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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 51

Session of 2013

INTRODUCED BY WILLIAMS, YUDICHAK, HUGHES, SCHWANK, STACK, ERICKSON AND FERLO, JANUARY 4, 2013

REFERRED TO FINANCE, JANUARY 4, 2013

AN ACT

Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An act relating to tax reform and State taxation by codifying and enumerating certain subjects of taxation and imposing taxes thereon; providing procedures for the payment, collection, administration and enforcement thereof; providing for tax credits in certain cases; conferring powers and imposing duties upon the Department of Revenue, certain employers, fiduciaries, individuals, persons, corporations and other entities; prescribing crimes, offenses and penalties," in educational improvement tax credit, further providing for definitions and for qualification and application; and, in educational opportunity scholarship tax credit, further providing for definitions and for qualification and application.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The definitions of "educational improvement organization," "pre-kindergarten scholarship organization" and "scholarship organization" in section 1702-F of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, amended or added October 9, 2009 (P.L.451, No.48) and July 2, 2012 (P.L.751, No.85), are amended to read:

Section 1702-F. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Educational improvement organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes [at least 80%] <u>a minimum percentage</u> of its annual receipts as grants to a public school, a chartered school as defined in section 1376.1 of act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, or a private school approved under section 1376 of the Public School Code of 1949, for innovative educational programs <u>in accordance with section 1703-F(b.1)</u>.

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts when it expends or otherwise irrevocably encumbers those funds for expenditure during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity. A nonprofit entity shall include a school district foundation, public school foundation, charter school foundation or cyber charter school foundation.

* * *

"Pre-kindergarten scholarship organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.) or is operated as a separate segregated fund by a scholarship organization that has been

qualified under section 1703-F; and

(2) contributes [at least 80%] a minimum percentage of its annual cash receipts to a pre-kindergarten scholarship program, in accordance with section 1703-F(b.1) by expending or otherwise irrevocably encumbering those funds for distribution during the then current fiscal year of the organization or during the next succeeding fiscal year of the organization.

* * *

"Scholarship organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes [at least 80%] a minimum percentage of its annual cash receipts to a scholarship program, in accordance with section 1703-F(b.1).

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts to a scholarship program when it expends or otherwise irrevocably encumbers those funds for distribution during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity.

* * *

Section 2. Section 1703-F of the act is amended by adding a subsection to read:

Section 1703-F. Qualification and application.

* * *

(b.1) Annual cash receipts.--

(1) For fiscal years 2012-2013 and 2013-2014, a scholarship organization, a pre-kindergarten scholarship

organization or an educational improvement organization must contribute at least 80% of its annual cash receipts in accordance with section 1702-F.

(2) For fiscal years 2014-2015 and 2015-2016, a scholarship organization, a pre-kindergarten scholarship organization or an educational improvement organization must contribute at least 82.5% of its annual cash receipts in accordance with section 1702-F.

(3) For fiscal years 2016-2017 and 2017-2018, a scholarship organization, a pre-kindergarten scholarship organization or an educational improvement organization must contribute at least 85% of its annual cash receipts in accordance with section 1702-F.

(4) For fiscal years 2018-2019 and 2019-2020, a scholarship organization, a pre-kindergarten scholarship organization or an educational improvement organization must contribute at least 87.5% of its annual cash receipts in accordance with section 1702-F.

(5) For fiscal year 2020-2021 and each fiscal year thereafter, a scholarship organization, a pre-kindergarten scholarship organization or an educational improvement organization must contribute at least 90% of its annual cash receipts in accordance with section 1702-F.

* * *

Section 3. Sections 1702-G.1 and 1703-G.1 of the act, added July 2, 2012 (P.L.751, No.85), are amended to read:

Section 1702-G.1. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Applicant." An eligible student who applies for a scholarship.

"Assessment." The Pennsylvania System of School Assessment test, the Keystone Exam, an equivalent local assessment or another test established by the State Board of Education to meet the requirements of section 2603-B(d)(10)(i) of the Public School Code of 1949 and required under the No Child Left Behind Act of 2001 (Public Law 107-110, 115 Stat. 1425) or its successor statute or any other test required to achieve other standards established by the Department of Education for the public school or school district under 22 Pa. Code § 403.3 (relating to single accountability system).

"Attendance boundary." A geographic area of residence used by a school district to assign a student to a public school.

"Average daily membership." As defined in section 2501(3) of the Public School Code of 1949.

"Business firm." An entity authorized to do business in this Commonwealth and subject to a tax under Article XVI of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or taxes imposed under Article III, IV, VI, VII, VIII, IX or XV. The term includes a pass-through entity.

"Contribution." A donation of cash, personal property or services, the value of which is the net cost of the donation to the donor or the pro rata hourly wage, including benefits, of the individual performing the services.

"Department." The Department of Community and Economic Development of the Commonwealth.

"Elementary school." A school which is not a secondary school.

"Eligible student." A student or a student with a disability who:

(1) resides within the attendance boundary of a low-achieving school as of the first day of classes of the school year; and

(2) is a member of a household which has a household income no greater than the maximum annual household income allowance.

"Household." An individual who lives alone or with the following: a spouse, parent and their unemancipated minor children, other unemancipated minor children who are related by blood or marriage or other adults or unemancipated minor children living in the household who are dependent upon the individual.

"Household income." All moneys or property received by a household of whatever nature and from whatever source derived. The term does not include the following:

(1) Periodic payments for sickness and disability other than regular wages received during a period of sickness or disability.

(2) Disability, retirement or other payments arising under workers' compensation acts, occupational disease acts and similar legislation by any government.

(3) Payments commonly recognized as old-age or retirement benefits paid to persons retired from service after reaching a specific age or after a stated period of employment.

(4) Payments commonly known as public assistance or unemployment compensation payments by a governmental agency.

(5) Payments to reimburse actual expenses.

(6) Payments made by employers or labor unions for

programs covering hospitalization, sickness, disability or death, supplemental unemployment benefits, strike benefits, Social Security and retirement.

(7) Compensation received by United States servicemen serving in a combat zone.

"Income allowance."

(1) The following shall apply:

(i) After June 30, 2012, and through June 30, 2013, $12,000 for each dependent member of the household.

(ii) After June 30, 2013, and through June 30, 2014, $15,000 for each dependent member of the household.

(2) Beginning July 1, 2014, the Department of Community and Economic Development shall annually adjust the income allowance amounts under paragraph (1) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

"Kindergarten." A one-year formal educational program that occurs during the school year immediately prior to first grade. The term includes a part-time and a full-time program.

"Low-achieving school." A public school that ranked in the lowest 15% of its designation as an elementary school or a secondary school based on combined mathematics and reading scores from the annual assessment administered in the previous school year and for which the Department of Education has posted results on its publicly accessible Internet website. The term does not include a charter school, cyber charter school or area vocational-technical school.

"Maximum annual household income allowance."

(1) Except as stated in paragraph (2) and subject to adjustment under paragraph (3), the sum of:

(i) Either:

(A) after June 30, 2012, and through June 30, 2013, not more than $60,000; or

(B) after June 30, 2013, not more than $75,000.

(ii) The applicable income allowance.

(2) With respect to a student with a disability, as calculated by multiplying:

(i) the applicable amount under paragraph (1); by

(ii) the applicable support level factor according to the following table:

Support Level	Support Level Factor
1	1.50
2	2.993

(3) Beginning July 1, 2014, the Department of Community and Economic Development shall annually adjust the income amounts under paragraphs (1) and (2) to reflect any upward changes in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area in the preceding 12 months and shall immediately submit the adjusted amounts to the Legislative Reference Bureau for publication as a notice in the Pennsylvania Bulletin.

"Nonpublic school." A school which is a nonprofit organization and which is located in the Commonwealth. The term does not include a public school.

"Parent." An individual who:

(1) is a resident of the Commonwealth; and

(2) either:

(i) has legal custody or guardianship of a student; or

(ii) keeps in his home a student and supports the student gratis as if the student were a lineal descendant of the individual.

"Participating nonpublic school." A nonpublic school which notifies the Department of Education under section 1710-G.1 that it wishes to participate in the program.

"Participating public school." A public school in a school district which notifies the Department of Education under section 1710-G.1(b) that it wishes to participate in the program. The term shall not include a low-achieving school.

"Pass-through entity." A partnership as defined in section 301(n.0), a single-member limited liability company treated as a disregarded entity for Federal income tax purposes or a Pennsylvania S corporation as defined in section 301(n.1).

"Public School Code of 1949." The act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949.

"Program." The Educational Opportunity Scholarship Tax Credit Program established under this article.

"Recipient." An applicant who receives a scholarship.

"Scholarship." An award given to an applicant for the recipient to pay tuition and school-related fees necessary to attend a participating nonpublic school or a participating public school located in a school district which is not the recipient's school district of residence.

"Scholarship organization." A nonprofit entity which:

(1) is exempt from Federal taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.); and

(2) contributes [at least 80%] a minimum percentage of its annual cash receipts to a scholarship program in accordance with section 1703-G.1(b.1).

For purposes of this definition, a nonprofit entity "contributes" its annual cash receipts to a scholarship program when it expends or otherwise irrevocably encumbers those funds for distribution during the then current fiscal year of the nonprofit entity or during the next succeeding fiscal year of the nonprofit entity.

"School." An elementary school or a secondary school at which the compulsory attendance requirements of the Commonwealth may be met and which meets the applicable requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

"School age." The age of an individual from the earliest admission age to a school's kindergarten or, when no kindergarten is provided, the school's earliest admission age for beginners, until the end of the school year the individual attains 21 years of age or graduation from high school, whichever occurs first.

"School district of residence." The school district in which the student's primary domicile is located.

"School-related fees." Fees charged by a school to all students for books, instructional materials, technology equipment and services, uniforms and activities.

"Secondary school." A school with an eleventh grade.

"Special education school." A school or program within a school that is designated specifically and exclusively for students with any of the disabilities listed in 34 CFR § 300.8 (relating to child with a disability) and meets one of the following:

(1) is licensed under the act of January 28, 1988 (P.L.24, No.11), known as the Private Academic Schools Act;

(2) is accredited by an accrediting association approved by the State Board of Education;

(3) is a school for the blind or deaf receiving Commonwealth appropriations; or

(4) is operated by or under the authority of a bona fide religious institution or by the Commonwealth or any political subdivision thereof.

"Student." An individual who meets all of the following:

(1) Is school age.

(2) Is a resident of this Commonwealth.

(3) Attends or is about to attend a school.

"Student with a disability." A student who meets all of the following:

(1) Is either enrolled in a special education school or has otherwise been identified, in accordance with 22 Pa. Code Ch. 14 (relating to special education services and programs), as a "child with a disability," as defined in 34 CFR § 300.8 (relating to child with a disability).

(2) Needs special education and related services.

"Support level." The level of support needed by an eligible student with a disability, as provided in the following matrix:

Support Level 1 - The student is not enrolled in a special education school.

Support Level 2 - The student is enrolled as a student in a special education school.

Section 1703-G.1. Qualification and application.

(a) Establishment.--The Educational Opportunity Scholarship

Tax Credit Program is established. The program shall provide tax credits to entities that provide contributions to scholarship organizations. The scholarship organizations must enhance the educational opportunities available to students in this Commonwealth by providing scholarships to eligible students who reside within the attendance boundary of low-achieving schools to attend schools which are not low-achieving schools and which are not a public school within the school district of residence.

(b) Information.--In order to qualify under this article, a scholarship organization must submit information to the department that enables the department to confirm that the scholarship organization is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1 et seq.).

(b.1) Annual cash receipts.--

(1) For fiscal years 2012-2013 and 2013-2014, a scholarship organization must contribute at least 80% of its annual cash receipts in accordance with section 1702-G.1.

(2) For fiscal years 2014-2015 and 2015-2016, a scholarship organization must contribute at least 82.5% of its annual cash receipts, in accordance with section 1702-G.1.

(3) For fiscal years 2016-2017 and 2017-2018, a scholarship organization must contribute at least 85% of its annual cash receipts in accordance with section 1702-G.1.

(4) For fiscal years 2018-2019 and 2019-2020, a scholarship organization must contribute at least 87.5% of its annual cash receipts in accordance with section 1702-G.1.

(5) For fiscal year 2020-2021 and each each fiscal year thereafter, a scholarship organization must contribute at

least 90% of its annual cash receipts in accordance with section 1702-G.1.

(c) Annual certification of eligibility.--By August 15, 2012, and by February 15, 2013, and each February 15 thereafter, a scholarship organization must certify to the department that the organization is eligible to participate in the program.

(d) Report.--

(1) A scholarship organization must agree to report the following information on a form provided by the department by September 1, 2013, and each September 1 thereafter:

(i) The total number of applications for scholarships received during the immediately preceding school year from eligible students in grades kindergarten through eight.

(ii) The number of scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.

(iii) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades kindergarten through eight.

(iv) The total number of applications for scholarships received during the immediately preceding school year from eligible students in grades 9 through 12.

(v) The number of scholarships awarded during the immediately preceding school year to eligible students in grades 9 through 12.

(vi) The total and average amounts of the scholarships awarded during the immediately preceding school year to eligible students in grades 9 through 12.

(vii) Where the scholarship organization collects information on a county-by-county basis, the total number and the total amount of scholarships awarded during the immediately preceding school year to residents of each county in which the scholarship organization awarded scholarships.

(viii) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level.

(ix) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level.

(x) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a first class school district.

(xi) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a first class school district.

(xii) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district with an average daily membership greater than 7,500 and that receives an advance of its basic education subsidy at any time.

(xiii) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district with an average daily membership greater than 7,500 and that receives an advance of its basic education subsidy at any time.

(xiv) The number of scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district that receives an advance of its basic education subsidy at any time and is either subject to a declaration of financial distress under section 691 of the Public School Code of 1949 or engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the Commonwealth to allow the school district to continue to operate.

(xv) The total and average amounts of the scholarships awarded during the immediately preceding school year to applicants with a household income that does not exceed 185% of the Federal poverty level and who reside within a school district that receives an advance of its basic education subsidy at any time and is either subject to a declaration of financial distress under section 691 of the Public School Code of 1949 or is engaged in litigation against the Commonwealth in which the school district seeks financial assistance from the

Commonwealth to allow the school district to continue to operate.

(xvi) The total number of scholarship applications processed and the amounts of any application fees charged either per scholarship application or in the aggregate through a third-party processor.

(xvii) The scholarship organization's Federal Form 990 or other Federal form indicating the tax status of the scholarship organization for Federal tax purposes, if any, and a copy of a compilation, review or audit of the scholarship organization's financial statements conducted by a certified public accounting firm.

(2) No later than May 1, 2013, and each May 1 thereafter, the department shall annually distribute such sample forms, together with the forms on which the reports are required to be made, to each listed scholarship organization.

(3) The department may not require any other information to be provided by scholarship organizations, except as expressly authorized in this article.

(e) Notification.--The department shall notify a scholarship organization that it meets the requirements of this article for that fiscal year no later than 60 days after the scholarship organization submits the information required under this section.

(f) Publication.--The department shall annually publish a list of each scholarship organization qualified under this section in the Pennsylvania Bulletin and shall post and update the list as necessary on the publicly accessible Internet website of the department.

Section 4. This act shall take effect in 60 days.