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**SENATE BILL NO. 848**

Offered January 9, 2013

Prefiled January 2, 2013

A *BILL to amend the Code of Virginia by adding in Article 13 of Chapter 3 of Title 58.1 a section numbered 58.1-439.12:11, relating to tax credits for donations to organizations providing scholarships to certain students attending Virginia two-year colleges.*

Patron—Edwards

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 58.1-439.12:11 as follows:

**§ 58.1-439.12:11. Tax credits for scholarships to students attending Virginia two-year colleges.**

A. As used in this section, unless the context requires otherwise:

"Council" means the State Council of Higher Education for Virginia.

"Eligible student" means a domiciled resident of Virginia according to the definition of "domicile" in § 23-7.4 enrolled in an associate degree program in a Virginia two-year college based on science, technology, engineering, math, education, or nursing.

"Qualified educational expenses" means school-related tuition, instructional fees, or other mandatory fees charged by a Virginia two-year college.

"Scholarship foundation" means a nonstock, nonprofit corporation that is approved by the Council pursuant to subsection E to receive monetary donations for which tax credits may be issued under this section. A scholarship foundation shall be organized in part or in whole to provide scholarships to students attending a Virginia two-year college. In addition, the Virginia Foundation for Community College Education shall be deemed a scholarship foundation.

B. For taxable years beginning on or after January 1, 2014, but before January 1, 2019, a person shall be eligible to receive a credit against any tax due under Article 2 (§ 58.1-320 et seq.), Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 in an amount equal to 65 percent of the monetary donation made by the person to a scholarship foundation included on the list published annually by the Council pursuant to subsection E to pay qualified educational expenses for eligible students. The credit shall be allowed to be claimed for the taxable year following the year of such donation. For individuals and corporations making estimated tax payments pursuant to this chapter, the credit shall be prorated equally against the individual's or corporation's estimated tax payments made in the third and fourth quarters of the taxable year in which the credit may be claimed and the final tax payment.

No tax credit shall be allowed under this section if the monetary donation is less than \$500. In addition, no more than \$50,000 in tax credits shall be issued to an individual or to married persons in a taxable year. However, such limitation on the amount of tax credits issued to an individual shall not apply to credits issued to any business entity, including a sole proprietorship.

C. Tax credits shall be issued by the Department to persons making monetary donations to scholarship foundations in accordance with procedures established by the Department under the following conditions:

1. The total amount of tax credits that may be issued each fiscal year under this section shall not exceed \$5 million. The Department shall develop procedures to issue tax credits in the event that applications for tax credits exceed \$5 million for the fiscal year.

2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ 58.1-320 et seq.), Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year in which the monetary donation was made. Any credit not usable for the taxable year following the taxable year of the monetary donation may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et seq.), Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable years or until the total amount of the tax credit has been taken, whichever is sooner.

The amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

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59 3. In issuing tax credits, the Department shall provide a preauthorization notice to the person  
60 making a monetary donation to a scholarship foundation. The Department's preauthorization notice shall  
61 accompany the monetary donation from the person to the scholarship foundation, which shall, within 20  
62 days, return the notice to the Department certifying the amount of the monetary donation and date  
63 received. Preauthorization notices not acted upon within 60 days of issuance shall be void.

64 4. Every person seeking to claim the credit allowed under this section shall submit with the  
65 applicable tax return verification from each scholarship foundation to which monetary donations have  
66 been made by the person during the taxable year.

67 D. No tax credit shall be allowed under this section for activities that are a part of a person's  
68 normal course of business.

69 E. 1. Persons seeking to receive and administer tax-credit-approved funds as scholarship foundations  
70 shall submit information to the Council, which shall determine whether an applicant is a scholarship  
71 foundation. The Council shall prescribe what reasonable information shall be submitted by such  
72 persons. Notice of approval or denial, including reasons for denial, shall be issued by the Council to the  
73 applicant within 60 days after the complete information is submitted. Any approval shall not be withheld  
74 unreasonably.

75 2. The Council shall publish annually on its website a list of each scholarship foundation qualified  
76 under this section. Once a foundation has been qualified by the Council, it shall remain qualified until  
77 the Council removes the foundation from its annual list. The Council shall remove a foundation from the  
78 annual list if it no longer meets the requirements of this section. The Council may periodically require a  
79 qualified foundation to submit updated or additional information for purposes of determining whether or  
80 not the foundation continues to meet the requirements of this section.

81 3. As a condition for qualification by the Council, a scholarship foundation included on the list  
82 published annually by the Council shall disburse at least 90 percent of the amount of the donations for  
83 which tax credits were issued under this section within one year of such donation for qualified  
84 educational expenses through scholarships to eligible students. Tax-credit-derived funds not used for  
85 such scholarships may only be used for the administrative expenses of the scholarship foundation. Any  
86 scholarship foundation that fails to disburse at least 90 percent of such donated amounts within one  
87 year shall be removed from the annual list published by the Council and shall not be entitled to receive  
88 and administer additional tax-credit-derived funds.

89 4. By August 1 of each year, each scholarship foundation receiving monetary donations for which tax  
90 credits have been issued pursuant to this section shall provide the following information to the Council:  
91 (i) the total number and dollar amount of monetary donations received between July 1 of the prior  
92 calendar year and July 1 of the current calendar year for which the Department has issued tax credits  
93 pursuant to this section, (ii) the dates when such monetary donations were received, and (iii) the total  
94 number and dollar amount of qualified educational expenses scholarships awarded between July 1 of the  
95 prior calendar year and July 1 of the current calendar year. Any scholarship foundation that fails to  
96 provide this report by September 30 shall be removed from the annual list published by the Council and  
97 shall not be entitled to receive and administer additional tax-credit-derived funds.

98 F. Payment of scholarships from tax-credit-derived funds by the scholarship foundation shall be by  
99 individual warrant or check made payable to and mailed to the applicable Virginia two-year college.

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

102 H. The Department shall submit a report of all scholarship foundations receiving donations for  
103 which tax credits were awarded under this section to the Chairmen of the House and Senate Finance  
104 Committees and the Council no later than December 1 of each year. The report shall include the total  
105 amount of monetary donations to each scholarship foundation for which the Department issued tax  
106 credits under this section.

107 I. The Tax Commissioner in consultation with the Council shall develop guidelines implementing the  
108 provisions of this section. Such guidelines shall be exempt from the provisions of the Administrative  
109 Process Act (§ 2.2-4000 et seq.).