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SENATE BILL NO. 1109

Offered January 11, 2017

Prefiled January 9, 2017

A *BILL to amend and reenact §§ 58.1-439.21 and 58.1-439.26 of the Code of Virginia, relating to certain tax credits; elimination of state-level charitable contribution deductions when such credits are claimed.*

Patron—Saslaw

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-439.21 and 58.1-439.26 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-439.21. Tax credit; amount; limitation; carry over.

A. The Superintendent of Public Instruction and the Commissioner of Social Services shall certify to the Department of Taxation, or in the case of business firms subject to a tax under Article 1 (§ 58.1-2500 et seq.) of Chapter 25 or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ 58.1-320 et seq.), 6 (§ 58.1-360 et seq.), and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, in an amount equal to 65 percent of the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § 58.1-439.20. Notwithstanding any other law and for purposes of this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as determined for federal income tax purposes using the laws and regulations of the United States relating to federal income taxes. No tax credit shall be granted for any donation made in the taxable year with a value of less than \$616.

A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available. Notwithstanding that this section establishes a tax credit of 65 percent of the value of the qualified donation, a business firm may by written agreement accept a lesser tax credit percentage from a neighborhood organization for any otherwise qualified donation it has made. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

Notwithstanding any other provision of law, for taxable years beginning on and after January 1, 2017, if a taxpayer claims a tax credit pursuant to this section for a qualified donation, such donation shall not also be eligible for deduction as a charitable contribution for purposes of calculating the taxpayer's Virginia taxable income.

C. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to § 58.1-439.20. The certification shall identify the type and value of the donation received, the business firm making the donation, and the tax credit percentage to be used in determining the amount of the tax credit. The certification shall also include any written agreement under which a business firm accepts a tax credit of less than 65 percent for a donation.

§ 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

59 accordance with the provisions of § 58.1-439.28.

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

67 *Notwithstanding any other provision of law, for taxable years beginning on and after January 1,*
68 *2017, if a taxpayer claims a tax credit pursuant to this section for a donation, such donation shall not*
69 *also be eligible for deduction as a charitable contribution for purposes of calculating the taxpayer's*
70 *Virginia taxable income.*

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

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

76 2. The amount of the credit shall not exceed the person's tax liability pursuant to Article 2
77 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25
78 (§ 58.1-2500 et seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, for the taxable year
79 for which the credit is claimed. Any credit not usable for the taxable year for which first allowed may
80 be carried over for credit against the taxes imposed upon the person pursuant to Article 2 (§ 58.1-320 et
81 seq.) or Article 10 (§ 58.1-400 et seq.), Chapter 12 (§ 58.1-1200 et seq.), Chapter 25 (§ 58.1-2500 et
82 seq.), or Article 2 (§ 58.1-2620 et seq.) of Chapter 26, as applicable, in the next five succeeding taxable
83 years or until the total amount of the tax credit has been taken, whichever is sooner.

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

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

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