

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12-29, FLORIDA ADMINISTRATIVE CODE
MULTITAX CREDITS
AMENDING RULES 12-29.001, 12-29.002, and 12-29.003

12-29.001 Scope.

This rule chapter sets forth the rules to be used in the administration of tax credits for contributions made to nonprofit scholarship_funding organizations (SFOs) under Section 1002.395, F.S., Florida Tax Credit Scholarship Program. That program allows taxpayers to receive a credit allocation for contributions made to SFOs ~~nonprofit scholarship_funding organizations~~. This rule chapter establishes procedures governing the approval of tax credit allocations and rescindments, ~~the approval for carryforward tax credits to a subsequent tax year,~~ procedures for transferring tax credits, and the procedures to be followed by taxpayers when claiming tax credits on tax returns. Rulemaking Authority 1002.395(13) F.S. Law Implemented 211.0251, 212.1831, 220.1875, 561.1211, 624.51055, 1002.395(1)-(3), (13) FS. History—New 6-6-11, Amended 7-28-15, ____.

12-29.002 Florida Tax Credit Scholarship Program; Participation; Allocation; Carryforward; Transfer; Rescindment.

(1) Definitions. For purpose of this rule, the following terms mean:

(a) No change.

(b) “Contribution” means an eligible contribution, as defined in Section 1002.395(2), F.S., made to an eligible nonprofit scholarship_funding organization.

(c) through (e) No change.

(f) “Eligible nonprofit scholarship_funding organization” or “SFO” means a charitable organization as defined in Section 1002.395(2), F.S. A list of SFOs ~~eligible nonprofit scholarship funding organizations~~ established by the Department of Education is available at www.fldoe.org/schools/school-choice ~~www.floridaschoolchoice.org/~~.

(g) through (h) No change.

(2) Taxpayers eligible to participate in the program. Taxpayers who pay any of the following taxes may apply to the Department for a credit allocation as follows:

(a) For the taxes administered by the Department:

1. through 2. No change.

3. Florida state sales and use tax self-accrued and paid directly to the Department in accordance with Taxpayers who hold a valid Sales and Use Tax Direct Pay Permit, issued by the Department, as provided in Section 212.183, F.S., and Rule 12A-1.0911, F.A.C.

4. Florida Taxpayers who pay tax on oil production tax in Florida imposed under Section 211.02, F.S., or Florida who pay tax on gas production tax in Florida imposed under Section 211.025, F.S.

(b) No change.

(3) Applications for credit allocations.

(a) To receive a credit allocation, taxpayers must apply online ~~on-line~~ using the Department’s website at www.floridarevenue.com or submit ~~an~~ Florida Tax Credit Scholarship Program – Application for Tax Credit Allocation for Contributions to Nonprofit Scholarship-Funding Organizations (Form DR-116000, incorporated by reference in Rule 12-29.003, F.A.C.) to the Department.

1. through 2. No change.

(b) A separate application to receive a credit allocation is required for:

1. Each SFO ~~eligible nonprofit scholarship funding organization~~ the taxpayer intends to support; and,

2. No change.

3. Each tax credit cap year.

(c) Taxpayers are eligible to apply during the following periods to receive a credit allocation from each annual tax credit cap for the following taxes as follows:

1. Corporate Income Tax – A taxpayer may make an application for a credit allocation on the first business day of January of each calendar year for its tax year that begins during that calendar year. For tax years beginning before January 1, 2018, the ~~The~~ application must be submitted made on or before the last day of the taxpayer's corporate income tax year. For tax years beginning January 1, 2018, or later, the application must be submitted before the date the taxpayer is required to file its corporate income/franchise tax return for that tax year pursuant to Section 220.222, F.S., including a valid extended due date.

a. Example: A calendar year taxpayer may apply for a credit allocation for the 2017-2018 ~~2011-2012~~ state fiscal year credit beginning on January 3, 2017 ~~January 3, 2011~~. The application must be submitted made on or before December 31, 2017 ~~December 31, 2011~~.

b. Example: A taxpayer with a tax year beginning December 1, 2017, ~~December 1, 2011~~ and ending November 30, 2018, ~~November 30, 2012~~, may apply for a credit allocation for the 2017-2018 ~~2011-2012~~ state fiscal year beginning on January 3, 2017 ~~January 3, 2011~~. The application must be submitted made on or before November 30, 2018 ~~November 30, 2012~~.

c. Example: A calendar year taxpayer may apply for a credit allocation for the 2018-2019 state

fiscal year credit beginning on January 2, 2018. The application must be submitted before May 1, 2019; however, if the due date of the taxpayer's corporate income/franchise tax return is validly extended, the application may be submitted before November 1, 2019.

d. Example: A taxpayer with a tax year beginning December 1, 2018, and ending November 30, 2019, may apply for a credit allocation for the 2018-2019 state fiscal year credit beginning on January 2, 2018. The application must be submitted before April 1, 2020; however, if the due date of the taxpayer's corporate income/franchise tax return is validly extended, the application may be submitted before October 1, 2020.

2. Insurance Premium Tax – An application for a credit allocation may be made beginning on the first business day of January of each calendar year and may not be made after December 31 of that calendar year. Example: For the 2018-2019 ~~2011-2012~~ state fiscal year tax credit cap, a taxpayer may submit an application for a credit allocation beginning on January 2, 2018 ~~January 3, 2011~~. The application must be made on or before December 31, 2018 ~~December 31, 2011~~.

3. Sales and Use Tax – Tax on Oil and Gas Production – Excise Taxes on Liquor, Wine, and Malt Beverages – A taxpayer may make an application for a credit allocation on the first business day of January of the calendar year preceding the state fiscal year beginning on July 1 of the calendar year. The application must be made by June 30 of the state fiscal year for which the taxpayer is applying. For example, for a credit allocation for the 2018-2019 ~~2011-2012~~ state fiscal year, taxpayers may apply for a credit allocation beginning on January 2, 2018 ~~January 3, 2011~~. The application must be made on or before June 30, 2019 ~~June 30, 2012~~.

(d) The Department will accept applications until either the tax credit cap is reached, or until the end of the state fiscal year for sales and use tax, the tax on oil and gas production, and the excise taxes on liquor, wine, and malt beverages; ~~or until the end of the tax year for corporate~~

~~income tax and insurance premium tax;~~ or until the due date of the taxpayer's corporate income/franchise tax return for corporate income tax, whichever occurs first.

(4) Notification.

(a) The Department will approve credit allocations on a first-come, first-served basis. ~~Following~~ Within ten days of receipt of an application, the Department will send written correspondence regarding the amount of the credit allocation for each tax applied for, or the reason the credit allocation could not be approved. For excise tax on liquor, wine, and malt beverages, the Division must approve the credit allocation before the Department will issue such correspondence.

(b) When approved, the Department's approval letter will specify the period in which the contribution to the designated SFO ~~nonprofit scholarship funding organization~~ must be made. Contributions must be made during the period year specified in the approval letter. The SFO ~~organization~~ receiving a contribution will issue the taxpayer a certificate of contribution signed by an officer or authorized representative of the SFO ~~organization~~ containing:

1. through 5. No change.

6. Name of SFO ~~eligible nonprofit scholarship funding organization~~.

(c) The amount of tax credit claimed on a tax return is limited to the amount of contribution contained in the certificate of contribution issued by an SFO ~~eligible nonprofit scholarship funding organization~~. The taxpayer must make the contribution before the credit is claimed on a tax return.

(d) No change.

(e) When an SFO ~~eligible nonprofit scholarship funding organization~~ is unable to accept the taxpayer's contribution, or a part of the contribution, because of its obligations under Section 1002.395, F.S., the taxpayer may make a contribution or partial contribution to another SFO ~~eligible nonprofit scholarship funding organization~~. The organization unable to accept the

taxpayer's contribution must provide a written statement to the taxpayer declining the contribution. The taxpayer is required to keep the written statement with its books and records.

(5) Tax Credits.

(a)1. Corporate Income Tax – ~~A For tax years ending on or after July 1, 2011,~~ a tax credit of 100 percent of the contribution against any corporate income tax due for the tax year is allowed.

The amount of the tax credit for a tax year:

a. Is taken in the order of the credits provided against the corporate income tax in Section 220.02(8), F.S.;

b. Must be reduced by the difference in federal corporate income tax due computed with the credit and without the credit; ~~and,~~

c. Must be added back to taxable income in determining Florida corporate income tax due. For tax years beginning on or after January 1, 2018, if the amount of a credit taken under Section 220.1875, F.S., is added to federal taxable income on the Florida corporate income/franchise tax return in a previous tax year and is taken as a deduction for federal tax purposes in the current tax year, the amount of the federal deduction is not required to be added to federal taxable income on the Florida corporate income/franchise tax return in the current year. This provision ensures that the amount of the credit taken under Section 220.1875, F.S., is added to federal taxable income in the applicable tax year and does not result in a duplicate addition in a subsequent tax year.

d. Is revoked and rescinded when a taxpayer applies for a credit allocation after timely requesting an extension of time in which to file its Florida corporate income/franchise tax return and fails to remit sufficient tentative tax, such that its extension is not valid under Sections 220.222 and 220.32, F.S.

2. Taxpayers must attach a copy of the certificate of contribution from each SFO eligible

~~nonprofit scholarship funding organization~~ to the Florida corporate income/franchise tax return on which the credit allocation, or a portion of the credit allocation, is taken as a tax credit.

(b)1. Insurance Premium Tax – ~~A For tax years ending on or after July 1, 2011,~~ a tax credit of 100 percent of the contribution against any insurance premium tax due under Section 624.509(1), F.S., for the tax year is allowed. The amount of the tax credit for a tax year is limited to the insurance premium tax due after deducting:

a. Assessments made pursuant to Section 440.51, F.S. (workers' compensation administrative assessments);

b. No change.

c. Credits for income taxes ~~and emergency excise taxes~~ paid under Chapter Chapters 220 and 221, F.S., and the salary credit allowed under Section 624.509(5), F.S., as these are limited by Section 624.509(6), F.S. (the 65 percent limitation).

2. Taxpayers must attach a copy of the certificate of contribution from each SFO eligible ~~nonprofit scholarship funding organization~~ to the tax return on which the credit allocation, or a portion of the credit allocation, is taken as a tax credit.

(c)1. Sales and Use Tax – A tax credit of 100 percent of the contribution is allowed against any state sales and use tax due self-accrued and paid directly to the Department in accordance with imposed under Chapter 212, F.S., to any taxpayer who holds a valid Sales and Use Tax Direct Pay Permit issued by the Department.

2.a. Taxpayers must submit a copy of the certificate of contribution from each SFO eligible ~~nonprofit scholarship funding organization~~ to:

Florida Department of Revenue

Revenue Accounting

P.O. Box 6609

Tallahassee, FL 32314-6609

b. Following ~~Within ten days of~~ receipt of the copy of the certificate, the Department will send written instructions on how to claim the credit allocation as a tax credit on a sales and use tax return remitted to the Department by electronic means.

(d)1. No change.

2. Taxpayers must attach a copy of the certificate of contribution from each SFO eligible ~~nonprofit scholarship funding organization~~ to the tax return on which the credit allocation, or a portion of the credit allocation, is taken as a tax credit.

(e)1. Excise Tax on Liquor, Wine, and Malt Beverages – A tax credit of 100 percent of the contribution is allowed against the following taxes administered by the Division.

a. No change.

b. Excise tax on wine beverages imposed under Section 564.06, F.S., except excise taxes imposed on wine produced ~~produce~~ by manufacturers in Florida from products grown in Florida; or

c. No change.

2. The tax credit taken on a return filed with the Division is limited to 90 percent of the tax due on the return. Taxpayers must attach a copy of the certificate of contribution from each SFO eligible ~~nonprofit scholarship funding organization~~ to the tax return on which the credit allocation, or a portion of the credit allocation, is taken as a tax credit.

(f) Contributions to an SFO eligible ~~nonprofit scholarship funding organization~~ are not payments of estimated tax or installment payments of tax. However, credits earned for contributions to an SFO eligible ~~nonprofit scholarship funding organization~~ made on or after July

1, 2014, for corporate income tax or insurance premium tax will be taken into account when determining the estimated payment amounts required to meet the prior year exceptions for each tax. Cross reference: Rules 12C-1.034 and 12B-8.001, F.A.C.

(6) Carryforward of unused credits.

(a) When a taxpayer is unable to use a tax credit during the period specified by the Department in the approval letter, because the taxpayer's liability is insufficient, the taxpayer may ~~apply to~~ carry forward the unused tax credit amount for a period not to exceed five years, if the credit was earned in a taxable year beginning before January 1, 2018, or for a period not to exceed ten years, if the credit was earned in a taxable year beginning on or after January 1, 2018. ~~The five-year carryforward period is applicable to all credits approved for carryforward on or after July 1, 2011, and to all unused carryforward credits that were eligible to be carried forward as of July 1, 2011. Taxpayers must apply on line using the Department's website at www.floridarevenue.com or submit an Application for Tax Credit for Contributions to Nonprofit Scholarship Funding Organizations (SFOs) (Form DR-116000, incorporated by reference in Rule 12-29.003, F.A.C.) requesting approval to carry forward the unused portion of the tax credit during the year in which the taxpayer wants to carry forward the unused tax credit. Applications to carry forward amounts beyond the five-year period will not be accepted by the Department. See paragraph (3)(a), for submitting the application to the Department.~~

(b) ~~A separate application to carry forward an unused tax credit is required for each beverage license issued by the Division for which a separate return to report and pay the excise taxes on liquor, wine, and malt beverages is filed with the Division.~~

(c) ~~Within ten days of receipt of the application, the Department will send written correspondence regarding the amount of the credit carryforward, or the reason the carryforward~~

~~request could not be approved. For excise tax on liquor, wine, and malt beverages, the Division must approve the carryforward before the Department will issue such correspondence. No request will be approved when the application for a credit allocation carryforward is submitted for a period beyond five years from the year in which the credit allocation was approved.~~

~~(d) Examples.~~

~~1. Corporate Income Tax Example – A calendar year taxpayer applied for and was approved for a credit allocation against corporate income tax for the tax year ending December 31, 2017 December 31, 2011. To carry forward the unused portion of the credit allocation from its tax year ending December 31, 2011, to its tax year ending December 31, 2012, the taxpayer must apply to the Department, specifying the carryforward amount, on or after January 3, 2012. The application must be filed on or before December 31, 2012. If any unused portion of the credit allocation remains, the taxpayer must apply for a carryforward of the unused portion. Any unused carryforward from its tax year ending December 31, 2017 December 31, 2011, expires on December 31, 2022 December 31, 2016.~~

~~2. Corporate Income Tax Example – A calendar year taxpayer applied for and was approved for a credit allocation against corporate income tax for the tax year ending December 31, 2018. Any unused carryforward from its tax year ending December 31, 2018, expires on the due date pursuant to Section 220.222, F.S., for the Florida corporate income/franchise tax return for the taxable year ending December 31, 2028.~~

~~3. Insurance Premium Tax Example – A taxpayer applied for and was approved for a credit allocation against insurance premium tax due for calendar year 2017 2010. To carry forward the unused portion of the credit allocation that was not taken on the 2010 insurance premium tax return (due March 1, 2011) to the 2011 insurance premium tax return, the taxpayer must apply to the~~

~~Department, specifying the carryforward amount, on or after January 3, 2011. The application must be filed and approved on or before December 31, 2011. If any unused portion of the credit allocation remains, the taxpayer must apply for a carryforward of the unused portion. Any unused carryforward from its tax year ending December 31, 2017 ~~December 31, 2010~~, expires on December 31, 2022 ~~December 31, 2015~~.~~

4. Insurance Premium Tax Example – A taxpayer applied for and was approved for a credit allocation against insurance premium tax due for calendar year 2018. Any unused carryforward from its tax year ending December 31, 2018, expires on December 31, 2028.

~~5. 3. Sales and Use Tax Example – A taxpayer who holds a Sales and Use Tax Direct Pay Permit applied for and was approved for a credit allocation against sales and use tax due to the Department as a result of the Direct Pay Permit for the state fiscal year 2017-2018 ~~2011-2012~~. The taxpayer paid the contribution to an SFO eligible nonprofit scholarship funding organization on July 14, 2017 ~~July 15, 2011~~, and submitted a copy of the certificate of contribution received from the organization to the Department. The taxpayer's state tax liability in accordance with the Sales and Use Tax Direct Pay Permit was insufficient to use the entire credit allocation on sales and use tax returns filed with the Department on or before June 30, 2018 ~~June 30, 2012~~. ~~To carry forward the unused portion of the tax credit to the 2012-2013 state fiscal year, the taxpayer must apply to the Department, specifying the carryforward amount during the 2012-2013 state fiscal year. The application must be filed and approved, and any approved carryforward must be taken on a sales and use tax return filed on or before June 30, 2013. If any unused portion of the credit allocation remains, the taxpayer must apply for a carryforward of the unused portion to be used during the following state fiscal year. Any unused carryforward from the 2017-2018 ~~2011-2012~~ state fiscal year expires June 30, 2023 ~~June 30, 2017~~.~~~~

6. Sales and Use Tax Example – A taxpayer who holds a Sales and Use Tax Direct Pay Permit applied for and was approved for a credit allocation against sales and use tax due to the Department for the state fiscal year 2018-2019. The taxpayer paid the contribution to an SFO on July 13, 2018, and submitted a copy of the certificate of contribution received from the organization to the Department. The taxpayer’s state tax liability in accordance with the Permit was insufficient to use the entire credit allocation on sales and use tax returns filed with the Department on or before June 30, 2019. Any unused carryforward from the 2018-2019 state fiscal year expires June 30, 2029.

7. 4. Tax on Oil and Gas Production – The same application periods and credit carryforward periods that apply to a sales and use tax credit allocation apply to a credit allocation against the tax on oil and gas production.

8. 5. Excise Taxes on Liquor, Wine, and Malt Beverages Example – A taxpayer who holds a liquor license issued by the Division applied for and was approved for a credit allocation against the liquor excise tax for returns due during the state fiscal year ~~2017-2018~~ ~~2011-2012~~. The taxpayer’s liability was insufficient to use the entire credit allocation during that state fiscal year. ~~To carry forward the unused portion of the tax credit to the 2012-2013 state fiscal year, the taxpayer must apply to the Department, specifying the carryforward amount during the 2012-2013 state fiscal year. The application must be filed and approved, and any approved carryforward must be taken on a return filed with the Division, on or before June 30, 2013. If any unused portion of the credit allocation remains, the taxpayer must apply for a carry forward of the unused portion to be used during the following state fiscal year.~~ Any unused carryforward from the ~~2017-2018~~ ~~2011-2012~~ state fiscal year expires ~~June 30, 2023~~ ~~June 30, 2017~~.

9. Excise Taxes on Liquor, Wine, and Malt Beverages Example – A taxpayer who holds a liquor license issued by the Division applied for and was approved for a credit allocation against

the liquor excise tax for returns due during the state fiscal year 2018-2019. The taxpayer's liability was insufficient to use the entire credit allocation during that state fiscal year. Any unused carryforward from the 2018-2019 state fiscal year expires June 30, 2029.

(7) Transfers of unused Tax Credits.

(a) A taxpayer may not convey, assign, or transfer a credit allocation or tax credit to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. However, the following credit allocations or tax credits may be transferred between members of the same affiliated group of corporations:

1. A tax credit allocation for which a contribution has not been made to an SFO eligible nonprofit scholarship funding organization by the transferring member. The receiving member must make a contribution to an SFO eligible nonprofit scholarship funding organization during the same period that the transferring member was required to make the contribution. In addition, the contribution must be made before the receiving member may claim the tax credit.

2. A tax credit allocation for which a contribution has been made to an SFO eligible nonprofit scholarship funding organization by the transferring member, but the tax credit has not been claimed on a tax return.

3. A carryforward tax credit amount ~~approved for carryforward~~ that has not been claimed on a tax return.

(b) through (e) No change.

(f) The Department must approve the application for transfer of the unused credit allocation or tax credit before the receiving member may claim the tax credit on a tax return. For excise tax on liquor, wine, and malt beverages, the Division must also approve the transfer before the the receiving member may claim the tax credit on a tax return.

(g) ~~Following~~ Within fifteen days of receipt of an application, the Department will send written correspondence approving the transfer or providing the reason the transfer could not be approved. If the transfer is approved, a copy of the approval letter will be sent to both the transferring member and the receiving member. The approval letter will include instructions on how the receiving member may claim the tax credit on a tax return.

(8) Rescindment of unused Tax Credits.

(a) The rescindment provision allows credit allocations that will not be used by the taxpayer to be reallocated to other taxpayers who may use the credit allocation. Taxpayers must apply online ~~on-line~~ using the Department's website at www.floridarevenue.com or submit ~~an~~ Florida Tax Credit Scholarship Program – Application for Rescindment of Previous Allocation of Tax Credit Allocation for Contributions to Nonprofit Scholarship Funding Organizations (Form DR-116100, incorporated by reference in Rule 12-29.003, F.A.C.) to the Department to rescind all or a portion of an unused credit allocation. See paragraph (3)(a) for submitting the application to the Department.

(b) An application for rescindment of the unused credit allocation by the Department will not be approved when:

1. No change.
2. The allocation year is closed for all taxpayers. The allocation period for a calendar year is closed for all taxes and all taxpayers on October 1 of the third year following the January 1 opening of the allocation period, regardless of whether the annual tax credit cap has been reached November 30 of the subsequent calendar year. For example, the allocation period beginning January 1, 2018, for the state fiscal year beginning July 1, 2018, closes for all taxpayers on October 1, 2020.

(c) ~~Following~~ ~~Within ten days of~~ receipt of an application, the Department will send written correspondence regarding the amount of the rescindment, or the reason rescindment could not be approved. For excise tax on liquor, wine, and malt beverages, the Division must approve the rescindment before the Department will issue such correspondence.

(d) When the approval of a rescindment allows the tax credit cap for a state fiscal year to be reopened and available for allocation, the Department will notify each SFO ~~eligible nonprofit scholarship funding organization~~ that the tax credit cap is available for allocation.

Rulemaking Authority 1002.395(13) F.S. Law Implemented 92.525(1)(b), 211.0251, 212.1831, 213.37, 220.1875, 561.1211, 624.51055, 1002.395(1)-(3), (5), (13) FS. History—New 6-6-11, Amended 1-25-12, 7-28-15, _____ .

12-29.003 Florida Tax Credit Scholarship Program; Applications.

(1) No change

Form Number	Title	Effective Date
(2)(a) DR-116000	<u>Florida Tax Credit Scholarship Program – Application for Tax Credit Allocation for Contributions to Nonprofit Scholarship Funding Organizations (SFOs) (R. 1/18)</u> (http://www.flrules.org/Gateway/reference.asp?No=Ref-____08953)	<u>XX/XX</u> 4/18
(b) DR-116100	<u>Florida Tax Credit Scholarship Program – Application for Rescindment of Previous Allocation of Tax Credit Allocation for Contributions to Nonprofit Scholarship</u>	<u>XX/XX</u> 4/18

~~Funding Organizations (SFOs) (R-07/11)~~

(<http://www.flrules.org/Gateway/reference.asp?No=Ref->

~~_____08954)~~

(c) DR-116200

Florida Tax Credit Scholarship Program – Notice of Intent

XX/XX

to Transfer a Tax Credit (~~N-07/15~~)

4/18

(<http://www.flrules.org/Gateway/reference.asp?No=Ref->

~~_____08955)~~

Rulemaking Authority 213.06(1), 1002.395(13) F.S. Law Implemented 92.525(1)(b), 211.0251, 212.1831, 213.37, 220.1875, 561.1211, 624.51055, 1002.395(1)-(3), (5), (13) FS. History–New 6-6-11, Amended 1-25-12, 7-28-15, 1-17-18,_____.