



## **Incentives Watch: ‘Back To School, Back To School’ in Georgia—Scholarship Tax Credits have Been Ruled Legal, Too**

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In the film “Billy Madison,” Adam Sandler sings “Back to school. Back to school. To prove to dad that I’m not a fool.” Thanks to a recent court ruling upholding Georgia’s scholarship tax credit, next school year students receiving scholarships through the program may be singing a similar tune.

In Gaddy v. Georgia Dept. of Rev., the Supreme Court of Georgia affirmed a lower court ruling holding that the plaintiffs lacked the standing necessary to challenge the tax credit. The plaintiffs alleged that the tax credits amounted to government funds or expenditures and that the use of the scholarships awarded through the credit program violated the state’s constitution.

As illustrated in Gaddy, opponents to the tax credits generally argue that the use of these scholarships to pay tuition at religious schools is unconstitutional and a misappropriation of government funds.

State-specific arguments can also be made surrounding the credits. For example, the Gaddy plaintiffs further stated that the credits violated Georgia’s Gratuities Clause and the Education Assistance Section of the state’s constitution. The Gratuities Clause essentially prohibits the government from paying or forgiving a debt or obligation owing to the public. The Education Assistance Section provides guidelines for state expenditures for education assistance and establishes that taxpayers receive a tax deduction, not a credit, for their contributions.

However, these arguments have been defeated time and time again in state courts, including the Gaddy ruling, as noted by the Cato Institute. The court determined that the plaintiffs lacked standing to challenge the tax credit for several reasons, most notably stating that the tax credits were private, not government, funds. This is the same basic conclusion arrived at by most of the state courts that have ruled on similar challenges, as Cato notes.

This poor track record in court might be one explanation for the arrival of a new theory challenging these credits. In May, the School Superintendents Association, AASA, a pro-public school organization, released a report calling scholarship tax credits a “tax shelter.”

In Georgia, tax credits are awarded to taxpayers making donations to nonprofit scholarship granting organizations. The credit equals 100 percent of the taxpayer's donation up to \$1,000 for individuals, \$2,500 for married couples filing jointly, \$10,000 for members of certain pass-through entities, and 75 percent of a C corporation's Georgia tax liability. There is an aggregate credit limit of \$58 million for all taxpayers per year.

The credit is so popular that in both 2015 and 2016, the entire year's limit of scholarship tax credits was allocated within days of the new-year.

Prior to the Gaddy ruling there was talk of doing away with the aggregate credit limit altogether, however those discussions were tabled because of the pending case, according to The Atlanta Journal-Constitution. Now, with this favorable ruling the legislature is free to begin the debate of removing the \$58 million annual credit cap, allowing more taxpayers to possibly claim the credit.

Back to school indeed.