THE CLUB FOR GROWTH®

Edward Waters
Office of the Associate Chief Counsel (Income Tax & Accounting)
Internal Revenue Service
CC:PA:01:PR (Notice 2025-70)
Room 5503
P.O. Box 7604
Ben Franklin Station, Washington, DC 20044

December 18, 2025

FILED VIA FEDERAL REGULATIONS.GOV PORTAL

Re: Comments in response to Request for Comments on Individual Tax Credit for Qualified Contributions to Scholarship Granting Organizations (IRS Notice 2025-70)

Dear Mr. Waters,

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have requested comments on regulations and guidance implementing Internal Revenue Code § 25F. The Club for Growth respectfully submits this comment in response, seeking to assist the Treasury and IRS in carrying out their statutory mandate.

The Club for Growth is a not-for-profit public policy organization that is committed to the prosperity and opportunity that come from economic freedom. It believes that the tax credit established by § 25F will promote prosperity and educational excellence by enabling more Americans to support worthy scholarship-granting organizations, which will in turn provide resources to students in public and private schools alike.

The One, Big, Beautiful Bill Act (OBBBA) added the new § 25F to the Internal Revenue Code. Pub. L. 119–21, title VII, § 70411(a)(1), July 4, 2025, 139 Stat. 215. It establishes an individual tax credit for contributions to qualified organizations providing scholarships supporting elementary and secondary school students. The new statutory initiative will facilitate better support for students at all kinds of schools, public and private, and promote individual choice in the organizations that receive support. This Comment offers recommendations on the guidance and regulations implementing § 25F. It seeks to assist the Treasury and IRS in implementing § 25F in a manner that complies with the text of the statute while effectively and efficiently furthering its salutary public policy.

This Comment tracks the organization of the Treasury and IRS request for comments. The Club for Growth does not take a position on every item, but this comment is organized in the same order as the request for comment. Our comment provides a particular focus on the relationship between the state and federal authorities that will implement the statute. Although improper reliance on state authorities to exercise discretion to implement this federal policy could lead to constitutional issues and to practical obstacles in effectuating the statute, § 25F need not be bogged down in these problems. This Comment provides analysis of the statutory text and recommends ways to implement it that minimize risks of constitutional or practical problems. This Comment suggests ways of designing the regulations that take the most plausible reading of the statute in order to facilitate the most efficient and effective mode of implementing the statute.

Central to all our recommendations to the Treasury and IRS is a commitment to efficient implementation of § 25F. States should not have discretionary authority beyond what the statute necessitates when it comes to implementing the program. The statute's terms should be interpreted as expansively and broadly as possible in order to minimize unnecessary bureaucracy and compliance effort for SGOs while maximizing the amount of funding that can be directed toward the ultimate beneficiaries—the school age children who will realize the benefit of greater resources and options in their education. It should be simple for states and taxpayers to comply. Implementing regulations and guidance should be written to prioritize clarity, continuity, and certainty over ambiguity, discontinuity, and confusion.

Section 2: Background and Interpretation of Key Terms in the Statute

The statutory tax deduction in § 25F applies to an "individual" who is either a citizen of the United States or a resident of the United States. In other situations, in the tax code where the provision applies to "an individual," it counts per individual taxpayer even when married and filing a joint return. See, e.g., 26 U.S.C. § 219 (retirement savings deduction applicable per "individual"), 26 U.S.C. § 223 (health savings account deduction) (depending on whether the individual has self-coverage or family coverage, see IRS Publication 969 (2024), Health Savings Accounts and Other Tax-Favored Health Plans). We recommend that the guidance clarify that—in accord with the statutory text—this deduction applies per individual, including **both** married individuals severally even if married filing jointly. In other words, this tax credit does not impose a "marriage penalty" and the rules should clearly reflect this fact.

Section 3. State Election and List

Under § 25F(g), a state that elects to participate is required to provide the Secretary of the Treasury with a list of SGOs that meet the statutory requirements and are located in the state. We recommend several additional terms be defined. And we provide support for some key measures proposed in the Treasury and IRS document.

Guidance on State Election. The IRS has already provided for an "Advance Election to Participate" by means of Form 15714. We recommend that the Treasury and IRS provide guidance on how a state elects to participate. We recommend providing that the opt-in may be made by state legislative act *or* by executive decision by the governor. The statutory text, § 25F(g)(1)(B), already endorses governor opt-in or any other method of opt-in determined by state law. The guidance should be clear that these are cumulative. If a state legislature, for instance, wished to thwart a governor who sought to participate, it would not be permitted because the statute already designates the governor as capable of opting in; any state law to the contrary will be preempted by federal law. But if the governor does *not* opt-in, the legislature could still provide by law for opt-in, or could by law name another person or entity to make the decision about opt-in.

Early Opt-In. We commend the Treasury and IRS for their announced intention to issue "published guidance providing States with the option to submit, beginning early in 2026, the State election to participate … for calendar year 2027." Form 15714 takes a crucial first step by allowing states to begin opting in, providing (in turn) crucial information for taxpayers. This form, together with any other early

guidance provided by the Treasury and IRS, will facilitate the ability for a state to exercise the opt-in so that SGOs, taxpayers, and students— the ultimate intended beneficiaries—will benefit from such clarity. Early opt-in will provide taxpayers certainty about where their contributions can be made, without having to wonder about whether particular entities will be listed as qualifying SGOs.

The period for opt-in should be as early as possible to provide maximum time for the states, SGOs, parents, and students to prepare for the start of the program in 2027. We support the proposed guidance allowing for states to electronically submit materials related to certification. This is sensible and will make it easier for states to participate early, facilitating the accomplishment of the legislation's objectives.

We recommend clarifying that the state may opt in on a multi-year or ongoing basis. If the individual or entity that, by state law, has the authority to opt in chooses to opt in for the present calendar year, it should presumptively continue for future calendar years. Moreover, if a state expressly makes a commitment to participate as to multiple future calendar years, or to participate in an ongoing manner for future calendar years, it may do so. The federal law does not prohibit that multi-year opt-in; such multi-year commitments will better effectuate the statute's design.

First, the statute does not limit opt-in to a single year; it merely provides that the state "for ***a*** calendar year, voluntarily elects to participate." § 25F(c)(1). It is not "one" year, or "the next year." The indefinite article "a" permits coverage of any one or more calendar years; opting in should be possible, consistent with the statute, in a way that is not limited to a single year.

Second, ongoing participation is not only permitted by this clause, but ongoing participation will better accomplish the statute's design. The structure and design of the statute as a whole indicates that ongoing participation is the goal, and assumption, of the statute. Under § 25F(f), contributions are to carry forward from one calendar year to the next, such that individual contributions that exceed the limit in a given year can count toward the following year. In this system, it is assumed that donations carrying forward may accumulate over time. More generally, for states, SGOs, and donors alike, tax planning works best when it can be done on horizons longer than a single calendar year or a single tax cycle. The guidance should clarify that state commitments work on a multi-year basis and are not limited to single-year operation. Form 15714 should be modified in order to facilitate this option for states.

Inclusion on State Lists Must Be Based on Federal Criteria and Open to All Who Meet That Criteria. The Treasury and IRS are correct to propose that the states' list "must include all organizations located in the State that have requested to be designated as an SGO and that meet the § 25F(c)(5) statutory requirements." Section 3.02. There are two important reasons for this.

First, permitting states to set their own requirements for getting onto the list is confusing. This would lead to qualifications for a federal program that vary among participating states. Some SGOs may have operations in more than one state and will have to consider qualifying separately in each. Donors may support SGOs in more than one state and they will have to face differing standards from state to state as to when an SGO will be listed.

Second, and more importantly, any state effort to impose additional regulations beyond or in addition to the criteria in § 25F would create potential litigation exposure for both the federal government and the states.

If the state were to try to impose additional requirements, it would at least be arguable that those added criteria were unauthorized by the statute. By adding restrictions on participation in a federal program, and without statutory authorization, the state regulations could be challenged as preempted by the federal supremacy clause. *See, e.g.*, *King v. Smith*, 392 U.S. 309, 333 (1968) (finding a state regulation to be inconsistent with the federal law where it imposed additional restrictions on access to a federal program); *Townsend v. Swank*, 404 U.S. 282, 286 (1971) ("a state eligibility standard that excludes persons" who would otherwise be "eligible for assistance" under a federal welfare law "violates the Social Security Act and is therefore invalid under the Supremacy Clause").

Under "principles of preemption," a "state law is preempted where it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Arizona v. United States*, 567 U.S. 387, 406 (2012), *quoting Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The Supreme Court has recognized that "a '[c]onflict in technique can be fully as disruptive to the system Congress erected as conflict in overt policy,'" and that a state law posing an "obstacle to the regulatory system Congress chose" is preempted. *Arizona*, 567 U.S. at 406, *quoting Motor Coach Employees v. Lockridge*, 403 U.S. 274, 287 (1971); *Lawrence Cnty. v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 260 (1985). A Fifth Circuit case, for example, held

unlawful state efforts to impose additional criteria for participation in a federal-state Temporary Assistance for Needy Families program. *Comacho v. Texas Workforce Comm'n*, 408 F.3d 229, 230 (5th Cir. 2005).

Even if the federal implementing regulations endorsed a role for the states in setting criteria, this would not insulate such criteria from legal challenge. Since the Supreme Court abandoned *Chevron*, the courts will simply evaluate the statutory text on their own, without deference to any agency interpretation. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024) ("Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.").

Section 25F is best read as setting the criteria for SGOs to make the list, not as permitting the states to add any requirements to the SGOs or to implement them in such a way as to impair the efficiency of the program. The statute does not support any role for the states to add qualifications. Deviating from this would risk litigation. Accordingly, it is emphatically the right decision for the Treasury and the IRS to provide guidance that participating states must list all SGOs that meet the statutory qualifications. States do not have discretion in compiling the list.

Limiting State Restrictions on the Kinds of Qualifying Scholarships. For the same reasons that the states cannot add criteria to the scholarship organizations, the states cannot add restrictions on the scholarships that may be given. Once a scholarship granting organization (SGO) qualifies under federal law, including by offering scholarships that qualify under the terms of § 25F, it has met

the relevant criteria. Just as a participating state cannot exclude a qualifying SGO, it cannot exclude particular kinds of qualifying scholarships. For instance, a state could not decide to count only scholarships offered to elementary school students but exclude high school students, when under the federal law criteria both scholarships would be permitted. The same federal law preemption principles discussed above would apply here, as would the practical concerns for administrability and functionality.

Distinguishing Discretionary from Ministerial Functions in State Implementation. Once a state has opted in for a calendar year, and has submitted a list with qualifying SGOs, the state has no authority under the statute to withdraw that certification unless the SGO no longer qualifies under federal law. In other words, the choice to opt-in is discretionary, in the sense that the states were not bound to act in a particular way. Once that choice has been made, the compiling of the list is ministerial. Once the state has opted in, it is a participant in a permanent federal program.

Homeschooling Covered. We recommend that the guidance clarify that homeschooling counts when it is treated as a "private" or "religious" school under state law. *See, e.g., People v. Levisen*, 90 N.E.2d 213, 215 (Ill. 1950) (treating home education as a "private school" within the Illinois compulsory education law); *Texas Educ. Agency v. Leeper*, 893 S.W.2d 432, 443–44 (Tex. 1994) (same); *Jonathan L. v. Superior Court*, 81 Cal. Rptr. 3d 571, 590 (Cal. App. 2008) (same); Tenn. Code Ann. §

49-6-3050(2)(A) (recognizing that homeschools may operate as a "church-related school" as defined by Tenn. Code Ann. § 49-50-801).

Non-Statutory Criteria Should Be Eliminated from Guidance. The proposed certification requirements set out in section 3.03(5) of the proposed guidance should be revised to ensure that they do not exceed the statutory demands of § 25F.

No Requirement That Multi-State Organizations Require Contributors to Select the State in Which the Contribution is Spent. Proposed requirements (b) and (c), listed in 3.03(5) of the proposed guidance, should be eliminated or modified. These two provisions would demand that states certify that an SGO that operates in multiple states *requires* contributors to designate the state in which the money is to be spent. The statute, however, does not require that contributors designate the state in which the money is to be spent.

Section 25F(c)(5) requires that the organization keep distinct the "qualified contributions" that it receives from any other funds; these qualified contributions are in turn to be used "to fund scholarships for eligible students solely within the State in which the organization is listed." § 25F(c)(3). Section 25F(c)(5) does *not* demand that the SGO allow or require the contributors to designate which state it shall be spent upon. The statute thus would permit an SGO that operates in two states to accept undesignated donations and then allocate them according to need and opportunity. Only the donations spent "within the State in which the organization is listed" and which had opted in to the program would count for the tax credit, however.

This has practical consequences for how SGOs are likely to operate. Consider, for example, an SGO that supports needy students in the vicinity of New York City, including nearby communities in New Jersey. The proposed regulatory guidance would require a donor in Maine who wishes to support the cause of student scholarships in the New York region to designate the state where the funds should be spent—even though the contributor in Maine may have no idea where the needs are greatest. The statute does not impose this burden on SGOs. The statute merely requires that the SGO keep track of which state contributions are spent in, so as to ensure that the scholarships are funded "within the State in which the organization is listed." This could be done by permitting the contributor to designate the state where it is to be spent, but it need not be done that way—meaning such a selection should not be mandatory on the part of a donor even if it could be permissible. A contribution could also be given without designation and the SGO could then provide a receipt indicating which state it is spent in. Additional criteria like this that are not based in the statute will limit the effectiveness of the statute, impose additional administrative work, and will be subject to legal challenge.

Accordingly, the guidance could be modified to provide that taxpayers must have a way to document that their qualified contribution was spent within the listed state. That *may*, but need not, be by designating the state in which the contribution is to be spent. Alternatively, it could be by an undesignated donation that the SGO then spends within the listed state and so indicates (as by a receipt) to the contributor.

Create a Unified List of SGOs Listed by States. We recommend that the Treasury and IRS also provide that it will make publicly available a list of the qualified scholarship organizations operating in each state. This will facilitate taxpayers' ability to figure out which SGOs can receive contributions that will receive tax credit treatment. It will relieve taxpayers of the confusion that could result if they must navigate varied state reporting agencies or state formats.

Federal Tax Forms Can Promote Donations. To better effectuate the design of this law, we recommend that the Treasury and IRS add a provision on the personal income tax form (1040) that permits an individual whose tax liability is non-zero to choose to donate some amount within the statutory limit to a qualifying SGO. At a minimum, the form should include a reminder that contributions to qualifying SGOs will reduce tax burdens in the tax year in which the contributions are made.

Guidance Can Clarify Federal Preemption of State Laws That Discriminate Regarding Religious Organizations. We recommend that the Treasury and IRS note explicitly in the guidance that § 25F preempts any state law restrictions on the availability of scholarship funds associated with religious schools or organizations. Under federal law, religious schools or organizations that participate in nondiscriminatory public funding programs must be treated without discrimination. *See also, e.g., Carson v. Makin*, 596 U.S. 767 (2022); *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017).

Carryforward Provisions Should Permit an Individual Credit So Long as the SGO Was Qualified and Listed at the Time of the Contribution. We recommend that the Treasury and IRS provide additional guidance regarding the multi-year carryforward provisions of § 25F(f). The law requires that contributions above the base limit be permitted to carry forward to the next year's taxes. By the terms of the statute, there is no provision for a state to prevent or prohibit a participant from claiming that benefit in a future year as to an SGO that qualified and was lawfully listed at the time of the contribution claimed. As a result, even if an SGO in a subsequent year ceases to qualify as an SGO under § 25F, the contributions during years in which that SGO qualified should still be available for the designated carryover time.

This also reinforces the importance of limiting the states' role to listing those SGOs and comply with the requirements of § 25F. If the states could add additional requirements, it will only increase the chance that any individual SGO might fail to comply with some state requirement. And in that case, an SGO could be removed from the list—leading to increased complication with any subsequent-year carryforward of funds.

Located in the State. We recommend that SGOs be considered "located in the State" within the meaning of § 25F(g)(1)(A) when they are lawfully operating within a state. Consider how this will work for an SGO that has operations in multiple states. The SGO may be incorporated in New York but conduct substantial scholarship-granting activities in New Jersey. So long as the SGO is lawfully

operating in New Jersey, there is no reason that the state of New Jersey should be limited in its ability to list the organization. The state should be able to list organizations conducting activities in-state and who would otherwise be qualified SGOs, without concern about whether the entity is incorporated in that state or where its principal place of business is located.

Section 4. SGO Requirements

Definition of Income. The proposed guidance suggests defining income as "all income." That approach would pose significant challenges for the practical operations of SGOs. For new organizations, it will not be possible for the entity to immediately launch at capacity to use ninety percent of its *total* budget for scholarships immediately. Other prominent organizations that provide educational scholarships may also have other operations that provide (for instance) medical or dental care for underserved children, after-school programing, or life-skills training that may not qualify as scholarships.

To address this problem, for both new SGOs as well as ongoing SGOs that provide other services or functions, we recommend defining "income of the organization" in § 25F(d)(1)(B) as the *income derived from contributions for scholarships*. This would allow an organization to raise funds for other activities besides scholarships, such as public awareness, program development, education, medical or dental care, and more—so long as they are properly accounted (and not comingled with scholarships). This definition would facilitate tax-credit incentives to support the scholarship-granting operations of these organizations, with the 90%

requirement to ensure that those receiving the credit are providing scholarships with efficiency.

The text of the statute does not preclude this reading but is best read as a whole to support this interpretation. When one reading has an "improbably broad reach," *Bond v. United States*, 572 U.S. 844, 860 (2014), that is a clue that the interpretation may not be the best one. Reading the statute in light of the traditional consideration of the problems or "mischief" which it is designed to address, *see* Samuel L. Bray, *The Mischief Rule*, 109 Geo. L.J. 967 (2021), and the "context from which the statute arose," one should question whether the term "income of the organization" ought to be read to exclude a great many scholarship granting organizations merely because they are not one-issue entities. The statute does *not* say "all income." It says, "income of the organization." The statute, read in its full context, is best understood as requiring the *income for scholarships* be efficiently used *for scholarships*. To this end, the 90 percent requirement would be directly on point.

A statutory requirement in § 25F(c)(3) provides another clue that the "all income" definition would be inconsistent with the overall statutory design. Section 25F(c)(3) specifies that a qualifying contribution must be used to fund scholarships for eligible students "solely within the State in which the organization is listed." Suppose that an organization operates in multiple states, not all of which participate in the tax credit program under § 25F. It offers qualifying scholarships for students in State A, which participates and which lists the SGO, and also in State B, which does not participate in the program (and consequently does not list the SGO).

Qualified contributions will count for tax credits when used to fund scholarships within State A but not within State B. But if the organization's income were defined to mean "all income," that might suggest that the organization could fall short of the 90 percent requirement merely because it offers too many scholarships in State B.

That the "all income" definition is not compelled by the statutory text is also clear when focusing on the meaning of "organization." The statute provides characteristics of the organization as it relates to scholarships. A scholarship-granting organization is one that provides scholarships and conducts the various forms of activity described in § 25F(d) as regards the allocation of scholarships, ensuring eligibility of students. Key here is that "organization" as such is not defined as a corporate entity. Accordingly, nothing prevents a nonprofit corporation from creating an SGO within its broader corporate form.[1] Donations should be designated in a way that they can be traced—and not comingled with—other functions of the organization. An organization that does not accordingly differentiate its scholarship-granting operation would fail to qualify as an SGO. But simply because the same corporate form conducts other activities does not preclude the scholarship-granting

[1] For points of comparison, consider:

- that the U.S. Sentencing Guidelines differentiate among various types of subparts of organizations. U.S. Sentencing Guidelines 2025, §8C2.5, Application Note 2 ("For example, a large organization may have several large units such as divisions or subsidiaries, as well as many smaller units such as specialized manufacturing, marketing, or accounting operations within these larger units. For purposes of this definition, all of these types of units are encompassed within the term 'unit of the organization.'").
- Federal procurement regulations provide that a nonresponsible organization that is "debarred" (prohibited from contracting with the government) may be the entire entity or an organizational subpart. 48 C.F.R. § 9.406-1(c) ("Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities.").

from having its own functional operation. This is consistent with the text of the statute, and if interpreted in this way, it would avoid excluding organizations based on where the scholarship-granting operations fits in the larger mission.

10 or More Students. The statute provides that the SGO must provide "scholarships to 10 or more students who do not all attend the same school." § 25F(d)(1)(A). The request for comments asks whether these 10 students must be in the same state or if a multi-state SGO could aggregate across all states. We believe that the better interpretation is to aggregate across all states. The statutory text does not require that the students be located within a single state. Adding additional requirements would exceed the text of the statute and would reduce the number of qualifying SGOs, even when the SGO with students in multiple states would otherwise be supporting the requisite number of students. There is no statutory reason to diminish the number of qualifying SGOs in this way. Doing so would only make the statute less effective in accomplishing its objectives.

Designating a State. As explained above, the statute does not require a donor to designate the state in which the funds will be spent. An SGO may allow donors to do this. Or it may provide other documentation (e.g., a receipt) that will inform contributors that their qualified contribution is spent within a relevant listed state. Nothing in the statute require that the donor be a resident of the state in which the SGO is listed. A donor living in state A—which has not opted in—could still make contributions to SGO located in state B—which has opted in—and then get the benefit of those contributions on the tax form.

Conclusion

The Club for Growth believes that the tax credits created by § 25F will provide a valuable support to allow more American students access to high quality K-12 education. It will enhance choice for students and for the generous donors who support them. The comments we have submitted seek to promote educational opportunity and make effective the full promise of § 25F. We respectfully submit these comments to facilitate the development of regulation and guidance by the Treasury and IRS.

Thank you for your attention to this matter.

Sincerely,

David M. McIntosh
President