

Regular Session, 2011

HOUSE BILL NO. 621

BY REPRESENTATIVE TALBOT

TAX CREDITS: Authorizes a tax credit for individuals and corporations which donate to certain school tuition organizations

1 AN ACT

2 To enact R.S. 47:6038, relative to tax credits; to authorize a tax credit against any Louisiana
3 income or corporation franchise tax for certain donations to certain school tuition
4 organizations; to provide for definitions, requirements, and limitations; to provide
5 for the amount, approval, and issuance of tax credits; to authorize the Department of
6 Revenue to conduct audits; to authorize the promulgation of rules and regulations;
7 to provide for an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:6038 is hereby enacted to read as follows:

10 §6038. Tax credits; contributions to school tuition organizations

11 A.(1) There shall be allowed a credit against any Louisiana income or
12 corporation franchise tax for donations a taxpayer makes during a taxable year to a
13 school tuition organization which provides scholarships or grants to qualified
14 students to attend a qualified school. The amount of the credit shall be equal to the
15 actual amount of the taxpayer's donation to a school tuition organization.

16 (2) In order for a donation from a taxpayer to qualify for the tax credit, the
17 donation shall be used by the school tuition organization to provide scholarships for
18 tuition and fees for students to attend a qualified school in accordance with the
19 provisions of this Section. No more than five percent of a donation shall be used by
20 the school tuition organization for administrative or promotional costs.

1 B.(1)(a) For purposes of this Section, the term "school tuition organization"
2 shall mean a tax exempt organization organized under Section 501(c)(3) of the
3 Internal Revenue Code which adheres to the requirements of this Paragraph. The
4 amount of scholarships awarded by a school tuition organization shall equal the
5 amount of donations the organization receives from taxpayers, minus allowable
6 administrative or promotional costs. No less than ninety-five percent of the monies
7 received by the school tuition organization from taxpayer donations for scholarships
8 shall be used to provide scholarships to students for attendance at a qualified
9 nonpublic school of their parent's choice. A school tuition organization shall not
10 carryforward more than twenty-five percent of net donations from one fiscal year to
11 the next. In addition, a school tuition organization shall provide educational
12 scholarships or tuition grants to students without limiting available scholarships and
13 grants to students of only one qualified school.

14 (b) The maximum amount for a scholarship provided by the school tuition
15 organization to a qualified student in kindergarten through eighth grade shall not
16 exceed eighty percent of the state average Minimum Foundation Program per pupil
17 funding amount for the previous year, and the maximum amount for a scholarship
18 for a qualified student in ninth through twelfth grades shall not exceed ninety percent
19 of the state average Minimum Foundation Program per pupil funding amount for the
20 previous year.

21 (c) A school tuition organization which provides scholarships or tuition
22 grants to qualified students shall do all of the following:

23 (i) Notify the Department of Education of its intent to provide educational
24 scholarships to qualified students attending qualified schools.

25 (ii) Provide documentary evidence to the Department of Education that it has
26 been granted an exemption from federal income tax and is established as an
27 organization described in Section 501(c)(3) of the Internal Revenue Code.

28 (iii) Document the eligibility of each qualified student for each year that a
29 qualified student receives a scholarship.

1 (iv) Provide scholarships to qualified students on a first-come, first-served
2 basis, with priority given to students who received a scholarship in the previous year.

3 (v) Quarterly distribute scholarship payments in September, November,
4 February, and May of each year as checks made out to a parent of a qualified student
5 which are mailed to the qualifying school where the student is enrolled. The parent
6 shall restrictively endorse the check for deposit into the account of the school. The
7 parent shall not designate any entity or individual associated with the school as the
8 parent's attorney to endorse a scholarship check.

9 (vi) Provide a receipt to all taxpayers making donations on a form approved
10 by the Department of Revenue.

11 (vii) Perform criminal background checks on all of its employees and board
12 members according to the provisions of R.S. 15:587.1. A person who has been
13 convicted of or has entered a plea of nolo contendere to a crime listed in R.S.
14 15:587.1 may not be employed by, or be a board member of, a school tuition
15 organization.

16 (viii) Ensure that scholarships granted to qualified students are portable
17 during the school year and can be used at any qualifying school that accepts a
18 qualified student. If the parent of a qualified student who is receiving a scholarship
19 desires the student to move to a new qualified school during a school year, the
20 scholarship amount may be prorated.

21 (ix) Provide a public report to the Department of Education which contains
22 information regarding all scholarships awarded or granted in the previous fiscal
23 year. The report shall be prepared by a certified public accountant and shall be
24 submitted to the department no later than the first day of January each year. The
25 report shall contain the name and address of the school tuition organization, the total
26 number and total dollar amount of donations received during the previous fiscal year,
27 and the total number and total dollar amount of educational scholarships or tuition
28 grants awarded to qualified students during the previous fiscal year. The report shall
29 also contain the total amount of contributions received by the school tuition

1 organization, the total amount of contributions made by each contributor during the
2 previous calendar year, and the social security number or Louisiana taxpayer
3 identification number of each contributor. An electronic format of this report shall
4 be furnished to the Department of Revenue on or by the first day of February of each
5 year.

6 (x) Annually demonstrate its financial accountability through a financial
7 information report that complies with uniform financial accounting standards. The
8 report shall be prepared by a certified public accountant and shall be submitted to the
9 Department of Education. The report shall contain a certification from an auditor
10 that the report is free of material misstatements.

11 (2)(a) For purposes of this Section, a "qualified school" shall mean a
12 nonpublic elementary or secondary school in this state which is approved by the
13 Board of Elementary and Secondary Education and which complies with the criteria
14 set forth in *Brumfield, et al. v. Dodd, et al.*, 425 F. Supp 528. A qualified school
15 shall do all of the following:

16 (i) Conduct criminal background checks on its employees and exclude from
17 employment any person not permitted by state law to work in a nonpublic school.

18 (ii) Annually administer the state test associated with the Louisiana
19 Educational Assessment Program (LEAP) to measure learning gains in math and
20 language arts to all participating students in grades that require testing under the
21 state's accountability testing laws for public schools; however, the Department of
22 Education shall not incur any expense for the administration of the LEAP test to
23 students applying for tuition scholarships from a school tuition organization. The
24 qualified school shall provide the parents of each student who was tested with a copy
25 of the student's test results on an annual basis, beginning with the first year the
26 student is tested.

27 (b) Any qualified school that receives more than fifty thousand dollars in
28 scholarship donations from a school tuition organization shall demonstrate its
29 financial viability by filing, prior to the start of a school year, a surety bond payable

1 to the school tuition organization in an amount equal to the aggregate amount of
2 donations expected to be received during the school year or by filing, prior to the
3 start of a school year, financial information with the qualified school tuition
4 organization demonstrating its financial viability; however, a qualified school which
5 has been in business for more than five years shall not be required to post a surety
6 bond.

7 (3) For purposes of this Section, a "qualified student" shall mean a child who
8 is a member of a family that resides in Louisiana with a total household income that
9 does not exceed an amount equal to two hundred fifty percent of the federal poverty
10 level based on the federal poverty guidelines established by the federal office of
11 management and budget. A qualified student shall also be a student who is entering
12 kindergarten for the first time, a student who attended a public school the previous
13 year, or a student who received a scholarship from a school tuition organization for
14 the previous school year.

15 (4) For purposes of this Section, a "parent" shall mean a guardian, custodian,
16 or other person with authority to act on behalf of the child.

17 C.(1)(a) The Department of Education may promulgate rules and regulations
18 in accordance with the provisions of the Administrative Procedure Act, as are
19 necessary to implement the provisions of this Section.

20 (b) The Department of Education shall approve the application used by a
21 school tuition organization in awarding scholarships to qualified students.

22 (2)(a) The Department of Revenue may conduct either a financial review or
23 audit of a school tuition organization if the department possesses evidence of fraud.
24 The department may bar a school tuition organization from participating in the tax
25 credit authorized under this Section if the school tuition organization intentionally
26 and substantially fails to comply with the requirements of this Section.

27 (b) The department shall provide a standardized format for a receipt to be
28 issued by a school tuition organization to a taxpayer to indicate the value of a
29 donation received by the organization. The department shall require a taxpayer to

1 provide a copy of this receipt when claiming the tax credit authorized by this
2 Section.

3 D. The total amount of tax credits that shall be issued pursuant to the
4 provisions of this Section shall not exceed five million dollars per calendar year;
5 however, in any year in which the amount of tax credits awarded reaches ninety
6 percent of the five million dollar annual cap, the annual cap for the next year shall
7 be increased by twenty percent.

8 E. The Department of Revenue shall approve tax credits on a first-come,
9 first-served basis until the maximum amount of tax credits have been issued;
10 however, all tax credit requests received on the same business day shall be treated
11 as received at the same time, and if the aggregate amount of tax credit requests
12 received on a single business day exceed the total amount of available tax credits, tax
13 credits shall be approved on a pro rata basis.

14 F. If the tax credit against Louisiana income tax or corporation franchise tax
15 provided for by this Section exceeds the amount of a taxpayer's tax liability, then any
16 unused credit may be carried forward as a credit against subsequent tax liability for
17 a period not to exceed five years.

18 Section 2. The provisions of this Act shall become effective for income tax periods
19 beginning on or after January 1, 2012, and for all corporation franchise tax periods beginning
20 on or after January 1, 2013.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Talbot

HB No. 621

Abstract: Authorizes a tax credit for donations to school tuition organizations equal to the actual amount donated. Limits total tax credits for each year at \$5 million, which can be increased under certain circumstances.

Proposed law authorizes a credit against any La. income or corporation franchise tax for donations a taxpayer makes during a taxable year to a school tuition organization which provides scholarships or grants to qualified students to attend a qualified school. The amount of the credit shall be equal to the actual amount of the taxpayer's donation.

Proposed law requires that in order for a taxpayer's donation to qualify for the tax credit, the donation shall be used by the school tuition organization to provide scholarships for tuition. No more than 5% of a donation shall be used for administrative or promotional costs.

Proposed law defines a "school tuition organization" as a §501(c)(3) tax exempt organization which donates no less than 95% of the monies from donations for scholarships to students for attendance at a qualified nonpublic school of their parent's choice. Prohibits a school tuition organization from carrying forward more than 25% of net donations into the next fiscal year. Proposed law limits the maximum amount of a scholarship for a student in grades K-8 to 80% of the state average MFP per pupil funding amount for the previous year, and for a student in grades 9-12 to 90% of the state average MFP per pupil funding amount for the previous year.

Proposed law requires school tuition organizations to do all of the following:

- (1) Notify the Dept. of Education (DOE) of its intent to provide educational scholarships.
- (2) Provide evidence of its §501(c)(3) status.
- (3) Document the eligibility of a student each year the student receives a scholarship.
- (4) Provide scholarships on a first-come, first-served basis, giving priority to students who received a scholarship the previous year.
- (5) Quarterly distribute scholarship payments.
- (6) Provide a receipt to all taxpayers making contributions on a form approved by Dept. of Revenue (DOR).
- (7) Perform criminal background checks on all of its employees and board members.
- (8) Ensure that scholarships granted to qualified students are portable during the school year and can be used at any qualifying school that accepts a qualified student.
- (9) Provide a public report to DOE and DOR each fiscal year which contains information regarding all scholarships awarded or granted in the previous fiscal year, as well as information regarding contributions received by the organization.
- (10) Annually demonstrate its financial accountability.

Proposed law defines a "qualified school" as a nonpublic elementary or secondary school which is approved by the Board of Elementary and Secondary Education and meets the criteria set forth in *Brumfield, et al. v. Dodd*.

Proposed law requires a qualified school to do all of the following:

- (1) Conduct criminal background checks on its employees and exclude from employment any person not permitted by state law to work in a nonpublic school.
- (2) Annually administer the state LEAP test that measures learning gains in math and language arts to all participating students in grades that require testing.

Proposed law requires any qualified school that receives more than \$50,000 in scholarship donations from a school tuition organization to demonstrate its financial viability by filing, prior to the start of a school year, either a surety bond payable to the school tuition organization in an amount equal to the aggregate amount of donations expected to be received during the school year, or by filing financial information demonstrating its financial

viability; however, a qualified school which has been in business for more than five years shall not be required to post a surety bond.

Proposed law defines a "qualified student" as a child who is a member of a family that resides in La. with a total household income that does not exceed 250% of the federal poverty level.

Proposed law authorizes DOE to promulgate rules and regulations in accordance with the APA, as are necessary to implement the provisions of proposed law.

Proposed law authorizes DOR to conduct either a financial review or audit of a school tuition organization if the department possesses evidence of fraud. Further authorizes DOR to bar a school tuition organization from participating in the provisions of proposed law if the school tuition organization intentionally and substantially fails to comply with the requirements of proposed law.

Proposed law requires DOR to approve a standardized format for a receipt to be issued by a school tuition organization to indicate the value of a donation received by the organization.

Proposed law limits the total amount of tax credits to \$5 million per calendar year; however, in any year in which the amount of tax credits awarded reaches 90% of the annual cap, the annual cap for the next year shall be increased by 20%. Requires DOR to approve tax credits on a first-come, first-served basis until the maximum amount of tax credits has been issued.

Proposed law provides that if the tax credit exceeds the amount of a taxpayer's tax liability, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed five years.

Effective for income tax periods beginning on or after Jan. 1, 2012, and for all corporation franchise tax periods beginning on or after Jan. 1, 2013.

(Adds R.S. 47:6038)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Ways and Means to the original bill.

1. Reduced the maximum amount of a scholarship for a student in grades 9-12 from 94% to 90% of the state average MFP per pupil funding amount for the previous year.
2. Added requirement that the report to the Dept. of Education contain information relative to the organization and contributors regarding contributions made to the organization. Further requires an electronic format of the report to be furnished to the Dept. of Revenue.
3. Changed the annual tax credit limit from \$5 million per fiscal year to \$5 million per calendar year.
4. Deleted authorization for taxpayers to purchase tax credits on Jan. 1 of each fiscal year.
5. Changed the effective date from Jan. 1, 2012, to income tax periods beginning on or after Jan. 1, 2012, and for all corporation franchise tax periods beginning on or after Jan. 1, 2013.