

# DEPARTMENT OF TAXATION

## 2006 Fiscal Impact Statement

1. **Patron** Christopher B. Saxman

3. **Committee** Senate Finance

4. **Title** Education Tax Credits

2. **Bill Number** HB 1294

**House of Origin:**

       **Introduced**

       **Substitute**

       **Engrossed**

**Second House:**

  X   **In Committee**

       **Substitute**

       **Enrolled**

### 5. **Summary/Purpose:**

This bill would allow individuals and businesses to claim a tax credit for contributions to Department of Taxation-approved nonprofit foundations that provide financial assistance to public schools for capital projects or provide scholarships to students in the Commonwealth. In addition, an individual taxpayer would be able to claim a credit of up to \$800, or \$1,200 if filing jointly, for the amount of contribution made to a nonprofit education foundation. The total amount of credits available in any given year would be capped at \$20 million.

This bill would be effective for taxable years beginning on and after January 1, 2006.

6. **No Fiscal Impact or Fiscal Impact Estimates are:** Not available. (See Line 8.)

#### 6a. **Expenditure Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Positions</b></i>	<i><b>Fund</b></i>
2005-06	\$34,600	1	GF
2006-07	\$48,700	1	GF
2007-08	\$49,700	1	GF
2008-09	\$50,700	1	GF
2009-10	\$51,700	1	GF
2010-11	\$52,700	1	GF
2011-12	\$53,700	1	GF

7. **Budget amendment necessary:** Yes.

ITEM(S): 264 and 265, Department of Taxation

### 8. **Fiscal implications:**

Information is not available on current contribution levels to public school and scholarship foundations in Virginia or how much individuals in Virginia incur for education expenses. The bill would provide an incentive for contributions to eligible organizations. Therefore, the negative General Fund revenue impact of this bill is not known, but cannot exceed \$20 million per year because of the statewide cap on allowable credits. Most of the revenue

loss would be general fund, but insurance companies may also claim the credit, so the Priority Transportation Fund's share of the premium tax would be reduced.

This bill would cost TAX \$34,600 in FY 06, \$48,700 in FY 07, \$49,700 in FY 08, \$50,700 in FY 09, \$51,700 in FY 10, \$52,700 in FY 11, and \$53,700 in FY 12. Because this bill would create a first-come first-served capped credit, along with a pre-authorization requirement, TAX would require one additional full time employee to implement this bill.

**9. Specific agency or political subdivisions affected:**

Department of Taxation  
State Corporation Commission

**Technical amendment necessary: Yes.**

To ensure that individual credits, combined with business credits, do not exceed the \$20 million cap, the following amendments are suggested to ensure that all taxpayers obtain pre-authorization for the credit.

Page 1 of the Engrossed substitute, Line 49, after awarded  
Strike: to business entities

Page 2 of the Engrossed substitute, Line 64, after entities  
Insert: and individual taxpayers

Page 2 of the Engrossed substitute, Line 66, after entity  
Insert: or individual taxpayer

Page 2 of the Engrossed substitute, Line 68, after entity  
Insert: or individual taxpayer

**11. Other comments:**

Tax Credit for Businesses

Under this bill, a business entity would be able to earn a tax credit equal to 90% of contributions to a nonprofit education foundation. A "business entity" would be a business subject to corporate income tax, individual income tax, bank franchise tax, the license tax on insurance companies, or the tax on public service corporations.

The total amount of tax credits that could be granted in any fiscal year would be \$20 million. Ten million dollars of the cap would be designated for contributions made to public school foundations. The other \$10 million would be granted for contributions made to scholarship foundations. Credits would be awarded to business entities on a first-come, first-served basis.

Business entities would be required request and receive preauthorization for a specified tax credit amount from the Department. A business entity would be required to make the preauthorized contribution within 30 days of issuance of the notice. The preauthorization

notice would accompany the donation from the business entity to the nonprofit education foundation. The education foundation would be required to return the notice to the Department, within 10 days certifying the amount of the donation and date received.

In addition to being preauthorized, business entities claiming credit for a contribution would be required to submit receipts from each nonprofit education foundation verifying such contribution.

Individuals would not be required to seek prior authorization for the credit. In order to ensure that the \$20 million cap is not exceeded, the Department would have to limit authorizations to business entities to ensure that individual contributions, combined with pre-authorized business contributions, do not exceed the cap. Technical amendments are suggested to require all credits to be pre-authorized.

Credits granted to a pass-through entities would be allocated to their individual owners in proportion to their ownership or interest in such business entities. Unused amount of the credit would not be refunded and could not be carried forward.

#### Individual Income Tax Credit

The bill would allow individuals to earn an income tax credit equal to 100% of contributions made to a nonprofit education foundation. The amount earned could not exceed \$800 for a single taxpayer or \$1,200 for taxpayers filing a joint return. Unused amount of the credit would not be refunded and could not be carried forward.

#### Nonprofit Education Foundations

Nonprofit education foundations would be required to apply to the Department in order to be approved to receive and administer tax credit-approved funds. The Department would be required to issue a notice of approval or denial, including reasons for denial, to the applicant within 60 days after the application is submitted. Nonprofit education foundations would include both public school foundations and scholarship foundations.

A "public school foundation" would be a charitable organization incorporated in Virginia that is exempt from taxation under the Internal Revenue Code and is established, in part, to provide financial aid for projects that have been approved by the foundation's local school board. A public school foundation would be required to disburse least 90% percent of its tax-credit derived funds for capital improvement projects approved by the local school board and for extracurricular activities, including, but not limited to, sports, band, and chorus.

A "scholarship foundation" would be a charitable organization incorporated in Virginia that is exempt from taxation under the Internal Revenue Code and is established, in part, to provide financial aid for the education of students residing in the Commonwealth. A scholarship foundation would be required to disburse at least 90% of its tax-credit derived funds for "qualified educational expenses" through scholarships. "Qualified educational expenses" would include school-related tuition and instructional fees and materials, including textbooks and workbooks used solely for school-related work. Scholarship

foundations would be required to provide receipts to individual taxpayers for their contributions.

In awarding scholarships, the scholarship foundation would (i) provide scholarships to any public, private or home-schooled student whose family's annual household income is less than 250% of the amount required to qualify for the Federal Free and Reduced Lunch Program; (ii) require evidence of the student's reading and math achievement for the previous school year as measured by a national norm-referenced achievement assessment, or a Virginia Standards of Learning assessment; (iii) not limit scholarships to students of one school; and (iv) not discriminate on the basis of race, color, national origin or disability.

Scholarship foundations would also be required to ensure that schools selected by scholarship students (i) are in compliance with the Commonwealth's and locality's health and safety laws and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) do not discriminate on the basis of race, color, or national origin; and (iv) comply with nonpublic school accreditation requirements administered by the Virginia Council for Private Education.

The amount of the scholarship provided to any child for any single school year by all eligible nonprofit scholarship foundations from eligible contributions shall not exceed the lesser of: (i) the actual tuition, textbook, and educational fees incurred, or (ii) the per pupil amount distributed to each local school division as the state's share of the standards of quality costs using the composite index of ability to pay as defined in the general appropriation act.

Payment of the scholarship by the eligible nonprofit scholarship foundation shall be by individual warrant or check made payable to the student's parent or legal guardian. If the parent chooses for his child to attend an eligible nonpublic school, the warrant or check must be mailed by the eligible nonprofit scholarship foundation to the eligible nonpublic school of the parent's choice, and the parent shall restrictively endorse the warrant or check to the eligible nonpublic school. An eligible nonprofit scholarship foundation shall ensure that, upon receipt of a scholarship warrant or check, the parent to whom the warrant or check is made restrictively endorses the warrant or check to the eligible nonpublic school of the parent's choice for deposit into the account of the nonpublic school.

Nonprofit education foundations would be required to be audited annually by a certified public accountant. The Department would be required to publish a list of approved nonprofit education foundations annually and submit a list of all nonprofit education foundations receiving contributions from business entities and individual taxpayers to the chairmen of the House and Senate Finance Committees no later than December 1 of each year.

This bill would be effective for taxable years beginning on and after January 1, 2006.

cc : Secretary of Finance

Date: 02/20/2006 PTR  
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