

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015
4

As Engrossed: H3/17/15 H3/27/15

A Bill

HOUSE BILL 1745

5 By: Representative Sorvillo
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH AN INDIVIDUAL INCOME TAX CREDIT
9 OPPORTUNITY SCHOLARSHIP PROGRAM; TO CREATE AN INCOME
10 TAX CREDIT FOR TUITION PAYMENTS FOR DEPENDENTS WITH
11 CERTAIN DISABILITIES; AND FOR OTHER PURPOSES.
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Subtitle

14 TO ESTABLISH AN INDIVIDUAL INCOME TAX
15 CREDIT OPPORTUNITY SCHOLARSHIP PROGRAM;
16 AND TO CREATE AN INCOME TAX CREDIT FOR
17 TUITION PAYMENTS FOR DEPENDENTS WITH
18 CERTAIN DISABILITIES.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 26, Chapter 51, is amended to add an
25 additional subchapter to read as follows:

26 Subchapter 26 – Individual Income Tax Credit Opportunity Scholarship Program
27

28 26-51-2601. Title.

29 This subchapter shall be known and may be cited as the "Individual
30 Income Tax Credit Opportunity Scholarship Program".
31

32 26-51-2602. Definitions.

33 As used in this subchapter:

34 (1) "Allocate" means reserving money for an award of a
35 multiyear educational scholarship or tuition grant for a specific student;

36 (2)(A) "Qualified school" means a:



1 (i) Preschool that offers services to students with
2 disabilities; and

3 (ii) Nongovernmental primary school or secondary
4 school that:

5 (a) Is located in this state and does not
6 discriminate on the basis of race, color, disability, familial status, or
7 national origin; and

8 (b) Requires all teaching staff and personnel
9 who have unsupervised contact with students to be fingerprinted.

10 (B) "Qualified school" does not include a charter school
11 or programs operated by a charter school; and

12 (3) "Student with a disability" means a student who has one (1)
13 or more of the following conditions:

14 (A) Hearing impairment;

15 (B) Visual impairment;

16 (C) Developmental delay;

17 (D) Preschool severe delay; or

18 (E) Speech or language impairment.

19
20 26-51-2603. Certification as a school tuition organization – Notice of
21 violation.

22 (a)(1) A nonprofit organization in this state that is exempt or has
23 applied for exemption from federal taxation under 26 U.S.C. § 501(c)(3) may
24 apply to the Department of Finance and Administration for certification as a
25 school tuition organization.

26 (2) The department shall certify a school tuition organization
27 that applies under subdivision (a)(1) of this section if it meets the
28 requirements prescribed under this subchapter.

29 (3) A nonprofit organization shall apply for certification under
30 this subsection on the form prescribed and furnished on request by the
31 department.

32 (b) The department shall:

33 (1) Maintain a public registry of currently certified school
34 tuition organizations;

35 (2) Make the registry available to the public on request; and

36 (3) Post the registry on the department's official website.

1 (c) The department shall send written notice by certified mail to a
2 school tuition organization if the department determines that the school
3 tuition organization has engaged in any of the following activities:

4 (1) Failing or refusing to allocate at least ninety percent
5 (90%) of annual revenues from contributions made for the purposes of § 26-51-
6 2607 for educational scholarships or tuition grants;

7 (2) Failing or refusing to file the annual reports required
8 under § 26-51-2605;

9 (3) Limiting the availability of scholarships to students of
10 only one (1) school;

11 (4) Encouraging, facilitating, or knowingly permitting taxpayers
12 to engage in actions prohibited under this subchapter; and

13 (5) Awarding, restricting, or reserving educational scholarships
14 or tuition grants for use by a particular student based solely on the
15 recommendation of the donor.

16 (d)(1) A school tuition organization that receives notice from the
17 department under subsection (c) of this section has ninety (90) days to
18 correct the violation identified by the department in the notice.

19 (2) If a school tuition organization fails or refuses to comply
20 after ninety (90) days, the department:

21 (A) May remove the school tuition organization from the
22 list of certified school tuition organizations; and

23 (B) Shall make available to the public notice of the
24 removal as soon as possible.

25 (3) A school tuition organization that is removed from the list
26 of certified school tuition organizations under this section shall notify any
27 taxpayer who attempts to make a contribution that the contribution is not
28 eligible for a tax credit and offer to refund all donations received after
29 the date of the notice of termination of certification.

30 (e)(1) A school tuition organization may request an administrative
31 hearing on the revocation of its certification.

32 (2) A final decision of the department under this section is
33 subject to judicial review.

34
35 26-51-2604. Operational requirements for school tuition organizations
36 - Notice - Qualified schools.

1 (a) A certified school tuition organization shall be established to:

2 (1) Receive contributions from taxpayers for the purposes of
3 income tax credits under this subchapter; and

4 (2) Pay educational scholarships or tuition grants to allow
5 students to attend a qualified school of their parents' or guardians' choice.

6 (b) To be eligible for certification and to retain certification, a
7 school tuition organization:

8 (1) Shall allocate at least ninety percent (90%) of its annual
9 revenue from contributions made for the purposes of § 26-51-2607 for
10 educational scholarships or tuition grants;

11 (2) Shall not limit the availability of educational scholarships
12 or tuition grants to only students of one (1) school;

13 (3) May allow donors to recommend student beneficiaries, but
14 shall not award, designate, or reserve scholarships solely on the basis of
15 donor recommendations;

16 (4) Shall not allow donors to designate student beneficiaries as
17 a condition of a contribution to the organization; and

18 (5) Shall not facilitate, encourage, or knowingly permit the
19 exchange of beneficiary student designations in violation of § 26-51-2607(f).

20 (c) A school tuition organization shall include the following notice
21 in any printed materials soliciting donations, in applications for
22 scholarships, and on its website:

23 "Notice

24 A school tuition organization cannot award, restrict, or reserve scholarships
25 solely on the basis of a donor's recommendation.

26 A taxpayer may not claim a tax credit if the taxpayer agrees to swap
27 donations with another taxpayer to benefit either taxpayer's own dependent."

28 (d) In evaluating applications and awarding, designating, or reserving
29 scholarships, a school tuition organization:

30 (1) Shall not award, designate, or reserve a scholarship solely
31 on the recommendation of a person contributing money to the organization, but
32 may consider the recommendation among other factors; and

33 (2) Shall consider the financial need of applicants.

34 (e) A school tuition organization shall use at least ninety percent
35 (90%) of contributions made under § 26-51-2607 for educational scholarships
36 or tuition grants for students who:

1 (1) Both:

2 (A) Attended a public primary or secondary school as a
3 full-time student or attended a preschool program that offers services to
4 students with disabilities at a public school for at least ninety (90) days
5 of the prior fiscal year; and

6 (B) Transferred from a public school to a qualified
7 school;

8 (2) Enroll in a qualified school in a kindergarten program or a
9 preschool program that offers services to students with disabilities;

10 (3) Are dependents of a member of the United States Armed Forces
11 who is stationed in this state pursuant to military orders; or

12 (4) Received an educational scholarship or tuition grant under
13 subdivisions (e)(1)–(3) of this section if the student continues to attend a
14 qualified school in a subsequent year.

15 (f) In awarding educational scholarships or tuition grants from
16 contributions made under § 26-51-2607, a school tuition organization shall
17 give priority to students and siblings of students on a waiting list for
18 scholarships if the school tuition organization maintains a waiting list.

19 (g)(1) If an individual educational scholarship or tuition grant
20 exceeds the school's tuition, the amount in excess shall be returned to the
21 school tuition organization that made the award or grant.

22 (2) The school tuition organization may allocate the returned
23 moneys:

24 (A) As a multiyear award for the student and report the
25 award under § 26-51-2605; or

26 (B) For educational scholarships or tuition grants for
27 other students.

28
29 26-51-2605. Annual report.

30 On or before September 30 of each year, each school tuition
31 organization shall report electronically to the Department of Finance and
32 Administration, in a form prescribed by the department, the following
33 information, separately compiled and identified for the purposes of § 26-51-
34 2607:

35 (1) The name, address, and contact person of the school tuition
36 organization;

1 (2) The total number of contributions received during the
2 previous fiscal year;

3 (3) The total dollar amount of contributions received during the
4 previous fiscal year;

5 (4) The total number of children awarded educational
6 scholarships or tuition grants during the previous fiscal year;

7 (5) The total dollar amount of:

8 (A) Educational scholarships and tuition grants
9 distributed during the previous fiscal year; and

10 (B) Money being held for identified students' scholarships
11 and tuition grants in future years;

12 (6) The cost of audits under § 26-51-2606 paid during the fiscal
13 year;

14 (7) The total dollar amount of educational scholarships and
15 tuition grants awarded during the previous fiscal year to:

16 (A) Students whose family income meets the economic
17 eligibility requirements established under the federal school lunch and child
18 nutrition acts for free or reduced price lunches, 42 U.S.C. §§ 1751 – 1785;
19 and

20 (B) Students whose family income exceeds the threshold
21 prescribed by subdivision (7)(A) of this section but does not exceed one
22 hundred eighty-five percent (185%) of the economic eligibility requirements
23 established under the federal school lunch and child nutrition acts for free
24 or reduced price lunches, 42 U.S.C. §§ 1751 – 1785;

25 (8) For each school to which educational scholarships or tuition
26 grants were awarded:

27 (A) The name and address of the school;

28 (B) The number of educational scholarships and tuition
29 grants awarded during the previous fiscal year; and

30 (C) The total dollar amount of educational scholarships
31 and tuition grants awarded during the previous fiscal year; and

32 (9) The names, job titles, and annual salaries of the three (3)
33 employees who receive the highest annual salaries from the school tuition
34 organization.

35
36 26-51-2606. Audits and financial reviews.

1 (a)(1) On or before September 30 of each year, each school tuition
2 organization that received at least one million dollars (\$1,000,000) in total
3 donations in the previous fiscal year shall provide for a financial audit of
4 the school tuition organization.

5 (2) The audit required under this subsection shall:

6 (A) Evaluate the organization's compliance with § 26-51-
7 2604(b)(1); and

8 (B) Be conducted:

9 (i) In accordance with generally accepted auditing
10 standards; and

11 (ii)(a) By an independent certified public
12 accountant licensed in this state.

13 (b) The certified public accountant conducting
14 the audit under this section and the firm the certified public accountant is
15 affiliated with shall be independent with respect to the school tuition
16 organization, the officers and directors of the school tuition organization,
17 the services performed by the certified public accountant, and all other
18 independent relationships prescribed by generally accepted auditing
19 standards.

20 (b)(1) On or before September 30 of each year, each school tuition
21 organization that received less than one million dollars (\$1,000,000) in
22 total donations in the previous fiscal year shall provide for a financial
23 review of the organization.

24 (2) The financial review required under this subsection shall:

25 (A) Evaluate the school tuition organization's compliance
26 with the fiscal requirements of this subchapter; and

27 (B) Be conducted:

28 (i) In accordance with standards for accounting and
29 review services; and

30 (ii)(a) By an independent certified public
31 accountant licensed in this state.

32 (b) The certified public accountant conducting
33 the audit under this section and the firm the certified public accountant is
34 affiliated with shall be independent with respect to the school tuition
35 organization, the officers and directors of the school tuition organization,
36 the services performed by the certified public accountant, and all other

1 independent relationships prescribed by generally accepted auditing
2 standards.

3 (c) Within five (5) days after receiving the audit or financial review
4 under this section, the school tuition organization shall file a signed copy
5 of the audit or financial review with the Department of Finance and
6 Administration.

7 (d)(1) A school tuition organization shall pay the fees and costs of a
8 certified public accountant under this section from the school tuition
9 organization's operating monies.

10 (2) The fees and costs of the certified public accountant shall
11 be excluded from the calculation of total revenues spent on scholarships and
12 tuition grants.

13
14 26-51-2607. Credit for contributions to school tuition organization.

15 (a)(1) An income tax credit of up to four thousand four hundred
16 dollars (\$4,400) is allowed against the taxes imposed under this chapter for
17 the amount of voluntary cash contributions by a taxpayer during the taxable
18 year to a school tuition organization that is certified under this subchapter
19 at the time of donation.

20 (2) However, the total amount of income tax credits that may be
21 claimed by all taxpayers in a tax year shall not exceed four hundred forty
22 thousand dollars (\$440,000).

23 (3) The income tax credits allowed under this section shall be
24 awarded on a first-come, first-serve basis.

25 (b) A husband and wife who file separate returns for a taxable year in
26 which they could have filed a joint return may each claim only one-half (1/2)
27 of the income tax credit that would have been allowed for a joint return.

28 (c) Any unused income tax credit under this section may be carried
29 forward for five (5) consecutive tax years following the tax year in which
30 the income tax credit was earned.

31 (d) The credit allowed by this section is in lieu of any deduction
32 under 26 U.S.C. § 170 taken for state tax purposes.

33 (e) The income tax credit under this section is not allowed if the
34 taxpayer:

35 (1) Designates the taxpayer's contribution to the school tuition
36 organization for the direct benefit of a dependent of the taxpayer or if the

1 taxpayer designates a student beneficiary as a condition of the taxpayer's
2 contribution to the school tuition organization; or

3 (2) With the intent to benefit the taxpayer's dependent, agrees
4 with one (1) or more other taxpayers to designate each taxpayer's
5 contribution to the school tuition organization for the direct benefit of the
6 other taxpayer's dependent.

7 (f) For the purposes of this section, a contribution, for which a
8 credit is claimed, that is made on or before the fifteenth day of the fourth
9 month following the close of the taxable year may be applied to either the
10 current or preceding taxable year and is considered to have been made on the
11 last day of that taxable year.

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13 SECTION 2. EFFECTIVE DATE. Section 1 of this act is effective for tax
14 years beginning on or after January 1, 2015.

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16 /s/Sorvillo
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