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HOUSE BILL NO. 1017

House Amendments in [] — February 3, 2016

A *BILL to amend and reenact §§ 58.1-439.26 and 58.1-439.28 of the Code of Virginia, relating to education improvement scholarships tax credits.*

Patron Prior to Engrossment—Delegate Massie

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.26 and 58.1-439.28 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.26. Tax credit for donations to certain scholarship foundations.

A. Notwithstanding the provisions of § 30-19.1:11, for taxable years beginning on or after January 1, 2013, but before January 1, 2028, a person shall be eligible to earn a credit against any tax due under Article 2 (§ 58.1-320 et seq.) or 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 value of the monetary or marketable securities donation made by the person to a scholarship foundation included on the list published annually by the Department of Education in accordance with the provisions of § 58.1-439.28.

No tax credit shall be allowed under this article if the value of the monetary or marketable securities donation made by an individual is less than \$500. In addition, tax credits shall be issued only for the first \$125,000 in value of donations made by the individual during the taxable year. The maximum aggregate donations of \$125,000 for the taxable year for which tax credits may be issued and the minimum required donation of \$500 shall apply on an individual basis. Such limitation on the maximum amount of tax credits issued to an individual shall not apply to credits issued to any business entity, including a sole proprietorship.

B. Tax credits shall be issued to persons making monetary or marketable securities donations to scholarship foundations by the Department of Education on a first-come, first-served basis in accordance with procedures established by the Department of Education under the following conditions:

1. The total amount of tax credits that may be issued each fiscal year under this article shall not exceed \$25 million.

2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2 (§ 58.1-320 et seq.) or 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 for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et seq.) or 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.

C. In a form approved by the Department of Education, the person seeking to make a monetary or marketable securities donation to a scholarship foundation or a scholarship foundation on behalf of such person shall request preauthorization for a specified tax credit amount from the Superintendent of Public Instruction. The Department of Education's preauthorization notice shall accompany the monetary or marketable securities donation from the person to the scholarship foundation, which shall, within 20 40 days, return the notice to the Department of Education certifying the value and type of donation and date received. Upon receipt and approval by the Department of Education of the preauthorization notice with required supporting documentation and certification of the value and type of the donation by the scholarship foundation, the Superintendent of Public Instruction shall as soon as practicable, and in no case longer than 30 days, issue a tax credit certificate to the person eligible for the tax credit. The person shall attach the tax credit certificate to the applicable tax return filed with the Department of Taxation or the State Corporation Commission, as applicable. The Department of Education shall provide a copy of the tax credit certificate to the scholarship foundation.

Preauthorization notices not acted upon by a donor within 180 days of issuance shall be void. No tax credit shall be approved by the Department of Education for activities that are a part of a person's normal course of business.

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59 **§ 58.1-439.28. Guidelines for scholarship foundations.**

60 A. As a condition for qualification by the Department of Education, a scholarship foundation, as
61 defined in § 58.1-439.25 and included on the list published annually by the Department of Education
62 pursuant to this section, shall disburse an amount at least equal to 90 percent of the value of the
63 donations it receives (for which tax credits were issued under this article) during each 12-month period
64 ending on June 30 by the immediately following June 30 for qualified educational expenses through
65 scholarships to eligible students. Tax-credit-derived funds not used for such scholarships may only be
66 used for the administrative expenses of the scholarship foundation. Any scholarship foundation that fails
67 to disburse at least 90 percent of any donated amount within the appropriate one-year period *meet such*
68 *disbursal requirement* shall, for the first offense, be required to pay a civil penalty equal to [200 100]
69 percent of the difference between 90 percent of the ~~donated amount~~ *value of the tax-credit-derived*
70 *donations it received in the applicable 12-month period* and the amount that was actually disbursed.
71 Such civil penalty shall be remitted by the scholarship foundation to the Department of Education within
72 30 days after the end of the one-year period and deposited to the general fund. For a second offense
73 within a five-year period, the scholarship foundation shall be removed from the annual list published
74 pursuant to this section and shall not be entitled to request preauthorization for additional tax credits,
75 nor shall it be entitled to receive and administer additional tax-credit-derived funds for two years. After
76 two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to
77 receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to
78 the annual list after such reapplication, the scholarship foundation shall not be considered to have any
79 previous offenses for purposes of this subsection. The required disbursement under this section shall
80 begin with donations received for the period January 1, 2013, through June 30, 2014.

81 B. By September 30 of each year beginning in ~~2014 2016~~, the scholarship foundation shall provide
82 the following information to the Department of Education: (i) the total number and value of
83 ~~contributions~~ *donations* received by the foundation in its ~~most recent fiscal year ended during the~~
84 *12-month period ending on June 30 of the prior calendar year* for which tax credits were issued by the
85 Superintendent of Public Instruction, (ii) the dates when such ~~contributions~~ *donations* were received, and
86 (iii) the total number and dollar amount of qualified educational expenses scholarships *awarded from*
87 *tax-credit-derived donations* and disbursed by the scholarship foundation during its ~~most recent fiscal~~
88 *year ended the 24-month period ending on June 30 of the current calendar year*. Any scholarship
89 foundation that fails to provide this report by September 30 shall, for the first offense, be required to
90 pay a \$1,000 civil penalty. Such civil penalty shall be remitted by the scholarship foundation to the
91 Department of Education by November 1 of the same year and deposited to the general fund. For a
92 second offense within a five-year period, the scholarship foundation shall be removed from the annual
93 list published pursuant to this section and shall not be entitled to request preauthorization for additional
94 tax credits, nor shall it be entitled to receive and administer additional tax-credit-derived funds. After
95 two years, the scholarship foundation shall be eligible to reapply to be included on the annual list to
96 receive and administer tax-credit derived funds. If a scholarship foundation is authorized to be added to
97 the annual list after such reapplication, the scholarship foundation shall not be considered to have any
98 previous offenses for purposes of this subsection.

99 C. In awarding scholarships from tax-credit-derived funds, the scholarship foundation shall (i)
100 provide scholarships for qualified educational expenses only to students whose family's annual household
101 income is not in excess of 300 percent of the current poverty guidelines or eligible students with a
102 disability, (ii) not limit scholarships to students of one school, and (iii) comply with Title VI of the
103 Civil Rights Act of 1964, as amended. Payment of scholarships from tax-credit-derived funds by the
104 eligible scholarship foundation shall be by individual warrant or check made payable to and mailed to
105 the eligible school that the student's parent or legal guardian indicates. In mailing such scholarship
106 payments, the eligible scholarship foundation shall include a written notice to the eligible school that the
107 source of the scholarship was donations made by persons receiving tax credits for the same pursuant to
108 this article.

109 D. Scholarship foundations shall ensure that schools selected by students to which tax-credit-derived
110 funds may be paid (i) are in compliance with the Commonwealth's and locality's health and safety laws
111 and codes; (ii) hold a valid occupancy permit as required by the locality; (iii) comply with Title VI of
112 the Civil Rights Act of 1964, as amended; and (iv) are nonpublic schools that comply with nonpublic
113 school accreditation requirements as set forth in § 22.1-19 and administered by the Virginia Council for
114 Private Education or nonpublic schools that maintain an assessment system that annually measures
115 scholarship students' progress in reading and math using a national norm-referenced achievement test,
116 including but not limited to the Stanford Achievement Test, California Achievement Test, and Iowa Test
117 of Basic Skills.

118 Eligible schools shall compile the results of any national norm-referenced achievement test for each
119 of its students receiving tax-credit-derived scholarships and shall provide the respective parents or legal
120 guardians of such students with a copy of the results on an annual basis, beginning with the first year of

121 testing of the student. Such schools also shall annually provide to the Department of Education for each
122 such student the achievement test results, beginning with the first year of testing of the student, and
123 student information that would allow the Department to aggregate the achievement test results by grade
124 level, gender, family income level, number of years of participation in the scholarship program, and
125 race. Beginning with the third year of testing of each such student and test-related data collection, the
126 Department of Education shall ensure that the achievement test results and associated learning gains are
127 published on the Department of Education's website in accordance with such classifications and in an
128 aggregate form as to prevent the identification of any student. Eligible schools shall annually provide to
129 the Superintendent of Public Instruction graduation rates of its students participating in the scholarship
130 program in a manner consistent with nationally recognized standards. In publishing and disseminating
131 achievement test results and other information, the Superintendent of Public Instruction and the
132 Department of Education shall ensure compliance with all student privacy laws.

133 E. The aggregate amount of scholarships provided to each student for any single school year by all
134 eligible scholarship foundations from eligible donations shall not exceed the lesser of (i) the actual
135 qualified educational expenses of the student or (ii) 100 percent of the per-pupil amount distributed to
136 the local school division (in which the student resides) as the state's share of the standards of quality
137 costs using the composite index of ability to pay as defined in the general appropriation act.

138 F. Scholarship foundations shall develop procedures for disbursing scholarships in quarterly or
139 semester payments throughout the school year to ensure scholarships are portable.

140 G. Scholarship foundations that receive donations of marketable securities for which tax credits were
141 issued under this article shall be required to sell such securities and convert the donation into cash
142 immediately, but in no case more than 44 21 days after receipt of the donation.

143 H. Each scholarship foundation with total revenues (including the value of all donations) (i) in excess
144 of \$100,000 for the foundation's most recent *fiscal* year ended shall have an audit or review performed
145 by an independent certified public accountant of the foundation's donations received in such year for
146 which tax credits were issued under this article; or (ii) of \$100,000 or less for the foundation's most
147 recent *fiscal* year ended shall have a compilation performed by an independent certified public
148 accountant of the foundation's donations received in such year for which tax credits were issued under
149 this article. A summary report of the audit, review, or compilation shall be made available to the public
150 and the Department of Education upon request. ~~As an appendix to the report, the scholarship~~
151 ~~foundation's board of directors shall certify (a) the total number and value of donations per locality~~
152 ~~received during the foundation's most recent year ended; (b) the total number and dollar amount of~~
153 ~~qualified educational expenses scholarships disbursed during the foundation's most recent year ended to~~
154 ~~every (1) student whose family's annual household income was not in excess of 300 percent of the~~
155 ~~current poverty guidelines or (2) eligible student with a disability; and (c) the percentage of first-time~~
156 ~~recipients to whom qualified educational expenses scholarships were disbursed in the foundation's most~~
157 ~~recent year ended.~~

158 I. The Department of Education shall publish annually on its website a list of each scholarship
159 foundation qualified under this article. Once a foundation has been qualified by the Department of
160 Education, it shall remain qualified until the Department removes the foundation from its annual list.
161 The Department of Education shall remove a foundation from the annual list if it no longer meets the
162 requirements of this article. The Department of Education may periodically require a qualified
163 foundation to submit updated or additional information for purposes of determining whether or not the
164 foundation continues to meet the requirements of this article.

165 J. Actions of the Superintendent of Public Instruction or the Department of Education relating to the
166 awarding of tax credits under this article and the qualification of scholarship foundations shall be exempt
167 from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Decisions of the
168 Superintendent of Public Instruction or the Department of Education shall be final and not subject to
169 review or appeal.