

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 800 Session of 2019

INTRODUCED BY TURZAI, MILLARD, REESE, HICKERNELL, ROTHMAN, FEE, RYAN, GREINER, PYLE, PICKETT, ZIMMERMAN, BENNINGHOFF, READSHAW, KAUFFMAN, WARNER, BERNSTINE, STAATS, SONNEY, MASSER, B. MILLER, SCHLEGEL CULVER, SIMMONS, MACKENZIE, EVERETT, SCHEMEL, NESBIT, LAWRENCE, TOPPER, SANKEY, F. KELLER, MENTZER, NELSON, DIAMOND, DRISCOLL, FRITZ, HENNESSEY, MALONEY, GROVE, ROZZI, BARRAR, WHEELAND, SAYLOR, HERSHEY, TOEPEL, GABLER, SCHMITT, KORTZ, DeLUCA, OBERLANDER, PUSKARIC, GLEIM, ECKER, POLINCHOCK, STRUZZI, MIZGORSKI, KAIL, BROOKS, TOBASH, DOWLING, GILLEN, GAYDOS, LEWIS AND T. DAVIS, MARCH 18, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MAY 1, 2019

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 tax credits, further
6 providing for definitions and for limitations.

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

9 Section 1. The definitions of "educational improvement
10 organization," "eligible pre-kindergarten student," "eligible
11 student," "eligible student with a disability," "maximum annual
12 household income," "opportunity scholarship organization,"
13 "PASS-THROUGH ENTITY," "pre-kindergarten scholarship
14 organization" and "scholarship organization" in section 2002-B
15 of the act of March 10, 1949 (P.L.30, No.14), known as the

<--

1 Public School Code of 1949, amended June 22, 2018 (P.L.241,
2 No.39), are amended AND THE SECTION IS AMENDED BY ADDING A
3 DEFINITION to read:

<--

4 Section 2002-B. Definitions.

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

8 * * *

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

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

14 (2) contributes at least [80%] 90% of its annual
15 receipts as grants to a public school, a chartered school as
16 defined in section 1376.1, or a private school approved under
17 section 1376, for innovative educational 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 A nonprofit entity shall include a school district foundation,
24 public school foundation, charter school foundation or cyber
25 charter school foundation.

26 * * *

27 "Eligible pre-kindergarten student." A student, including an
28 eligible student with a disability, who is enrolled in a pre-
29 kindergarten program and is either:

30 (1) a member of a household with a maximum annual household

1 income as increased by the applicable income allowance[.]; or
2 (2) received a scholarship or opportunity scholarship in any
3 prior year.

4 "Eligible student." A school-age student, including an
5 eligible student with a disability, who is enrolled in a school
6 and is either:

7 (1) a member of a household with a maximum annual household
8 income as increased by the applicable income allowance[.]; or

9 (2) received a scholarship or opportunity scholarship in any
10 prior year.

11 "Eligible student with a disability." A pre-kindergarten
12 student or a school-age student who meets all of the following:

13 (1) Is enrolled in a special education school or has
14 otherwise been identified, in accordance with 22 Pa. Code Ch.
15 14 (relating to special education services and programs), as
16 a "child with a disability," as defined in 34 CFR § 300.8
17 (relating to child with a disability).

18 (2) Needs special education and related services.

19 (3) Is enrolled in a pre-kindergarten program or in a
20 school.

21 (4) Is either a member of a household with a household
22 income of not more than the maximum annual household income
23 or received a scholarship or opportunity scholarship in any
24 prior year.

25 * * *

26 "Maximum annual household income."

27 (1) Subject to adjustment under paragraphs (2) and (3),
28 the amount of [~~\$85,000~~] \$95,000, plus the applicable income
29 allowance.

30 (2) With respect to an eligible student with a

1 disability, as calculated by multiplying:

2 (i) the applicable amount under paragraph (1); by

3 (ii) the applicable support level factor according

4 to the following table:

5 Support Level	Support Level Factor
6 1	1.50
7 2	2.993

8 (3) Beginning July 1, 2014, the department shall
9 annually adjust the income amounts under paragraphs (1) and
10 (2) to reflect any upward changes in the Consumer Price Index
11 for All Urban Consumers for the Pennsylvania, New Jersey,
12 Delaware and Maryland area in the preceding 12 months and
13 shall immediately submit the adjusted amounts to the
14 Legislative Reference Bureau for publication as a notice in
15 the Pennsylvania Bulletin.

16 * * *

17 "Opportunity scholarship organization." A nonprofit entity
18 which:

19 (1) Is exempt from Federal taxation under section 501(c)
20 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
21 26 U.S.C. § 1 et seq.); and

22 (2) Contributes at least [80%] 90% of the entity's
23 annual cash receipts to an opportunity scholarship program.

24 For the purposes of this definition, a nonprofit entity
25 contributes the entity's cash receipts to an opportunity
26 scholarship program when the entity expends or otherwise
27 irrevocably encumbers those funds for distribution during the
28 then-current fiscal year of the nonprofit entity or during the
29 next succeeding fiscal year of the nonprofit entity.

30 * * *

1 "PASS-THROUGH ENTITY." A PARTNERSHIP AS DEFINED IN SECTION <--
2 301(N.0) OF THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE
3 TAX REFORM CODE OF 1971, A SINGLE-MEMBER LIMITED LIABILITY
4 COMPANY TREATED AS A DISREGARDED ENTITY FOR FEDERAL INCOME TAX
5 PURPOSES OR A PENNSYLVANIA S CORPORATION AS DEFINED IN SECTION
6 301(N.1) OF THE TAX REFORM CODE OF 1971. THE TERM INCLUDES A
7 PASS-THROUGH ENTITY THAT OWNS AN INTEREST IN A PASS-THROUGH
8 ENTITY. THE TERM ALSO INCLUDES A QUALIFIED SUBCHAPTER S TRUST.

9 "Pre-kindergarten scholarship organization." A nonprofit
10 entity which:

11 (1) is exempt from Federal taxation under section 501(c)
12 (3) of the Internal Revenue Code of 1986 or is operated as a
13 separate segregated fund by a scholarship organization that
14 has been qualified under section 2003-B; and

15 (2) contributes at least [80%] 90% of its annual cash
16 receipts to a pre-kindergarten scholarship program by
17 expending or otherwise irrevocably encumbering those funds
18 for distribution during the then-current fiscal year of the
19 organization or during the next succeeding fiscal year of the
20 organization.

21 * * *

22 "QUALIFIED SUBCHAPTER S TRUST." AS DEFINED IN SECTION <--
23 1361(D) (3) OF THE INTERNAL REVENUE CODE OF 1986.

24 * * *

25 "Scholarship organization." A nonprofit entity which:

26 (1) is exempt from Federal taxation under section 501(c)
27 (3) of the Internal Revenue Code of 1986; and

28 (2) contributes at least [80%] 90% of its annual cash
29 receipts to a scholarship program.

30 For purposes of this definition, a nonprofit entity

1 "contributes" its annual cash receipts to a scholarship program
2 when it expends or otherwise irrevocably encumbers those funds
3 for distribution during the then-current fiscal year of the
4 nonprofit entity or during the next succeeding fiscal year of
5 the nonprofit entity.

6 * * *

7 Section 2. Section 2006-B(a) of the act, amended June 22,
8 2018 (P.L.241, No.39), is amended to read:

9 Section 2006-B. Limitations.

10 (a) Amount.--

11 (1) The total aggregate amount of all tax credits
12 approved for contributions from business firms to scholarship
13 organizations, educational improvement organizations and pre-
14 kindergarten scholarship organizations shall not exceed
15 [\$160,000,000] \$260,000,000 plus any increased dollar amounts
16 calculated under subparagraph (i) (A) in a fiscal year[.],
17 with each category as follows:

18 (i) No less than [\$110,000,000] \$210,000,000 of the
19 total aggregate amount shall be used to provide tax
20 credits for contributions from business firms to
21 scholarship organizations. The following shall apply:

22 (A) Beginning July 1, 2019, the department shall
23 annually increase the dollar amounts under this
24 subparagraph if more than 90% of the total aggregate
25 amount of tax credits under this subparagraph was
26 used by taxpayers during the prior fiscal year and
27 the General Assembly has not otherwise enacted an
28 increase to the dollar amount under this
29 subparagraph. The amount of the increase required
30 under this clause for the total aggregate amount

1 under this subparagraph shall be 10% and shall be
2 allocated to the program under this subparagraph.

3 (B) The department shall immediately submit the
4 increased dollar amounts under clause (A) to the
5 Legislative Reference Bureau for publication as a
6 notice in the Pennsylvania Bulletin.

7 (ii) No less than \$37,500,000 of the total aggregate
8 amount shall be used to provide tax credits for
9 contributions from business firms to educational
10 improvement organizations.

11 (iii) The total aggregate amount of all tax credits
12 approved for contributions from business firms to pre-
13 kindergarten scholarship organizations shall not exceed
14 \$12,500,000 in a fiscal year.

15 (2) The total aggregate amount of all tax credits
16 approved for contributions from business firms to opportunity
17 scholarship organizations shall not exceed \$50,000,000 in a
18 fiscal year.

19 * * *

20 SECTION 3. THE AMENDMENT OF THE DEFINITION OF "PASS-THROUGH <--
21 ENTITY" IN SECTION 2002-B OF THE ACT SHALL APPLY RETROACTIVELY
22 TO JANUARY 1, 2015.

23 Section ~~3~~ 4. This act shall take effect July 1, 2019, or <--
24 immediately, whichever is later.