REVISED
1/24/11

DEPARTMENT OF TAXATION
2011 Fiscal Impact Statement

1. Patron Mark D. Obenshain

2. Bill Number SB 1194

House of Origin:
X **Introduced**
____ **Substitute**
____ **Engrossed**

Second House:
____ **In Committee**
____ **Substitute**
____ **Enrolled**

3. Committee Senate Finance

4. Title Income tax; corporate tax credits for donations to nonprofit organizations providing educational scholarships

5. Summary/Purpose:

This bill would allow businesses to claim a credit against the corporate income tax for contributions to TAX-approved scholarship foundations that provide scholarships to students in the Commonwealth. The total amount of credits available in any given fiscal year would be capped at $25 million. Any unused tax credits could be carried forward or carried back. This credit would also be transferable and refundable.

This bill would be effective for taxable years beginning on and after January 1, 2012.

6. Budget amendment necessary: Yes.
ITEM(S): Page 1, Revenue Estimates
262, Department of Taxation

7. Fiscal Impact Estimates are: Not available. (See Line 8.)

7a. Expenditure Impact:

Fiscal Year	***Dollars***	***Fund***
2010-11	$0	GF
2011-12	$71,160	GF
2012-13	$93,600	GF
2013-14	$95,600	GF
2014-15	$95,600	GF
2015-16	$97,600	GF
2016-17	$97,600	GF

8. Fiscal implications:

Administrative Costs

Typically, TAX would not assign any administrative costs to tax credit bills because the changes required by such bills can be implemented as a part of the annual changes to our systems and forms. However, this bill would create significant administrative costs as a result of the transferability and fifteen-year carryback provisions. If the carryback and transferability provisions were eliminated from this bill, the implementation of this bill would be considered “routine” and would not require any additional funding.

The costs incurred as a result of this bill would be $71,160 in FY 2012, $93,600 in FY 2013, $95,600 in FY 2014, $95,600 in FY 2015, $97,600 in FY 2016, and $97,600 in FY 2017. These administrative costs include those associated with hiring two additional employees to track any transfers or carrybacks, as well as manually enter data from amended returns claiming the carryback.

Revenue Impact

The revenue loss associated with this is unknown but potentially significant. The number of Virginia companies that would donate to non-profits and meet the requirements of this bill is unknown, as is the amount they would donate. Because this credit is subject to an aggregate annual cap, the maximum impact of this credit would be a $25 million revenue loss per year.

According to the Department of Education (“DOE”), there is no estimate for the number of eligible students who would receive scholarships under the bill, or in what localities of the Commonwealth these students would reside. The number of students receiving scholarships would depend on the amount of contributions received by the scholarship foundations each year, the level of student utilization of the scholarships, and the per pupil value of the scholarships provided. It is estimated that 467,016 Virginia students would be eligible to receive a scholarship under the income criterion of the bill (annual family household income not to exceed the income amount required for a student to qualify for the federal Free and Reduced Lunch program). For a family of four, this income limit is $40,793 for the higher reduced price lunch income threshold. A similar scholarship program in Florida has approximately 30,000 students participating with similar income eligibility requirements as proposed in the bill.

Under the bill, the scholarship amount provided is the lesser of the actual qualified educational expenses (i.e., tuition, supplies, etc.) or 90% of the per pupil amount of state Standards of Quality (SOQ) funding provided to the locality. State funding for the SOQ is distributed to local school divisions on a per pupil basis using the number of students enrolled, and the per pupil funding amounts and composite index calculated for the division. Due to composite index, state per pupil SOQ funding varies across school divisions. For FY12, state per pupil SOQ funding averages $4,100 statewide; however, due to the composite index, the per pupil amounts vary across divisions and range from $1,300 to $6,700 for the lowest and highest divisions.

If eligible students already enrolled in public school were to attend private school using a scholarship, DOE indicates there would be some state General Fund cost reduction resulting from students moving from public to private schools. These students would no longer be counted in the average daily membership of the school division for the purpose of driving state SOQ funding. Also, the state would avoid the per student cost for eligible kindergarten and first grade students not yet enrolled in public school who use a scholarship to initially enroll in private school. However, DOE cannot estimate the number of students who may opt for the transfer or initially enroll in private school, and is unable to make a fiscal estimate until such a program is in operation and transfers or initial enrollments are taking place. A key factor affecting state cost reduction would be whether there is full utilization each year of the scholarships awarded to students such that the students awarded scholarships move from public to private school or initially enroll in private school, and thus eliminate or avoid the per pupil state cost. This is critical since it is assumed the full value of the tax credit will be taken on the contributions made each year, with the loss of state revenue assumed to be fixed each year based on the level of contributions made.

9. Specific agency or political subdivisions affected:

Department of Taxation
Department of Education

10. Technical amendment necessary: Yes.

Line 33, after § 58.1-439.27
Strike: , except that no business entity shall receive any credit against any bank franchise tax imposed by a city, town, or county under the authority granted in § 58.1-1208, 58.1-1209 or 58.1-1210

Because of the high costs of administering a credit that is transferable and can be carried back, as well as the infeasibility of tracking the carryback, TAX suggests the following technical amendments:

Line 43, after forward
Strike: or carried back

Line 43, after refundable
Strike: or transferable

11. Other comments:

Proposed Legislation – Corporate Income Tax Credit

Under this bill, a business entity would be able to earn a corporate income tax credit equal to 90% of its contributions to a scholarship foundation. The credit would be allowed to be claimed for the taxable year following the year of contribution.

Tax credits would be awarded to businesses on a first-come, first-served basis in accordance with procedures established by TAX. The total amount of credits available in any given fiscal year would be capped at $25 million.

Any unused tax credits could be carried forward or carried back. Credits would also be transferable and refundable.

Business entities would be required to request and receive preauthorization for a specified tax credit amount from TAX. The preauthorization notice would accompany the donation from the business entity to the scholarship foundation. The scholarship foundation would be required to return the notice to TAX within 20 days certifying the amount of the donation and date received. A business entity would be required to make the preauthorized contribution within 60 days of issuance of the notice.

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

Proposed Legislation – Requirements for Scholarship Foundations

Scholarship foundations would be required to apply to TAX in order to be approved to receive and administer tax credit-approved funds. 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. A "scholarship foundation" would be defined as a nonstock, nonprofit corporation that is exempt from taxation under IRC § 501(c)(3) and is established 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 mean school-related tuition and instructional fees and materials, including textbooks, workbooks, and supplies 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 be required to (i) not limit scholarships to students of one school; and (ii) comply with Title VI of the Civil Rights Act of 1964.

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) comply with Title VI of the Civil Rights Act of 1964; 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.

The amount of the scholarship provided to any child for any single school year by all eligible nonprofit scholarship foundations from eligible contributions would not be allowed to exceed the lesser of: (i) the actual qualified educational expenses, or (ii) 90 percent of 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.

Scholarship foundations shall develop procedures for disbursing scholarships in periodic payments throughout the school year to ensure scholarships are portable.

This bill would be effective for taxable years beginning on and after January 1, 2012.

Similar Legislation

House Bill 2314 would allow businesses to claim a non-refundable credit against the corporate income tax for contributions to nonprofit foundations that provide scholarships to students in the Commonwealth.

cc : Secretary of Finance

Date: 1/24/2011 KLC
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