

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 899** Session of
2009

INTRODUCED BY PICCOLA, SCARNATI, DINNIMAN, BAKER, ORIE,
M. WHITE, WONDERLING, MUSTO, RAFFERTY, FOLMER, D. WHITE,
ERICKSON, WAUGH, EARLL, PIPPY, O'PAKE, GREENLEAF, GORDNER,
TOMLINSON, ALLOWAY, VANCE, WASHINGTON, EICHELBERGER,
BRUBAKER, WARD AND SMUCKER, JUNE 4, 2009

SENATOR PICCOLA, EDUCATION, AS AMENDED, JUNE 30, 2009

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," in educational improvement tax
6 credit, further providing for definitions, for tax credit and
7 for limitations.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 2002-B of the act of March 10, 1949
11 (P.L.30, No.14), known as the Public School Code of 1949,
12 amended or added July 11, 2006 (P.L.1092, No.114) and July 9,
13 2008 (P.L.846, No.61), is amended to read:

14 Section 2002-B. Definitions.

15 The following words and phrases when used in this article
16 shall have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Business firm." An entity authorized to do business in this
19 Commonwealth and subject to taxes imposed under Article III, IV,

1 VI, VII, VIII, IX or XV of the act of March 4, 1971 (P.L.6,
2 No.2), known as the Tax Reform Code of 1971. This term includes
3 a pass-through entity.

4 "Contribution." A donation of cash, personal property or
5 services the value of which is the net cost of the donation to
6 the donor or the pro rata hourly wage, including benefits, of
7 the individual performing the services.

8 "Department." The Department of Community and Economic
9 Development of the Commonwealth.

10 "Educational improvement organization." A nonprofit entity
11 which:

12 (1) is exempt from Federal taxation under section 501(c)
13 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
14 26 U.S.C. § 1 et seq.); and

15 (2) contributes at least 80% of its annual receipts as
16 grants to a public school for innovative educational
17 programs.

18 For purposes of this definition, a nonprofit entity
19 "contributes" its annual cash receipts when it expends or
20 otherwise irrevocably encumbers those funds for expenditure
21 during the then current fiscal year of the nonprofit entity or
22 during the next succeeding fiscal year of the nonprofit entity.

23 "Eligible pre-kindergarten student." For participation in
24 the pre-kindergarten scholarship program, a student who is
25 enrolled in a pre-kindergarten program and is a member of a
26 household with an annual household income of not more than
27 [\$50,000] \$60,000. An income allowance of [\$10,000] \$12,000
28 shall be allowed for each eligible student and dependent member
29 of the household. The Department of ~~Education~~ COMMUNITY AND
30 ECONOMIC DEVELOPMENT shall adjust the income amounts under this



1 definition on July 1 of each year to reflect any upward changes
2 in the Consumer Price Index for All Urban Consumers (CPI-U) FOR ←
3 THE PENNSYLVANIA, NEW JERSEY, DELAWARE AND MARYLAND AREA in the
4 preceding 12 months, as calculated by the United States
5 Department of Labor, Bureau of Labor Statistics, and shall
6 immediately thereafter publish the adjusted amounts in the
7 Pennsylvania Bulletin.

8 "Eligible student." A school-age student who is enrolled in
9 a school and is a member of a household with an annual household
10 income of not more than [\$50,000] \$60,000. An income allowance
11 of [\$10,000] \$12,000 shall be allowed for each eligible student
12 and dependent member of the household. The Department of
13 ~~Education~~ COMMUNITY AND ECONOMIC DEVELOPMENT shall adjust the ←
14 income amounts under this definition on July 1 of each year to
15 reflect any upward changes in the Consumer Price Index for All
16 Urban Consumers (CPI-U) FOR THE PENNSYLVANIA, NEW JERSEY, ←
17 DELAWARE AND MARYLAND AREA in the preceding 12 months, as
18 calculated by the United States Department of Labor, Bureau of
19 Labor Statistics, and shall immediately thereafter publish the
20 adjusted amounts in the Pennsylvania Bulletin.

21 "Eligible student with a disability." A pre-kindergarten
22 student or a school age student who has been identified as being ←
23 a child:

24 (1) with mental retardation; hearing impairments, ←
25 including deafness; speech or language impairments; visual
26 impairments, including blindness; serious emotional
27 disturbance; orthopedic impairments; autism spectrum
28 disorder; traumatic brain injury; other health impairments;
29 or specific learning disabilities WHO IS EITHER ENROLLED IN A ←
30 SPECIAL EDUCATION SCHOOL, OR HAS OTHERWISE BEEN IDENTIFIED,

1 IN ACCORDANCE WITH 22 PA. CODE CH. 14 (RELATING TO SPECIAL
2 EDUCATION SERVICES AND PROGRAMS), AS A "CHILD WITH A
3 DISABILITY," AS DEFINED IN 34 CFR § 300.8 (RELATING TO CHILD
4 WITH DISABILITY);

5 (2) who, by reason thereof, needs special education and
6 related services;

7 (3) who is enrolled in a pre-kindergarten program or in
8 a school; and

9 (4) who is a member of a household with an annual
10 household income of not more than the maximum allowable
11 household income for students with a disability.

12 "Household." An individual living alone or with the
13 following: a spouse, parent and their unemancipated minor
14 children; and other unemancipated minor children who are related
15 by blood or marriage; or other adults or unemancipated minor
16 children living in the household who are dependent upon the
17 individual.

18 "Household income." All moneys or property received of
19 whatever nature and from whatever source derived. The term does
20 not include the following:

21 (1) Periodic payments for sickness and disability other
22 than regular wages received during a period of sickness or
23 disability.

24 (2) Disability, retirement or other payments arising
25 under workers' compensation acts, occupational disease acts
26 and similar legislation by any government.

27 (3) Payments commonly recognized as old-age or
28 retirement benefits paid to persons retired from service
29 after reaching a specific age or after a stated period of
30 employment.

1 (4) Payments commonly known as public assistance or
2 unemployment compensation payments by a governmental agency.

3 (5) Payments to reimburse actual expenses.

4 (6) Payments made by employers or labor unions for
5 programs covering hospitalization, sickness, disability or
6 death, supplemental unemployment benefits, strike benefits,
7 Social Security and retirement.

8 (7) Compensation received by United States servicemen
9 serving in a combat zone.

10 "Innovative educational program." An advanced academic or
11 similar program that is not part of the regular academic program
12 of a public school but that enhances the curriculum or academic
13 program of the public school or provides pre-kindergarten
14 programs to public school students.

15 "Maximum allowable household income for students with a
16 disability." The maximum annual household income for eligible
17 students with a disability as calculated by multiplying the sum
18 of \$60,000 plus the income allowance of \$12,000 per dependent
19 member of the household by the applicable support level factor
20 according to the following table:

	<u>Support Level</u>	<u>Support Level Factor</u>	
21			
22	<u>1</u>	<u>1.333</u>	←
23	<u>2</u>	<u>1.995</u>	
24	<u>3</u>	<u>2.993</u>	
25	<u>1</u>	<u>1.50</u>	←
26	<u>2</u>	<u>2.993</u>	

27 The Department of ~~Education~~ COMMUNITY AND ECONOMIC DEVELOPMENT ←
28 shall adjust the income amounts under this definition on July 1
29 of each year to reflect any upward changes in the Consumer Price
30 Index for All Urban Consumers (CPI-U) FOR THE PENNSYLVANIA, NEW ←

1 JERSEY, DELAWARE AND MARYLAND AREA in the preceding 12 months,
2 as calculated by the United States Department of Labor, Bureau
3 of Labor Statistics, and shall immediately thereafter publish
4 the adjusted amounts in the Pennsylvania Bulletin.

5 "Pass-through entity." A partnership as defined in section
6 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
7 Tax Reform Code of 1971, a single-member limited liability
8 company treated as a disregarded entity for Federal income tax
9 purposes or a Pennsylvania S corporation as defined in section
10 301(n.1) of the Tax Reform Code of 1971.

11 "Pre-kindergarten program." A program of instruction for
12 three-year-old or four-year-old students that utilizes a
13 curriculum aligned with the curriculum of the school with which
14 it is affiliated and which provides a minimum of two hours of
15 instructional and developmental activities per day at least 60
16 days per school year.

17 "Pre-kindergarten scholarship organization." A nonprofit
18 entity which:

19 (1) either is exempt from Federal taxation under section
20 501(c)(3) of the Internal Revenue Code of 1986 (Public Law
21 99-514, 26 U.S.C. § 1 et seq.) or is operated as a separate
22 segregated fund by a scholarship organization that has been
23 qualified under section 2003-B; and

24 (2) contributes at least 80% of its annual cash receipts
25 to a pre-kindergarten scholarship program by expending or
26 otherwise irrevocably encumbering those funds for
27 distribution during the then current fiscal year of the
28 organization or during the next succeeding fiscal year of the
29 organization.

30 "Pre-kindergarten scholarship program." A program to provide

1 tuition to eligible pre-kindergarten students to attend a pre-
2 kindergarten program operated by or in conjunction with a school
3 located in this Commonwealth and that includes an application
4 and review process for the purpose of making awards to eligible
5 pre-kindergarten students and awards scholarships to eligible
6 pre-kindergarten students without limiting availability to only
7 students of one school.

8 "Public school." A public pre-kindergarten where compulsory
9 attendance requirements do not apply or a public kindergarten,
10 elementary school or secondary school at which the compulsory
11 attendance requirements of this Commonwealth may be met and
12 which meets the applicable requirements of Title VI of the Civil
13 Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

14 "Scholarship organization." A nonprofit entity which:

15 (1) is exempt from Federal taxation under section 501(c)
16 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
17 26 U.S.C. § 1 et seq.); and

18 (2) contributes at least 80% of its annual cash receipts
19 to a scholarship program.

20 For purposes of this definition, a nonprofit entity
21 "contributes" its annual cash receipts to a scholarship program
22 when it expends or otherwise irrevocably encumbers those funds
23 for distribution during the then current fiscal year of the
24 nonprofit entity or during the next succeeding fiscal year of
25 the nonprofit entity.

26 "Scholarship program." A program to provide tuition to
27 eligible students to attend a school located in this
28 Commonwealth. A scholarship program must include an application
29 and review process for the purpose of making awards to eligible
30 students. The award of scholarships to eligible students shall

1 be made without limiting availability to only students of one
2 school.

3 "School." A public or nonpublic pre-kindergarten,
4 kindergarten, elementary school or secondary school at which the
5 compulsory attendance requirements of the Commonwealth may be
6 met and which meets the applicable requirements of Title VI of
7 the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

8 "School age." Children from the earliest admission age to a
9 school's pre-kindergarten or kindergarten program or, when no
10 pre-kindergarten or kindergarten program is provided, the
11 school's earliest admission age for beginners, until the end of
12 the school year the student attains 21 years of age or
13 graduation from high school, whichever occurs first.

14 "SPECIAL EDUCATION SCHOOL." A SCHOOL OR PROGRAM WITHIN A
15 SCHOOL THAT IS DESIGNATED SPECIFICALLY AND EXCLUSIVELY FOR
16 STUDENTS WITH ANY ONE OR MORE OF THE DISABILITIES LISTED IN 34
17 CFR § 300.8 (RELATING TO CHILD WITH DISABILITY), AND IS:

18 (1) LICENSED UNDER THE ACT OF JANUARY 28, 1988 (P.L.24,
19 NO.11), KNOWN AS THE PRIVATE ACADEMIC SCHOOLS ACT;

20 (2) ACCREDITED BY AN ACCREDITING ASSOCIATION APPROVED BY
21 THE STATE BOARD OF EDUCATION;

22 (3) A SCHOOL FOR THE BLIND OR DEAF RECEIVING
23 COMMONWEALTH APPROPRIATIONS; OR

24 (4) OPERATED BY OR UNDER THE AUTHORITY OF A BONA FIDE
25 RELIGIOUS INSTITUTION OR BY THE COMMONWEALTH OR ANY POLITICAL
26 SUBDIVISION THEREOF.

27 "Support ~~Level~~ LEVEL." The level of support needed by an
28 eligible student with a disability, as set forth in the
29 following matrix:

30 Support Level 1 - The student ~~spends at least 75% of the~~

1 ~~student's instructional time in a regular classroom setting.~~

2 ~~Support Level 2 — The student spends less than 75% of the~~
3 ~~student's instructional time in a regular classroom setting~~

4 IS NOT ENROLLED IN A SPECIAL EDUCATION SCHOOL. ←

5 ~~Support Level 3 2 - The student is enrolled as a full~~ ←
6 ~~time student in a school or program within a school that is~~
7 ~~designed specifically and exclusively for students with~~
8 ~~disabilities~~ STUDENT IN A SPECIAL EDUCATION SCHOOL. ←

9 Section 2. Section 2005-B(e) of the act, amended July 9,
10 2008 (P.L.846, No.61), is amended to read:

11 Section 2005-B. Tax credit.

12 * * *

13 (e) Pass-through entity.--

14 (1) If a pass-through entity does not intend to use all
15 approved tax credits under section 2005-B, it may elect in
16 writing[, according to procedures established by the
17 Department of Revenue,] to transfer all or a portion of the
18 credit to shareholders, members or partners in proportion to
19 the share of the entity's distributive income to which the
20 shareholder, member or partner is entitled, for use in the
21 taxable year in which the contribution is made or in the
22 taxable year immediately following the year in which the
23 contribution is made. The election shall designate the year
24 in which the transferred credits are to be used and shall be
25 made according to procedures established by the Department of
26 Revenue.

27 (2) A pass-through entity and a shareholder, member or
28 partner of a pass-through entity shall not claim the credit
29 under this section for the same contribution.

30 (3) [A shareholder, member or partner of a pass-through

1 entity to whom a credit is transferred under this section
2 shall immediately claim the credit in the taxable year in
3 which the transfer is made.] The shareholder, member or
4 partner may not carry forward, carry back, obtain a refund of
5 or sell or assign the credit.

6 * * *

7 Section 3. Section 2006-B(d) of the act, amended December
8 23, 2003 (P.L.304, No.48), is amended to read:

9 Section 2006-B. Limitations.

10 * * *

11 (d) Use.--A tax credit not used by the applicant in the
12 taxable year the contribution was made, or in the year
13 designated by the shareholder, member or partner to whom the
14 credit was transferred pursuant to section 2005-B(e), may not be
15 carried forward or carried back and is not refundable or
16 transferable.

17 * * *

18 Section 4. This act shall take effect in 60 days.