

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1434 Session of 2012

INTRODUCED BY STACK, RAFFERTY, TARTAGLIONE, ERICKSON, ALLOWAY, FONTANA, WILLIAMS, SOLOBAY, FARNESE, GREENLEAF, BOSCOLA AND BROWNE, MARCH 2, 2012

REFERRED TO FINANCE, MARCH 2, 2012

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," providing for higher education scholarship tax
11 credit.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XVII-G

18 HIGHER EDUCATION SCHOLARSHIP TAX CREDIT

19 Section 1701-G. Scope of article.

20 This article establishes the higher education scholarship tax
21 credit.

22 Section 1702-G. Definitions.

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

"Business firm." An entity authorized to do business in this Commonwealth and subject to taxes imposed under Article III, IV, VI, VII, VIII, IX or XV. The term includes a pass-through entity.

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

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

"Eligible student." An individual who satisfies all of the criteria for an eligible student under the act of January 25, 1966 (1965 P.L.1546, No.541), referred to as the Higher Education Scholarship Law.

"Higher education scholarship organization." A nonprofit entity which:

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

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

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

1 "Higher education scholarship program." A program to provide
2 a scholarship to eligible students for attendance at an
3 institution of higher education. A higher education scholarship
4 program must include an application and review process for the
5 purpose of making awards to eligible students. The award of
6 scholarships to eligible students shall be made without limiting
7 availability to only students of one school.

8 "Institution of higher education." A public or private
9 institution that is located within this Commonwealth and is
10 authorized by the Department of Education to grant an associate
11 degree or higher degree.

12 "Pass-through entity." A partnership as defined in section
13 301(n.0), a single-member limited liability company treated as a
14 disregarded entity for Federal income tax purposes or a
15 Pennsylvania S corporation as defined in section 301(n.1).

16 "State-related institution." The Pennsylvania State
17 University, the University of Pittsburgh, Temple University,
18 Lincoln University and their branch campuses.

19 "State system." The State System of Higher Education
20 established under Article XX-A of the act of March 10, 1949
21 (P.L.30, No.14), known as the Public School Code of 1949.
22 Section 1703-G. Qualification and application for higher
23 education scholarship organization.

24 (a) Program established.--There is established a higher
25 education improvement tax credit program to enhance the higher
26 education opportunities available to all students in this
27 Commonwealth.

28 (b) Submission of information.--In order to qualify under
29 this article, a scholarship organization must submit information
30 to the department that enables the department to confirm that

1 the organization qualifies as an organization under section
2 501(c)(3) of the Internal Revenue Code of 1986 (Public Law
3 99-514, 26 U.S.C. § 1 et seq.) and is exempt from taxation under
4 section 501(a) of that act.

5 (c) Requirements.--

6 (1) A higher education scholarship organization must
7 certify to the department that the organization is eligible
8 to participate in the program established under this article
9 and must agree to annually report to the department by
10 December 1, 2012, and September 1 of each year thereafter,
11 all of the following:

12 (i) The number of higher education scholarships
13 awarded during the immediately preceding academic year to
14 eligible students.

15 (ii) The total and average amounts of the higher
16 education scholarships awarded during the immediately
17 preceding academic year to eligible students.

18 (iii) The number of higher education scholarships
19 awarded during the immediately preceding academic year to
20 eligible students who attended community colleges.

21 (iv) The total and average amounts of the higher
22 education scholarships awarded during the immediately
23 preceding academic year to eligible students who attended
24 community colleges.

25 (v) The number of higher education scholarships
26 awarded during the immediately preceding academic year to
27 eligible students who attended an institution of the
28 State system.

29 (vi) The total and average amounts of the higher
30 education scholarships awarded during the immediately

1 preceding academic year to eligible students who attended
2 an institution of the State system.

3 (vii) The number of higher education scholarships
4 awarded during the immediately preceding academic year to
5 eligible students who attended a State-related
6 institution.

7 (viii) The total and average amounts of the higher
8 education scholarships awarded during the immediately
9 preceding academic year to eligible students who attended
10 a State-related institution.

11 (ix) The number of higher education scholarships
12 awarded during the immediately preceding academic year to
13 eligible students who attended a private institution of
14 higher education.

15 (x) The total and average amounts of the higher
16 education scholarships awarded during the immediately
17 preceding academic year to eligible students who attended
18 a private institution of higher education.

19 (2) The information required under paragraph (1) shall
20 be submitted on a form provided by the department. No later
21 than September 1, 2012, and May 1 of each year thereafter,
22 the department shall annually distribute such sample forms,
23 together with the forms on which the reports are required to
24 be made, to each listed higher education scholarship
25 organization.

26 (3) The department may not require any other information
27 to be provided by a higher education scholarship
28 organization, except as expressly authorized in this article.

29 (d) Notification.--The department shall notify the higher
30 education scholarship organization whether the organization

1 meets the requirements of this article for that fiscal year no
2 later than 60 days after the organization has submitted the
3 information required under this section.

4 (e) Publication.--The department shall annually publish a
5 list of each higher education scholarship organization qualified
6 under this section in the Pennsylvania Bulletin. The list shall
7 also be posted and updated as necessary on the publicly
8 accessible Internet website of the department.

9 Section 1704-G. Application for tax credit by business firm.

10 (a) Requirements.--A business firm upon application to the
11 department for a tax credit under section 1705-G may receive a
12 tax credit under this article if the higher education
13 scholarship organization that receives the contribution appears
14 on the list established under section 1703-G(e).

15 (b) Availability of tax credits.--Tax credits under this
16 article shall be made available by the department on a first-
17 come-first-served basis within the limitation established under
18 section 1706-G(a).

19 (c) Contributions.--A contribution by a business firm to a
20 higher education scholarship organization shall be made no later
21 than 60 days following the approval of an application under
22 subsection (a) or (b).

23 Section 1705-G. Tax credit.

24 (a) General rule.--In accordance with section 1706-G(a), the
25 Department of Revenue shall grant a tax credit against any tax
26 due under Article III, IV, VI, VII, VIII, IX or XV to a business
27 firm providing proof of a contribution to a higher education
28 scholarship organization in the taxable year in which the
29 contribution is made, which shall not exceed 75% of the total
30 amount contributed during the taxable year by the business firm.

The credit shall not exceed \$300,000 annually per business firm for contributions made to higher education scholarship organizations.

(b) Additional amount.--The Department of Revenue shall grant a tax credit of up to 90% of the total amount contributed during the taxable year if the business firm provides a written commitment to provide the higher education scholarship organization with the same amount of contribution for two consecutive tax years. The business firm must provide the written commitment under this subsection to the department at the time of application.

(c) Combination of tax credits.--A business firm may receive tax credits from the Department of Revenue in any tax year for any combination of contributions under subsection (a) or (b). In no case shall a business firm receive tax credits in any tax year in excess of \$300,000 for contributions under subsection (a) or (b).

(d) Pass-through entity.--

(1) If a pass-through entity does not intend to use all approved tax credits under this section, it may elect in writing to transfer all or a portion of the credit to shareholders, members or partners in proportion to the share of the entity's distributive income to which the shareholder, member or partner is entitled for use in the taxable year in which the contribution is made or in the taxable year immediately following the year in which the contribution is made. The election shall designate the year in which the transferred credits are to be used and shall be made according to procedures established by the Department of Revenue.

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

4 (3) The shareholder, member or partner may not carry
5 forward, carry back, obtain a refund of or sell or assign the
6 credit.

7 (e) Restriction on applicability of credits.--No credits
8 granted under this section shall be applied against any tax
9 withheld by an employer from an employee under Article III.

10 (f) Time of application for credits.--

11 (1) Except as provided in paragraphs (2) and (3), the
12 department may accept applications for tax credits available
13 during a fiscal year no earlier than July 1 of each fiscal
14 year.

15 (2) The application of any business firm for tax credits
16 available during a fiscal year as part of the second year of
17 a two-year commitment may be accepted no earlier than May 15
18 preceding the fiscal year.

19 (3) The application under subsection (a) of any pass-
20 through entity for approval of single-year tax credits
21 available during a fiscal year against the taxes imposed
22 under Article III or under subsection (b) for approval of
23 credits against such taxes for the first year of a two-year
24 commitment may be accepted by the department no earlier than
25 the first business day following July 7 of the fiscal year.

26 Section 1706-G. Limitations.

27 (a) Amount.--The total aggregate amount of all tax credits
28 approved by the department shall not exceed \$25,000,000 in a
29 fiscal year.

30 (b) Activities.--No tax credit shall be approved for

1 activities that are a part of a business firm's normal course of
2 business.

3 (c) Tax liability.--

4 (1) Except as provided in paragraph (2), a tax credit
5 granted for any one taxable year may not exceed the tax
6 liability of a business firm.

7 (2) In the case of a credit granted to a pass-through
8 entity which elects to transfer the credit according to
9 section 1705-G(d), a tax credit granted for any one taxable
10 year and transferred to a shareholder, member or partner may
11 not exceed the tax liability of the shareholder, member or
12 partner.

13 (d) Use.--A tax credit not used by the applicant in the
14 taxable year the contribution was made or in the year designated
15 by the shareholder, member or partner to whom credit was
16 transferred under section 1705-G(d) may not be carried forward
17 or carried back and is not refundable or transferable.

18 (e) Nontaxable income.--A scholarship received by an
19 eligible student shall not be considered to be taxable income
20 for purposes of Article III.

21 Section 1707-G. List of organizations receiving contributions.

22 The Department of Revenue shall provide a list of all higher
23 education scholarship organizations receiving contributions from
24 business firms granted a tax credit under this article to the
25 General Assembly by June 30 of each year.

26 Section 2. The addition of Article XVII-G of the act shall
27 apply to tax years beginning after December 31, 2011.

28 Section 3. This act shall take effect immediately.