

HOUSE
AMENDMENT

THIS AMENDMENT
ADOPTED

ALLEN/PAIR
FEBRUARY 5, 2016

CLERK OF THE HOUSE

THE PROPERTY TAX SUBCOMMITTEE PROPOSES THE
FOLLOWING AMENDMENT NO. TO H. 4537
(COUNCIL\DKA\4537C004.DKA.SA16):

REFERENCE IS TO THE BILL AS INTRODUCED.

**AMEND THE BILL, AS AND IF AMENDED, SECTION
1, PAGE 4, BEGINNING ON LINE 13, BY STRIKING
SECTION 12-6-3685(B)(2) AND INSERTING:**

**/ (2)AN INDIVIDUAL IS ENTITLED TO A
REFUNDABLE TAX CREDIT AGAINST INCOME
TAXES IMPOSED PURSUANT TO THIS CHAPTER, OR
BANK TAXES IMPOSED PURSUANT TO CHAPTER 11
OF THIS TITLE FOR THE AMOUNT OF CASH AND
THE MONETARY VALUE OF ANY PUBLICLY TRADED
SECURITIES, NOT EXCEEDING TEN THOUSAND**

DOLLARS FOR EACH CHILD, THE INDIVIDUAL CONTRIBUTES AS TUITION FOR EXCEPTIONAL NEEDS CHILDREN WITHIN THEIR CUSTODY OR CARE AND ENROLLED IN ELIGIBLE SCHOOLS WHO QUALIFY FOR THESE GRANTS UNDER THE PROVISIONS OF THIS SECTION. THE MAXIMUM TOTAL FOR CREDITS AUTHORIZED BY THIS ITEM MAY NOT EXCEED FOUR MILLION DOLLARS FOR EACH TAX YEAR. HOWEVER, IF A CHILD WITHIN THE CARE AND CUSTODY OF AN INDIVIDUAL RECEIVES A TUITION SCHOLARSHIP FROM A NONPROFIT SCHOLARSHIP FUNDING ORGANIZATION, THEN THE INDIVIDUAL ONLY MAY CLAIM A CREDIT EQUAL TO THE DIFFERENCE OF TEN THOUSAND DOLLARS OR THE COST OF TUITION, WHICHEVER IS LOWER, AND THE AMOUNT OF THE SCHOLARSHIP. /

AMEND THE BILL FURTHER, SECTION 1, PAGE 5, BEGINNING ON LINE 5, BY STRIKING SECTION 12-6-3685(D)(1)(A) AND INSERTING:

/ (A) THE TAX CREDITS AUTHORIZED BY SUBSECTION (B) MAY NOT EXCEED A TOTAL OF TWELVE MILLION DOLLARS FOR CONTRIBUTIONS MADE ON BEHALF OF EXCEPTIONAL NEEDS STUDENTS FOR EACH TAX YEAR. IF THE DEPARTMENT DETERMINES THAT THE TOTAL OF THESE CREDITS CLAIMED BY ALL TAXPAYERS EXCEEDS EITHER LIMIT AMOUNT, IT SHALL ALLOW CREDITS ONLY UP TO THOSE AMOUNTS ON A FIRST COME, FIRST SERVED BASIS. /

AMEND THE BILL FURTHER, SECTION 1, BEGINNING ON PAGE 5 AND LINE 32, BY STRIKING SECTION 12-6-3685(G)(1) AND INSERTING:

/ (1) BY FEBRUARY FIFTEENTH OF EACH YEAR, EACH INDEPENDENT SCHOOL SHALL APPLY TO THE EDUCATION OVERSIGHT COMMITTEE TO BE CONSIDERED AN ELIGIBLE INSTITUTION FOR WHICH IT MAY RECEIVE CONTRIBUTIONS FROM A NONPROFIT SCHOLARSHIP FUNDING ORGANIZATION FOR WHICH THE TAX CREDIT ALLOWED BY THIS SECTION IS ALLOWED. THE EDUCATION OVERSIGHT COMMITTEE, AS ESTABLISHED IN CHAPTER 6, TITLE 59, IS RESPONSIBLE FOR DETERMINING IF AN ELIGIBLE SCHOOL MEETS THE CRITERIA ESTABLISHED BY SUBSECTION (A)(1), AND SHALL PUBLISH AN APPROVED LIST OF THE SCHOOLS MEETING THE CRITERIA. IF AN INDEPENDENT

SCHOOL DOES NOT APPLY TO BE AN ELIGIBLE SCHOOL, THE INDEPENDENT SCHOOL MAY NOT BE PUBLISHED AS AN APPROVED SCHOOL, AND CONTRIBUTIONS TO THAT SCHOOL MUST NOT BE ALLOWED FOR PURPOSES OF THE CREDIT ALLOWED BY THIS SECTION. THE EDUCATION OVERSIGHT COMMITTEE MUST PUBLISH THE APPROVED LIST OF SCHOOLS ON ITS WEBSITE BY SEPTEMBER FIRST OF EACH YEAR, AND THE LIST MUST INCLUDE THEIR NAMES, ADDRESSES, TELEPHONE NUMBERS, AND, IF AVAILABLE, WEBSITE ADDRESSES. ALSO, THE SCORE REPORTS AND AUDITS RECEIVED BY THE EDUCATION OVERSIGHT COMMITTEE PURSUANT TO ITEMS (2)(B) AND (C) MUST BE PUBLISHED WITH THE LIST. THE EDUCATION OVERSIGHT COMMITTEE SHALL SUMMARIZE OR REDACT THE SCORE REPORTS IF NECESSARY TO PREVENT THE DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION. FOR THIS PURPOSE, IT ALSO SHALL PROMULGATE REGULATIONS FURTHER ENUMERATING THE SPECIFICS OF THIS CRITERIA. IN PERFORMING THIS FUNCTION, THE EDUCATION OVERSIGHT COMMITTEE SHALL ESTABLISH AN ADVISORY COMMITTEE MADE UP OF NOT MORE THAN NINE MEMBERS, INCLUDING PARENTS, AND REPRESENTATIVES OF INDEPENDENT SCHOOLS AND INDEPENDENT SCHOOL ASSOCIATIONS. THE ADVISORY COMMITTEE SHALL PROVIDE RECOMMENDATIONS TO THE EDUCATION OVERSIGHT COMMITTEE ON THE CONTENT OF THESE REGULATIONS AND ANY OTHER MATTERS REQUESTED BY THE EDUCATION OVERSIGHT COMMITTEE. /

RENUMBER SECTIONS TO CONFORM.

AMEND TITLE TO CONFORM.

"THE BELOW CONSTITUTED SUMMARY IS PREPARED BY THE STAFF OF THE SOUTH CAROLINA HOUSE OF REPRESENTATIVES AND IS NOT THE EXPRESSION OF THE LEGISLATION'S SPONSOR(S) OR THE HOUSE OF REPRESENTATIVES. IT IS STRICTLY FOR THE INTERNAL USE AND BENEFIT OF MEMBERS OF THE HOUSE OF REPRESENTATIVES AND IS NOT TO BE CONSTRUED BY A COURT OF LAW AS AN EXPRESSION OF LEGISLATIVE INTENT".

REPORT OF THE PROPERTY TAX SUBCOMMITTEE

(G.R. Smith, Clyburn, Merrill, Bales & Clemmons - Staff Contact: Kenzie Riddle)

HOUSE BILL 4537

H. 4537 -- Rep. Henderson: A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3685 SO AS TO ALLOW AN INCOME TAX CREDIT FOR CONTRIBUTIONS TO A SCHOLARSHIP FUNDING ORGANIZATION THAT PROVIDES GRANTS FOR STUDENTS TO ATTEND CERTAIN INDEPENDENT SCHOOLS, TO SPECIFY THE MANNER IN WHICH THE CREDIT IS CLAIMED, TO SPECIFY THE PROCESS BY WHICH CERTAIN ORGANIZATIONS AND SCHOOLS BECOME ELIGIBLE, TO SPECIFY CERTAIN INFORMATION WHICH MUST BE MADE PUBLIC, AND TO ALLOW THE DEPARTMENT OF REVENUE TO ENFORCE THE PROVISIONS OF THE CREDIT.

Summary of Bill:

This bill allows for a tax credit for scholarship funding organizations to provide grants for student to attend certain schools. This bill provides have the credit is claimed and specifically the process the organizations and schools become eligible. Also, the bill allows the Department of Revenue to enforce the provisions of the tax credit.

Estimated Revenue Impact:

This bill will have no expenditure impact on the General Funds, Federal Funds, or Other Funds. The codification of the two exceptional needs child tax credits will have no additional General Fund revenue impact on individual and corporate income and bank tax revenue.

Subcommittee Recommendation:

Favorable with Amendment

Full Committee Recommendation:

Pending

Other Notes/Comments:

The amendment allow for schools to apply to the Education Oversight Committee by February 15th of each year. The amendment ensures that this happens each tax year.



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
 (803)734-0640 • RFA.SC.GOV/IMPACTS

Bill Number: H. 4537
Author: Henderson
Subject: Exceptional Needs Child Tax Credits
Requestor: House Ways and Means
RFA Analyst(s): Shuford
Impact Date: February 3, 2016

Estimate of Fiscal Impact

	FY 2016-17	FY 2017-18
State Expenditure		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Full-Time Equivalent Position(s)	0.00	0.00
State Revenue		
General Fund	\$0	\$0
Other and Federal	\$0	\$0
Local Expenditure	\$0	\$0
Local Revenue	\$0	\$0

Fiscal Impact Summary

This bill will have no expenditure impact on the General Fund, Federal Funds, or Other Funds. The codification of the two exceptional needs child tax credits will have no additional General Fund revenue impact on individual and corporate income and bank tax revenue since the Board of Economic Advisors initial forecast for FY 2016-17 included the revenue impact of these existing tax credits as part of the income tax base.

Explanation of Fiscal Impact

State Expenditure

This bill requires the Department of Revenue (DOR) to continue to administer the two exceptional needs child tax credits. The Education Oversight Committee (EOC) is required to continue determining the eligibility of an independent school to receive contributions from a nonprofit scholarship funding organization. The DOR and EOC indicate that codifying the existing budget provision and continuing their administrative responsibilities will have no expenditure impact on the General Fund, Federal Funds, or Other Funds.

State Revenue

This bill codifies the two existing exceptional needs child tax credits contained most recently in Act 92 of 2015, the supplemental appropriations bill. These tax credits, with amendments, have been included in the annual appropriation act or similar bills since FY 2013-14.

The first tax credit applies to individual and corporate income and bank taxes for contributions to a nonprofit scholarship funding organization. This credit is limited to 60% of the taxpayer's total

tax liability for that year and is not refundable. The second tax credit applies also to individual and corporate income and bank taxes for tuition payments for exceptional needs children within the taxpayer's custody or care. This tax credit is refundable to the taxpayer. The bill states these two tax credits cumulatively may not exceed a total of \$12 million. For this fiscal impact statement, we interpret that the \$12 million limit is per year. Otherwise, a literal reading would suggest that no additional tax credits would be allowed since the cumulative \$12 million limit has been reached through tax credits claimed in previous years.

We estimate that these tax credits will reduce General Fund individual and corporate income and bank taxes by the \$12 million limit in FY 2016-17 from the tax credit for contributions to nonprofit scholarship funding organizations and the refundable tax credit for tuition payments for exceptional needs children that are within the taxpayer's custody or care. In November 2015 when the Board of Economic Advisors (BEA) set the initial forecast for FY 2016-17, the forecast included the revenue impact of these existing tax credits as part of the income tax base since an identical budget provision has been in effect since FY 2013-14. Therefore, the proposed addition of Section 12-6-3685 will have no further revenue impact on the General Fund.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director

South Carolina General Assembly
121st Session, 2015-2016

H. 4537

STATUS INFORMATION

General Bill

Sponsors: Reps. Henderson, Robinson-Simpson, Atwater, Horne, Allison, Clary, Daning, Forrester, Collins, Hiott, Duckworth, Yow, Clemmons, Fry, Johnson, Rivers, Goldfinch, Hicks, Whitmire, Sandifer, Huggins, Toole, Newton, Hixon, Crosby, Southard, Hamilton, Simrill, Kennedy and Sottile
Document Path: I:\council\bill\dk\3146sa16.docx

Introduced in the House on January 12, 2016
Currently residing in the House Committee on **Ways and Means**

Summary: Income tax credit

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/10/2015	House	Prefiled
12/10/2015	House	Referred to Committee on Ways and Means
1/12/2016	House	Introduced and read first time (<u>House Journal-page 96</u>)
1/12/2016	House	Referred to Committee on Ways and Means (<u>House Journal-page 96</u>)

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VERSIONS OF THIS BILL

12/10/2015

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A BILL

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TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12-6-3685 SO AS TO ALLOW AN INCOME TAX CREDIT FOR CONTRIBUTIONS TO A SCHOLARSHIP FUNDING ORGANIZATION THAT PROVIDES GRANTS FOR STUDENTS TO ATTEND CERTAIN INDEPENDENT SCHOOLS, TO SPECIFY THE MANNER IN WHICH THE CREDIT IS CLAIMED, TO SPECIFY THE PROCESS BY WHICH CERTAIN ORGANIZATIONS AND SCHOOLS BECOME ELIGIBLE, TO SPECIFY CERTAIN INFORMATION WHICH MUST BE MADE PUBLIC, AND TO ALLOW THE DEPARTMENT OF REVENUE TO ENFORCE THE PROVISIONS OF THE CREDIT.

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Be it enacted by the General Assembly of the State of South Carolina:

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SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

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“Section 12-6-3685. (A) As used in this section:

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(1) ‘Eligible school’ means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met, that:

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(a) offers a general education to primary or secondary school students;

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(b) does not discriminate on the basis of race, color, or national origin;

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(c) is located in this State;

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(d) has an educational curriculum that includes courses set forth in the State’s diploma requirements and where the students attending are administered national achievement or state

1 standardized tests, or both, at progressive grade levels to determine
2 student progress;

3 (e) has school facilities that are subject to applicable
4 federal, state, and local laws; and

5 (f) is a member in good standing of the Southern
6 Association of Colleges and Schools, the South Carolina
7 Association of Christian Schools, or the South Carolina Independent
8 Schools Association.

9 (2) 'Exceptional needs child' means a child:

10 (a)(i) who has been evaluated in accordance with this
11 State's evaluation criteria, as set forth in S.C. Code Ann. Regs.
12 43-243.1, and determined eligible as a child with a disability who
13 needs special education and related services, in accordance with the
14 requirements of Section 300.8 of the Individuals with Disabilities
15 Education Act; or

16 (ii) who has been diagnosed within the last three years by
17 a licensed speech-language pathologist, psychiatrist, or medical,
18 mental health, psychoeducational, or other comparable licensed
19 health care provider as having a neurodevelopmental disorder, a
20 substantial sensory or physical impairment such as deaf, blind, or
21 orthopedic disability, or some other disability or acute or chronic
22 condition that significantly impedes the student's ability to learn and
23 succeed in school without specialized instructional and associated
24 supports and services tailored to the child's unique needs; and

25 (b) the child's parents or legal guardian believes that the
26 services provided by the school district of legal residence do not
27 sufficiently meet the needs of the child.

28 (3) 'Independent school' means a school, other than a public
29 school, at which the compulsory attendance requirements of Section
30 59-65-10 may be met and that does not discriminate based on the
31 grounds of race, color, religion, or national origin.

32 (4) 'Nonprofit scholarship funding organization' means a
33 charitable organization that:

34 (a) is exempt from federal tax pursuant to Section 501(a)
35 of the Internal Revenue Code by being listed as an exempt
36 organization in Section 501(c)(3) of the code;

37 (b) allocates, after its first year of operation, at least
38 ninety-seven percent of its annual contributions and gross revenue
39 received during a particular year to provide grants for tuition to
40 children enrolled in an eligible school meeting the criteria of this
41 section, and incurs administrative expenses annually, after its first
42 year of operation, of not more than three percent nor more than two
43 hundred thousand dollars in the aggregate, whichever is less, of its

1 annual contributions and revenue for a particular year to cover
2 operational costs;

3 (c) allocates all of its funds used for grants on an annual
4 basis to children who are exceptional needs students;

5 (d) does not provide grants only for the benefit of one
6 school, and if the department determines that the nonprofit
7 scholarship funding organization is providing grants to one
8 particular school, the tax credit allowed by this section may be
9 disallowed;

10 (e) does not have as a volunteer, contractor, consultant,
11 fundraiser, or member of its governing board any parent, legal
12 guardian, or member of their immediate family who has a child or
13 ward who is currently receiving or has received a scholarship grant
14 authorized by this section from the organization within one year of
15 the date the parent, legal guardian, or member of their immediate
16 family became a board member;

17 (f) does not have as a member of its governing board or an
18 employee, volunteer, contractor, consultant, or fundraiser who has
19 been convicted of a felony;

20 (g) does not release personally identifiable information
21 pertaining to students or donors or use information collected about
22 donors, students, or schools for financial gain; and

23 (h) does not place conditions on schools enrolling students
24 receiving scholarships to limit the ability of the schools to enroll
25 students accepting grants from other nonprofit scholarship funding
26 organizations.

27 (5) 'Parent' means the natural or adoptive parent or legal
28 guardian of a child.

29 (6) 'Person' means an individual, partnership, corporation, or
30 other similar entity.

31 (7) 'Qualifying student' means a student who is an
32 exceptional needs child, a South Carolina resident, and who is
33 eligible to be enrolled in a South Carolina secondary or elementary
34 public school at the kindergarten or later-year level for the
35 applicable school year.

36 (8) 'Resident public school district' means the public school
37 district in which a student resides.

38 (9) 'Transportation' means transportation to and from school
39 only.

40 (10) 'Tuition' means the total amount of money charged for the
41 cost of a qualifying student to attend an independent school
42 including, but not limited to, fees for attending the school, textbook
43 fees, and school-related transportation.

1 (11) 'Department' means the Department of Revenue.
2 (B)(1) A person is entitled to a tax credit against income taxes
3 imposed pursuant to this chapter, or bank taxes imposed pursuant to
4 Chapter 11 of this title for the amount of cash and the monetary
5 value of any publicly traded securities the person contributes to a
6 nonprofit scholarship funding organization up to the limits of this
7 section if:

8 (a) the contribution is used to provide grants for tuition to
9 exceptional needs children enrolled in eligible schools who qualify
10 for these grants under the provisions of this section; and

11 (b) the person does not designate a specific child or school
12 as the beneficiary of the contribution.

13 (2) An individual is entitled to a refundable tax credit against
14 income taxes imposed pursuant to this chapter, or bank taxes
15 imposed pursuant to Chapter 11 of this title for the amount of cash
16 and the monetary value of any publicly traded securities, not
17 exceeding ten thousand dollars for each child, the individual
18 contributes as tuition for exceptional needs children within their
19 custody or care and enrolled in eligible schools who qualify for these
20 grants under the provisions of this section. The cumulative
21 maximum total for credits authorized by this item may not exceed
22 four million dollars. However, if a child within the care and custody
23 of an individual receives a tuition scholarship from a nonprofit
24 scholarship funding organization, then the individual only may
25 claim a credit equal to the difference of ten thousand dollars or the
26 cost of tuition, whichever is lower, and the amount of the
27 scholarship.

28 (C) Grants may be awarded by a scholarship funding
29 organization in an amount not exceeding ten thousand dollars or the
30 total cost of tuition, whichever is less, for qualifying students with
31 exceptional needs to attend an independent school. Before awarding
32 any grant, a scholarship funding organization must receive written
33 documentation from the parent documenting that the qualifying
34 student is an exceptional needs child. Upon approving the
35 application, the scholarship funding organization shall issue a check
36 to the eligible school in the name of the qualifying student. If the
37 qualifying student leaves or withdraws from the school for any
38 reason before the end of the semester or school year and does not
39 reenroll within thirty days, then the eligible school shall return a
40 prorated amount of the grant to the scholarship funding organization
41 based on the number of days the qualifying student was enrolled in
42 the school during the semester or school year within sixty days of
43 the qualifying student's departure.

1 (D)(1)(a) The tax credits authorized by subsection (B) may not
2 exceed cumulatively a total of twelve million dollars for
3 contributions made on behalf of exceptional needs students. If the
4 department determines that the total of these credits claimed by all
5 taxpayers exceeds either limit amount, it shall allow credits only up
6 to those amounts on a first come, first served basis.

7 (b) The department shall establish an application process to
8 determine the amount of credit available to be claimed. The receipt
9 of the application by the department shall determine priority for the
10 credit. The credit must be claimed on the return for the tax year that
11 the contribution is made.

12 (2) A taxpayer may not claim more than sixty percent of their
13 total tax liability for the year in contribution toward the tax credit
14 authorized by subsection (B)(1). This credit is not refundable.

15 (3) If a taxpayer deducts the amount of the contribution on the
16 taxpayer's federal return and claims the credit allowed by this
17 section, then the taxpayer shall add back the amount of the
18 deduction for purposes of South Carolina income taxes.

19 (4) The department shall prescribe the form and manner of
20 proof required to obtain the credit authorized by subsection (B).
21 Also, the department shall develop a method of informing taxpayers
22 if the credit limit is met at any time during the year.

23 (E) A corporation or entity entitled to a credit under subsection
24 (B) may not convey, assign, or transfer the credit authorized by this
25 section to another entity unless all of the assets of the entity are
26 conveyed, assigned, or transferred in the same transaction.

27 (F) Except as otherwise provided, neither the Department of
28 Education, the Department of Revenue, nor any other state agency
29 may regulate the educational program of an independent school that
30 accepts students receiving scholarship grants pursuant to this
31 section.

32 (G)(1) By August first of each year, each independent school
33 shall apply to the Education Oversight Committee to be considered
34 an eligible institution for which it may receive contributions from a
35 nonprofit scholarship funding organization for which the tax credit
36 allowed by this section is allowed. The Education Oversight
37 Committee, as established in Chapter 6, Title 59, is responsible for
38 determining if an eligible school meets the criteria established by
39 subsection (A)(1), and shall publish an approved list of the schools
40 meeting the criteria. If an independent school does not apply to be
41 an eligible school, the independent school may not be published as
42 an approved school, and contributions to that school must not be
43 allowed for purposes of the credit allowed by this section. The

1 Education Oversight Committee must publish the approved list of
2 schools on its website by September first of each year, and the list
3 must include their names, addresses, telephone numbers, and, if
4 available, website addresses. Also, the score reports and audits
5 received by the Education Oversight Committee pursuant to items
6 (2)(b) and (c) must be published with the list. The Education
7 Oversight Committee shall summarize or redact the score reports if
8 necessary to prevent the disclosure of personally identifiable
9 information. For this purpose, it also shall promulgate regulations
10 further enumerating the specifics of this criteria. In performing this
11 function, the Education Oversight Committee shall establish an
12 advisory committee made up of not more than nine members,
13 including parents, and representatives of independent schools and
14 independent school associations. The advisory committee shall
15 provide recommendations to the Education Oversight Committee on
16 the content of these regulations and any other matters requested by
17 the Education Oversight Committee.

18 (2) An independent school's application for consideration as
19 an eligible institution must contain:

20 (a) the number and total amount of grants received from
21 each nonprofit scholarship funding organization in the preceding
22 fiscal year;

23 (b) student test scores, by category, on national
24 achievement or state standardized tests, or both, for all grades tested
25 and administered by the school receiving or entitled to receive
26 scholarship grants pursuant to this section in the previous fiscal
27 year;

28 (c) a copy of a compilation, review, or compliance audit of
29 the organization's financial statements, conducted by a certified
30 public accounting firm; and

31 (d) a certification by the independent school that it meets
32 the definition of an eligible school as that term is defined in
33 subsection (A)(1) and that the report is true, accurate, and complete
34 under penalty of perjury in accordance with Section 16-9-10.

35 (3) Any independent school not determined to be an eligible
36 school pursuant to the provisions of this section may seek review by
37 filing a request for a contested case hearing with the Administrative
38 Law Court in accordance with the court's rules of procedure.

39 (4) The Education Oversight Committee, after consultation
40 with its nine-member advisory committee, may exempt an
41 independent school having students with exceptional needs who
42 receive scholarship grants pursuant to this section from the
43 curriculum requirements of subsection (A)(1)(d).

1 (H)(1) By August first of each year, each nonprofit scholarship
2 funding organization shall apply to the department to be considered
3 an eligible organization for which its contributors are allowed the
4 tax credit allowed by this section. If a nonprofit scholarship funding
5 organization does not apply, the organization may not be published
6 as an approved organization, and contributions to that organization
7 must not be allowed for purposes of the credit allowed by this
8 section. A nonprofit scholarship funding organization's application
9 must contain:

10 (a) the number and total amount of grants issued to eligible
11 schools in the preceding fiscal year;

12 (b) for each grant issued to an eligible school in the
13 preceding fiscal year, the identity of the school and the amount of
14 the grant;

15 (c) an itemization and detailed explanation of any fees or
16 other revenues obtained from or on behalf of any eligible schools;

17 (d) a copy of the organization's Form 990 or other
18 comparable federal submission that indicates the provisions of the
19 Internal Revenue Code under which the organization has been
20 granted exempt status for purposes of federal taxation;

21 (e) a copy of a compilation, review, or audit of the
22 organization's financial statements, conducted by a certified public
23 accounting firm;

24 (f) the criteria and eligibility requirements for scholarship
25 awards; and

26 (g) a certification by the organization that it meets the
27 definition of a nonprofit scholarship funding organization as that
28 term is defined in subsection (A)(4) and that the report is true,
29 accurate, and complete under penalty of perjury in accordance with
30 Section 16-9-10.

31 (2) By receiving the application materials and approving the
32 organization as an eligible organization pursuant to item (1), the
33 department is not determining that the organization meets all of the
34 requirements of a qualified nonprofit scholarship funding
35 organization and the organization remains subject to examination as
36 provided for pursuant to subsection (I).

37 (3) The department has authority to disclose the names of
38 qualifying nonprofit scholarship funding organizations to the
39 Education Oversight Committee. The department also may disclose
40 to the Education Oversight Committee the names of organizations
41 that applied but were not qualified by the department and those
42 organizations whose eligibility has been revoked in accordance with
43 subsection (I)(2), as well as the reason the application of the

1 organization was not accepted or the reason its qualification was
2 revoked.

3 (4) By September first of each year, the Education Oversight
4 Committee shall publish on its website a list of all qualifying
5 nonprofit scholarship funding organizations, provided by the
6 department, to include their names, addresses, telephone numbers,
7 and, if available, website addresses. Also, the results of the audit
8 required by item (1)(e) must be published with the list.

9 (I)(1) The department has authority to oversee, audit, and
10 examine the nonprofit scholarship funding organizations, including
11 determining whether the nonprofit scholarship funding organization
12 is being operated in a manner consistent with the requirements for
13 an IRC Section 501(c)(3) organization or is in compliance with any
14 other provision of this section.

15 (2)(a) If at any time during the year, the department has
16 evidence, through audit or otherwise, that a nonprofit scholarship
17 funding organization is not being operated in a manner consistent
18 with the requirements for operating an IRC Section 501(c)(3)
19 organization or is not in compliance with any other provision of this
20 section, the department immediately may revoke the organization's
21 participation in the program and shall notify the organization and
22 the Education Oversight Committee in writing of the revocation.

23 (b) Notice of revocation may be provided to the
24 organization by personal delivery to the organization, by first class
25 mail to the last known address of the organization, or by other means
26 reasonably designed to provide notice to the organization.

27 (c) Any donations made following the date the notice of
28 revocation is received by the organization or in the case of delivery
29 by mail ten days after the notice of revocation was mailed, do not
30 qualify for the credit and the donated funds must be returned to the
31 donor by the organization. This section may not limit the
32 department's authority to deny any tax credit or other benefit
33 provided by this section if the circumstances warrant.

34 (d)(i) Within thirty days after the day on which the
35 organization is notified of the revocation, the organization may
36 request a contested hearing before the Administrative Law Court.
37 Within thirty days after a request for a contested case hearing is
38 received by the Administrative Law Court, an administrative law
39 judge shall hold the contested case hearing and determine whether
40 the revocation was reasonable under the circumstances. The
41 department has the burden of proof of showing that the revocation
42 was reasonable under the circumstances. The revocation is
43 'reasonable' if the department has some credible evidence to believe

1 that the organization is not being operated in a manner consistent
2 with the requirements for operating an IRC Section 501(c)(3)
3 organization or is not in compliance with any other provision of this
4 section. The decision made by the administrative law judge is final
5 and conclusive and may not be reviewed by any court. If the
6 organization does not request a contested case hearing within thirty
7 days of the immediate revocation, the revocation is permanent.

8 (ii) If the administrative law judge determines that the
9 revocation was reasonable, the administrative law judge shall
10 remand the case to the department to issue a department
11 determination for permanent revocation within the time period
12 determined by the judge. The organization may appeal this
13 department determination in accordance with Section 12-60-460. At
14 the contested case hearing on the department determination, the
15 parties may raise new issues and arguments in addition to those
16 issues and arguments previously presented at the revocation hearing.

17 (iii) If the administrative law judge determines that
18 immediate revocation is not reasonable, the revocation must be
19 lifted and the organization may resume accepting donations and
20 award scholarships hereunder. The department may still issue a
21 department determination in accordance with Section
22 12-60-450(E)(2).

23 (iv) If at any time during the process, the department
24 believes the organization is in compliance, the department, in its
25 sole discretion, may reinstate the organization and notify the
26 Education Oversight Committee.

27 (v) Following the permanent revocation of a nonprofit
28 scholarship funding organization, the Education Oversight
29 Committee has the authority to oversee the transfer of donated funds
30 of the revoked organization to other nonprofit scholarship funding
31 organizations.

32 (J) A nonprofit scholarship funding organization may transfer
33 funds to another nonprofit scholarship funding organization,
34 especially if the organization cannot distribute the funds in a timely
35 manner or if the organization ceases to exist. None of the funds that
36 are transferred by one nonprofit scholarship funding organization to
37 another may be considered by the former organization when
38 calculating its administrative expenses.”

39
40 SECTION 2. This act takes effect upon approval of the Governor
41 and applies to income tax years beginning after 2015.

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