

The Education Investment Tax Credit

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Summary

The Education Investment Tax Credit will provide for universal access to all K-12 educational options while minimizing government interference and maximizing educational freedom and achievement for all children.

Model Legislation

Be it enacted by the General Assembly of the State of XXXX:

Section I. This act may be cited as the “Education Investment Tax Credit Act.”

Section II.

A) The General Assembly finds:

- 1) it has the inherent power to determine subjects of taxation for general or particular public purposes;
- 2) expanding educational opportunities and improving the quality of educational services within the State are valid public purposes that the General Assembly may promote using its sovereign power to determine subjects of taxation and exemptions from taxation;
- 3) ensuring that all parents, regardless of means, may exercise and enjoy their basic right to educate their children as they see fit is a valid public purpose that the General Assembly may promote using its sovereign power to determine subjects of taxation and exemptions from taxation;
- 4) expanding educational opportunities and thereby promoting healthy competition is critical to improving the quality of education in the State and ensuring that all children have the opportunity to receive a high quality education; and

B) The purpose of this article is to:

- 1) allow maximum freedom to parents and independent schools to respond to and, without governmental interference, provide for the educational needs of children, and this act must be liberally construed to achieve that purpose;
- 2) enable taxpayers to make private, voluntary contributions to nonprofit scholarship-funding organizations or for direct educational expenses for a qualifying student in order to promote the general welfare;
- 3) provide taxpayers who wish to help parents exercise their basic right to educate their children as they see fit with a means to do so;
- 4) promote the general welfare by expanding educational opportunities for children;
- 5) enable children in this State to achieve a higher level of excellence in their education;
- 6) improve the quality of education in this State, both by expanding educational opportunities for children and by creating incentives for schools to achieve excellence.

Section III. Chapter Y, Title Z of the XXXX Code is amended by adding:

Article X

Education Investment Tax Credit Act

Section I.

A) As used in this article:

- 1) 'Department' means the Department of Revenue.
- 2) 'Independent school' means a school, other than a public school, at which the compulsory attendance requirements of the relevant sections in the state code may be met and that does not discriminate based on the grounds of race, color, or national origin.
- 3) 'Owner or operator' includes:
 - a) an owner, president, officer, or director of an eligible nonprofit scholarshipfunding organization or a person with equivalent decision making authority over an eligible nonprofit scholarship funding organization; and
 - b) an owner, operator, superintendent, or principal of an eligible independent school or a person with equivalent decision making authority over an eligible independent school.
- 4) 'Parent' means the natural or adoptive parent or legal guardian of a child.
- 5) 'Public school' means a public school in the State as defined in the relevant sections in the state code.
- 6) 'Qualifying student' means a student who is a XXXX legal resident and who was enrolled in a XXXX secondary or primary public school at the kindergarten or later year level for the preceding school year, is a new legal resident in the state, or who is eligible to enroll in a qualified fiveyear-old kindergarten program. Once approved as a qualifying student, the student will remain qualified until the student has obtained a high school diploma or its equivalent or reached twenty years of age.
- 7) 'Receipt' means a document developed by the Department of Revenue that is issued by the receiving school to the organization which makes payment for education expenses on behalf of a qualifying student and that contains, at a minimum:
 - a) the name and address of the school if a school is attended;
 - b) the name, social security number, and address of the qualifying student for whom the expense has been paid; and
 - c) the name of the payer and the date and amount of the expense paid.
 - d) receipts for all specific, reimbursed educational expenses.
- 8) 'Receiving school' means an independent school which the qualifying student seeks to attend.
- 9) 'Resident public school district' means the public school district in which a student resides.
- 10) 'Release of information form' means a document developed by a receiving school, signed by the parent or guardian of a qualifying student, and which

acknowledges the consent of the parent or guardian to release of information contained in the receipt.

- 11) 'Scholarship receipt' means a document developed by the Department of Revenue and issued by the student scholarship organization to a corporation or a person that makes a contribution to a student scholarship organization.
- 12) 'State' means the state of XXXX.
- 13) 'Scholarship organization' means a charitable organization incorporated or qualified to do business in this State that:
 - a) is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code;
 - b) complies with the applicable state and federal antidiscrimination provisions; and
 - c) is registered with the Office of the Secretary of State.
- 14) 'Education Expenses' means the total amount of money charged for the cost of a qualifying student to be educated, including, but not limited to, fees for attending a private school, education-related transportation, and other instruction-related expenses, including but not limited to, online learning services, tutoring services, and instruction-related materials and equipment.

Section II.

- A) A qualifying student is eligible to utilize tax-credit funds for educational expenses if the student is not enrolled in a public school at the time the education expenses are incurred.
- B) For each student scholarship organization, the average value of a scholarship given to a student may not exceed:
 - 1) in the first year of the program, seventy percent of the state's average public K-12 education spending per student, which includes all funds derived from state revenue sources for any public K-12 educational purpose, multiplied by the number of scholarship students, minus the state income tax liability of each qualifying student's family, and then divided by the number of students receiving scholarships. In years two and each year thereafter, the amount shall be equal to the amount established in the first program year, adjusted for inflation according to XYZ, for each qualifying student who meets the criteria provided in subsection (A).

Section IV.

- A) A corporation may claim a credit against all applicable state taxes, specifically XYZ, for a contribution made to a scholarship organization.
- B) A person who files a state income tax return and who is not a dependent of another taxpayer may claim a credit against state income taxes for a contribution made to a scholarship organization or for itemized and documented educational expenses made on behalf of a dependent qualifying student for whom the taxpayer is the legal guardian.
 - 1) The total credits claimed by a taxpayer for direct expenditures for on behalf of a dependent child may not exceed, in the first year of the program, seventy percent of the state's average public K-12 education spending per student, which includes all

funds derived from state revenue sources for any public K-12 educational purpose. In years two and each year thereafter, the amount shall be equal to the amount established in the first program year, adjusted for inflation according to XYZ.

- C) A tax credit may not be claimed without a scholarship receipt.
- D) A taxpayer can assign his contribution to specific students in an amount no greater than the average value of a scholarship for the scholarship organization as established according to Section II (B).
- E) Each taxpayer must apply, according to procedures established by the Department of Revenue, for authorization to claim a credit.

Section V.

- A) An independent school, excepting any home school, that accepts students pursuant to this article shall:
 - 1) comply with state and federal anti-discrimination laws;
 - 2) meet state and local health and safety laws and codes;
 - 3) comply with state statutes relating to independent education in Section XXXX;
 - 4) accept scholarship students on the basis of the admissions criteria of the school within the school's capacity to accept additional students;
 - 5) be in operation for three years or post a surety bond or letter of credit equal to two hundred fifty thousand dollars;
- B) The inability of an independent school to meet the requirements of this section constitutes a basis for the ineligibility of the independent school to participate in the scholarship program as determined by the Department of Revenue.

Section VI.

- A) A student scholarship organization shall:
 - 1) not have an owner or operator who in the last seven years has filed for personal bankruptcy or corporate bankruptcy in a corporation of which he or she owned more than twenty percent;
 - 2) provide scholarships, from eligible contributions, to qualifying students to defray educational expenses;
 - 3) not restrict or reserve scholarships for use at a single independent school or provide scholarships to a child of an owner or operator;
 - 4) verify the eligibility through transcripts and attendance records of a qualifying student who applies for a scholarship;
 - 5) not use more than ten percent of eligible contributions received during the state fiscal year in which the contributions are collected, and for which scholarship receipts were issued for tax credit purposes, for administrative expenses. These administrative expenses must be reasonable and necessary for the organization's management and distribution of eligible contributions pursuant to this section. ;
 - 6) expend an amount equal to 90 percent of the net eligible contributions remaining after administrative expenses are expended for annual or partial-year scholarships during the state fiscal year in which these contributions are collected. No more than

ten percent of these net eligible contributions remaining after administrative expenses during the state fiscal year in which such contributions are collected may be carried forward to the following state fiscal year. Any amounts carried forward must be expended for annual or partial-year scholarships in the following state fiscal year. Net eligible contributions remaining on June thirtieth of each year that are in excess of the ten percent that can be carried forward must be returned to the relevant donor or donors in order that the donor may appropriately amend their tax return and the Department of Revenue informed of each transaction;

- 7) maintain separate accounts for scholarship funds, operating funds, funds given as donation tax credits, and funds given as standard charitable donations;
- 8) provide to the Department of Revenue an annual financial and compliance report of its accounts and records. It also must include a report on financial statements presented in accordance with generally accepted accounting principles provided by the American Institute of Certified Public Accountants for not-for-profit organizations and a determination of compliance with statutory eligibility and expenditure requirements provided in this section. Reports must be provided to the Department of Revenue within one hundred eighty days after completion of the eligible nonprofit scholarship funding organization's fiscal year;
- 9) prepare and submit quarterly reports to the Department of Revenue. In addition, an eligible nonprofit scholarship funding organization must submit in a timely manner any information requested by the Department of Revenue relating to the scholarship program;
- 10) For each independent school subject to Section V(14), the appropriate scholarship funding organization shall notify the Department of Revenue by August 15, 20XX, and annually thereafter of:
 - a) an independent school's failure to submit the report required pursuant to Section V; or
 - b) any material exceptions set forth in the report required pursuant to Section V.

Section VII

- A) Taxpayers may claim credits only for expenses actually paid.
- B) On a form prescribed by the department, taxpayers will provide a detailed listing of educational expenses against which a credit is claimed. They will attach to the form all receipts necessary to document these expenses.
- C) A taxpayer may carry forward unused credits for five years.

Section VIII.

To ensure that schools provide academic accountability to parents of enrolled students and supporting scholarship organizations, receiving schools annually shall make available to parents and supporting scholarship organizations an assessment of educational progress. This provision shall not be construed to require any particular means or method of assessing educational progress on the part of education service providers

Section IX.

The provisions of this article regarding independent schools and their relation to student scholarship organizations apply only to independent schools that choose to accept scholarship students.

Section X.

The total amount of tax credits that may be granted in the first year of operation under this section shall not exceed \$150 million. Following each year in which the total amount of credits claimed are equal to or more than 90 percent of the program cap, the credit cap will increase by 25 percent.

Section XI.

A) The Department of Revenue shall:

- 1) submit annually, by March fifteenth, a list of eligible nonprofit scholarship funding organizations that meet the requirements of Section VI;
- 2) verify annually the eligibility of nonprofit scholarship funding organizations that meet the requirements of Section VI;
- 3) verify annually the eligibility of expenditures as provided in Section VI using the audit required by Section VI(8)

Section XII.

A) The XXXX Department of Revenue shall:

- 1) Develop a procedure for authorizing taxpayers to claim credits on a first-come basis and notify taxpayers in a timely manner regarding the status of their claim. A taxpayer approved for claiming a credit will be given priority in claiming a credit of at least the same amount in subsequent consecutive years.
- 2) notify an eligible nonprofit scholarship funding organization of any of the organization's identified students who are receiving tax credit scholarships from other eligible nonprofit scholarship funding organizations;
- 3) establish a process by which individuals may notify the Department of Revenue of any violation by a parent or independent school of state laws relating to program participation. The Department of Revenue shall conduct an inquiry of any written complaint of a violation of this section, or make a referral to the appropriate agency for an investigation, if the complaint is signed by the complainant and is legally sufficient. A complaint is legally sufficient if it contains ultimate facts that show that a violation of this section or any rule adopted by the Department of Revenue has occurred. In order to determine legal sufficiency, the Department of Revenue may require supporting information or documentation from the complainant;
- 4) require quarterly reports by an eligible nonprofit scholarship funding organization regarding the number of students participating in the scholarship program, the independent schools at which the students are enrolled, and additional information only to the minimum extent necessary for the Department of Revenue to ensure general compliance with the law;

Section XIII.

- A) A receiving independent school that accepts students benefiting from scholarships, grants, or tax credits is not an agent or arm of the state or federal government.
- B) Except as provided by this article, the Department of Education, Department of Revenue, or any other state agency may not regulate the educational program of a receiving independent school that accepts students pursuant to this article.

Section XIV.

If a of this act is for any reason held to be unconstitutional or invalid, this holding does not affect the constitutionality or the validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words thereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Section XV.

This act will be implemented by the Department of Revenue no later than the fiscal year following approval by the Governor.