

Senate Bill 243

By: Senators Bethel of the 54th, Jeffares of the 17th, Millar of the 40th and Carter of the 42nd

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to  
2 student scholarship organizations, so as to change certain provisions relating to definitions;  
3 to change certain provisions relating to requirements for such organizations; to change  
4 certain provisions relating to taxation reporting requirements for such organizations; to  
5 amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating  
6 to the imposition, rate, and computation of income taxes, so as to change certain provisions  
7 relating to qualified education tax credits; to provide for related matters; to provide for an  
8 effective date and applicability; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student  
12 scholarship organizations, is amended by revising paragraph (1) of Code Section 20-2A-1,  
13 relating to definitions, as follows:

14 "(1) 'Eligible student' means a student who is a Georgia resident enrolled in a Georgia  
15 secondary or primary public school for at least six weeks or eligible to enroll in a  
16 qualified first grade, kindergarten program, or pre-kindergarten program; provided,  
17 however, that if a student is deemed an eligible student pursuant to this paragraph, he or  
18 she shall continue to qualify as such until he or she graduates, reaches the age of 20, or  
19 returns to a public school, whichever occurs first."

20 style="text-align:center">**SECTION 2.**

21 Said chapter is further amended by revising Code Section 20-2A-2, relating to requirements  
22 for student scholarship organizations, as follows:

23 "20-2A-2.

24 Each student scholarship organization:

25 (1) Must obligate for scholarships or tuition grants at least 90 percent of its annual  
26 revenue received from donations for scholarships or tuition grants if such annual revenue

27 is \$1.5 million or less, at least 93 percent of its annual revenue received from donations  
 28 for scholarships or tuition grants if such annual revenue is more than \$1.5 million but not  
 29 more than \$10 million, or at least 95 percent of its annual revenue received from  
 30 donations for scholarships or tuition grants if such annual revenue is more than \$10  
 31 million; however, up to 25 percent of this amount may be carried forward for the next  
 32 fiscal year. On or before the end of the calendar year following the year in which a  
 33 student scholarship organization receives revenues from donations and obligates them for  
 34 the awarding of scholarships or tuition grants, the student scholarship organization shall  
 35 designate the obligated revenues for specific student recipients. Once the student  
 36 scholarship organization designates obligated revenues for specific student recipients, in  
 37 the case of multiyear scholarships or tuition grants, the student scholarship organization  
 38 may distribute the entire obligated and designated revenues to a qualified school or  
 39 program to be held in accordance with Department of Revenue rules for distribution to  
 40 the specified recipients during the years in which the recipients are projected in writing  
 41 by the private school to be enrolled at the qualified school or program. Once the student  
 42 scholarship organization designates obligated revenues for specific student recipients, in  
 43 the case of multiyear scholarships or tuition grants for which the student scholarship  
 44 organization distributes the obligated and designated revenues to a qualified school or  
 45 program annually rather than the entire amount, if the designated student becomes  
 46 ineligible or for any other reason the student scholarship organization elects not to  
 47 continue disbursement for all years, then the student scholarship organization shall  
 48 designate any remaining previously obligated revenues for a new specific student  
 49 recipient on or before the end of the following calendar year. The maximum scholarship  
 50 amount given by the student scholarship organization in any given year shall not exceed  
 51 the average state and local expenditures per student in fall enrollment in public  
 52 elementary and secondary education for this state. The Department of Education shall  
 53 determine and publish such amount annually, no later than January 1;

54 (1.1) In awarding scholarships or tuition grants, shall give preferences to students with  
 55 financial needs;

56 (2) Must maintain separate accounts for scholarship funds and operating funds. Until  
 57 obligated revenues are designated for specific student recipients, the student scholarship  
 58 organization shall hold the obligated revenues in a bank or investment account owned by  
 59 the student scholarship organization and over which it has complete control;

60 (3) Must have an independent board of directors with at least three members;

61 (4) May transfer funds to another student scholarship organization;

62 (5) Must conduct an audit of its accounts by an independent certified public accountant  
 63 within 120 days after the completion of the student scholarship organization's fiscal year

64 verifying that it ~~obligated for scholarships or tuition grants~~ at least 90 percent of its  
 65 ~~annual revenue received from donations for scholarships or tuition grants~~ has complied  
 66 with all requirements of this Code section, including but not limited to that obligated  
 67 revenues were designated for specific student recipients within the time frame required  
 68 by paragraph (1) of this Code section and that all obligated and designated revenues  
 69 distributed to a qualified school or program for the funding of multiyear scholarships or  
 70 tuition grants were held in accordance with applicable Department of Revenue rules.  
 71 Each student scholarship organization shall provide a copy of ~~and provide~~ such audit to  
 72 the Department of Revenue in accordance with Code Section 20-2A-3. If the copy of the  
 73 audit submitted fails to verify that the student scholarship organization has obligated for  
 74 scholarships or tuition grants at least the percentage of its annual revenue required by  
 75 paragraph (1) of this Code section, that obligated revenues were designated for specific  
 76 student recipients within the time frame required by paragraph (1) of this Code section,  
 77 and that all obligated and designated revenues distributed to a qualified school or  
 78 program for the funding of multiyear scholarships or tuition grants were in accordance  
 79 with applicable Department of Revenue rules, then the Department of Revenue shall post  
 80 on its website the details of such failure to verify; and

81 (6) Must annually submit notice to the Department of Education in accordance with  
 82 department guidelines of its participation as a student scholarship organization under this  
 83 chapter."

### 84 SECTION 3.

85 Said chapter is further amended by revising Code Section 20-2A-3, relating to taxation  
 86 reporting requirements for student scholarship organizations, as follows:

87 "(a) Each student scholarship organization must report to the Department of Revenue, on  
 88 a form provided by the Department of Revenue, by January 12 of each tax year the  
 89 following:

90 (1) The total number and dollar value of individual contributions and tax credits  
 91 approved. Individual contributions shall include contributions made by those filing  
 92 income tax returns as a single individual or head of household and those filing joint  
 93 returns;

94 (2) The total number and dollar value of corporate contributions and tax credits  
 95 approved;

96 (3) The total number and dollar value of scholarships awarded to eligible students; ~~and~~

97 (4) The federal adjusted gross income, as defined in the United States Internal Revenue  
 98 Code of 1986, for families of scholarship recipients as well as the number of dependents  
 99 in such families; and

100 ~~(4)~~(5) A list of donors, including the dollar value of each donation and the dollar value  
101 of each approved tax credit.

102 Such report shall also include a copy of the audit conducted pursuant to paragraph (5) of  
103 Code Section 20-2A-2. The Department of Revenue shall post on its website the  
104 information received ~~by~~ from each student scholarship organization pursuant to paragraphs  
105 (1) through (4) of this subsection.

106 (b) ~~The Department of Revenue shall not require any other information from student~~  
107 ~~scholarship organizations, except as expressly authorized in this chapter. Except for the~~  
108 ~~information reported pursuant to paragraphs (1) through (4) of subsection (a) of this Code~~  
109 ~~section, all~~ All information or reports provided by student scholarship organizations to the  
110 Department of Revenue shall be confidential taxpayer information, governed by Code  
111 Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the student  
112 scholarship organization."

113 **SECTION 4.**

114 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the  
115 imposition, rate, and computation of income taxes, is amended by revising Code Section  
116 48-7-29.16, relating to qualified education tax credits, as follows:

117 "48-7-29.16.

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

119 (1) 'Corporation' means a corporation as defined in paragraph (4) of Code Section  
120 14-2-140, a limited liability company duly formed under state law, and a Subchapter 'S'  
121 corporation under Subchapter S of Chapter 1 of the Internal Revenue Code.

122 (2) 'Eligible student' shall have the same meaning as in paragraph (1) of Code Section  
123 20-2A-1.

124 ~~(1)~~(3) 'Qualified education expense' means the expenditure of funds by the taxpayer  
125 during the tax year for which a credit under this Code section is claimed and allowed to  
126 a student scholarship organization operating pursuant to Chapter 2A of Title 20 which are  
127 used for tuition and fees for a qualified school or program.

128 ~~(2)~~(4) 'Qualified school or program' shall have the same meaning as in paragraph (2) of  
129 Code Section 20-2A-1.

130 ~~(3)~~(5) 'Student scholarship organization' shall have the same meaning as in paragraph (3)  
131 of Code Section 20-2A-1.

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

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

136 (2) In the case of a married couple filing a joint return, the actual amount expended or  
137 \$2,500.00 per tax year, whichever is less.

138 (c) A corporation or other entity shall be allowed a credit against the tax imposed by this  
139 chapter for qualified education expenses in an amount not to exceed the actual amount  
140 expended or 75 percent of the corporation's income tax liability, whichever is less.

141 (d)(1) The tax credit shall not be allowed if the taxpayer designates the taxpayer's  
142 qualified education expense for the direct benefit of any particular individual, whether  
143 or not such individual is a dependent of the taxpayer.

144 (2) In soliciting contributions, a student scholarship organization shall not represent, or  
145 direct a qualified private school to represent, that, in exchange for contributing to the  
146 student scholarship organization, a taxpayer shall receive a scholarship for the direct  
147 benefit of any particular individual, whether or not such individual is a dependent of the  
148 taxpayer. The status as a student scholarship organization shall be revoked for any such  
149 organization which violates this paragraph.

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

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

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

161 (3) For the purposes of paragraph (1) of this subsection, a student scholarship  
162 organization shall notify a potential donor of the requirements of this Code section.  
163 Before making a contribution to a student scholarship organization, the taxpayer shall  
164 notify the department, in a manner specified by the department, of the total amount of  
165 contributions that the taxpayer intends to make to the student scholarship organization.  
166 The commissioner shall preapprove or deny the requested amount within 30 days after  
167 receiving the request from the taxpayer and shall provide ~~written~~ notice to the taxpayer  
168 and the student scholarship organization of such preapproval or denial which shall not  
169 require any signed release or notarized approval by the taxpayer. In order to receive a tax  
170 credit under this Code section, the taxpayer shall make the contribution to the student  
171 scholarship organization within 60 days after receiving notice from the department that  
172 the requested amount was preapproved. If the taxpayer does not comply with this

173 paragraph, the commissioner shall not include this preapproved contribution amount  
174 when calculating the limit prescribed in paragraph (1) of this subsection. The department  
175 shall establish a ~~web-based~~ web based donation approval process to implement this  
176 subsection.

177 (4) Preapproval of contributions by the commissioner shall be based solely on the  
178 availability of tax credits subject to the aggregate total limit established under  
179 paragraph (1) of this subsection. The department shall maintain an ongoing, current list  
180 on its website of the amount of tax credits available under this Code section.

181 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse  
182 action against donors to student scholarship organizations if the commissioner  
183 preapproved a donation for a tax credit prior to the date the student scholarship  
184 organization is removed from the Department of Education list pursuant to Code Section  
185 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to  
186 the donor's compliance with paragraph (3) of this subsection.

187 (g) In order for the taxpayer to claim the student scholarship organization tax credit under  
188 this Code section, a letter of confirmation of donation issued by the student scholarship  
189 organization to which the contribution was made shall be attached to the taxpayer's tax  
190 return. However, in the event the taxpayer files an electronic return, such confirmation  
191 shall only be required to be electronically attached to the return if the Internal Revenue  
192 Service allows such attachments when the data is transmitted to the department. In the  
193 event the taxpayer files an electronic return and such confirmation is not attached because  
194 the Internal Revenue Service does not, at the time of such electronic filing, allow electronic  
195 attachments to the Georgia return, such confirmation shall be maintained by the taxpayer  
196 and made available upon request by the commissioner. The letter of confirmation of  
197 donation shall contain the taxpayer's name, address, tax identification number, the amount  
198 of the contribution, the date of the contribution, and the amount of the credit.

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

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

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

208

**SECTION 5.**

209 This Act shall become effective upon its approval by the Governor or upon its becoming law  
210 without such approval and shall be applicable to all taxable years beginning on or after  
211 January 1, 2013.

212

**SECTION 6.**

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