

DEPARTMENT OF TAXATION

2010 Fiscal Impact Statement

1. **Patron** Mark D. Obenshain

3. **Committee** Senate Finance

4. **Title** Income Tax: Credit for Donations to
Nonprofit Education Organizations

2. **Bill Number** SB 133

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. **Summary/Purpose:**

This bill would allow a business entity to claim a tax credit equal to 80 percent of approved contributions to a nonprofit education foundation, not to exceed \$80,000 in a taxable year.

The total amount of tax credits that could be allowed to business entities in any fiscal year would be \$25 million. The total amount of the tax credit for each business entity would not be allowed to exceed the entity's tax liability, and any unused tax credits could be carried forward for five taxable years.

Business entities would be required to request preauthorization for a specified credit amount from TAX. TAX would also be responsible for developing the list of approved nonprofit education foundations.

This bill would be effective for taxable years beginning on or after January 1, 2010.

6. **Fiscal Impact Estimates are:** Preliminary. (See Line 8.)

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

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8. **Fiscal implications:**

Administrative Impact

TAX has not assigned any administrative costs to this bill because the changes required by a single bill such as this can be implemented as part of the annual changes to our systems and forms. As stand-alone legislation, TAX considers implementation of this bill as "routine," and does not require additional funding.

TAX will provide specific administrative costs on any legislation that is not "routine." Additionally, TAX will review all state tax legislation likely to be enacted prior to the passage by each house. If the aggregate number of routine bills likely to pass either house is unusually large, it is possible that additional resources will be required. If so, TAX will identify the costs at that time.

Revenue Impact

This bill would result in an unknown, but potentially significant, negative revenue impact. The impact amount could be up to the \$25 million authorized each fiscal year.

According to the Virginia Department of Education (DOE), there could be some positive impact on General Fund revenue resulting from students transferring from public schools to private schools. When such a transfer occurred, under the provisions of this bill, the local school division would receive a supplement equal to 25 percent of the per-pupil amount for two years. According to DOE, any funds saved from such reductions in payments to local school divisions would first be used to offset any shortfall in Basic Aid and would be redistributed to other localities. If there were no shortfall, any excess Basic Aid funds would be used to fill other Direct Aid accounts with shortfalls. If no shortfalls existed there, then funds would revert to the General Fund. However, DOE cannot estimate the number of students who may opt for the transfer and has no way of making a fiscal estimate until such a program is actually operating and transfers are taking place.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Education

10. Technical amendment necessary: No.

11. Other comments:

Income Tax Credit Proposal

This bill would allow a business entity to earn a tax credit equal to 80% of contributions to a nonprofit education foundation, not to exceed \$80,000 in a taxable year. This credit would be allowed against the individual, fiduciary, and corporate income taxes, as well as the bank franchise tax, the license tax on insurance companies, and the license tax on certain regulated utility companies. The total amount of tax credits that could be granted to business entities in any fiscal year would be \$25 million. The total amount of the tax credit would not be allowed to exceed the business entity's tax liability, and any unused tax credits may be carried forward for five taxable years.

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 then be required to return the notice to the Department, within 10 days certifying the amount of the donation and date received. No tax credit, however, would be issued by TAX for activities that were part of the business entity's normal course of business.

Any credits granted to partnerships, electing small business (Subchapter S) corporations, or limited liability companies would be allocated to their individual partners, shareholders,

or members, respectively, in proportion to their ownership or interest in such business entities.

TAX would be required to develop and publish guidelines, exempt from the Administrative Process Act, implementing this credit.

Nonprofit Education Foundations

Educational improvement organizations and scholarship organizations would be required to apply to TAX in order to be approved to receive a donation that would qualify to receive tax credits. TAX 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.

The application submitted by an educational improvement organization would be required to describe the proposed innovative educational program or programs the organization intends to make contributions to, in a manner prescribed by TAX. The bill would permit TAX to consult the Department of Education regarding these programs. After consulting the Department of Education, TAX would review and approve or disapprove such application.

The application submitted by a scholarship organization would be required to show that the organization would 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, or maintain an assessment system that annually measures scholarship students' progress in reading and math using a national norm-referenced achievement test such as the Stanford Achievement Test, California Achievement Test, and Iowa Test of Basic Skills. The scholarship organization would be required to submit to TAX written certification that it meets these requirements.

The scholarships for educational expenses awarded by a scholarship organization to an eligible student enrolled in a nonpublic elementary school or secondary school in a single year could not exceed the lesser of: (i) the qualified educational expenses incurred, (ii) 40 percent of the per pupil amount distributed to the local school division in which the student resides 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, or (iii) \$4,000. Such scholarships would not be subject to the Virginia income tax.

If an eligible student transferred from a public elementary school or secondary school to a nonpublic elementary school or secondary school and receives a scholarship for qualified educational expenses from a scholarship organization in the academic year of transfer, the local school division from which the student transferred would receive 25% of the per-pupil amount from the student for each academic year or portion thereof that the eligible student is enrolled in the nonpublic elementary school or secondary school, up to a maximum of two academic years.

TAX would be required to annually publish on its website a list of each qualified educational improvement organization and scholarship organization. In addition, TAX would be required to publish a list of approved educational improvement organization and scholarship organizations receiving contributions from business entities to the General Assembly no later than December 31 of each year, beginning in 2011.

Once an organization was qualified by TAX, it would remain a qualified organization until TAX removed it from the annual list. TAX would remove an organization if it no longer met the applicable requirements. TAX would be authorized to periodically require a qualified organization to submit updated or additional information in order to determine whether or not the organization continued to meet the applicable requirements.

Definitions

"Business entity" would mean a business.

"Donation" would mean 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" would mean 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 federal law.

"Innovative educational program" would mean 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" would mean an educational improvement organization or a scholarship organization.

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

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

"Scholarship organization" would mean 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" would mean 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.

Effective Date

This bill would be effective for taxable years beginning on or after January 1, 2010.

Similar Legislation

House Bill 599 would create income tax credits for business entities and individual taxpayers who make contributions to eligible public school foundations and eligible scholarship foundations.

cc : Secretary of Finance

Date: 1/17/2010 TG
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