The Educational Choice Tax Credit Program Act (Scholarship Tax Credits)

Summary

The Educational Choice Tax Credit Program authorizes a tax credit for individual and corporate contributions to organizations that provide educational scholarships to eligible students so their parents can provide them with the education that best meets their individual needs.

Model Legislation

Preamble.

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 1. {Title.} The Educational Choice Tax Credit Program Act

Section 2. {Definitions.}

(A) “Program” means the Educational Choice Tax Credit Program.

(B) “Eligible student” means a student who:

   (1) is a member of a household whose total annual income the year before he or she receives an educational scholarship under this program does not exceed an amount equal to two times the income standard used to qualify for a free or reduced-price lunch under the national free or reduced-price lunch program established under 42 USC Section 1751 et seq. Once a student receives a scholarship under this program, the student will remain eligible regardless of household income until the student graduates high school or reaches 21 years of age.

   (2) was eligible to attend a public school in the preceding semester or is starting school in [state] for the first time;

   (3) Resides in [state] while receiving an educational scholarship.

(C) “Low-income eligible student” means a student who qualifies for a free or reduced-price lunch under the national free or reduced-price lunch program established under 42 USC Section 1751 et seq.

(D) “Parent” includes a guardian, custodian, or other person with authority to act on behalf of the child.
(E) “Department” means the state Department of Revenue.

(F) “Qualifying school” means either a public school outside of the resident school district, or any private school that provides education to elementary and/or secondary students and has notified the Department of its intention to participate in the program and comply with the program’s requirements.

(G) “Educational scholarships” means grants to students to cover all or part of the cost of a qualifying student to be educated, including, but not limited to:

1) tuition and fees at either a qualifying private school or a qualifying public school, including education-related transportation expenses; and/or

2) other instruction-related expenses, including but not limited to, online learning services, tutoring services, and instruction-related materials and equipment, subject to the approval of the Department and the scholarship organization. Educational expenses shall not include the cost of a parent’s time expended in the home schooling of his or her child.

(H) “Scholarship Organization” means an organization that complies with the requirements of the state’s school scholarship tax credit program and provides educational scholarships to students.

Section 3. {Basic Elements of the Educational Choice Tax Credit Program.}

(A) A taxpayer who files a state income tax return and is not a dependent of another taxpayer may claim a credit for a contribution made to a scholarship organization.

(B) In the first five years of the program, the tax credit may be claimed by an individual taxpayer or a married couple filing jointly in an amount equal to the total contributions made to a scholarship organization for educational scholarships during the taxable year for which the credit is claimed. Beginning in the sixth year of the program, the amount of the taxpayer’s tax liability which is eligible for a credit will decrease by 10 percentage points each year until the tenth year of the program and beyond, when the tax credit may be claimed up to 50 percent of the taxpayer’s tax liability.

(C) In the first five years of the program, the tax credit may be claimed by a corporate taxpayer in an amount equal to the total contributions made to a scholarship organization for educational scholarships during the taxable year for which the credit is claimed. Beginning in the sixth year of the program, the amount of the taxpayer’s tax liability which is eligible for a credit will decrease by 10 percentage points each year until the tenth year of the program.
and beyond, when the tax credit may be claimed up to 50 percent of the taxpayer’s tax liability.

(D) A corporate taxpayer, an individual taxpayer, or a married couple filing jointly may carry forward a tax credit under this program for three years.

Section 4. {Responsibilities of Scholarship Organizations.}

(A) Administrative Accountability Standards. All scholarship organizations shall:

1. notify the Department of their intent to provide educational scholarships to students attending qualifying schools;

2. demonstrate to the Department that they have been granted exemption from the federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code;

3. distribute periodic scholarship payments as checks made out to a student’s parent or guardian;

   (a) tuition payments shall be mailed to the qualifying school where the student is enrolled. The parent or guardian must endorse the check before it can be deposited;

   (b) payments for other qualifying instruction-related expenses shall be mailed directly to a student’s parent or guardian. The parent or guardian must submit receipts for all qualifying instruction-related expenses to the scholarship organization within 90 days;

4. provide a Department-approved receipt to taxpayers for contributions made to the organization;

5. ensure that at least 90 percent of their revenue from donations is spent on educational scholarships, and that all revenue from interest or investments is spent on educational scholarships;

6. spend each year a portion of their expenditures on scholarships for low-income eligible students that is at minimum equal to the percentage of low-income eligible students in the county where the scholarship organization expends the majority of its scholarships;
(7) ensure that at least X percent of first-time recipients of educational scholarships were not continuously enrolled in a private school during the previous year;

(8) not grant multiyear scholarships to participating students in one approval process;

(9) carry forward no more than 25 percent of their revenue from donations from the state fiscal year in which they were received to the following state fiscal year;

(10) cooperate with the Department to conduct criminal background checks on all of their employees and board members and exclude from employment or governance any individual(s) that might reasonably pose a risk to the appropriate use of contributed funds;

(11) ensure that scholarships are portable during the school year and can be used at any qualifying school to which the scholarship organization grants scholarships and that accepts the eligible student according to a parent’s wishes. If a student moves to a new qualifying school during a school year, the scholarship amount may be prorated.

(12) publicly report to the Department by June 1 of each year the following information prepared by a certified public accountant regarding their grants in the previous calendar year:

(a) the name and address of the student support organization;

(b) the total number and total dollar amount of contributions received during the previous calendar year; and

(c) the total number and total dollar amount of educational scholarships awarded during the previous calendar year, the total number and total dollar amount of educational scholarships awarded during the previous year to students qualifying for the federal free and reduced-price lunch program, and the percentage of first-time recipients of educational scholarships who were enrolled in a public school during the previous year.

(13) ensure scholarships are not provided for students to attend a school with paid staff or board members, or relatives thereof, in common with the scholarship organization.

(B) Financial Accountability Standards.

(1) All scholarship organizations shall demonstrate their financial accountability by:
(a) annually submitting to the Department a financial information report for the organization that complies with uniform financial accounting standards established by the Department and conducted by a certified public accountant; and

(b) having the auditor certify that the report is free of material misstatements.

Section 5. {Program Oversight of Participating Schools.}

(A) Each scholarship organization shall collect written verification from participating, private schools that accept its scholarship students that those schools:

(1) comply with all health and safety laws or codes that apply to private schools;

(2) hold a valid occupancy permit if required by their municipality;

(3) certify that they comply with the nondiscrimination policies set forth in 42 USC 1981; and

(4) conduct criminal background checks on employees when already required by law and then:

   (a) exclude from employment any people not permitted by state law to work in a private school; and

   (b) exclude from employment any people that might reasonably pose a threat to the safety of students.

Section 6. {Responsibilities of the Department of Revenue.}

(A) The Department shall adopt rules and procedures consistent with this act as necessary to implement the program.

(B) The Department shall provide a standardized format for a receipt to be issued by a scholarship organization to a taxpayer to indicate the value of a contribution received. The Department shall require a taxpayer to provide a copy of this receipt when claiming the Educational Choice Tax Credit.

(C) The Department shall provide a standardized format for a scholarship organization to report the information in Section 4(A)(10) above.
(D) The Department shall have the authority to conduct either a financial review or audit of a scholarship organization if possessing evidence of fraud.

(E) The Department may bar a scholarship organization from participating in the program if the Department establishes that the scholarship organization has intentionally and substantially failed to comply with the requirements in Section 4 or Section 5.

(F) If the Department decides to bar a scholarship organization from the program, it shall notify affected scholarship students and their parents of this decision as quickly as possible.

(G) The Department shall allow a taxpayer to divert a prorated amount of state income tax withholdings to a scholarship organization of the taxpayer’s choice up to the maximum credit allowed by law, including carry-over credits. The Department shall have the authority to develop a procedure to facilitate this process.

Section 7. {Responsibilities of Qualifying Schools.}

(A) All qualifying schools shall comply with all state laws that apply to private schools regarding criminal background checks for employees and exclude from employment any people not permitted by state law to work in a private school.

Section 8. {Effective Date.} The Educational Choice Tax Credit may be first claimed in the next calendar year.