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HOUSE BILL 207

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

INTRODUCED BY

Jane E. Powdrell-Culbert and David E. Adkins

AN ACT

RELATING TO TAXATION; ENACTING THE EQUAL EDUCATIONAL ACCESS
SCHOLARSHIP ACT; PROVIDING FOR TUITION SCHOLARSHIP
ORGANIZATIONS TO GRANT EDUCATIONAL SCHOLARSHIPS TO LOW-INCOME
STUDENTS TO ATTEND NONPUBLIC SCHOOLS; CREATING INCOME TAX AND
CORPORATE INCOME TAX CREDITS FOR CONTRIBUTIONS TO TUITION
SCHOLARSHIP ORGANIZATIONS THAT PROVIDE EDUCATIONAL SCHOLARSHIPS
FOR LOW-INCOME STUDENTS TO ATTEND NONPUBLIC SCHOOLS OF THE
STUDENT'S PARENTS' CHOICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 5 of this act may be cited as the "Equal Educational
Access Scholarship Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the
Equal Educational Access Scholarship Act:

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1 A. "certification document" means the document
2 issued by the department to an organization verifying that the
3 organization is a tuition scholarship organization and
4 contributions to that organization for equal educational access
5 scholarships may be claimed as an equal educational access
6 scholarship tax credit;

7 B. "contribution receipt" means a document
8 developed by the taxation and revenue department pursuant to
9 the Equal Educational Access Scholarship Act and provided to a
10 tuition scholarship organization that in turn provides the
11 document to an individual or corporate contributor that is a
12 taxpayer that intends to claim an equal educational access
13 scholarship tax credit as a receipt for a contribution to the
14 tuition scholarship organization;

15 C. "department" means the public education
16 department;

17 D. "educational scholarship" means a tuition grant
18 or other grant of funds to an eligible student to cover all or
19 part of the costs of that student at a qualified school,
20 including transportation costs;

21 E. "eligible student" means a student who:

22 (1) is a member of a household for which the
23 total annual income does not exceed an amount used to qualify
24 for a reduced-price lunch through the federal school lunch
25 programs established pursuant to 42 USCA Sections 1751 through

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1 1769, as amended; provided that once a student receives a
2 scholarship pursuant to the Equal Educational Access
3 Scholarship Act, the student shall remain eligible regardless
4 of household income until the student graduates from high
5 school or reaches twenty-one years of age;

6 (2) attended a New Mexico public school for a
7 full school year prior to first receiving an educational
8 scholarship pursuant to the Equal Educational Access
9 Scholarship Act or is starting school in New Mexico for the
10 first time; and

11 (3) resides in New Mexico while receiving a
12 scholarship from a tuition scholarship organization;

13 F. "equal educational access scholarship tax
14 credit" means the equal educational access scholarship income
15 tax credit provided in the Income Tax Act and the equal
16 educational access scholarship corporate income tax credit
17 provided in the Corporate Income and Franchise Tax Act;

18 G. "home school" means the operation by the parent
19 of a school-age person of a home study program of instruction
20 that provides a basic academic educational program, including
21 reading, language arts, mathematics, social studies and
22 science;

23 H. "parent" means a guardian, custodian or other
24 person with authority to act on behalf of a child;

25 I. "qualified school" means a nonpublic

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1 elementary, middle or secondary school located in New Mexico to
2 which a parent has chosen to send an eligible student.

3 "Qualified school" does not include a home school;

4 J. "relative" means a person related by affinity or
5 consanguinity to the third degree;

6 K. "tuition grant" means a grant of funds for the
7 purpose of covering the costs of tuition for a qualified
8 school; and

9 L. "tuition scholarship organization" means an
10 organization that provides educational scholarships to students
11 attending qualified schools of their parents' choice and that
12 meets the criteria established in the Equal Educational Access
13 Scholarship Act.

14 SECTION 3. [NEW MATERIAL] TUITION SCHOLARSHIP
15 ORGANIZATION--CERTIFICATION.--

16 A. An organization may seek certification from the
17 department as a tuition scholarship organization by submitting
18 an application for certification to the department.

19 B. To be certified as a tuition scholarship
20 organization by the department, the organization shall provide
21 documentation as deemed appropriate by the department to verify
22 that:

23 (1) the tuition scholarship organization has
24 been granted an exemption from federal income tax as an
25 organization described in Section 501(c)(3) of the federal

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1 Internal Revenue Code of 1986;

2 (2) the tuition scholarship organization has
3 awarded or intends to award educational scholarships to
4 eligible students who are attending or plan to attend qualified
5 schools;

6 (3) the scholarships are funded from
7 contributions that the tuition scholarship organization has
8 received in or prior to the current calendar year or
9 anticipates receiving during the remainder of the calendar year
10 and:

11 (a) at least ninety percent of the
12 contributions received during a calendar year for which the
13 tuition scholarship organization issues a contribution receipt
14 to an individual or corporate taxpayer for purposes of
15 obtaining an equal educational access scholarship tax credit is
16 awarded by the organization as educational scholarships and all
17 revenue from interest or investments is expended solely on
18 educational scholarships in the same calendar year; and

19 (b) the average annual scholarship award
20 to eligible students shall not exceed eighty percent of the
21 three-year rolling average of the final unit value multiplied
22 by the quotient of the final membership units divided by the
23 total membership used to determine the prior year final unit
24 value;

25 (4) the tuition scholarship organization

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1 distributes scholarship payments each semester as checks that
2 are mailed to the qualified school in which the eligible
3 student is enrolled and that require the endorsement of the
4 parent and the qualified school prior to deposit of the check;

5 (5) educational scholarships awarded by the
6 tuition scholarship organization are portable during the school
7 year and can be used at any qualified school that accepts the
8 eligible student according to a parent's wishes; provided that
9 the scholarship shall be prorated between schools based on the
10 number of days attended at each school by the eligible student;

11 (6) criminal background checks on all of the
12 tuition scholarship organization's employees and board members
13 have been conducted by the organization, with the understanding
14 that individuals who might reasonably pose a risk to the sound
15 fiscal management of the funds of the organization shall be
16 excluded from employment or governance, and all pertinent
17 findings on employees and board members have been provided to
18 the department for review and approval; and

19 (7) the tuition scholarship organization has
20 in place systems to provide for financial accountability,
21 including independent annual audits that shall be submitted to
22 the department in the form of a financial information report
23 that complies with generally accepted accounting procedures as
24 specified by the department and is certified to be free of
25 material misstatements by the certified public accountant who

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1 performed the audit.

2 SECTION 4. [NEW MATERIAL] TUITION SCHOLARSHIP
3 ORGANIZATION--DUTIES.--

4 A. No later than thirty days prior to the start of
5 a new school year or the start of a new semester, a tuition
6 scholarship organization shall provide to the department the
7 names of eligible students who received scholarships and the
8 students' previous school district or charter school
9 affiliation. The tuition scholarship organization shall
10 provide verification that the qualified students have been
11 awarded a tuition scholarship and have enrolled in a nonpublic
12 school for the new school year or the new semester.

13 B. A tuition scholarship organization shall ensure
14 that a school participating in the tuition scholarship
15 organization's scholarship program certifies that the school:

16 (1) is in compliance with all health and
17 safety laws or rules that apply to schools;

18 (2) does not discriminate in admissions on the
19 basis of race, color or national origin;

20 (3) ensures that every school employee with
21 unsupervised access to students has undergone a background
22 check as described in Subsection B of Section 22-10A-5 NMSA
23 1978;

24 (4) has no paid staff or board members who are
25 also staff or board members of the tuition scholarship

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1 organization or who are relatives of the staff or board members
2 of the tuition scholarship organization;

3 (5) gives enrollment preference to eligible
4 students who were enrolled at the school in the prior year and
5 to siblings of eligible students already admitted to or
6 attending the school; and

7 (6) is a qualified school and, if the school
8 has more applications for educational scholarships from
9 eligible students than positions available for students
10 receiving scholarships, the school fills the available
11 scholarship positions only by using a random selection process.

12 C. By June 1 of each year beginning in 2017, a
13 tuition scholarship organization shall report the following
14 information to the department and the taxation and revenue
15 department:

16 (1) the name and address of the tuition
17 scholarship organization;

18 (2) the total number and dollar amount of
19 contributions received for which contribution receipts were
20 issued during the calendar year ending on December 31 of the
21 prior year;

22 (3) the total number and dollar amount of all
23 educational scholarships awarded during the calendar year
24 ending on December 31 of the prior year; and

25 (4) the total number and dollar amount of

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1 educational scholarships awarded to eligible students during
2 the calendar year ending on December 31 of the prior year.

3 D. A tuition scholarship organization shall:

4 (1) provide to each individual and corporate
5 contributor of funds dedicated for educational scholarships a
6 contribution receipt that shall be completed according to
7 taxation and revenue department requirements;

8 (2) maintain a list by the sequential number
9 on the contribution receipt identifying to whom each copy is
10 issued, the amount and date of the contribution and any other
11 information deemed necessary by the taxation and revenue
12 department to allow the contributor to receive an equal
13 educational access scholarship tax credit;

14 (3) account for all copies of contribution
15 receipts damaged, destroyed, lost or otherwise unusable; and

16 (4) engage an auditor to conduct a financial
17 and program unit audit of a tuition scholarship organization,
18 at the expense of the tuition scholarship organization, on an
19 annual basis.

20 SECTION 5. [NEW MATERIAL] DEPARTMENT--DUTIES.--

21 A. The department shall administer the Equal
22 Educational Access Scholarship Act.

23 B. The department shall:

24 (1) provide the name of each certified tuition
25 scholarship organization to the taxation and revenue department

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1 by no later than thirty days after issuing the certification
2 document to the tuition scholarship organization;

3 (2) upon notification by the tuition
4 scholarship organization, calculate the associated program
5 units by multiplying the prior year final unit value by the
6 quotient derived by dividing the final membership units by the
7 total membership used to determine the prior year final unit
8 value;

9 (3) if an eligible student receiving an
10 educational scholarship withdraws prior to the start of a new
11 school year, deduct the amount calculated pursuant to Paragraph
12 (2) of this subsection from the student's previous school
13 district or charter school state equalization guarantee
14 distribution allocation prior to distribution;

15 (4) if an eligible student receiving an
16 educational scholarship withdraws between semesters, make a
17 reduction equal to the amount calculated pursuant to Paragraph
18 (2) of this subsection in the school district's or charter
19 school's distribution for the remainder of the school year and
20 not distribute the funds attributed to the adjustments, which
21 shall remain undistributed and shall revert to the general fund
22 at the end of the fiscal year;

23 (5) deny, suspend or revoke the certification
24 of a tuition scholarship organization for purposes of the equal
25 educational access scholarship tax credit if the department

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1 determines that the organization has intentionally and
2 substantially failed to comply with the requirements of the
3 Equal Educational Access Scholarship Act; and

4 (6) notify the taxation and revenue department
5 if the certification of an organization as a tuition
6 scholarship organization is denied, suspended or revoked within
7 ten days of the denial, suspension or revocation.

8 SECTION 6. A new section of the Income Tax Act is enacted
9 to read:

10 "[NEW MATERIAL] EQUAL EDUCATIONAL ACCESS SCHOLARSHIP
11 INCOME TAX CREDIT.--

12 A. Prior to January 1, 2021, a taxpayer who files a
13 New Mexico income tax return, is not a dependent of another
14 taxpayer and makes a contribution to a tuition scholarship
15 organization pursuant to this section may apply for, and the
16 department may allow, a tax credit against the taxpayer's
17 liabilities imposed pursuant to the Income Tax Act. The tax
18 credit provided by this section may be referred to as the
19 "equal educational access scholarship income tax credit".

20 B. The purpose of the equal educational access
21 scholarship income tax credit is to encourage individuals and
22 businesses to contribute money to tuition scholarship
23 organizations that provide scholarships for eligible students
24 to attend nonpublic schools that are chosen by the students'
25 parents.

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1 C. The amount of an equal educational access
2 scholarship income tax credit shall equal eighty percent of the
3 total contributions made by a taxpayer in a taxable year to a
4 tuition scholarship organization but shall not exceed the
5 lesser of ten thousand dollars (\$10,000) or fifty percent of
6 the taxpayer's liabilities imposed pursuant to the Income Tax
7 Act for that taxable year. If the total amount of equal
8 educational access scholarship income tax credits, including
9 amounts carried forward from previous years, exceeds fifty
10 percent of the taxpayer's liabilities imposed pursuant to the
11 Income Tax Act for the taxable year in which a contribution was
12 made, the excess may be carried forward for three consecutive
13 taxable years.

14 D. The department may allow a maximum annual
15 aggregate of five million dollars (\$5,000,000) for equal
16 educational access scholarship income tax credits and equal
17 educational access scholarship corporate income tax credits.
18 Completed applications for the tax credits shall be considered
19 in the order received by the department. A taxpayer who
20 submits an application for a tax credit but is unable to
21 receive the tax credit due to the limitation in this subsection
22 shall be placed for the subsequent year at the front of a queue
23 of tax credit claimants submitting claims in the subsequent
24 year in the order of the date on which the application was
25 received.

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1 E. To receive an equal educational access
2 scholarship income tax credit, a taxpayer shall apply to the
3 department on forms and in the manner prescribed by the
4 department. The application shall include a numbered copy of
5 the contribution receipt provided by the tuition scholarship
6 organization to the taxpayer pursuant to Subsection G of this
7 section.

8 F. To ensure that the department receives the
9 information needed to allow an equal educational access
10 scholarship income tax credit, the department shall develop a
11 contribution receipt that requests all of the information
12 needed by the department to determine if a credit may be
13 allowed. The contribution receipts shall be sequentially
14 numbered, and a charge, not to exceed fifty cents (\$.50) per
15 numbered copy, may be charged by the department to the tuition
16 scholarship organization.

17 G. Upon receiving notice from the public education
18 department that an organization has been certified as a tuition
19 scholarship organization, the taxation and revenue department
20 shall provide sequentially numbered copies of contribution
21 receipts to the tuition scholarship organization to be
22 distributed by the tuition scholarship organization to its
23 contributors to indicate the recipient, date and value of a
24 contribution to the tuition scholarship organization and other
25 information required by the taxation and revenue department.

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1 H. The equal educational access scholarship income
2 tax credit shall not be allowed for a contribution that is
3 included for the taxable year in the taxpayer's itemized
4 deductions, as defined in Section 63 of the Internal Revenue
5 Code.

6 I. Married individuals who file separate returns
7 for a taxable year in which they could have filed a joint
8 return may each claim only one-half of the equal educational
9 access scholarship income tax credit that would have been
10 allowed on a joint return.

11 J. A taxpayer who otherwise qualifies for and
12 claims an equal educational access scholarship income tax
13 credit for a contribution made to a tuition scholarship
14 organization by a partnership or other business association of
15 which the taxpayer is a member may claim a credit only in
16 proportion to the taxpayer's interest in the partnership or
17 business association. The total credit claimed in the
18 aggregate by all members of the partnership or business
19 association in a taxable year with respect to a contribution
20 made to a tuition scholarship organization, including equal
21 educational access scholarship corporate income tax credits
22 claimed by a corporate member of the partnership or business
23 association, shall not exceed the maximum credit that would
24 have been allowable pursuant to this section if claimed by a
25 single taxpayer.

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1 K. A taxpayer allowed a tax credit pursuant to this
2 section shall report the amount of the credit to the department
3 in a manner required by the department.

4 L. The department shall compile an annual report on
5 the equal educational access scholarship income tax credit that
6 shall include the number of taxpayers approved by the
7 department to receive the credit, the aggregate amount of
8 credits approved and any other information necessary to
9 evaluate the effectiveness of the credit. The department shall
10 compile and present the annual reports to the revenue
11 stabilization and tax policy committee and the legislative
12 finance committee with an analysis of the effectiveness and
13 cost of the tax credit and whether the tax credit is performing
14 the purpose for which it was created.

15 M. As used in this section:

16 (1) "eligible student" means a student who:

17 (a) is a member of a household for which
18 the total annual income does not exceed an amount used to
19 qualify for a reduced-price lunch through the federal school
20 lunch programs established pursuant to 42 USCA Sections 1751
21 through 1769, as amended; provided that once a student receives
22 a scholarship pursuant to the Equal Educational Access
23 Scholarship Act, the student shall remain eligible regardless
24 of household income until the student graduates from high
25 school or reaches twenty-one years of age;

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1 (b) attended a New Mexico public school
2 for a full school year prior to first receiving an educational
3 scholarship pursuant to the Equal Educational Access
4 Scholarship Act or is starting school in New Mexico for the
5 first time; and

6 (c) resides in New Mexico while
7 receiving a scholarship from a tuition scholarship
8 organization;

9 (2) "parent" means a guardian, custodian or
10 other person with authority to act on behalf of a child; and

11 (3) "tuition scholarship organization" means
12 an organization that provides educational scholarships to
13 students attending qualified schools of their parents' choice
14 and that meets the requirements of the Equal Educational Access
15 Scholarship Act."

16 SECTION 7. A new section of the Corporate Income and
17 Franchise Tax Act is enacted to read:

18 "[NEW MATERIAL] EQUAL EDUCATIONAL ACCESS SCHOLARSHIP
19 CORPORATE INCOME TAX CREDIT.--

20 A. Prior to January 1, 2021, a taxpayer that files
21 a New Mexico corporate income tax return and makes a
22 contribution to a tuition scholarship organization pursuant to
23 this section may apply for, and the department may allow, a tax
24 credit against the taxpayer's liabilities imposed pursuant to
25 the Corporate Income and Franchise Tax Act. The tax credit

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1 provided by this section may be referred to as the "equal
2 educational access scholarship corporate income tax credit".

3 B. The purpose of the equal educational access
4 scholarship corporate income tax credit is to encourage
5 corporations to contribute money to tuition scholarship
6 organizations that provide scholarships for eligible students
7 to attend nonpublic schools that are chosen by the students'
8 parents.

9 C. The amount of an equal educational access
10 scholarship corporate income tax credit shall equal eighty
11 percent of the total contributions made by a taxpayer in a
12 taxable year to a tuition scholarship organization but shall
13 not exceed the lesser of twenty thousand dollars (\$20,000) or
14 fifty percent of the taxpayer's liabilities imposed pursuant to
15 the Corporate Income and Franchise Tax Act for that taxable
16 year. If the total amount of equal educational access
17 scholarship corporate income tax credits, including amounts
18 carried forward from previous years, exceeds fifty percent of
19 the taxpayer's liabilities imposed pursuant to the Corporate
20 Income and Franchise Tax Act for the taxable year in which a
21 contribution was made, the excess may be carried forward for
22 three consecutive taxable years.

23 D. The department may allow a maximum annual
24 aggregate of five million dollars (\$5,000,000) for equal
25 educational access scholarship income tax credits and equal

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1 educational access scholarship corporate income tax credits.
2 Completed applications for the tax credits shall be considered
3 in the order received by the department. A taxpayer that
4 submits an application for a tax credit but is unable to
5 receive the tax credit due to the limitation in this subsection
6 shall be placed for the subsequent year at the front of a queue
7 of tax credit claimants submitting claims in the subsequent
8 year in the order of the date on which the application was
9 received.

10 E. To receive an equal educational access
11 scholarship corporate income tax credit, a taxpayer shall apply
12 to the department on forms and in the manner prescribed by the
13 department. The application shall include a numbered copy of
14 the contribution receipt provided by the tuition scholarship
15 organization to the taxpayer pursuant to Subsection G of this
16 section.

17 F. To ensure that the department receives the
18 information needed to allow an equal educational access
19 scholarship corporate income tax credit, the department shall
20 develop a contribution receipt that requests all of the
21 information needed by the department to determine if a credit
22 may be allowed. The contribution receipts shall be
23 sequentially numbered, and a charge, not to exceed fifty cents
24 (\$.50) per numbered copy, may be charged by the department to
25 the tuition scholarship organization.

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1 G. Upon receiving notice from the public education
2 department that an organization has been certified as a tuition
3 scholarship organization, the taxation and revenue department
4 shall provide sequentially numbered copies of contribution
5 receipts to a tuition scholarship organization to be
6 distributed by the tuition scholarship organization to its
7 contributors to indicate the recipient, date and value of a
8 contribution to the tuition scholarship organization and other
9 information required by the taxation and revenue department.

10 H. The equal educational access scholarship
11 corporate income tax credit shall not be allowed for a
12 contribution that is included for the taxable year in the
13 taxpayer's itemized deductions, as defined in Section 63 of the
14 Internal Revenue Code.

15 I. A taxpayer allowed a tax credit pursuant to this
16 section shall report the amount of the credit to the department
17 in a manner required by the department.

18 J. The department shall compile an annual report on
19 the equal educational access scholarship corporate income tax
20 credit that shall include the number of taxpayers approved by
21 the department to receive the credit, the aggregate amount of
22 credits approved and any other information necessary to
23 evaluate the effectiveness of the credit. The department shall
24 compile and present the annual reports to the revenue
25 stabilization and tax policy committee and the legislative

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1 finance committee with an analysis of the effectiveness and
2 cost of the tax credit and whether the tax credit is performing
3 the purpose for which it was created.

4 K. As used in this section:

5 (1) "eligible student" means a student who:

6 (a) is a member of a household for which
7 the total annual income does not exceed an amount used to
8 qualify for a reduced-price lunch through the federal school
9 lunch programs established pursuant to 42 USCA Sections 1751
10 through 1769, as amended; provided that once a student receives
11 a scholarship pursuant to the Equal Educational Access
12 Scholarship Act, the student shall remain eligible regardless
13 of household income until the student graduates from high
14 school or reaches twenty-one years of age;

15 (b) attended a New Mexico public school
16 for a full school year prior to first receiving an educational
17 scholarship pursuant to the Equal Educational Access
18 Scholarship Act or is starting school in New Mexico for the
19 first time; and

20 (c) resides in New Mexico while
21 receiving a scholarship from a tuition scholarship
22 organization;

23 (2) "parent" means a guardian, custodian or
24 other person with authority to act on behalf of a child; and

25 (3) "tuition scholarship organization" means

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1 an organization that provides educational scholarships to
2 students attending qualified schools of their parents' choice
3 pursuant to the Equal Educational Access Scholarship Act."

4 SECTION 8. APPLICABILITY.--The provisions of Sections 6
5 and 7 of this act apply to taxable years beginning on or after
6 January 1, 2017.

7 SECTION 9. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2016.

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