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SENATE BILL NO. 133

Offered January 13, 2010

Prefiled January 11, 2010

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03, relating to tax credits for donations to organizations providing certain educational funding for elementary school or secondary school students.*

Patron—Obenshain

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:03 as follows:

§ 58.1-439.12:03. Tax credits for donations to nonprofit education organizations.

A. As used in this section, unless the context clearly shows otherwise, the term or phrase:

"Business entity" means a business.

"Donation" means a donation of cash or personal property. The value of any donation of personal property shall be equal to such value as determined for federal income tax purposes using the laws and regulations of the United States relating to federal income taxes.

"Educational improvement organization" means a nonprofit entity that (i) is exempt from federal taxation under § 501 (c) (3) of the Internal Revenue Code, and (ii) contributes at least 90 percent of its annual receipts as grants to public schools for innovative educational programs.

"Eligible student" means any student who would be eligible for the federal free and reduced lunch program if the student was enrolled in a public school.

"Federal free and reduced lunch program" means the federal program established under 42 U.S.C. § 1751.

"Innovative educational program" means an advanced academic or similar program that is not part of the regular academic program of a public school but that enhances the curriculum or academic program of the public school.

"Nonprofit education foundation" means an educational improvement organization or a scholarship organization.

"Public school" means a public elementary school or secondary school in the Commonwealth.

"Qualified educational expenses" means school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies used solely for school-related work.

"Scholarship organization" means a nonprofit entity that (i) is exempt from federal taxation under § 501 (c) (3) of the Internal Revenue Code, and (ii) contributes at least 90 percent of its annual receipts to a scholarship program.

"Scholarship program" means a program to provide scholarships for qualified educational expenses to eligible students enrolled in a nonpublic elementary school or secondary school in the Commonwealth at which the compulsory attendance requirements of the Commonwealth may be met. A scholarship program shall include an application and review process for the purpose of making scholarship awards to eligible students. The award of scholarships to eligible students shall be made without limiting availability only to students of one school. A scholarship program, in awarding scholarships, shall not discriminate on the basis of race, color, national origin, or disability.

"Student" means a child who is of compulsory school attendance age as defined in § 22.1-254 and who is a resident of the Commonwealth.

B. For taxable years beginning on or after January 1, 2010, a business entity (or the partners, shareholders, or members of the business entity as provided in subsection G) shall be allowed a credit against any tax due under Articles 2 (§ 58.1-320et seq.) or 10 (§ 58.1-400et seq.) of Chapter 3; Chapter 12 (§ 58.1-1200et seq.); Article 1 (§ 58.1-2500et seq.) of Chapter 25; or Article 2 (§ 58.1-2620et seq.) of Chapter 26, in an amount equal to 80 percent of the value of the donations made in the taxable year by the business entity to a nonprofit education foundation included on the list published annually by the Department on its website in accordance with subsection D. However, in no case shall a business entity be allowed more than an aggregate of \$80,000 in tax credit under this section for donations made in the taxable year.

C. Tax credits under this section shall be issued by the Department. In a form approved by the Department, business entities shall request and receive preauthorization for a specified tax credit amount from the Department. The Department's preauthorization notice shall accompany the donation

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59 from the business entity to the nonprofit education foundation, which shall, within 10 days, return the
60 notice to the Department certifying the value of the donation from the business entity and the date
61 received. Preauthorization notices not acted upon by the business entity within 30 days of issuance by
62 the Department shall be void. The Department shall issue a tax credit to a business entity upon receipt
63 of the preauthorization notice from the nonprofit education foundation. The aggregate amount of tax
64 credits that may be issued each fiscal year by the Department under this section shall not exceed \$25
65 million.

66 The Department shall develop and publish guidelines for purposes of the implementation of the
67 provisions of this section. The guidelines shall be exempt from the Administrative Process Act
68 (§ 2.2-4000 et seq.).

69 D. 1. In order to qualify as an educational improvement organization or a scholarship organization,
70 the organization shall make an application to the Department. Organizations shall submit information to
71 the Department that enables the Department to confirm that the organization is exempt from taxation
72 under § 501 (c) (3) of the Internal Revenue Code.

73 2. A scholarship organization shall ensure that nonpublic elementary schools or secondary schools
74 selected by eligible students to whom it awards scholarships (i) are in compliance with the
75 Commonwealth's and the locality's health and safety laws and codes; (ii) hold a valid occupancy permit
76 as required by the locality; (iii) do not discriminate on the basis of race, color, national origin, or
77 disability; and (iv) comply with nonpublic school accreditation requirements as set forth in § 22.1-19
78 and administered by the Virginia Council for Private Education, or maintain an assessment system that
79 annually measures scholarship students' progress in reading and math using a national norm-referenced
80 achievement test such as the Stanford Achievement Test, California Achievement Test, and Iowa Test of
81 Basic Skills.

82 As part of its application, a scholarship organization shall make a written certification to the
83 Department that it meets all requirements for a scholarship organization described under this section.

84 3. An application submitted by an educational improvement organization shall describe the proposed
85 innovative educational program or programs the organization intends to make contributions to, in a
86 manner prescribed by the Department. The Department shall consult with the Department of Education
87 as necessary with regard to such program or programs. After consulting with the Department of
88 Education, the Department shall review and approve or disapprove such application.

89 The guidelines described under this section shall provide a framework for determining the eligibility
90 of an innovative educational program, and such guidelines for eligibility shall be developed by the
91 Department in consultation with the Department of Education.

92 4. The Department shall notify the educational improvement organization or the scholarship
93 organization whether or not the organization meets the requirements of this section and is a qualified
94 organization no later than 60 days after the organization has submitted the information required under
95 this section.

96 5. The Department shall annually publish on its website a list of each educational improvement
97 organization and scholarship organization qualified under this section. Once an organization has been
98 qualified by the Department, it shall remain a qualified organization until the Department removes the
99 organization from its annual list. The Department shall remove an organization from the annual list if it
100 no longer meets the requirements of this section. The Department may periodically require a qualified
101 organization to submit updated or additional information for purposes of the Department determining
102 whether or not the organization continues to meet the requirements of this section.

103 E. The total amount of scholarships for qualified educational expenses awarded by a scholarship
104 organization to an eligible student enrolled in a nonpublic elementary school or secondary school for
105 any single school year shall not exceed the lesser of: (i) the qualified educational expenses incurred, (ii)
106 40 percent of the per-pupil amount distributed to the local school division in which the student resides
107 as the state's share of the standards of quality costs using the composite index of ability to pay as
108 defined in the general appropriation act, or (iii) \$4,000.

109 If an eligible student transfers from a public elementary school or secondary school to a nonpublic
110 elementary school or secondary school and receives a scholarship for qualified educational expenses
111 from a scholarship organization in the academic year of transfer, the local school division from which
112 the student transferred shall receive from the Commonwealth 25 percent of such per-pupil amount for
113 such student for each academic year or portion thereof that the eligible student is enrolled in the
114 nonpublic elementary school or secondary school, up to a maximum of two academic years.

115 F. In no case shall the amount of tax credit taken by a taxpayer for any taxable year exceed the
116 total amount of tax imposed for the taxable year. If the total amount of the tax credit allowed under this
117 section for the taxable year in which the donation was made exceeds the business entity's tax liability
118 for such taxable year, the amount that exceeds the tax liability may be carried over for credit against
119 the taxes of the business entity in the next five taxable years or until the total amount of the tax credit
120 has been taken, whichever is sooner.

121 G. Credits granted to partnerships, electing small business (Subchapter S) corporations, or limited
122 liability companies shall be allocated to their individual partners, shareholders, or members,
123 respectively, in proportion to their ownership or interest in such business entities.

124 H. No tax credit under this section shall be issued by the Department for activities that are a part of
125 a business entity's normal course of business.

126 I. A scholarship for qualified educational expenses received by an eligible student from a scholarship
127 organization pursuant to a scholarship program shall not be subject to the tax imposed by this chapter.

128 J. By December 31 of each year beginning in 2011, the Department shall provide to the General
129 Assembly a list of each educational improvement organization and scholarship organization receiving
130 donations for which tax credits have been issued by the Department in the preceding fiscal year.