

House Bill 239

By: Representatives Brockway of the 102<sup>nd</sup>, Casas of the 107<sup>th</sup>, Duncan of the 26<sup>th</sup>, Dudgeon of the 25<sup>th</sup>, and Pak of the 108<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 state tax liabilities other than for state income tax, including, but not  
 31 limited to, a tax liability for the sale of alcoholic beverages or based on insurance  
 32 premiums, the credit for qualified education expenses may be used to offset those  
 33 liabilities; provided, however, that the credit for qualified education expenses shall only be  
 34 credited to a corporation or other entity once in any taxable year.

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

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

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

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

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

63 (4) Preapproval of contributions by the commissioner shall be based solely on the  
64 availability of tax credits subject to the aggregate total limit established under paragraph  
65 (1) of this subsection. The department shall keep a list, based on the date of receipt of the  
66 request by the department, of all donors who were denied preapproval due to the  
67 nonavailability of tax credits. The donors, in the order shown on the list, shall be notified  
68 by the department in the event more tax credits become available in the applicable tax  
69 year for any reason. The department shall maintain an ongoing, current list on its website  
70 of the amount of tax credits available under this Code section. The list shall be updated  
71 at least monthly to reflect any changes in the amount of tax credits available under this  
72 Code section due to any reason, particularly if a donor does not contribute the full amount  
73 of a previously approved contribution. Any amount of unused tax credits in a tax year  
74 shall be carried forward to the next tax year and be added to the aggregate total limit  
75 established under paragraph (1) of this subsection.

76 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse  
77 action against donors to student scholarship organizations if the commissioner  
78 preapproved a donation for a tax credit prior to the date the student scholarship  
79 organization is removed from the Department of Education list pursuant to Code Section  
80 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to  
81 the donor's compliance with paragraph (3) of this subsection.

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

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

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

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

103 **SECTION 2.**

104 This Act shall become effective on July 1, 2013, and shall be applicable to all taxable years  
105 beginning on or after January 1, 2013.

106 **SECTION 3.**

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