

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 AND EICHELBERGER,
 JUNE 4, 2009

REFERRED TO EDUCATION, JUNE 4, 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 shall adjust the
30 income amounts under this definition on July 1 of each year to

1 reflect any upward changes in the Consumer Price Index for All
2 Urban Consumers (CPI-U) in the preceding 12 months, as
3 calculated by the United States Department of Labor, Bureau of
4 Labor Statistics, and shall immediately thereafter publish the
5 adjusted amounts in the Pennsylvania Bulletin.

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

18 "Eligible student with a disability." A pre-kindergarten
19 student or a school age student who has been identified as being
20 a child:

21 (1) with mental retardation; hearing impairments,
22 including deafness; speech or language impairments; visual
23 impairments, including blindness; serious emotional
24 disturbance; orthopedic impairments; autism spectrum
25 disorder; traumatic brain injury; other health impairments;
26 or specific learning disabilities;

27 (2) who, by reason thereof, needs special education and
28 related services;

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

1 (4) who is a member of a household with an annual
2 household income of not more than the maximum allowable
3 household income for students with a disability.

4 "Household." An individual living alone or with the
5 following: a spouse, parent and their unemancipated minor
6 children; and other unemancipated minor children who are related
7 by blood or marriage; or other adults or unemancipated minor
8 children living in the household who are dependent upon the
9 individual.

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

13 (1) Periodic payments for sickness and disability other
14 than regular wages received during a period of sickness or
15 disability.

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

19 (3) Payments commonly recognized as old-age or
20 retirement benefits paid to persons retired from service
21 after reaching a specific age or after a stated period of
22 employment.

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

25 (5) Payments to reimburse actual expenses.

26 (6) Payments made by employers or labor unions for
27 programs covering hospitalization, sickness, disability or
28 death, supplemental unemployment benefits, strike benefits,
29 Social Security and retirement.

30 (7) Compensation received by United States servicemen

1 serving in a combat zone.

2 "Innovative educational program." An advanced academic or
3 similar program that is not part of the regular academic program
4 of a public school but that enhances the curriculum or academic
5 program of the public school or provides pre-kindergarten
6 programs to public school students.

7 "Maximum allowable household income for students with a
8 disability." The maximum annual household income for eligible
9 students with a disability as calculated by multiplying the sum
10 of \$60,000 plus the income allowance of \$12,000 per dependent
11 member of the household by the applicable support level factor
12 according to the following table:

13	<u>Support Level</u>	<u>Support Level Factor</u>
14	<u>1</u>	<u>1.333</u>
15	<u>2</u>	<u>1.995</u>
16	<u>3</u>	<u>2.993</u>

17 The Department of Education shall adjust the income amounts
18 under this definition on July 1 of each year to reflect any
19 upward changes in the Consumer Price Index for All Urban
20 Consumers (CPI-U) in the preceding 12 months, as calculated by
21 the United States Department of Labor, Bureau of Labor
22 Statistics, and shall immediately thereafter publish the
23 adjusted amounts in the Pennsylvania Bulletin.

24 "Pass-through entity." A partnership as defined in section
25 301(n.0) of the act of March 4, 1971 (P.L.6, No.2), known as the
26 Tax Reform Code of 1971, a single-member limited liability
27 company treated as a disregarded entity for Federal income tax
28 purposes or a Pennsylvania S corporation as defined in section
29 301(n.1) of the Tax Reform Code of 1971.

30 "Pre-kindergarten program." A program of instruction for

1 three-year-old or four-year-old students that utilizes a
2 curriculum aligned with the curriculum of the school with which
3 it is affiliated and which provides a minimum of two hours of
4 instructional and developmental activities per day at least 60
5 days per school year.

6 "Pre-kindergarten scholarship organization." A nonprofit
7 entity which:

8 (1) either is exempt from Federal taxation under section
9 501(c)(3) of the Internal Revenue Code of 1986 (Public Law
10 99-514, 26 U.S.C. § 1 et seq.) or is operated as a separate
11 segregated fund by a scholarship organization that has been
12 qualified under section 2003-B; and

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

19 "Pre-kindergarten scholarship program." A program to provide
20 tuition to eligible pre-kindergarten students to attend a pre-
21 kindergarten program operated by or in conjunction with a school
22 located in this Commonwealth and that includes an application
23 and review process for the purpose of making awards to eligible
24 pre-kindergarten students and awards scholarships to eligible
25 pre-kindergarten students without limiting availability to only
26 students of one school.

27 "Public school." A public pre-kindergarten where compulsory
28 attendance requirements do not apply or a public kindergarten,
29 elementary school or secondary school at which the compulsory
30 attendance requirements of this Commonwealth may be met and

1 which meets the applicable requirements of Title VI of the Civil
2 Rights Act of 1964 (Public Law 88-352, 78 Stat. 241).

3 "Scholarship organization." A nonprofit entity which:

4 (1) is exempt from Federal taxation under section 501(c)
5 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,
6 26 U.S.C. § 1 et seq.); and

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

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

15 "Scholarship program." A program to provide tuition to
16 eligible students to attend a school located in this
17 Commonwealth. A scholarship program must include an application
18 and review process for the purpose of making awards to eligible
19 students. The award of scholarships to eligible students shall
20 be made without limiting availability to only students of one
21 school.

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

27 "School age." Children from the earliest admission age to a
28 school's pre-kindergarten or kindergarten program or, when no
29 pre-kindergarten or kindergarten program is provided, the
30 school's earliest admission age for beginners, until the end of

1 the school year the student attains 21 years of age or
2 graduation from high school, whichever occurs first.

3 "Support Level." The level of support needed by an eligible
4 student with a disability, as set forth in the following matrix:

5 Support Level 1 - The student spends at least 75% of the
6 student's instructional time in a regular classroom setting.

7 Support Level 2 - The student spends less than 75% of the
8 student's instructional time in a regular classroom setting.

9 Support Level 3 - The student is enrolled as a full-time
10 student in a school or program within a school that is
11 designed specifically and exclusively for students with
12 disabilities.

13 Section 2. Section 2005-B(e) of the act, amended July 9,
14 2008 (P.L.846, No.61), is amended to read:

15 Section 2005-B. Tax credit.

16 * * *

17 (e) Pass-through entity.--

18 (1) If a pass-through entity does not intend to use all
19 approved tax credits under section 2005-B, it may elect in
20 writing[, according to procedures established by the
21 Department of Revenue,] to transfer all or a portion of the
22 credit to shareholders, members or partners in proportion to
23 the share of the entity's distributive income to which the
24 shareholder, member or partner is entitled, for use in the
25 taxable year in which the contribution is made or in the
26 taxable year immediately following the year in which the
27 contribution is made. The election shall designate the year
28 in which the transferred credits are to be used and shall be
29 made according to procedures established by the Department of
30 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) [A shareholder, member or partner of a pass-through
5 entity to whom a credit is transferred under this section
6 shall immediately claim the credit in the taxable year in
7 which the transfer is made.] The shareholder, member or
8 partner may not carry forward, carry back, obtain a refund of
9 or sell or assign the credit.

10 * * *

11 Section 3. Section 2006-B(d) of the act, amended December
12 23, 2003 (P.L.304, No.48), is amended to read:

13 Section 2006-B. Limitations.

14 * * *

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

21 * * *

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