

# DEPARTMENT OF TAXATION

## 2013 Fiscal Impact Statement

1. **Patron** John S. Edwards

2. **Bill Number** SB 848

3. **Committee** Senate Finance

**House of Origin:**

  X   **Introduced**

       **Substitute**

       **Engrossed**

4. **Title** Tax Credit for Donations to Organizations  
Providing Scholarships to Certain Students  
Attending Two-Year Colleges

**Second House:**

       **In Committee**

       **Substitute**

       **Enrolled**

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

This bill would allow taxpayers to claim a credit against the individual income tax, corporate income tax, bank franchise tax, insurance premiums license tax, or tax on public service corporations equal to 65 percent of the monetary donation made to a scholarship foundation approved by the State Council of Higher Education for Virginia ("SCHEV"). The scholarship foundation would be required to disburse at least 90 percent of the amount of each donation for which a tax credit is received within one year of such donation for qualified educational expenses through scholarships for eligible students enrolled in certain associate degree programs in a Virginia two-year college.

The total amount of credits available in any given fiscal year would be capped at \$5 million. The Department of Taxation ("the Department") would be required to develop procedures to issue tax credits in the event that applications for tax credits exceed the \$5 million cap. The tax credit would be claimed for the taxable year following the year of donation. Any unused tax credits would be carried over for five years.

This credit would be effective for taxable years beginning on and after January 1, 2014, but before January 1, 2019.

6. **Budget amendment necessary:** No.

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

#### 7b. **Revenue Impact:**

<i><b>Fiscal Year</b></i>	<i><b>Dollars</b></i>	<i><b>Fund</b></i>
2012-13	\$0	GF
2013-14	\$0	GF
2014-15	\$0	GF
2015-16	(\$5 million)	GF
2016-17	(\$5 million)	GF
2017-18	(\$5 million)	GF
2018-19	(\$5 million)	GF

## **8. Fiscal implications:**

### Administrative Costs – Department of Taxation

The Department of Taxation (“the Department”) 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, the Department considers implementation of this bill as “routine,” and does not require additional funding.

The Department will provide specific administrative costs on any legislation that is not “routine.” Additionally, the Department 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, the Department will identify the costs at that time.

### Administrative Costs – SCHEV

SCHEV may require additional funding in order to implement the provisions of this bill. The amount of such funding is unknown, but would likely include funding for additional staff or contractors to review applications for scholarship foundations.

### Revenue Impact

This bill is would have a negative impact on General Fund revenues, beginning in Fiscal Year 2016. Given the amount and availability of this tax credit, the amount of tax credits granted under this bill is expected to reach the \$5 million cap. The maximum credit amount would be reached once approximately \$7.69 million worth of annual monetary contributions was approved.

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

Department of Taxation  
State Council of Higher Education for Virginia

## **10. Technical amendment necessary: Yes.**

This bill would allow taxpayers to claim the credit for the taxable year following the year of donation. To clarify the timing of the credit, the Department suggests the following technical amendments:

Line 28, after eligible to  
Strike: receive  
Insert: earn

Line 50, after year  
Insert: following the year

SCHEV would require sufficient time for staff to thoroughly review applications and prepare recommendations to the Council. Because the Council does not currently meet every month, SCHEV estimates that the 60-day period for approving or denying applications may be insufficient. Accordingly, the following technical amendment is suggested:

Line 73, after within  
Strike: 60  
Insert: 120

To correct an inconsistency in the dates by which a scholarship foundation must report certain information to SCHEV, the Department suggests the following technical amendment:

Line 96, after report by  
Strike: September 30  
Insert: August 1

## **11. Other comments:**

### Educational Improvement Scholarships Tax Credit

Effective for the 2013 taxable year, taxpayers may earn an Educational Improvement Scholarships Tax Credit equal to 65 percent of the monetary donation made to a qualifying scholarship foundation. This credit may be claimed for the taxable year following the year of contribution, and may be applied against the individual income tax, corporate income tax, bank franchise tax, insurance premiums license tax, or tax on public service corporations. For taxpayers making estimated tax payments, the credit is prorated equally against 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.

Tax credits are awarded to taxpayers on a first-come, first-served basis. The total amount of credits available in any given fiscal year is capped at \$25 million. No tax credit is allowed if the monetary donation is less than \$500. No more than \$50,000 in tax credits may be issued to an individual or to married persons in a taxable year. The \$50,000 limitation does not apply to credits issued to any business entity, including a sole proprietorship. Any unused tax credits may be carried over for the next five succeeding taxable years or until the total amount of credit has been taken, whichever is sooner.

Taxpayers are required to request and receive preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The preauthorization notice must accompany the donation from the taxpayer to the scholarship foundation. The scholarship foundation is then required to return the notice to the Department of Education within 20 days certifying the amount of the donation and date received. A taxpayer is required to make the preauthorized contribution within 60 days of issuance of the notice. In addition to being preauthorized, taxpayers claiming credit for a contribution are required to submit verification from each scholarship foundation to which monetary donations have been made.

For purposes of this credit, a “scholarship foundation” is defined as a nonstock, nonprofit corporation that is exempt from taxation under IRC § 501(c)(3), that has been approved by the Department of Education, and that is established to provide financial aid for the education of students residing in the Commonwealth. In order to be approved to receive and administer tax credit-approved funds, scholarship foundations are required to apply to the Department of Education. The Department of Education is 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 is required to disburse at least 90 percent of the amount of each donation for which a tax credit may be received within one year of such donation for “qualified educational expenses” through scholarships. Tax credit-derived funds not used for such scholarships may be used only for the administrative expenses of the scholarship foundation. “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 must provide receipts to individual taxpayers for their contributions.

By September 30 of each year, each scholarship foundation is required to provide the following information to the Department of Education:

- The total number and dollar amount of contributions received between September 1 of the prior calendar year and September 1 of the current calendar year,
- The dates when such contributions were received, and
- The total number and dollar amount of qualified educational expenses scholarships awarded for the school year that began during the current calendar year

Any scholarship foundation that fails to disburse at least 90 percent of any donated amount within one year or that fails to provide the required report by September 30 is removed from the annual list published by the Department of Education and is not entitled to request preauthorization for additional tax credits, nor is it entitled to receive and administer additional tax credit-derived funds.

In awarding scholarships from tax credit-derived funds, the scholarship foundation is required to (i) provide scholarships for qualified educational expenses only to students whose family's annual household income is not in excess of 300 percent of the current poverty guidelines or any eligible student with a disability; (ii) not limit scholarships to students of one school; and (iii) comply with Title VI of the Civil Rights Act of 1964. Scholarship foundations are also be required to ensure that schools selected by students to which tax credit-derived funds may be paid (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 aggregate amount of scholarships provided to each child for any single school year by all eligible scholarship foundations from eligible donations cannot be allowed to exceed

the lesser of: (i) the actual qualified educational expenses, or (ii) 100 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 Appropriations Act.

#### Proposed Legislation – Tax Credit Requirements

This bill would allow taxpayers to claim a credit against the individual income tax, corporate income tax, bank franchise tax, insurance premiums license tax, or tax on public service corporations equal to 65 percent of the monetary donation made to a scholarship foundation approved by SCHEV.

No tax credit would be allowed for monetary donations of less than \$500. No more than \$50,000 in tax credits would be issued to an individual or to married persons in a taxable year. Such limitation would not apply to credits issued to any business entity, including a sole proprietorship.

The total amount of credits available in any given fiscal year would be capped at \$5 million. The Department would be required to develop procedures to issue tax credits in the event that applications for tax credits exceed the \$5 million cap. The tax credit would be claimed for the taxable year following the year of donation. Any unused tax credits would be carried over for five years.

For individuals and corporations making estimated tax payments, the credit would 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 payment.

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

Nothing in this bill would prohibit taxpayers from claiming this credit and the itemized deduction for charitable contributions. Accordingly, under this bill, a taxpayer would be permitted to claim a credit equal to 65 percent of the charitable contribution, as well as a federal itemized deduction, resulting in a federal income tax benefit of up to 39.6 percent of the amount contributed, and a state itemized deduction, resulting in an additional Virginia income tax benefit of up to 5.75 percent of the amount contributed. This could result in a taxpayer receiving a total federal and state tax benefit that is greater than the amount of the contribution made to the scholarship foundation.

This credit would be effective for taxable years beginning on and after January 1, 2014, but before January 1, 2019.

#### Proposed Legislation – Requirements for Scholarship Foundations

A "scholarship foundation" would be defined as a nonstock, nonprofit corporation that is approved by SCHEV to receive monetary donations for which tax credits may be issued. A scholarship foundation would be required to 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 would be deemed a scholarship foundation for purposes of this credit.

Organizations seeking to qualify as scholarship foundations would be required to apply to SCHEV, which would determine whether the applicant is a scholarship foundation. SCHEV would be required to prescribe what reasonable information must be submitted by the applicants. Notice of approval or denial, including reasons for denial, would be issued by SCHEV within 60 days after the complete information is submitted. Any approval would not be withheld unreasonably. A technical amendment is suggested to change this to 120 days to allow SCHEV adequate time to review the application and bring it before the next scheduled meeting.

SCHEV would be required to publish an annual list of qualified scholarship foundations. Once a foundation has been qualified by SCHEV, it would remain qualified until SCHEV removes the foundation from its annual list. SCHEV would remove a foundation from the annual list if it no longer meets the requirements. SCHEV may periodically require a qualified foundation to submit updated or additional information for purposes of determining whether or not the foundation continues to meet the requirements.

Scholarship foundations are required to disburse at least 90 percent of the amount of each donation for which a tax credit is received within one year of such donation for qualified educational expenses through scholarships for eligible students. For purposes of this credit, an eligible student would be a domiciled resident of Virginia enrolled in an associate degree program in a Virginia two-year college based on science, technology, engineering, math, education, or nursing. "Qualified educational expenses" would be defined as school-related tuition, instructional fees, or other mandatory fees charged by a Virginia two-year college.

Tax-credit derived funds not used for qualified scholarships would be permitted to be used only for administrative expenses of the scholarship foundation. Any scholarship foundation that fails to disburse at least 90 percent of such donated amounts within one year would be removed from the annual list published by SCHEV and would not be entitled to receive and administer additional tax credit-derived funds.

By August 1 of each year, each scholarship foundation receiving monetary donations for which tax credits have been issued would be required to provide the following information to the Council:

- The total number and dollar amount of contributions received between July 1 of the prior calendar year and July 1 of the current calendar year,
- The dates when such contributions were received, and
- The total number and dollar amount of qualified educational expenses scholarships awarded between July 1 of the prior calendar year and July 1 of the current calendar year

Any scholarship foundation that fails to provide this report by the specified deadline would be removed from the annual list published by SCHEV and would not be entitled to receive and administer additional tax credit-derived funds.

Payment of scholarships from tax credit-derived funds by the scholarship foundation would be required to be by individual warrant or check made payable to and mailed to the applicable Virginia two-year college. Scholarship foundations would be required to develop procedures for disbursing scholarships in periodic payments throughout the school year to ensure scholarships are portable.

The Department would be required to submit a report of all scholarship foundations receiving donations for which tax credits were awarded to the Chairmen of the House and Senate Finance Committees and SCHEV no later than December 1 of each year. This report would include the total amount of monetary donations to each scholarship foundation for which the Department issued tax credits.

The Tax Commissioner, in consultation with SCHEV, would be required to develop guidelines implementing the provisions of this bill. Such guidelines would be exempt from the provisions of the Administrative Procedure Act.

### Similar Legislation

**House Bill 1767** would create an income tax credit for donations of machinery and equipment to a community college or vocational school that would be principally used in Virginia in teaching or training students.

**Senate Bill 749** would create an income tax credit for donations to STEM organizations approved by the Department of Education that would provide funding to qualified public schools for use in science, technology, engineering, and math (STEM) programs.

**House Bill 1512** would create an income tax subtraction for income from the lease of a building to a local public school division.

**House Bill 1767** would create an income tax credit for donations of machinery and equipment to a community college or vocational school that would be principally used in Virginia in teaching or training students.

**House Bill 1996** and **Senate Bill 1227** would expand the Education Improvement Scholarships Tax Credit to donations of marketable securities; would change the reporting requirements imposed on the Department of Education; would increase the maximum amount of donations by an individual for purposes of the Education Improvement Scholarships Tax Credit and Neighborhood Assistance Act Tax Credit to \$125,000; and would extend the expiration date for both programs through Taxable Year 2027.

**Senate Bill 749** would create an income tax credit for contributions to STEM organizations for use in science, technology, engineering, and math (STEM) programs at qualified public schools.

**Senate Bill 1000** would repeal the Education Improvement Scholarships Tax Credit.

**Senate Bill 1009** would make several changes to the Neighborhood Assistance Act Tax Credit.

**Senate Bill 1206** would amend several of the requirements imposed on schools and scholarship foundations for purposes of the Education Improvement Scholarships Tax Credit.

cc : Secretary of Finance

Date: 1/17/2013 KLC  
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