

House Bill 142

By: Representatives Carpenter of the 4th, Watson of the 172nd, Rhodes of the 120th, and Ehrhart of the 36th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to imposition, rate, computation, and exemptions from state income taxes,
3 respectively, so as to provide for qualified education tax credits to be used by certain
4 insurance companies against certain tax liability; to provide for conditions and limitations;
5 to increase the limit on qualified education tax credits available to individuals who are
6 members of certain limited liability companies, shareholders of Subchapter "S" corporations,
7 or partners in a partnership; to revise the annual aggregate tax credit limits; to provide for
8 rules and regulations; to provide for a definition; to provide for related matters; to provide
9 for an effective date and applicability; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
13 imposition, rate, computation, and exemptions from state income taxes, is amended by
14 revising Code Section 48-7-29.16, relating to a qualified education tax credit, as follows:

15 "48-7-29.16.

16 (a) As used in this Code section, the term:

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17 (1) 'Business enterprise' means any insurance company or the headquarters of any
18 insurance company required to pay the tax provided for in Code Section 33-8-4.

19 ~~(1)~~(2) 'Eligible student' shall have the same meaning as in paragraph (1) of Code Section
20 20-2A-1.

21 ~~(2)~~(3) 'Qualified education expense' means the expenditure of funds by the taxpayer or
22 business enterprise during the tax year for which a credit under this Code section is
23 claimed and allowed to a student scholarship organization operating pursuant to Chapter
24 2A of Title 20 which are used for tuition and fees for a qualified school or program.

25 ~~(3)~~(4) 'Qualified school or program' shall have the same meaning as in paragraph (2) of
26 Code Section 20-2A-1.

27 ~~(4)~~(5) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
28 of Code Section 20-2A-1.

29 (b) An individual taxpayer shall be allowed a credit against the tax imposed by this chapter
30 for qualified education expenses as follows:

31 (1) In the case of a single individual or a head of household, the actual amount expended
32 or \$1,000.00 per tax year, whichever is less;

33 (2) In the case of a married couple filing a joint return, the actual amount expended or
34 \$2,500.00 per tax year, whichever is less; or

35 (3) Anything to the contrary contained in paragraph (1) or (2) of this subsection
36 notwithstanding, in the case of an individual who is a member of a limited liability
37 company duly formed under state law, a shareholder of a Subchapter 'S' corporation, or
38 a partner in a partnership, the amount expended or ~~\$10,000.00~~ \$25,000.00 per tax year,
39 whichever is less; provided, however, that tax credits pursuant to this paragraph shall
40 only be allowed for the portion of the income on which such tax was actually paid by
41 such member of the limited liability company, shareholder of a Subchapter 'S'
42 corporation, or partner in a partnership.

43 (c) A corporation or other entity shall be allowed a credit against the tax imposed by this
44 chapter for qualified education expenses in an amount not to exceed the actual amount
45 expended or 75 percent of the corporation's income tax liability, whichever is less.

46 (c.1) A business enterprise shall be allowed a credit against the tax imposed by Code
47 Section 33-8-4 in an amount equal to its qualified education expenses or 75 percent of the
48 business enterprise's state insurance premium tax liability owed pursuant to Code Section
49 33-8-4, whichever is less.

50 (d)(1) The tax credit shall not be allowed if the taxpayer or business enterprise designates
51 ~~the taxpayer's~~ its qualified education expense for the direct benefit of any particular
52 individual, whether or not such individual is a dependent of the taxpayer or business
53 enterprise.

54 (2) In soliciting contributions, a student scholarship organization shall not represent, or
55 direct a qualified private school to represent, that, in exchange for contributing to the
56 student scholarship organization, a taxpayer or business enterprise shall receive a
57 scholarship for the direct benefit of any particular individual, whether or not such
58 individual is a dependent of the taxpayer or business enterprise. The status as a student
59 scholarship organization shall be revoked for any such organization which violates this
60 paragraph.

61 (e) In no event shall the total amount of the tax credit allowed to any taxpayer or business
62 enterprise under this Code section for a taxable year exceed ~~the such~~ taxpayer's income tax
63 liability or such business enterprise's state insurance premium tax liability owed pursuant
64 to Code Section 33-8-4, provided that any. ~~Any~~ unused tax credit shall be allowed the
65 taxpayer or business enterprise against ~~the~~ up to its succeeding five years' tax liability. No
66 such credit shall be allowed the taxpayer or business enterprise against prior years' tax
67 liability.

68 (f)(1) The aggregate amount of tax credits allowed under this Code section shall not
69 exceed:

- 70 (A) Fifty-eight million dollars for the ~~tax~~ year ending on December 31, 2018;
- 71 (B) One hundred million dollars for ~~tax years beginning on January 1, 2019, and~~
72 ~~ending on December 31, 2028~~ 2019 or 2020; and
- 73 (C) One hundred and fifty million dollars for each year from 2021 through 2028; or
- 74 (D) Fifty-eight million dollars for the tax year beginning on January 1, 2029, and for
75 all subsequent tax years.

76 (1.1) In no event shall the aggregate amount of tax credits allowed under this Code
77 section to all business enterprises for state insurance premium tax liability owed pursuant
78 to Code Section 33-8-4 combined exceed 15 percent of the annual cap provided in
79 paragraph (1) of this subsection for any year.

80 (2) The commissioner shall allow the tax credits on a first come, first served basis.

81 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
82 organization shall notify a potential donor of the requirements of this Code section.
83 Before making a contribution to a student scholarship organization, the taxpayer or
84 business enterprise shall electronically notify the department, in a manner specified by
85 the department, of the total amount of contributions that the taxpayer or business
86 enterprise intends to make to the student scholarship organization. The commissioner
87 shall preapprove, deny, or prorate the requested amount within 30 days after receiving
88 the request from the taxpayer or business enterprise and shall provide notice to the
89 taxpayer or business enterprise and the student scholarship organization of such
90 preapproval, denial, or proration which shall not require any signed release or notarized
91 approval by the taxpayer or business enterprise. In order to receive a tax credit under this
92 Code section, the taxpayer or business enterprise shall make the contribution to the
93 student scholarship organization within 60 days after receiving notice from the
94 department that the requested amount was preapproved. If the taxpayer or business
95 enterprise does not comply with this paragraph, the commissioner shall not include this
96 preapproved contribution amount when calculating the limit prescribed in paragraph (1)

97 of this subsection or the additional limitation specific to business enterprises prescribed
98 in paragraph (1.1) of this subsection. The department shall establish a web based
99 donation approval process to implement this subsection.

100 (4) Preapproval of contributions by the commissioner shall be based solely on the
101 availability of tax credits subject to the aggregate total limit established under paragraph
102 (1) of this subsection or the additional limitation specific to business enterprises
103 prescribed in paragraph (1.1) of this subsection. The department shall maintain an
104 ongoing, current list on its website of the amount of tax credits available under this Code
105 section.

106 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
107 action against donors to student scholarship organizations if the commissioner
108 preapproved a donation for a tax credit prior to the date the student scholarship
109 organization is removed from the Department of Education list pursuant to Code Section
110 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to
111 the donor's compliance with paragraph (3) of this subsection.

112 (6) In addition to the reporting requirements in Code Section 20-2A-3, each student
113 scholarship organization shall file an annual report with the department showing any fees
114 or assessments retained by the student scholarship organization during the calendar year.

115 (g)(1) In order for the taxpayer to claim the student scholarship organization tax credit
116 under this Code section, a letter of confirmation of donation issued by the student
117 scholarship organization to which the contribution was made shall be attached to the
118 taxpayer's tax return or a business enterprise's tax return provided for in Code Section
119 33-8-6.

120 (2)(A) However, in the event the taxpayer files an electronic return permitted by this
121 chapter, such confirmation shall only be required to be electronically attached to the
122 return if the Internal Revenue Service allows such attachments when the data is
123 transmitted to the department. In the event the taxpayer files an electronic return and

124 such confirmation is not attached because the Internal Revenue Service does not, at the
125 time of such electronic filing, allow electronic attachments to the Georgia return, such
126 confirmation shall be maintained by the taxpayer and made available upon request by
127 the commissioner.

128 (B) With respect to a business enterprise's tax return provided for in Code Section
129 33-8-6, the Commissioner of Insurance is authorized to promulgate rules and
130 regulations regarding the manner in which such letters of confirmation of donations
131 shall be filed in the case of tax returns filed electronically.

132 (3) The letter of confirmation of donation shall contain the taxpayer's or business
133 enterprise's name, address, tax identification number, the amount of the contribution, the
134 date of the contribution, and the amount of the credit.

135 (h)(1) No credit shall be allowed under this Code section with respect to any amount
136 deducted from taxable net income by the taxpayer or business enterprise as a charitable
137 contribution to a bona fide charitable organization qualified under Section 501(c)(3) of
138 the Internal Revenue Code.

139 (2) The amount of any scholarship received by an eligible student or eligible
140 pre-kindergarten student shall be excluded from taxable net income for Georgia income
141 tax purposes.

142 (i) The commissioner shall be authorized to promulgate any rules and regulations
143 necessary to implement and administer the tax provisions of this Code section."

144 **SECTION 2.**

145 This Act shall become effective on July 1, 2021, and shall be applicable to all taxable years
146 beginning on or after January 1, 2021.

147 **SECTION 3.**

148 All laws and parts of laws in conflict with this Act are repealed.