

House Bill 440

By: Representatives Glanton of the 75th, Dudgeon of the 25th, Stovall of the 74th, and Casas of the 107th

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 imposition, rate, computation, and exemptions from state income taxation, so as
3 to provide an exemption for corporate donors to student scholarship organizations; to amend
4 Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student
5 scholarship organizations, so as to create a new income tax exemption for student scholarship
6 funding; to provide for corporate donations to student scholarship organizations; to provide
7 for procedures, conditions, and limitations; to provide for a short title; to provide for related
8 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Business and Education Succeeding
13 Together (BEST) Act."

14 **SECTION 2.**

15 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
16 imposition, rate, computation, and exemptions from state income taxation, is amended by
17 adding a new Code section to read as follows:

18 "48-7-29.16A.

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

20 (1) 'BEST' means Business and Education Succeeding Together.

21 (2) 'BEST eligible student' shall have the same meaning as in paragraph (2) of Code
Section 20-2A-15.

23 (3) 'BEST student scholarship donor' shall have the same meaning as in paragraph (4)
of Code Section 20-2A-15.

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

27 (b) A BEST student scholarship donor shall be allowed a credit against the tax imposed
28 by this chapter for donations to a student scholarship organization in an amount not to
29 exceed the actual amount expended.

30 (c) The tax credit shall not be allowed if the BEST student scholarship donor designates
31 the donation to be used for the direct benefit of any particular individual or school.

32 (d) If a tax credit approved under paragraph (3) of subsection (e) of this Code section is
33 not fully used within the specified state fiscal year for credits, any unused tax credit shall
34 be allowed the BEST student scholarship donor against the succeeding five years' tax
35 liability. If a tax credit approved under paragraph (3) of subsection (e) of this Code section
36 is not fully used because of insufficient tax liability on the part of the taxpayer, the unused
37 amount may be carried forward for a period not to exceed five years. However, any
38 taxpayer that seeks to carry forward an unused amount of tax credit must submit an
39 application to the department for approval of the carry-forward tax credit in the year that
40 the taxpayer intends to use such carry-forward tax credit. No such credit shall be allowed
41 against prior years' tax liability.

42 (e)(1) In no event shall the aggregate amount of tax credits allowed under this Code
43 section exceed \$12 million per year. Beginning in 2016, the department shall calculate
44 the amount of tax credits available under this Code section from the first Monday in
45 March through the first Monday in March of the succeeding year.

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

47 (3) Before making a contribution to a student scholarship organization, the BEST student
48 scholarship donor shall electronically notify the department, in a manner specified by the
49 department, of the total amount of contributions that the BEST student scholarship donor
50 intends to make to the student scholarship organization. The commissioner shall
51 preapprove or deny the requested amount within 15 days after receiving the request from
52 the BEST student scholarship donor and shall provide notice to such donor and the
53 student scholarship organization of such preapproval or denial, which shall not require
54 any signed release or notarized approval by the BEST student scholarship donor. In order
55 to receive a tax credit under this Code section, the BEST student scholarship donor shall
56 make the contribution to the student scholarship organization within 60 days after
57 receiving notice from the department that the requested amount was preapproved. If the
58 BEST student scholarship donor 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 web
61 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 any BEST student scholarship donor if the commissioner preapproved a
68 donation for a tax credit prior to the date the student scholarship organization is removed
69 from the Department of Education list pursuant to Code Section 20-2A-7, and all such
70 donations shall remain as preapproved tax credits subject only to the BEST student
71 scholarship donor's compliance with paragraph (3) of this subsection.

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

85 (g) No tax credit shall be allowed under this Code section with respect to any amount
86 deducted from taxable net income by the BEST student scholarship donor as a charitable
87 contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the
88 Internal Revenue Code.

89 (h) All information or reports provided by student scholarship organizations to the
90 department shall be confidential taxpayer information, governed by Code Sections 48-2-15,
91 48-7-60, and 48-7-61, with respect to BEST student scholarship donor information.

92 (i) The amount of any scholarship received by a BEST eligible student shall be excluded
93 from taxable net income for state income tax purposes.

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

96

SECTION 3.

97 Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student
98 scholarship organizations, is amended by designating the existing Code sections as Article
99 1 and adding a new article to read as follows:

100

"ARTICLE 2101 20-2A-15.102 As used in this article, the term:

103 (1) 'BEST' means Business and Education Succeeding Together.
104 (2) 'BEST eligible student' means any student who, immediately prior to receiving a
105 scholarship or tuition grant under Code Section 20-2A-2 and enrolling in a BEST
106 qualified school or program, was enrolled in and attended for at least six weeks a Georgia
107 secondary or primary public school or who is eligible to enroll in a qualified first grade
108 or kindergarten program; provided, however, that if a student is deemed a BEST eligible
109 student pursuant to this paragraph, he or she shall continue to qualify as such until he or
110 she graduates, reaches the age of 20, or returns to a public school, whichever occurs first;
111 and provided, further, that the enrollment and six-week public school attendance
112 requirements shall be waived in the case of a student who, based on the school attendance
113 zone of his or her primary residence, is or would be assigned to a public school that the
114 Office of Student Achievement determines to be a low-performing school, or who is the
115 subject of officially documented cases of school based physical violence or student
116 related verbal abuse threatening physical harm, or who was enrolled in a home study
117 program meeting the requirements of subsection (c) of Code Section 20-2-690 for at least
118 one year immediately prior to receiving a scholarship or tuition grant under Code Section
119 20-2A-2, or who was already served by an existing student scholarship organization for
120 the prior school year.

121 (3) 'BEST qualified school or program' means a school or program that:

122 (A) Annually administers nationally norm-referenced tests or the state tests that
123 measure learning gains and provide for value added assessment to all participating
124 BEST students in grades that require testing under this state's accountability testing
125 laws for public schools;
126 (B) Provides the parents of each BEST student with a copy of the results of the tests
127 administered pursuant to subparagraph (A) of this paragraph on an annual basis
128 beginning with the first year of testing;
129 (C) Provides the test results of BEST students to the Office of Student Achievement
130 on an annual basis beginning with the first year of testing;

131 (D) Reports BEST student information that would allow the state to aggregate data by
132 grade level, gender, family income level, and race;
133 (E) Provides graduation rates of BEST students, where applicable, to the Office of
134 Student Achievement in a manner consistent with nationally recognized standards;
135 (F) Is accredited or in the process of becoming accredited by one or more entities listed
136 in subparagraph (A) of paragraph (6) of Code Section 20-3-519;
137 (G) Is located in this state, adheres to the provisions of the federal Civil Rights Act of
138 1964, and satisfies the requirements prescribed by law for private schools in this state;
139 and
140 (H) Agrees to hold in reserve no more than three years of BEST funds for any
141 individual student. Such three-year period shall automatically be extended when the
142 student satisfactorily completes a school year and enrolls in the same school for the
143 succeeding new school year.

144 (4) 'BEST student scholarship donor' means a C corporation lawfully organized and
145 registered under the laws of this state that contributes to a student scholarship
146 organization.

147 (5) 'Student scholarship organization' shall have the same meaning as in paragraph (3)
148 of Code Section 20-2A-1. Such organizations shall provide educational scholarships or
149 tuition grants to eligible students without limiting availability to only students of one
150 school. In addition to the specific requirements for BEST eligible students and BEST
151 qualified schools or programs contained in this Code section and Code Section 20-2A-16,
152 student scholarship organizations receiving donations from a BEST student scholarship
153 donor shall adhere to all of the requirements in Article 1 of this chapter.

154 20-2A-16.

155 (a) Each student scholarship organization shall transfer any funds received from a BEST
156 student scholarship donor designated for scholarships or tuition grants to a BEST qualified
157 school or program on behalf of a BEST eligible student within 24 months of receipt of such
158 revenue.

159 (b) Scholarships awarded by student scholarship organizations with funds received from
160 a BEST student scholarship donor shall be portable to any BEST qualified school or
161 program of the student's, parent's, or guardian's choice.

162 (c) The parent or guardian to whom a BEST scholarship is granted shall restrictively
163 endorse such scholarship to the BEST qualified school or program for deposit into the
164 account of the BEST qualified school or program. The parent or guardian may not
165 designate any entity or individual associated with the participating BEST qualified school

166 or program as the parent's or guardian's attorney in fact to endorse a scholarship. A parent
167 or guardian who fails to comply with this Code section forfeits the BEST scholarship.
168 (d) In addition to the requirements in Code Section 48-7-29.16A, each student scholarship
169 organization participating in the BEST student scholarship program shall annually submit
170 notice to the Department of Education in accordance with department guidelines of its
171 participation as a BEST student scholarship organization under this article.
172 (e) The Department of Education shall maintain on its website a current list of all BEST
173 student scholarship organizations which have provided notice pursuant to subsection (d)
174 of this Code section."

175 **SECTION 4.**

176 This Act shall become effective upon its approval by the Governor or upon its becoming law
177 without such approval and shall be applicable to all taxable years beginning on or after
178 January 1, 2015.

179 **SECTION 5.**

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