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**SENATE BILL NO. 893**

Offered January 11, 2023

Prefiled January 5, 2023

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

Patrons—Newman, Chase, Cosgrove, Dunnivant, Hackworth, McDougle, Norment, Obenshain, Peake, Pillion, Reeves, Ruff, Stanley and Stuart

Referred to Committee on Education and Health

**Be it enacted by the General Assembly of Virginia:****1. That § 58.1-439.26 of the Code of Virginia is 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 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

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58 normal course of business.

59 *D. Any taxpayer holding a credit under this article may transfer unused but otherwise allowable*  
60 *credit for use by another taxpayer on his Virginia income tax return. A taxpayer who transfers any*  
61 *amount of credit under this article shall file a notification of such transfer to the Department in*  
62 *accordance with procedures and forms prescribed by the Tax Commissioner.*