**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 12‑6‑1145 SO AS TO AUTHORIZE A DEDUCTION FROM STATE OF SOUTH CAROLINA TAXABLE INCOME UP TO SPECIFIED AMOUNTS FOR TUITION PAID BY A PARENT OR LEGAL GUARDIAN FOR THEIR CHILD OR WARD TO ATTEND AN INDEPENDENT SCHOOL OR A PUBLIC SCHOOL OUTSIDE THE CHILD’S OR WARD’S SCHOOL DISTRICT OF RESIDENCE, AND TO ALSO AUTHORIZE A SIMILAR INCOME TAX DEDUCTION UP TO A SPECIFIED AMOUNT TO A PARENT OR LEGAL GUARDIAN FOR HOME SCHOOL EXPENDITURES; AND BY ADDING SECTION 12‑6‑1146 SO AS TO AUTHORIZE A CREDIT AGAINST A TAXPAYER’S SOUTH CAROLINA INCOME TAX LIABILITY OR CERTAIN OTHER TAX LIABILITY FOR CONTRIBUTIONS MADE TO NONPROFIT SCHOLARSHIP FUNDING ORGANIZATIONS THAT PROVIDE GRANTS FOR CHILDREN WHO ARE ELIGIBLE FOR THE FEDERAL FREE OR REDUCED SCHOOL LUNCH PROGRAM, WHO ARE “EXCEPTIONAL NEEDS” CHILDREN, OR WHO MEET OTHER REQUIREMENTS TO ATTEND INDEPENDENT SCHOOLS OF THEIR CHOICE OR FOR OTHER AUTHORIZED PURPOSES, AND TO PROVIDE THE PROCEDURES FOR, AND CONDITIONS AND LIMITATIONS OF THESE TAX CREDITS.

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

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

“Section 12‑6‑1145. (A) As used in this section:

(1) ‘Independent school’ means a school, other than a public school, at which the compulsory attendance requirements of Section 59‑65‑10 may be met and that does not discriminate based on the grounds of race, color, or national origin. For purposes of this definition, ‘independent school’ does not include a home school as defined in item (2).

(2) ‘Home school’ means a home, residence, or location where a parent or legal guardian teaches one or more children as authorized pursuant to Section 59‑65‑40, 59‑65‑45, or 59‑65‑47.

(3) ‘Parent’ means the natural or adoptive parent or legal guardian of a child.

(4) ‘Qualifying student’ means a student who is a South Carolina resident and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the current school year.

(5) ‘Resident public school district’ means the public school district in which a student resides.

(6) ‘Tuition’ means the total amount of money charged for the cost of a qualifying student to attend an independent school including, but not limited to, fees for attending the school and school‑related transportation.

(B)(1) Beginning with the 2012‑2013 school year, a parent or legal guardian who teaches one or more qualifying students at home as authorized pursuant to Section 59‑65‑40, 59‑65‑45, or 59‑65‑47 may take a deduction against their State of South Carolina income taxes due of up to two thousand dollars per home school student for instruction‑related expenditures. This deduction is limited to a total of two thousand dollars per child per year regardless of the number of taxpayers incurring home school instruction‑related expenses on behalf of that child. The deduction allowed by this subsection is fully deductible for the calendar year in which the home school term begins provided the qualifying student completes the school term for that school year.

(2) Beginning with the 2012‑2013 school year, a parent or legal guardian is entitled to a deduction against their State of South Carolina income taxes due of up to two thousand five hundred dollars paid to an independent school within this State for tuition on behalf of their child or ward to attend the independent school for that school year. The child or ward must be a qualifying student as this term is defined in subsection (A)(4). This deduction is limited to a total of two thousand five hundred dollars per child per year regardless of the number of taxpayers making tuition payments on behalf of that child. The deduction allowed by this subsection is fully deductible for the calendar year in which the school term begins provided the qualifying student completes the school term for that school year.

(3) Beginning with the 2012‑2013 school year, a parent or legal guardian is entitled to a deduction against their State of South Carolina income taxes due of up to one thousand dollars paid on behalf of their child or ward to attend a school in a school district which is not the school district of residence of the child or ward. This deduction is limited to a total of one thousand dollars per child per year regardless of the number of taxpayers making payments to another school district on behalf of that child. The deduction allowed by this subsection is fully deductible for the calendar year in which the school term begins provided the qualifying student completes the school term for that school year.”

SECTION 2. Chapter 6, Title 12, of the 1976 Code is amended by adding:

“Section 12‑6‑1146. (A) The purpose of this section is to:

(1) provide tax credits for certain contributions to a nonprofit scholarship funding organization;

(2) expand educational opportunities for children of families that have limited financial resources or exceptional needs; and

(3) enable children in this State to achieve a greater level of excellence in their education.

(B) In enacting this section, the General Assembly recognizes diversity among children and affirms that every child is unique. The General Assembly also affirms that children learn differently from one another and may benefit from expanded educational opportunities.

(C) As used in this section:

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

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

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

(c) is located in this State;

(d) has an education curriculum which complies with or is comparable to state and national standards applicable generally to K‑12 public schools in this State where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress; and

(e) has adequate school facilities that foster productive learning in a healthy environment and are accessible to students with physical disabilities in accordance with federal, state, and local laws.

(2) ‘Nonprofit scholarship funding organization’ means a charitable organization that:

(a) is exempt from federal tax under Section 501(a) of the Internal Revenue Code by being listed as an exempt organization in Section 501(c)(3) of the Code;

(b) allocates, after its first year of operation, at least ninety percent of its annual contributions and revenue received during a particular year to provide grants for tuition, transportation, or textbook expenses (collectively hereinafter referred to as tuition) or any combination thereof to children enrolled in an eligible school meeting the criteria of this chapter, and incurs administrative expenses annually, after its first year of operation, of not more than five percent of its annual contributions and revenue for a particular year;

(c) allocates all of its funds used for grants on an annual basis to children who are ‘exceptional needs’ students, who are eligible for the federal free or reduced lunch program, whose families meet the qualifications for federal Medicaid benefits, or for other authorized purposes of this chapter;

(d) does not provide grants solely for the benefit of one school, and if the Department of Revenue determines that the nonprofit scholarship funding organization is providing grants to one school to the exclusion of other schools in a particular area which would also like to enroll such students, the tax credit allowed by this section may be disallowed;

(e) does not have as a member of its governing board any parent, legal guardian, or member of their immediate family who has a child or ward who is currently receiving or has received a scholarship grant authorized by this section from the organization within one year of the date the parent, legal guardian, or member of their immediate family became a board member; and

(f) does not have as a member of its governing board any person who has been convicted of a felony, or who has declared bankruptcy within the last seven years.

(3) ‘Person’ means an individual, partnership, corporation, or other similar entity.

(4) ‘Transportation’ means transportation to and from school only.

(D) The tax credits allowed by this section may be used in computing any tax imposed by this chapter or in computing insurance premium taxes or bank license fees; provided, that the tax credit may not offset more than sixty percent of the taxpayer’s liability for a particular year.

(E) A person is entitled to a tax credit under this section for the amount of money the person contributes to a nonprofit scholarship funding organization up to the limits of this chapter if:

(1) the contribution is used to provide grants for tuition, transportation, or textbook expenses (tuition) or any combination thereof to children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

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

(F)(1) Grants shall be awarded by the nonprofit scholarship funding organization in an amount not exceeding five thousand dollars per year or seventy‑five percent of the cost of tuition, whichever is less. However, beginning with year 2013, in any year where the Consumer Price Index (Southeast Region) has increased on a percentage basis over that for the previous year as determined by the Department of Revenue, the dollar amount or percentage amount of a scholarship which may be granted under the provisions of this subsection is increased by a similar percentage to be determined and published by the Department of Revenue on its website available to the general public..

(2) In addition to the provisions of item (1), grants may be awarded by a scholarship granting organization in an amount not exceeding ten thousand dollars or seventy‑five percent of the cost of tuition, whichever is less, for students with ‘exceptional needs’ as this term is defined herein to attend an independent school. An ‘exceptional needs’ child is defined as a child who has significant cognitive, mental, physical, or emotional disabilities and whose parents or legal guardian believe that the services provided by the school district of legal residence do not sufficiency meet the needs of their child. The dollar and percentage amounts of the grants permitted by this item must be increased annually beginning in 2013 in the same manner provided in item (1) of this subsection.

(G)(1) The tax credits authorized by this section may not exceed cumulatively a total of fifteen million dollars annually for students who are eligible for the federal free or reduced lunch program, whose families meet the qualifications for federal Medicaid benefits, or for the purposes of subsection (L), and the tax credits authorized by this section may not exceed cumulatively a total of seven million five hundred thousand dollars annually for ‘exceptional needs’ students. If the Department of Revenue determines for a particular year that the total of such credits claimed by all taxpayers exceed this amount, it shall proportionally reduce the credits of all taxpayers pro rata for that year.

(2) Taxpayers making contributions to a nonprofit scholarship funding organization who desire that a portion or all of their contributions be used for grants for exceptional needs children shall state with their contribution the amount to be used for this purpose. These amounts so stated must be used for purposes of computing the maximum tax credit amounts under item (1) of this subsection authorized for contributions on behalf of exceptional needs students. If no such designation for exceptional needs children is made, the contribution shall come within the maximum tax credit limitation for other authorized purposes of this chapter provided in item (1).

(3) If a husband and wife file separate returns for any year, they each may only claim one‑half of the tax credit that would have been allowed for a joint return for the year.

(4) The tax credits allowed by this section are in lieu of any State of South Carolina charitable contribution deductions that could have been taken on the applicable return in regard to the contribution.

(5) The person shall apply for a credit under this section on or with the tax return for the period for which the credit is claimed.

(6) The Department of Revenue shall prescribe the form and manner of proof required to obtain the credit authorized by this section.

(7) A person may claim a credit under this section for a contribution during a particular period only against the tax owed for the corresponding period.

(8) Any unused tax credit may be carried forward for a period not exceeding five consecutive years. However, the tax credit is not refundable..

(H) A corporation or entity entitled to a credit under this section may not convey, assign, or transfer the deduction or credit authorized by this section to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

(I) The Department of Education, Department of Revenue, State Budget and Control Board, or any other state agency may not regulate the operations of a nonprofit scholarship funding organization under this section, except for the purpose of tax compliance, or the educational program of an independent school that accepts students who receive grants from the nonprofit scholarship funding organization, except for the school’s compliance with the requirements of subsection (C)(1) of this section.

(J)(1) 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 (C)(1) of this section, and shall annually publish an approved list of such schools meeting this criteria as provided in item (2) below. 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, representatives of independent schools and independent school associations, and other educators. 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.

(2) By the first day of August of each year, beginning on August 1, 2012, the Education Oversight Committee, on its website available to the general public, shall provide a list with addresses and telephone numbers of nonprofit scholarship funding organizations in good standing which provide grants under this section, and a list of approved independent schools which accept grants for eligible students under this section and which in its determination are in compliance with the requirements of subsection (C)(1) of this section.

(3) Any independent school not determined to be an eligible school by the Education Oversight Committee under its authority under this section may appeal this determination to the Administrative Law Court within thirty days of this determination.

(K) Every nonprofit scholarship funding organization providing grants under this section and every independent school accepting grants for eligible students under this section shall cause an outside auditing firm each year to conduct a comprehensive financial audit of its operations in conformity with generally accepted accounting principles and shall furnish same within thirty days of its completion and acceptance to the Secretary of State and Department of Revenue which must be made available by them on their website for public review.

(L) Scholarship grants under the terms and conditions of this section as are applicable also may be made on behalf of qualifying students to attend public schools located in a school district other than their school district of residence in the manner provided by law.

(M) On January 1, 2015, and on January first every three years thereafter, the Education Oversight Committee shall report to the Governor and the General Assembly on the effectiveness and success of this section and whether or not the purposes of this section as provided in subsections (A) and (B) hereunder have been accomplished.

SECTION 3. If a section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, this holding does not affect the constitutionality or the validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words thereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 4. This act takes effect upon approval by the Governor, and the tax deductions authorized by Section 1 and tax credits authorized by Section 2 of this act may be taken to the extent authorized beginning with calendar year 2012.

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