

House Bill 862

By: Representatives Martin of the 47<sup>th</sup> and Sheldon of the 105<sup>th</sup>

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 the imposition, rate, and computation of income taxes and exemptions, so as to  
3 broaden the types of tax liability subject to offset by the qualified education tax credit; to  
4 provide for related matters; to provide for an effective date and applicability; to repeal  
5 conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

11 "48-7-29.16.

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

13 (1) 'Qualified education expense' means the expenditure of funds by the taxpayer during  
14 the tax year for which a credit under this Code section is claimed and allowed to a student  
15 scholarship organization operating pursuant to Chapter 2A of Title 20 which are used for  
16 tuition and fees for a qualified school or program.

17 (2) 'Qualified school or program' shall have the same meaning as in paragraph (2) of  
18 Code Section 20-2A-1.

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

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

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

25 (2) In the case of a married couple filing a joint return, the actual amount expended or  
26 \$2,500.00 per tax year, whichever is less.

27 (c) A corporation or other entity shall be allowed a credit against the tax imposed by this  
28 chapter for qualified education expenses in an amount not to exceed the actual amount  
29 expended or 75 percent of the corporation's state income tax liability, whichever is less.  
30 If a corporation has other state tax liabilities, such as a tax liability for the sale of alcoholic  
31 beverages or tax liability based on insurance premiums, the credit against the tax imposed  
32 by this chapter for qualified education expenses may be used to offset those liabilities;  
33 provided, however, that the credit shall only be credited once in any taxable year.

34 (d) The tax credit shall not be allowed if the taxpayer designates the taxpayer's qualified  
35 education expense for the direct benefit of any dependent of the taxpayer.

36 (e) In no event shall the total amount of the tax credit under this Code section for a taxable  
37 year exceed the taxpayer's income tax liability. Any unused tax credit shall be allowed the  
38 taxpayer against the succeeding five years' tax liability. No such credit shall be allowed  
39 the taxpayer against prior years' tax liability.

40 (f)(1) In no event shall the aggregate amount of tax credits allowed under this Code  
41 section exceed \$50 million per tax year; provided, however, that this maximum amount  
42 shall be adjusted annually until January 1, 2018, which adjustment may be based on the  
43 most recent annual percentage change in the Consumer Price Index for All Urban  
44 Consumers, U.S. City Average All Items Index, published by the Bureau of Labor  
45 Statistics of the United States Department of Labor, as determined by the department.

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

47 (3) For the purposes of paragraph (1) of this subsection, a student scholarship  
48 organization shall notify a potential donor of the requirements of this Code section.  
49 Before making a contribution to a student scholarship organization, the taxpayer shall  
50 notify the department of the total amount of contributions that the taxpayer intends to  
51 make to the student scholarship organization. The commissioner shall preapprove or  
52 deny the requested amount within 30 days after receiving the request from the taxpayer  
53 and shall provide written notice to the taxpayer and the student scholarship organization  
54 of such preapproval or denial which shall not require any signed release or notarized  
55 approval by the taxpayer. In order to receive a tax credit under this Code section, the  
56 taxpayer shall make the contribution to the student scholarship organization within 60  
57 days after receiving notice from the department that the requested amount was  
58 preapproved. If the taxpayer does not comply with this paragraph, the commissioner  
59 shall not include this preapproved contribution amount when calculating the limit  
60 prescribed in paragraph (1) of this subsection. The department shall establish a  
61 ~~web-based~~ web based donation approval process to implement this subsection.

62 (4) Preapproval of contributions by the commissioner shall be based solely on the  
63 availability of tax credits subject to the aggregate total limit established under paragraph

64 (1) of this subsection. The department shall maintain an ongoing, current list on its  
65 website of the amount of tax credits available under this Code section.

66 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse  
67 action against donors to student scholarship organizations if the commissioner  
68 preapproved a donation for a tax credit prior to the date the student scholarship  
69 organization is removed from the Department of Education list pursuant to Code Section  
70 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to  
71 the donor's compliance with paragraph (3) of this subsection.

72 (g) In order for the taxpayer to claim the student scholarship organization tax credit under  
73 this Code section, a letter of confirmation of donation issued by the student scholarship  
74 organization to which the contribution was made shall be attached to the taxpayer's tax  
75 return. However, in the event the taxpayer files an electronic return, such confirmation  
76 shall only be required to be electronically attached to the return if the Internal Revenue  
77 Service allows such attachments when the data is transmitted to the department. In the  
78 event the taxpayer files an electronic return and such confirmation is not attached because  
79 the Internal Revenue Service does not, at the time of such electronic filing, allow electronic  
80 attachments to the Georgia return, such confirmation shall be maintained by the taxpayer  
81 and made available upon request by the commissioner. The letter of confirmation of  
82 donation shall contain the taxpayer's name, address, tax identification number, the amount  
83 of the contribution, the date of the contribution, and the amount of the credit.

84 (h)(1) No credit shall be allowed under this Code section with respect to any amount  
85 deducted from taxable net income by the taxpayer as a charitable contribution to a bona  
86 fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue  
87 Code.

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

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

93 **SECTION 2.**

94 This Act shall become effective on January 1, 2012, and shall be applicable to all taxable  
95 years beginning on or after January 1, 2012.

96 **SECTION 3.**

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