

Senate Bill 243

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

AS PASSED SENATE

**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 **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 who, immediately prior
15 to receiving a scholarship or tuition grant under Code Section 20-2A-2 and enrolling in
16 a qualified school or program, was enrolled in and attended for at least six weeks a
17 Georgia secondary or primary public school or who is eligible to enroll in a qualified first
18 grade, kindergarten program, or pre-kindergarten program; provided, however, that if a
19 student is deemed an eligible student pursuant to this paragraph, he or she shall continue
20 to qualify as such until he or she graduates, reaches the age of 20, or returns to a public
21 school, whichever occurs first; and provided, further, that the enrollment and six week
22 public school attendance requirements shall be waived in the case of a student who, based
23 on the school attendance zone of his or her primary residence, is or would be assigned to
24 a public school that the Office of Student Achievement determines to be a
25 low-performing school, who is the subject of officially documented cases of school based

26 physical violence or student related verbal abuse threatening physical harm, or whose
 27 parent or parents inform the public school in writing that they do not wish for their child
 28 to participate in classroom instruction or exercises that conflict with their religious
 29 beliefs."

30 SECTION 2.

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

33 "20-2A-2.

34 Each student scholarship organization:

35 (1) ~~Must~~ With respect to the first \$1.5 million of its annual revenue received from
 36 donations for scholarships or tuition grants, must obligate for scholarships or tuition
 37 grants at least 90 percent of such its annual revenue received from donations for
 38 scholarships or tuition grants; with respect to its annual revenue received from donations
 39 for scholarships or tuition grants in excess of \$1.5 million and up to and including \$10
 40 million, must obligate at least 93 percent of such revenue for scholarships and tuition
 41 grants; with respect to its annual revenue received from donations for scholarships or
 42 tuition grants in excess of \$10 million and up to and including \$20 million, must obligate
 43 at least 94 percent of such revenue for scholarships and tuition grants; and, with respect
 44 to its annual revenue received from donations for scholarships or tuition grants in excess
 45 of \$20 million, must obligate at least 95 percent of such revenue for scholarships and
 46 tuition grants however, up to 25 percent of this amount may be carried forward for the
 47 next fiscal year. On or before the end of the calendar year following the calendar year in
 48 which a student scholarship organization receives revenues from donations and obligates
 49 them for the awarding of scholarships or tuition grants, the student scholarship
 50 organization shall designate the obligated revenues for specific student recipients. Once
 51 the student scholarship organization designates obligated revenues for specific student
 52 recipients, in the case of multiyear scholarships or tuition grants, the student scholarship
 53 organization may distribute the entire obligated and designated revenues to a qualified
 54 school or program to be held in accordance with Department of Revenue rules for
 55 distribution to the specified recipients during the years in which the recipients are
 56 projected in writing by the private school to be enrolled at the qualified school or
 57 program. In making a multiyear distribution to a qualified school or program, the student
 58 scholarship organization shall require that if the designated student becomes ineligible
 59 or for any other reason the qualified school or program elects not to continue
 60 disbursement of the multiyear scholarship or tuition grant to the designated student for
 61 all the projected years, then the qualified school or program shall immediately return the
 62 remaining funds to the student scholarship organization. Once the student scholarship

63 organization designates obligated revenues for specific student recipients, in the case of
 64 multiyear scholarships or tuition grants for which the student scholarship organization
 65 distributes the obligated and designated revenues to a qualified school or program
 66 annually rather than the entire amount, if the designated student becomes ineligible or for
 67 any other reason the student scholarship organization elects not to continue disbursement
 68 for all years, then the student scholarship organization shall designate any remaining
 69 previously obligated revenues for a new specific student recipient on or before the end
 70 of the following calendar year. The maximum scholarship amount given by the student
 71 scholarship organization in any given year shall not exceed the average state and local
 72 expenditures per student in fall enrollment in public elementary and secondary education
 73 for this state. The Department of Education shall determine and publish such amount
 74 annually, no later than January 1;

75 (1.1) In awarding scholarships or tuition grants, shall consider financial needs of students
 76 based on the federal adjusted gross income from the federal income tax return most
 77 recently filed by the parents or guardians of such students, as adjusted for family size
 78 using the modified scale published by the Organization of Economic Cooperation and
 79 Development. If the parents or guardians of a student have not filed a federal income tax
 80 return in either of the two calendar years immediately preceding the year of application,
 81 the student scholarship organization shall consider the financial need of the student based
 82 on the paystubs of the parents or guardians from the 30 consecutive days closest to when
 83 the applicant submitted the scholarship application and on any other sources of income,
 84 including, but not limited to, unemployment benefits, social security benefits, and child
 85 support benefits;

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

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

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

92 (5) Must conduct an audit of its accounts by an independent certified public accountant
 93 within 120 days after the completion of the student scholarship organization's fiscal year
 94 verifying that it ~~obligated for scholarships or tuition grants at least 90 percent of its~~
 95 ~~annual revenue received from donations for scholarships or tuition grants~~ has complied
 96 with all requirements of this Code section, including but not limited to financial
 97 requirements. Each student scholarship organization shall provide a copy of the material
 98 findings of and provide such audit to the Department of Revenue in accordance with
 99 Code Section 20-2A-3. If the copy of the audit submitted fails to verify that the student

100 scholarship organization obligated its annual revenue received from donations for
 101 scholarships or tuition grants as required under paragraph (1) of this Code section; that
 102 obligated revenues were designated for specific student recipients within the time frame
 103 required by paragraph (1) of this Code section; and that all obligated and designated
 104 revenue distributed to a qualified school or program for the funding of muliyear
 105 scholarships or tuition grants complied with all applicable Department of Revenue rules,
 106 then the Department of Revenue shall post on its website the details of such failure to
 107 verify. Until any such noncompliant student scholarship organization submits an
 108 amended audit, which, to the satisfaction of the Department of Revenue, contains the
 109 verifications required under of this Code section, the Department of Revenue shall not
 110 pre-approve any contributions to the noncompliant student scholarship organization; and
 111 (6) Must annually submit notice to the Department of Education in accordance with
 112 department guidelines of its participation as a student scholarship organization under this
 113 chapter."

114 **SECTION 3.**

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

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

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

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

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

127 (4) On an aggregate basis, the average household income of the families of scholarship
 128 recipients based on the federal adjusted gross income, as defined in the United States
 129 Internal Revenue Code of 1986, or other income of the scholarship families considered
 130 by the student scholarship organization pursuant to paragraph (1.1) of Code Section
 131 20-2A-2 as adjusted for family size using the modified scale published by the
 132 Organization for Economic Cooperation and Development; and

133 ~~(4)~~(5) A list of donors, including the dollar value of each donation and the dollar value
 134 of each approved tax credit.

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

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

146 **SECTION 4.**

147 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to the
 148 imposition, rate, and computation of income taxes, is amended by revising Code Section
 149 48-7-29.16, relating to qualified education tax credits, as follows:

150 "48-7-29.16.

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

152 (1) 'Corporation' means a corporation as defined in paragraph (4) of Code Section
 153 14-2-140.

154 (2) 'Eligible student' shall have the same meaning as in paragraph (1) of Code Section
 155 20-2A-1.

156 ~~(1)(3)~~ (3) 'Qualified education expense' means the expenditure of funds by the taxpayer
 157 during the tax year for which a credit under this Code section is claimed and allowed to
 158 a student scholarship organization operating pursuant to Chapter 2A of Title 20 which are
 159 used for tuition and fees for a qualified school or program.

160 ~~(2)(4)~~ (4) 'Qualified school or program' shall have the same meaning as in paragraph (2) of
 161 Code Section 20-2A-1.

162 ~~(3)(5)~~ (5) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
 163 of Code Section 20-2A-1.

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

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

168 (2) In the case of a married couple filing a joint return, the actual amount expended or
 169 \$2,500.00 per tax year, whichever is less; or

170 (3) Anything to the contrary contained in paragraph (1) or (2) of this subsection
 171 notwithstanding, in the case of an individual who is a member of a limited liability
 172 company duly formed under state law or is a shareholder of a Subchapter 'S' corporation,
 173 the amount expended or \$10,000.00 per tax year, whichever is less; provided, however,
 174 tax credits pursuant to this paragraph shall only be allowed for the portion of the income
 175 on which such tax was actually paid by such limited liability company or Subchapter 'S'
 176 corporation.

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

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

183 (2) In soliciting contributions, a student scholarship organization shall not represent, or
 184 direct a qualified private school to represent, that, in exchange for contributing to the
 185 student scholarship organization, a taxpayer shall receive a scholarship for the direct
 186 benefit of any particular individual, whether or not such individual is a dependent of the
 187 taxpayer. The status as a student scholarship organization shall be revoked for any such
 188 organization which violates this paragraph.

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

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

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

200 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
 201 organization shall notify a potential donor of the requirements of this Code section.
 202 Before making a contribution to a student scholarship organization, the taxpayer shall
 203 electronically notify the department, in a manner specified by the department, of the total
 204 amount of contributions that the taxpayer intends to make to the student scholarship
 205 organization. The commissioner shall preapprove or deny the requested amount within
 206 30 days after receiving the request from the taxpayer and shall provide ~~written~~ notice to

207 the taxpayer and the student scholarship organization of such preapproval or denial which
208 shall not require any signed release or notarized approval by the taxpayer. In order to
209 receive a tax credit under this Code section, the taxpayer shall make the contribution to
210 the student scholarship organization within 60 days after receiving notice from the
211 department that the requested amount was preapproved. If the taxpayer does not comply
212 with this paragraph, the commissioner shall not include this preapproved contribution
213 amount when calculating the limit prescribed in paragraph (1) of this subsection. The
214 department shall establish a ~~web-based~~ web based donation approval process to
215 implement this subsection.

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

220 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
221 action against donors to student scholarship organizations if the commissioner
222 preapproved a donation for a tax credit prior to the date the student scholarship
223 organization is removed from the Department of Education list pursuant to Code Section
224 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to
225 the donor's compliance with paragraph (3) of this subsection.

226 (g) In order for the taxpayer to claim the student scholarship organization tax credit under
227 this Code section, a letter of confirmation of donation issued by the student scholarship
228 organization to which the contribution was made shall be attached to the taxpayer's tax
229 return. However, in the event the taxpayer files an electronic return, such confirmation
230 shall only be required to be electronically attached to the return if the Internal Revenue
231 Service allows such attachments when the data is transmitted to the department. In the
232 event the taxpayer files an electronic return and such confirmation is not attached because
233 the Internal Revenue Service does not, at the time of such electronic filing, allow electronic
234 attachments to the Georgia return, such confirmation shall be maintained by the taxpayer
235 and made available upon request by the commissioner. The letter of confirmation of
236 donation shall contain the taxpayer's name, address, tax identification number, the amount
237 of the contribution, the date of the contribution, and the amount of the credit.

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

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

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

247 **SECTION 5.**

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

251 **SECTION 6.**

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