House Bill 217 (AS PASSED HOUSE AND SENATE)
By: Representatives Carson of the 46th, Kelley of the 16th, Knight of the 130th, Ehrhart of the 36th, Stephens of the 164th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to imposition, rate, computation, and exemptions from state income taxes, so as to increase the amount of the aggregate cap on contributions to certain scholarship organizations in order to receive income tax credits; to provide for an increase in the limit of tax credits and for reporting the increase in the limit; to provide for procedures, conditions, and limitations; to amend Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student scholarship organizations, so as to provide for new expenditure limits; to provide for additional reporting and auditing requirements; to amend Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from sales and use taxes, so as to provide a sales tax exemption for the sale or use of noncommercial written materials or mailings by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; to amend an Act relating to education and to revenue and taxation authorizing the Public Education Innovation Fund Foundation to receive private donations to be used for grants to public schools and providing for an income tax credit for qualified education donations, approved April 27, 2017 (Ga L. 2017, p. 100), so as to extend an uncodified sunset provision; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"(f)(1) In no event shall the aggregate amount of tax credits allowed under this Code section shall not exceed:

(A) Fifty-eight $58 million per dollars for the tax year ending on December 31, 2018;

H. B. 217
- 1 -
(B) One hundred million dollars for tax years beginning on January 1, 2019, and ending on December 31, 2028; and

(C) Fifty-eight million dollars for the tax year beginning on January 1, 2029, and for all subsequent tax years.

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

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

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

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

(6) In addition to the reporting requirements in Code Section 20-2A-3, each student scholarship organization shall file an annual report with the department showing any fees or assessments retained by the student scholarship organization during the calendar year. *
SECTION 2.

Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student scholarship organizations, is amended by restating the introductory language, revising paragraphs (1) and (5), and adding a new paragraph in Code Section 20-2A-2, relating to requirements for student scholarship organizations, as follows:

"Each student scholarship organization:

(1) With respect to the first $1.5 million of its annual revenue received from donations for scholarships or tuition grants, must obligate at least 90 percent of such revenue for scholarships or tuition grants; with respect to its annual revenue received from donations for scholarships or tuition grants in excess of $1.5 million and up to and including $10 million, must obligate at least 93 percent of such revenue for scholarships and tuition grants; with respect to its annual revenue received from donations for scholarships or tuition grants in excess of $10 million and up to and including $20 million, must obligate at least 94 percent of such revenue for scholarships and tuition grants; and, with respect to its annual revenue received from donations for scholarships or tuition grants in excess of $20 million, must obligate at least 95 percent of such revenue for scholarships and tuition grants. On or before the end of the calendar year following the calendar year in which a student scholarship organization receives revenues from donations and obligates them for the awarding of scholarships or tuition grants, the student scholarship organization shall designate the obligated revenues for specific student recipients. Once the student scholarship organization designates obligated revenues for specific student recipients, in the case of multiyear scholarships or tuition grants, the student scholarship organization may distribute the entire obligated and designated revenues to a qualified school or program to be held in accordance with Department of Revenue rules for distribution to the specified recipients during the years in which the recipients are projected in writing by the private school to be enrolled at the qualified school or program. In making a multiyear distribution to a qualified school or program, the student scholarship organization shall require that if the designated student becomes ineligible or for any other reason the qualified school or program elects not to continue disbursement of the multiyear scholarship or tuition grant to the designated student for all the projected years, then the qualified school or program shall immediately return the remaining funds to the student scholarship organization. Once the student scholarship organization designates obligated revenues for specific student recipients, in the case of multiyear scholarships or tuition grants for which the student scholarship organization distributes the obligated and designated revenues to a qualified school or program annually rather than the entire amount, if the designated student becomes ineligible or for any other reason the student scholarship organization elects not to..."
continue disbursement for all years, then the student scholarship organization shall designate any remaining previously obligated revenues for a new specific student recipient on or before the end of the following calendar year. The maximum scholarship amount given by the student scholarship organization in any given year shall not exceed the average state and local expenditures per student in fall enrollment in public elementary and secondary education for this state. The Department of Education shall determine and publish such amount annually, no later than January 1;”

“(5) Must conduct an audit of its accounts by an independent certified public accountant within 120 days after the completion of the student scholarship organization's fiscal year verifying that it has complied with all requirements of this Code section, including, but not limited to, financial requirements. Each student scholarship organization shall provide a copy of such audit to the Department of Revenue in accordance with Code Section 20-2A-3. Notwithstanding Code Sections 20-2A-7, 48-2-15, 48-7-60, and 48-7-61, if the copy of the audit submitted fails to verify that the student scholarship organization obligated its annual revenue received from donations for scholarships or tuition grants as required under paragraph (1) of this Code section; that obligated revenues were designated for specific student recipients within the time frame required by paragraph (1) of this Code section; and that all obligated and designated revenue distributed to a qualified school or program for the funding of multiyear scholarships or tuition grants complied with all applicable Department of Revenue rules, then the Department of Revenue shall post on its website the details of such failure to verify. Until any such noncompliant student scholarship organization submits an amended audit, which, to the satisfaction of the Department of Revenue, contains the verifications required under this Code section, the Department of Revenue shall not preapprove any contributions to the noncompliant student scholarship organization; and

(5.1) In addition to the audit required by paragraph (5) of this Code section, in 2023, the state auditor shall issue an economic analysis report on the performance of this tax credit to the chairpersons of the House Committee on Ways and Means and the Senate Finance Committee. An economic analysis shall include, but not be limited to, a good faith estimate, on both a direct and indirect basis, as to the:

(A) Net change in state revenue;

(B) Net change in state expenditures, which shall include, but not be limited to, costs of administering the tax credit;

(C) Net change in economic activity; and

(D) Net change in public benefit; and”
SECTION 3.

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


(a) Each student scholarship organization must report annually to the Department of Revenue, on a date determined by the Department of Revenue and on a form provided by the Department of Revenue, by January 12 of each tax year the following:

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

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

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

(4) The total number of families of scholarship recipients who fall within each quartile of Georgia whose family’s adjusted gross income as defined and reported annually by the Department of Revenue and the average number of dependents of recipients for each quartile, as follows:

(A) Under 125 percent of the federal poverty level;

(B) Between 125 and 250 percent of the federal poverty level;

(C) Between 250 and 400 percent of the federal poverty level; and

(D) Above 400 percent of the federal poverty level;

(5) The average scholarship dollar amount by adjusted gross income category as provided in paragraph (4) of this subsection; and

(6) A list of donors, including the dollar value of each donation and the dollar value of each approved tax credit.

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

(b) Except for the information reported pursuant to paragraphs (1) through (5) of subsection (a) of this Code section, all information or reports provided by student scholarship organizations to the Department of Revenue shall be confidential taxpayer information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates to the donor or the student scholarship organization.”
SECTION 4.

Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from state sales and use taxes, is amended by deleting "or" at the end of paragraph (99), by replacing the period with "; or" at the end of paragraph (100), and by adding a new paragraph to read as follows:

"(101)(A) The sale or use of noncommercial written materials or mailings by an organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, if the organization is located in this state and provides such materials to charity supporters for educational, charitable, religious, or fundraising purposes, to the extent provided in subparagraph (B) of this paragraph.

(B) This exemption shall apply from July 1, 2018, until July 1, 2021. A qualifying organization must pay sales and use tax on all purchases and uses of tangible personal property and may obtain the benefit of this exemption from sales and use taxes by filing a claim for refund of tax paid on qualifying items. All refunds made pursuant to this paragraph shall not include interest."

SECTION 5.

An Act relating to education and to revenue and taxation authorizing the Public Education Innovation Fund Foundation to receive private donations to be used for grants to public schools and providing for an income tax credit for qualified education donations, approved April 27, 2017 (Ga L. 2017, p. 100), is amended by revising Section 3 to read as follows:

"SECTION 3.

(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2018.

(b) This Act shall be automatically repealed on December 31, 2023."

SECTION 6.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval. Sections 1, 2, and 3 of this Act shall be applicable to tax years beginning on or after January 1, 2019.

SECTION 7.

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