

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2544 Session of 2012

INTRODUCED BY GERBER, D. EVANS, SANTARSIERO, WHEATLEY, BISHOP, K. BOYLE, BRADFORD, BRENNAN, BRIGGS, V. BROWN, CALTAGIRONE, DALEY, DeLUCA, DePASQUALE, GALLOWAY, GIBBONS, GOODMAN, HORNAMAN, JAMES, KIRKLAND, MANN, MURT, PAYTON, M. SMITH AND WATERS, JULY 2, 2012

REFERRED TO COMMITTEE ON FINANCE, JULY 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," in educational improvement tax credit, further  
 11 providing for definitions, for qualification and application,  
 12 for application, for tax credit and for limitations and  
 13 providing for assessments, for the Keystone Scholarship Tax  
 14 Credit Program and for enforcement by Attorney General.

15 The General Assembly of the Commonwealth of Pennsylvania  
 16 hereby enacts as follows:

17 Section 1. The definitions of "educational improvement  
 18 organization," "pre-kindergarten scholarship organization,"  
 19 "scholarship organization" and "scholarship program" in section  
 20 1702-F of the act of March 4, 1971 (P.L.6, No.2), known as the  
 21 Tax Reform Code of 1971, added October 9, 2009 (P.L.451, No.48),  
 22 are amended and the section is amended by adding definitions to

1 read:

2 Section 1702-F. Definitions.

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

6 "Assessment." The Pennsylvania System of School Assessment  
7 test, the Keystone Exam, an equivalent local assessment or other  
8 test established by the State Board of Education to meet the  
9 requirements of section 2603-B(d)(10)(i) of the act of March 10,  
10 1949 (P.L.30, No.14), known as the Public School Code of 1949,  
11 and required under the No Child Left Behind Act of 2001 (Public  
12 Law 107-110, 115 Stat. 1425) or its successor statute, or any  
13 other test required to achieve other standards established by  
14 the Department of Education for the public school or school  
15 district under 22 Pa. Code § 403.3 (relating to single  
16 accountability system).

17 \* \* \*

18 "Educational improvement organization." A nonprofit entity  
19 which:

20 (1) is exempt from Federal taxation under section 501(c)  
21 (3) of the Internal Revenue Code of 1986 (Public Law 99-514,  
22 26 U.S.C. § 1 et seq.); and

23 (2) contributes at least [80%] 85% of its annual  
24 receipts as grants to a public school for innovative  
25 educational programs. No more than 15% of the educational  
26 improvement organization's annual receipts may be used for  
27 administrative expenses which are reasonable and necessary  
28 for the organization's management and distribution of  
29 eligible contributions under this article.

30 For purposes of this definition, a nonprofit entity

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

5 "Elementary school." A school that does not have an eleventh  
6 grade.

7 \* \* \*

8 "Eligible target student." A school-age student, including  
9 an eligible target student with a disability, who is a member of  
10 a household whose household income does not exceed 1.33 times  
11 the Federal poverty line and who lives within the attendance  
12 boundary of a low-achieving school.

13 "Eligible target student with a disability." An eligible  
14 target student who meets all of the following:

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

20 (2) Needs special education and related services.

21 "Federal poverty line." The official Federal poverty line,  
22 as defined in section 673(2) of the Community Services Block  
23 Grant Act (Public Law 97-35, 95 Stat. 511), as adjusted from  
24 time to time.

25 \* \* \*

26 "Low-achieving school." In the school year 2012-2013 and  
27 each school year thereafter, a public elementary or secondary  
28 school within this Commonwealth ranking in the lowest 10% of its  
29 designation, based on combined mathematics and reading scores  
30 from the assessment administered in the most recent school year.

1 The term does not include a charter school, cyber school, cyber  
2 charter school, area vocational-technical education school or a  
3 school that does not draw its boundaries from a particular  
4 attendance boundary, as defined in the act of March 10, 1949  
5 (P.L.30, No.14), known as the Public School Code of 1949.

6 \* \* \*

7 "Organization." A scholarship organization, pre-kindergarten  
8 scholarship organization or an educational improvement  
9 organization.

10 "Participating school." A school that enrolls an eligible  
11 student or an eligible target student with a scholarship under  
12 this article.

13 \* \* \*

14 "Pre-kindergarten scholarship organization." A nonprofit  
15 entity which:

16 (1) either is exempt from Federal taxation under section  
17 501(c) (3) of the Internal Revenue Code of 1986 (Public Law  
18 99-514, 26 U.S.C. § 1 et seq.) or is operated as a separate  
19 segregated fund by a scholarship organization that has been  
20 qualified under section 1703-F; and

21 (2) contributes at least [80%] 85% of its annual cash  
22 receipts to a pre-kindergarten scholarship program by  
23 expending or otherwise irrevocably encumbering those funds  
24 for distribution during the then current fiscal year of the  
25 organization or during the next succeeding fiscal year of the  
26 organization for the direct awarding of scholarships to  
27 eligible students. No more than 15% of the pre-kindergarten  
28 scholarship organization's annual cash receipts may be used  
29 for administrative expenses which are reasonable and  
30 necessary for the organization's management and distribution

1 of eligible contributions under this article.

2 \* \* \*

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%] 85% of its annual cash  
8 receipts to a scholarship program for the direct awarding of  
9 scholarships to eligible students and eligible target  
10 students. No more than 15% of the scholarship organization's  
11 annual cash receipts may be used for administrative expenses  
12 which are reasonable and necessary for the organization's  
13 management and distribution of eligible contributions under  
14 this article.

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

21 "Scholarship program." A program to provide tuition to  
22 eligible students and eligible target students to attend a  
23 school located in this Commonwealth. A scholarship program must  
24 include an application and review process for the purpose of  
25 making awards to eligible students and eligible target students.  
26 The award of scholarships to eligible students and eligible  
27 target students shall be made without limiting availability to  
28 only students of one school.

29 \* \* \*

30 "Secondary school." A school that has an eleventh grade.

1 \* \* \*

2 Section 2. Section 1703-F(b), (c)(1) and (f) of the act,  
3 added October 9, 2009 (P.L.451, No.48), are amended to read:  
4 Section 1703-F. Qualification and application.

5 \* \* \*

6 (b) Information.--

7 (1) In order to qualify under this article, a  
8 scholarship organization, a pre-kindergarten scholarship  
9 organization or an educational improvement organization must  
10 submit information to the department that enables the  
11 department to confirm that the organization is exempt from  
12 taxation under section 501(c)(3) of the Internal Revenue Code  
13 of 1986 (Public Law 99-514, 26 U.S.C. §1 et seq.)[,],  
14 including a copy of the organization's Internal Revenue  
15 Service Code Form 990. The department shall post this  
16 information on its publicly accessible Internet website.

17 (2) No later than March 1, 2013, and each year  
18 thereafter, scholarship organizations, pre-kindergarten  
19 scholarship organizations and educational improvement  
20 organizations must verify to the department that an audit  
21 regarding the organization's operations was conducted by an  
22 independent certified public accountant for the preceding  
23 taxable year. The following shall apply:

24 (i) The audit shall be accompanied by the auditor's  
25 statement that the report is free of material  
26 misstatements and adequately accounts for contributions  
27 received by an organization under this article.

28 (ii) The audit shall be conducted under generally  
29 accepted audit standards of the Auditing Standards Board  
30 of the American Institute of CPAs.

1           (iii) The audits submitted to the department under  
2           this subsection shall be considered public documents and  
3           shall be posted on the department's publicly accessible  
4           Internet website.

5           (c) Scholarship organizations and pre-kindergarten  
6 scholarship organizations.--A scholarship organization or pre-  
7 kindergarten scholarship organization must certify to the  
8 department that the organization is eligible to participate in  
9 the program established under this [article] section and the  
10 Keystone Scholarship Tax Credit Program, if applicable, and must  
11 agree to annually report the following information to the  
12 department by December 1, 2005, and September 1 of each year  
13 thereafter:

14           (1) (i) The number of scholarships awarded during the  
15 immediately preceding school year to eligible pre-  
16 kindergarten students or eligible target students  
17 enrolling in a pre-kindergarten program.

18           (ii) The total and average amounts of the  
19 scholarships awarded during the immediately preceding  
20 school year to eligible pre-kindergarten students or  
21 eligible target students enrolling in a pre-kindergarten  
22 program.

23           (iii) The number of scholarships awarded during the  
24 immediately preceding school year to eligible students  
25 and eligible target students in grades kindergarten  
26 through eight.

27           (iv) The total and average amounts of the  
28 scholarships awarded during the immediately preceding  
29 school year to eligible students and eligible target  
30 students in grades kindergarten through eight.

1 (v) The number of scholarships awarded during the  
2 immediately preceding school year to eligible students  
3 and eligible target students in grades nine through 12.

4 (vi) The total and average amounts of the  
5 scholarships awarded during the immediately preceding  
6 school year to eligible students and eligible target  
7 students in grades nine through 12.

8 (vii) [Where the scholarship organization or pre-  
9 kindergarten scholarship organization collects  
10 information on] On a county-by-county basis, the total  
11 number and the total amount of scholarships awarded  
12 during the immediately preceding school year to residents  
13 of each county in which the scholarship organization or  
14 pre-kindergarten scholarship organization awarded  
15 scholarships.

16 (viii) The names of each school where an eligible  
17 student, eligible pre-kindergarten student or an eligible  
18 target student who receives a scholarship under this  
19 article has enrolled and the total amount of scholarship  
20 money received under this article every year by each  
21 school.

22 \* \* \*

23 (f) Publication.--The department shall annually publish a  
24 list of each scholarship organization, pre-kindergarten  
25 scholarship organization or educational improvement organization  
26 qualified under this [section] article in the Pennsylvania  
27 Bulletin. The list shall also be posted and updated as necessary  
28 on the publicly accessible Internet website of the department.  
29 The department shall also post on its publicly accessible  
30 Internet website information submitted to the department by



1 educational improvement organizations under subsection (d) and  
2 information submitted to the department by scholarship  
3 organizations and pre-kindergarten scholarship organizations  
4 under subsection (c).

5 Section 3. Section 1704-F of the act is amended by adding a  
6 subsection to read:

7 Section 1704-F. Application.

8 \* \* \*

9 (e) Notice.--The department shall annually post on its  
10 publicly accessible Internet website the names of each business  
11 firm awarded a tax credit under this article and the amount  
12 awarded to each firm.

13 Section 4. Sections 1705-F(a), (c), (d) and (g) and 1706-F  
14 of the act, added October 9, 2009 (P.L.451, No.48), are amended  
15 to read:

16 Section 1705-F. Tax credit.

17 (a) Scholarship or educational improvement organizations.--  
18 In accordance with section 1706-F(a), the Department of Revenue  
19 shall grant a tax credit against any tax due under Article III,  
20 IV, VI, VII, VIII, IX or XV to a business firm providing proof  
21 of a contribution to a scholarship organization or educational  
22 improvement organization in the taxable year in which the  
23 contribution is made which shall not exceed 75% of the total  
24 amount contributed during the taxable year by the business firm.  
25 Such credit shall not exceed [~~\$300,000~~] \$1,000,000 annually per  
26 business firm for contributions made to scholarship  
27 organizations or educational improvement organizations.

28 \* \* \*

29 (c) Pre-kindergarten scholarship organizations.--In  
30 accordance with section 1706-F(a), the Department of Revenue

1 shall grant a tax credit against any tax due under Article III,  
2 IV, VI, VII, VIII, IX or XV to a business firm providing proof  
3 of a contribution to a pre-kindergarten scholarship organization  
4 in the taxable year in which the contribution is made which  
5 shall be equal to 100% of the first \$10,000 contributed during  
6 the taxable year by the business firm, and which shall not  
7 exceed 90% of the remaining amount contributed during the  
8 taxable year by the business firm. Such credit shall not exceed  
9 [\$150,000] \$250,000 annually per business firm for contributions  
10 made to pre-kindergarten scholarship organizations.

11 (d) Combination of tax credits.--A business firm may receive  
12 tax credits from the Department of Revenue in any tax year for  
13 any combination of contributions under subsection (a) or (b) or  
14 (c). In no case may a business firm receive tax credits in any  
15 tax year in excess of [\$300,000] \$1,000,000 for contributions  
16 under subsections (a) and (b). In no case shall a business firm  
17 receive tax credits in any tax year in excess of [\$150,000]  
18 \$250,000 for contributions under subsection (c).

19 \* \* \*

20 (g) Time of application for credits.--

21 (1) Except as provided in [paragraphs (2) and (3)]  
22 paragraph (2), the department may accept applications for tax  
23 credits available during a fiscal year no earlier than July 1  
24 of each fiscal year.

25 (2) The application of any business firm for tax credits  
26 available during a fiscal year as part of the second year of  
27 a two-year commitment may be accepted no earlier than May 15  
28 preceding the fiscal year. Business firms approved for tax  
29 credits in any fiscal year shall be given the option to  
30 reapply for tax credit approval to the department for a

1 subsequent fiscal year no earlier than May 1 on a form  
2 prescribed by the department.

3 [(3) The application under subsection (a) of any pass-  
4 through entity for approval of single-year tax credits  
5 available during a fiscal year against the taxes imposed  
6 under Article III or under subsection (b) for approval of  
7 credits against such taxes for the first year of a two-year  
8 commitment may be accepted by the department no earlier than  
9 the first business day following July 7 of the fiscal year.]

10 Section 1706-F. Limitations.

11 (a) Amount.--

12 (1) [The] For the fiscal year 2012-2013 and each fiscal  
13 year thereafter, the total aggregate amount of all tax  
14 credits approved shall not exceed [\$67,000,000] \$135,000,000  
15 in a fiscal year. No less than \$75,000,000 of the total  
16 aggregate amount shall be used to provide tax credits for  
17 contributions from business firms to scholarship  
18 organizations that provide scholarship awards to eligible  
19 target students under the Keystone Scholarship Tax Credit  
20 Program. No less than [\$44,666,667] \$37,666,667 of the total  
21 aggregate amount shall be used to provide tax credits for  
22 contributions from business firms to scholarship  
23 organizations. No less than \$22,333,333 of the total  
24 aggregate amount shall be used to provide tax credits for  
25 contributions from business firms to educational improvement  
26 organizations.

27 (2) (i) For the fiscal years 2004-2005, 2005-2006 and  
28 2006-2007, the total aggregate amount of all tax credits  
29 approved for contributions from business firms to pre-  
30 kindergarten scholarship programs shall not exceed

1 \$5,000,000 in a fiscal year.

2 (ii) For the fiscal [year] years 2007-2008 [and each  
3 fiscal year thereafter] through 2011-2012, the total  
4 aggregate amount of all tax credits approved for  
5 contributions from business firms to pre-kindergarten  
6 scholarship programs shall not exceed \$8,000,000 in a  
7 fiscal year.

8 (iii) For the fiscal year 2012-2013 and each fiscal  
9 year thereafter, the total aggregate amount of all tax  
10 credits approved for contributions from business firms to  
11 pre-kindergarten scholarship programs shall not exceed  
12 \$15,000,000 in a fiscal year.

13 (b) Activities.--No tax credit shall be approved for  
14 activities that are a part of a business firm's normal course of  
15 business.

16 (c) Tax liability.--

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

20 (2) In the case of a credit granted to a pass-through  
21 entity which elects to transfer the credit according to  
22 section 1705-F(e), a tax credit granted for any one taxable  
23 year and transferred to a shareholder, member or partner may  
24 not exceed the tax liability of the shareholder, member or  
25 partner.

26 (d) Use.--A tax credit not used by the applicant in the  
27 taxable year the contribution was made or in the year designated  
28 by the shareholder, member or partner to whom the credit was  
29 transferred under section 1705-F(e) may not be carried forward  
30 or carried back and is not refundable or transferable.

1 (e) Nontaxable income.--A scholarship received by an  
2 eligible student or eligible pre-kindergarten student shall not  
3 be considered to be taxable income for the purposes of Article  
4 III.

5 Section 5. The act is amended by adding sections to read:

6 Section 1709-F. Assessments.

7 (a) Duty to administer.--Each participating school shall  
8 administer annually the assessment under 22 Pa. Code § 4.51  
9 (relating to State assessment system).

10 (b) Requirements.--A participating school shall:

11 (1) Release an eligible student's individual results and  
12 an eligible target student's individual results on the  
13 assessment administered to the eligible student or eligible  
14 target student under subsection (a) and to the parent or  
15 guardian of the eligible student or eligible target student.

16 (2) If the participating school has a publicly  
17 accessible Internet website, post on the website the  
18 participating school's aggregate results on the assessment  
19 administered to under subsection (a), provided that the  
20 participating school shall not post results that reveal the  
21 identity of any individual student.

22 (3) Provide to the Department of Education the  
23 participating school's aggregate results on the assessment  
24 test.

25 (c) Cost of testing.--The participating school shall bear  
26 the cost of the testing administered under this section and  
27 shall not impose an assessment or testing fee on an eligible  
28 student or an eligible target student.

29 Section 1710-F. Keystone Scholarship Tax Credit Program.

30 (a) Establishment.--The Keystone Scholarship Tax Credit

1 Program is established within this Commonwealth to enhance the  
2 educational opportunities available to students who reside  
3 within the attendance boundary of a low-achieving school.

4 (b) Eligibility.--Eligible target students seeking to  
5 receive a scholarship under the Keystone Scholarship Tax Credit  
6 Program for the first time must have attended a low-achieving  
7 school during the previous school year or will be an incoming  
8 pre-kindergarten or kindergarten student for the upcoming school  
9 year. The scholarship under the Keystone Scholarship Tax Credit  
10 Program shall continue to be available to eligible target  
11 students in subsequent school years as long as eligibility  
12 criteria continue to be met, with the exception of subsection  
13 (e).

14 (c) Use.--Contributions made by business firms to  
15 scholarship organizations under the Keystone Scholarship Tax  
16 Credit Program shall be exclusively used by scholarship  
17 organizations to award scholarships to eligible target students  
18 who reside within the attendance boundary of a low-achieving  
19 school, as determined annually by the Department of Education.  
20 In addition to the information submitted to the department under  
21 section 1703-F(c), scholarship organizations shall submit a  
22 signed verification form that attests that the contributions  
23 received under the program were exclusively used to provide  
24 scholarships under this section not including the amount to be  
25 used for administrative fees under this article.

26 (d) Penalties.--Any person who fraudulently submits an  
27 application to a scholarship organization or who knowingly  
28 falsifies material information on a scholarship application  
29 under this section shall be subject to the following:

30 (1) Imposition by the department of a civil penalty of

1 up to \$1,000.

2 (2) Prosecution for violation of 18 Pa.C.S. § 4904  
3 (relating to unsworn falsification to authorities).

4 (3) Disqualification from future participation in the  
5 Keystone Scholarship Tax Credit Program.

6 (e) Continued eligibility.--An eligible target student  
7 awarded a scholarship under this section for the previous school  
8 year shall continue to be eligible for a scholarship under this  
9 section for three subsequent school years even if the individual  
10 no longer meets the definition of an eligible target student.

11 (f) School requirements.--No school that enrolls eligible  
12 target students under this section may have a tuition rate  
13 structure that charges different tuition amounts to students  
14 based on any factor, including race or religious affiliation.  
15 Section 1711-F. Enforcement by Attorney General.

16 If an educational improvement organization, scholarship  
17 organization or prekindergarten scholarship organization fails  
18 to comply with the provisions of this article, the Attorney  
19 General shall have standing to initiate an action against the  
20 organization in a court of competent jurisdiction to obtain  
21 compliance with the provisions of this section. The relief  
22 sought shall be equal to three times the total dollar amount of  
23 the noncompliance.

24 Section 6. This act shall take effect in 60 days.