahoma and

Pennsylvania require students to be means-tested and in a failing school to be eligible, or prioritize serving students in failing schools. (noted in Appendix III)

- Florida's new program is for students who have been "subjected to an incident of battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses, harassment, assault, or battery; threat or intimidation; or fighting at school."

In addition to these responses, ED has outlined additional technical comments in the appendix.

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You may direct your questions to me at (202) 453-6048 or at Jason.Botel@ed.gov. We appreciate the work that went into this draft report and the opportunity to comment.

Sincerely,

Jason Botel
Acting Assistant Deputy Secretary for the Office of Innovation and Improvement
Principal Deputy Assistant Secretary for the Office of Elementary and Secondary Education

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