Comments in response to Internal Revenue Notice 2025-70, issued in November 2025, to solicit public comment on the Individual Tax Credit for Qualified Contributions to Scholarship Granting Organizations, pursuant to Internal Revenue Code §25F

On behalf of the Children's Tuition Fund, a ministry of the Association of Christian Schools International (ACSI), we thank the Department of the Treasury for the opportunity to submit comments as it undertakes rulemaking on the Federal Scholarship Tax Credit (FSTC).

The FSTC was enacted as part of the FY2025 reconciliation legislation (PL 119-21), commonly known as the One Big Beautiful Bill Act, and signed into law on July 4, 2025. As the nation's first federal tax credit scholarship program, it represents a significant advancement in educational choice. At the same time, several provisions of the statute would benefit from regulatory clarification prior to the program's scheduled implementation on January 1, 2027. We, as a Scholarship Granting Organizations (SGO) must be able to rely on clear guidance well in advance in order to establish systems, engage donors, and prepare to serve families effectively.

We respectfully offer the following recommendations for Treasury's consideration.

I. State Certification Process

Under the statute, Governors (or their designees) play a role in certifying scholarship granting organizations (SGOs) that operate in their state for receiving qualified contributions. The precise role that Governors should have is not clear. The Notice provides that Governors, at a minimum, need to determine that all the applicable statutory requirements need to be met, and that self-certification is not sufficient for an SGO to be eligible to participate in the federal tax credit program. We believe that Governors' role should be limited.

a. Governors do not have the authority or the expertise to audit an SGO for compliance with federal tax law. SGOs have separate requirements they must meet to operate at the state level. Section 25F is a federal tax credit with specific requirements.

b. Thus, we recommend that Governors have a limited ability to review information related to the requirements for an SGO under §25F.

c. We further recommend that the IRS provide Governors with a form that is primarily a checklist for SGOs to certify that they meet the applicable requirements for being an SGO under §25F. We recommend that an SGO be required to include the following information on the form:
    - an employer identification number and/or state registration information supporting the SGO's ability to operate in the state;

- contact information for the president or chief executive officer of the SGO;
- a copy of the SGO's letter from the IRS confirming tax-exempt status and purpose;
- the number of students they supported the prior year;
- the number of schools those students attended; and
- the income guidelines under which the SGO operates.

This form should be signed under penalty of perjury by both the chief executive officer and the chief financial officer of the SGO.

d. Income verification. We acknowledge that some states require SGOs to review tax returns to verify family income levels. However, we recommend that for §25F household income verification that the following alternative methods be allowed: income reporting statements for tax purposes or wage and income transcripts from the Internal Revenue Service; notarized income verification letter from employers; unemployment or workers compensation statements; or budget letters regarding public assistance payments and Supplemental Nutrition Assistance Program (SNAP) payments, including a list of household members.

e. We also note that four of the requirements for an SGO are phrased in the negative.
   i. that the organization spends not less than 90 percent of its income on scholarships for eligible students (§25F(d)(1)(B));
   ii. such organization does not provide scholarships for any expense other than qualified elementary or secondary expenses (§25F(d)(1)(C));
   iii. such organization does not earmark or set aside contributions for scholarships on behalf of any particular student (§25F(d)(1)(E)); and
   iv. does not award a scholarship to a disqualified person (§25F(d)(2)(A)).

It would not be reasonable for an SGO as part of the certification process to prove a negative. The information we outlined above, which is more than merely a self-certification, should be sufficient for the certification process.

f. Information Regarding Multistate Scholarship Granting Organizations.

Notice 2025-70 has several questions focused on multistate SGOs. We do not think any of these certifications are necessary. First, multistate SGOs are already under the obligation to only fund students in states that have opted in. Any SGO doing otherwise would risk an IRS audit and the usual sanctions that can follow in such a situation. A certification is, therefore, unnecessary.

Second, there is no requirement in §25F that a donor to a multistate organization needs to designate the funds. A donor may want to do that, but we think the best reading of the statute would allow a multistate SGO to use any tax credit donation as they would

like in the various states where they, or a subsidiary, are certified as an SGO. This provides maximum flexibility for the funding of scholarships, thus achieving the intent of the provision.

Third, given our position on the first two multistate issues, it follows that there should be no reason to certify that an SGO has tracked and matched qualifying contributions that are designated by the donor to be spent with the state with scholarships to eligible students within the state. As a general matter, SGOs, whether multistate or single state, will have to do this to ensure that other requirements are met, such as the 90 percent of income needs to be spent on scholarships. Specific matching is not required by the statute and does not add any additional protections to ensure funds are properly spent.

g. Given the role for Governors outlined in Notice 2025-70, we recommend that the Department of the Treasury provide protections for SGOs to avoid potential abuses in the certification process.
    i. It should be made clear in the regulations that Governors, for purposes of the federal credit, cannot add any additional requirements. For example, a Governor cannot require an SGO that supports students attending private schools to also support students at public schools. The sole requirements to be certified as an SGO under §25F are those in the statute.

    ii. There should also be relief for SGOs if a Governor does not submit their name as a certified SGO in a timely manner. Governors should not be able to use this process as a means to force certain behavior from SGOs. We suggest that a Governor be required to submit the name of a certified SGO to the Department of the Treasury within fourteen days of receipt of a certification form. If a Governor does not submit the form, an SGO should have the ability to appeal directly to the Department of the Treasury to be included on the list of certified SGOs for that state. An SGO could use the same portal as the Governors will use but note that the submission is from the SGO itself to appeal to the Department of the Treasury for review. The Department of the Treasury should be required to review such an application within 30 days and notify both the SGO and the Governor of that SGO's status.

    iii. We acknowledge that §25F(g) provides that a list of SGOs be provided on an annual basis. We recommend that after the initial submission of the list of qualified SGOs is made, the list carries over from year to year unless the Governor modifies the list by adding or removing an SGO. This will provide certainty for SGOs, families and students that the program will continue without any interruptions from year to year. It is also administratively convenient for both Governors and the Department of the Treasury.

iv. We recommend that the regulations make clear that a Governor may add an SGO to the list at any time during the year leading up to January 1 of the year in which the SGO intends to operate in the state.

v. We recommend that the regulations provide that there are two circumstances under which an SGO can be removed from the list of certified organizations. One, if an SGO decides to no longer operate in a state as part of the federal tax credit scholarship program. Two, if the IRS finds that an SGO is not compliant with the requirements to be an SGO and the IRS determines that the appropriate penalty is that the SGO should no longer be able to operate. Consistent with our comments above, we recommend that the regulations make clear that Governors can only review documents as part of the certification process (or an annual review process) and have no power to audit an SGO.

II. State Policies and Procedures

a. Uniform policies, procedures, and recordkeeping. States should be directed to establish policies, procedures and recordkeeping consistent with their ministerial responsibility pursuant to §25F(g) in providing a list to the Department of the Treasury.

b. How do states ensure that SGOs are meeting state requirements. Existing and future SGOs are and would be subject to applicable state law for which Governors are responsible to enforce. Respectfully we suggest no need to address this in IRS rulemaking.

III. The requirement that an SGO must be "located in the State"

For an SGO to operate in a State that has opted in to the federal tax credit scholarship program it must be "located in the State" (§25F(g)(1)(A)). We recommend that an SGO should be considered "located in the State" if one of three circumstances applies:

a. The SGO has a physical presence in the state as evidenced by an office or employees (whether they work from an office or from home).

b. The SGO is licensed to do business in the state by the appropriate State authority or office.

c. The SGO is qualified to solicit funds in the state as required for non-profit entities.

The Notice also asked if in the states that currently offer tax credits whether there are jurisdictional or similar nexus requirements that an organization must satisfy in order for any contributions to be eligible for the state tax credit. We respectfully request, for purposes of the §25F, that one of the three criteria listed above apply.

IV. State credit offset

Given the variety of State laws and uncertainty over the full capabilities of the IRS to match such information, we respectfully request that we further discuss this with the IRS and the Department of the Treasury. We appreciate that this "no double dipping" rule is in a federal statute, so the IRS has some role in the enforcement of this provision. We also recognize that the harm of a taxpayer who takes both a Federal and State credit on the same dollar of a contribution will manifest at the State level.

In addition, several people have interpreted the language in the Notice (§3.06) to mean that any Federal credit must be reduced by any State credit. We believe this interpretation is incorrect. The Notice uses the words "qualified contribution" which, under the statute, is a contribution specifically, to an SGO under the federal tax credit scholarship program. Thus, a contribution that generates a state tax credit is not a qualified contribution under §25F. We respectfully suggest that an example would be useful to help clear up any confusion that may exist.

V. SGO Requirements: The 90 percent of income requirement

The Notice poses two questions regarding the requirement that an SGO spend "not less than 90 percent of the income of the organization on scholarships for eligible students." The Notice also provides, as a starting point, that the proposed regulations would provide that the "income of the organization includes all income of organizations, including unrelated business income, and is not limited to qualified contributions segregated in" the separate accounts required under §25F(c)(5)(B).

a. Does this interpretation of income pose practical challenges for SGOs? Yes, this interpretation of income would be detrimental to SGOs that would like to participate in this program. Currently, SGOs can have multiple sources of income depending on where they are located: general charitable donations and charitable donations that generate a state tax credit. States with a scholarship tax credit law typically have a requirement that 90 percent of donations from that credit be used for scholarships. These rules do not include other income streams, like general charitable donations. That allows, when necessary, for general charitable donations to be used for administrative costs related to the state tax credit programs and other purposes without being pulled into any spending requirements related to state tax credit programs.

   We respectfully suggest that the best, most accurate reading of the 90 percent rule for the federal tax credit scholarship program is one that is consistent with current state practice. The 90 percent rule in §25F was chosen because of the state tax credit programs. SGOs that are in state tax credit states are well aware of these rules and have in place the necessary controls and operations to comply. A rule that would define income for an SGO as all donation streams would improperly include non-federal tax credit contributions in the program. SGOs are required to

not co-mingle funds from the federal program (§25F(c)(5)(B)), so tracking these dollars separately will already occur. We believe including the other donations in the 90 percent calculation would imperil the scholarship programs supported by the other donations. We believe the rule suggested in the Notice would result in few, if any, SGOs being able to participate in the federal tax credit scholarship program.

We also respectfully suggest that forming a separate SGO just for the federal tax credit scholarship program is not a reasonable solution. SGOs leverage all possible income streams to provide the maximum amount of support for families and students. The federal tax credit was designed to be complementary to existing state tax credit programs; thus, having to form a separate SGO would undermine that goal. It would also be inefficient for SGOs to have to form a new entity just for the federal program. Existing SGOs have the resources in place to maximize the benefits under §25F for schools, families, and students.

In addition, in some states, New Hampshire and Florida, for example, SGOs also manage education savings account programs. SGOs should not be required to include those funds in a rule that requires a 90 percent distribution of all income for scholarships as part of the calculation for §25F. An all-income approach would require such SGOs to make significant and onerous changes to their operations to take advantage of the federal program.

We believe the best reading of the statute is the one that incorporates the history of the state tax credit programs upon which the federal tax credit scholarship program is built. This would continue to allow SGOs to operate any and all scholarship programs available in the State or States in which they operate. In addition, the statute includes in the definition of an SGO, an entity which "prevents the co-mingling of qualified contributions with other amounts by maintaining one or more separate accounts exclusively for qualified contributions" (§25F(c)(5)(B)). The appropriate rule, therefore, regarding income for purposes of the 90 percent provision is to apply this percentage threshold to income from the federal tax credit scholarship program under §25F.

The same justification for defining the 90 percent rule within qualified contributions under §25F(c)(3) likewise should apply to requirements that SGOs do not provide scholarships for any expenses other than qualified elementary or secondary education expenses under §25F(d)(1)(C).

b. Potential fluctuations in income and expense, such as potential start-up costs to the organization in first year of operation or the smoothing of this calculation of a certain number of years?

Yes, we suggest future guidance consider the operations of an SGO over a several

year period to measure many of the requirements, in particular, the 90 percent rule discussed above. SGOs operate on a school year schedule rather than on a calendar year or a fiscal year. That means in January of year one, SGOs are planning for the next school year, that is from September of year one to June of year two. We intend to provide additional comments on this point.

If the Department of the Treasury does agree on our reading of the statute on the 90 percent rule, we do not think there is any reason for a special rule for start-up costs. These would be funded through general charitable donations, which would not be included in the 90 percent calculation. Should the Department of the Treasury move forward with the proposed rule in the Notice, there would be a need for rules on start-up costs and perhaps other rules that would apply to the first and possible initial years of an SGO's life. It would also result in SGOs having to rethink how to participate in the federal program.

VI. Multistate organizations

The Notice requests comments on several aspects of multistate organizations and their interactions with donors.

a. Donor designation of state in which the donor intends the contribution to be used.

   Respectfully, we do not believe a donor should be required to designate a state in which the donor's contribution should be used in the case of multistate organizations. We agree that contributions must be used to fund scholarships "solely within the State in which the organization is listed." (§25F(c)(3)). Requiring a designation raises several concerns.

   First, it will create additional burdens on SGOs to ensure that funds are placed with the appropriate organization. Second, it will limit the ability of multistate organizations to allocate funds where they are needed the most, which is an important strength of such entities. Third, this could lead to overabundance of funds in a particular state, which could result in an organization not being able to meet the 90 percent distribution test. Without a required designation, multistate organizations will be much more assured of meeting statutory requirements. Therefore, we do not recommend that donors have the ability to designate a recipient state for their donation through a multistate SGO. If a donor does want to focus on a particular state, they can always do so through a different single state SGO.

b. Should the ten or more students be measured in the aggregate or on a state-by-state basis?

   We suggest that the provision for ten or more students (§25F(d)(1)(A)) be measured on an aggregate basis. This will provide a multistate SGO with more flexibility in allocating funds and is more administrable. As a practical matter, a multistate SGO should never have difficulty meeting the requirement to award scholarships to ten or more students.

Even a small multistate SGO would have a large pool of students available to support.

c. Should additional requirements all be measured in the aggregate or on a state-by-state basis? Such additional requirements include: donations were spent on qualified expenses; scholarships were awarded in accordance with statutory student priorities; there were no earmarks for a particular student; household income was properly verified; and the entity does not engage in self-dealing.

d. The statutory requirement that SGOs serve students "solely within the State" warrants clarification. We recommend Treasury clarify that students who reside in a qualified SGO's state while attending school in a state that has not opted in are eligible for FSTC scholarships from that SGO. Likewise, students who attend school in the qualified SGO's state but reside in state that has not opted in should also be eligible to receive scholarships from that SGO. In Notice 2025-70, Treasury suggests that scholarship recipients will need to reside in a qualified SGO's state, however the statute does not say "reside." The statute is less restrictive.

   The statutory language – "students solely within the State" – should be understood to mean students residing, or attending school, within the state. Ensuring that scholarships remain portable will maximize participation and better fulfill congressional intent.

   We recommend that these provisions also be done on an aggregate basis.

VII. Disqualified person

The Department of the Treasury and the IRS in Notice 2025-70 raise two issues with regard to disqualified persons. The first is whether a change in the definition under §4946 is warranted. Specifically, for a substantial contributor, eliminating the $5,000 requirement, and having the definition be whether any contributor from the inception of the SGO through the end of the taxable year in which the contribution is received has given more than 2 percent of the total contributions. The second is whether an individual who is a member of the SGOs selection committee or a part of the immediate family of such is member is a disqualified person with respect to that SGO.

As to the first issue, we agree with the rule proposed in the Notice as long as the contributions are limited to qualified contributions pursuant to §25F(c)(3). We believe that there are taxpayers who will make charitable contributions for the credit but may also make additional contributions that will either be for a state credit program or for a charitable deduction. Including those contributions could have a negative effect on the ability of an SGO to raise funds for other scholarship programs.

As to the second issue, we agree with the rule proposed in the Notice. We have concluded that anyone with influence over the allocation of contributions to scholarships should be

considered a disqualified person. There are SGOs that do not have selection committees. In those cases, the SGO will provide scholarships on a first-come first-served basis. Such scholarships are awarded based on objective criteria related to family income and other factors. We suggest that even in those cases, those individuals involved in reviewing such applications be considered disqualified persons.

VIII. Reporting and recording keeping requirements

Notice 2025-70, §4.05(1) information reporting requirements

a. Information on an IRS Form pertaining to §25F
We agree that information related to §25F may be of use to the IRS to ensure that SGOs are meeting the requirements of the federal tax credit scholarship program. As noted above, four of the requirements are phrased in the negative. SGOs should not be asked to prove a negative. SGOs could provide information on number of students receiving scholarships, average amount of a scholarship, total amount of scholarships given, number of different schools that students are attending, and number of donors (although there is no requirement related to number of donors).

We are opposed to including any information related to specific students. All states have laws that protect student identities. Therefore, SGOs could only provide the information above.

b. Information on each qualified contribution received by the organization, including the donor's taxpayer identification number.

Respectfully, we recommend that SGOs should under no circumstances be required to collect the Social Security numbers of donors. Given that it is a relatively small donation and credit, and that there is not an aggregate cap on the total number of donations that the Department of the Treasury needs to track, it should suffice to provide a donor receipt similar to what is provided now to donors for regular charitable donations which include the SGO's EIN number. We suggest that the Department of the Treasury require taxpayers include the EIN number of the SGO on their return. This will allow the IRS to connect a donor with the SGO to which the donation was made in the event of an audit. SGOs should not be placed in the position of protecting critical taxpayer information like Social Security numbers. The potential liability for identity theft would be too great for an SGO to participate in the federal tax credit scholarship program if this was the rule.

c. Information on each scholarship recipient awarded a scholarship to ensure that each recipient meets the requirements of §25F.

As noted above, state privacy laws that apply to student identities would prevent

SGOs from meeting such a requirement. SGOs do keep records related to each student but can only report to the IRS non-student specific information about donations used for the federal tax credit scholarship program.

In a state such as New Hampshire, when its scholarship tax credit contained student household income limits, there was never a requirement by participating SGOs to report to the state any income information by child. If under §25F the IRS wants to ensure that SGOs are income-qualifying children, they could request the SGO's guidelines and the number of children in different income categories. The SGO could also report specifically the number of children from low-income households they are serving according to whatever federal guidelines they might choose. But, reporting any income information by child would be administratively onerous and impractical.

d. Additional reporting requirements.
We recommend that any reporting requirements of SGOs meet a least onerous, common-sense standard to reflect the type of data they already should maintain:

- Number of students awarded scholarships by school year;
- The list of schools where scholarship recipients attended by school year;
- Aggregate qualified contributions by calendar year;
- Number of donors making qualified contributions by calendar year.

e. Verification of student eligibility.
We recommend that to ensure scholarship recipients are qualified, the final rules under §25F should confirm that certified SGOs collected income data and determined student residency.

This can be satisfied by one of several options, including:

- Prior-year tax returns; or
- Free and Reduced-priced lunch eligibility.

f. No co-mingling of funds.

The vast majority of donations made to SGOs are done online. SGOs have online platforms that allow donors to designate what a particular donation is for at the time of the donation. If an SGO receives a check in the mail with no clear designation as to its use, the SGO can call or otherwise contact the donor to determine the intent. Therefore, at the time of the donation, an SGO will generally have all the information required to direct the funds to the correct account. In the event an SGO does not have that information, it can still determine the intent in a short amount of time. Should donor intent be impossible to determine, we recommend that SGOs treat such funds as a general charitable donation.

We recommend that a donor should be required to indicate the intent of the donation to take the §25F credit before the end of the year of the donation. As noted above, this will overwhelmingly happen at the time of the donation. We also suggest that the current reporting requirements (starting with a statement from the charity for gifts of $250 or more) is sufficient for purposes of §25F. We agree that a charity should inform a donor of the potential that their charitable donation could be eligible for the credit.

g. What information should an SGO be required to provide to its donor?

   As noted above, we suggest that an SGO be required to inform a donor that up to $1,700 of any charitable donation may be eligible for the federal scholarship tax credit. We do not recommend that SGOs be required to inform the donor anything further. Donors may be making charitable donations to multiple tax-exempt organizations as well as multiple SGOs. A simple statement will provide a donor with the information they need to file a return on their own or with their tax preparer.

h. Should an SGO be required to inform the donor that any credit under §25F must be reduced by any credit by the amount of the state tax credit for a qualified contribution?

   We recommend that SGOs not be required to provide this information. We do not think an SGO should be placed in the position of a tax advisor. It is the responsibility of taxpayers to be compliant with both federal and state tax laws.

i. For multistate organizations, what types of reporting and record keeping could allow them to demonstrate it meets the requirements on a state-by-state basis?

   As noted above, we suggest that a multistate SGO be evaluated on an aggregate basis. We also noted above that information relating to specific students cannot be shared as part of a routine tax return filing. However, SGOs currently have records that would support qualifications under §25F. We believe our suggestion that the certification form be signed, under penalty of perjury, by both the CEO and the CFO should be sufficient to support an SGO's claim to be qualified. Any further information would be provided as part of an audit.

j. For multistate organizations, what record keeping or other requirements could allow such an organization to establish that contributions to it qualify as contributions to an SGO for purposes of §25F?

   Respectfully, we do not think any additional record keeping or other requirements, other than those provided in this letter, are necessary.

IX. Potential Marriage Penalty

(§25F(b)(1)). Section 25F authorizes a credit of up to $1,700 for each taxpayer who makes qualified contributions. Although the statute does not explicitly address joint filers, its repeated references to "individuals" and "taxpayers" strongly indicate that the limitation applies on a per-person basis rather than per return. The relevant language of Section 25F provides:

a. *In the case of an **individual** who is **a** citizen or resident of the United States… there shall be allowed as a credit…the aggregate amount of qualified contributions made by the taxpayer during the taxable year."*
b. *(1) "The credit allowed under subsection (a) to any taxpayer for any taxable year shall not exceed $1,700.*

Federal tax law has long recognized that a jointly filed return reflects two separate taxpayers. Where Congress intends to override that principle, it does so explicitly. No such language appears in Section 25F. Without regulatory clarification, married couples who file jointly could be disadvantaged compared to those who file separately. Treasury should therefore confirm that spouses filing a joint return may each claim the credit for their own contributions, for a combined total of up to $3,400. This approach aligns with Treasury's interpretation of similar provisions, including the clean vehicle credit under Section 30D.

X. Qualified Education Expenses and Religious Schools (§25F(c)(4))

The statute defines allowable education expenses by cross-reference to Section 530(b)(3)(A), which explicitly encompasses expenses at religious schools. Treasury regulations should make unmistakably clear that participation in the FSTC may not be conditioned on a school's religious character, affiliation, or faith-based policies.

Any regulatory framework that excludes or disadvantages religious schools or their students would conflict with the statute and established constitutional precedent. Treasury should explicitly affirm these protections, with reference to Supreme Court decisions in *Trinity Lutheran Church of Columbia, Inc. v. Comer*, *Espinoza v. Montana Department of Revenue* to provide clarity and guard against discriminatory interpretations.

XI. Application of the 90% SGO Income Requirement (§25F(d)(1)(B))

We believe it is clear Congress intended for this provision to require SGOs to spend 90% of FSTC income on FSTC scholarships. We would urge Treasury to clarify that this provision does not mean SGOs must spend 90% of their entire organizational income from any sources on FSTC scholarships. The restriction against co-mingling of funds in (c)(5)(B) makes plain that

Congress intended for existing SGOs participating in existing state tax credit scholarship programs to be able to provide FSTC scholarships as well.

Yet, it would be impossible for SGOs receiving funds through state level program donations to provide 90% of their income from all sources to FSTC scholarships. If they were required by Treasury regulations to do so, existing SGOs interested in providing FSTC scholarships would feel compelled to each create a new 501(c)(3) for FSTC purposes. There is nothing in the OBBBA to suggest that was Congress's intent with respect to the FSTC, and this would be extremely burdensome both to SGOs and to the Department of the Treasury.