

By: Paxton

S.B. No. 1015

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax or insurance premium tax credit for contributions made to certain certified nonprofit educational assistance organizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. TAX CREDIT FOR CONTRIBUTIONS TO CERTAIN NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATIONS

Sec. 171.601. DEFINITIONS. In this subchapter:

(1) "Educational expenses" means expenses for student tuition, fees, transportation costs, textbooks, school supplies, and tutoring related to:

(A) a course at a public school or charter school that is part of the required curriculum under Section 28.002, Education Code, or a course that is the equivalent at a qualified nonpublic school;

(B) a high school equivalency certificate; or

(C) an apprenticeship training program under Chapter 133, Education Code.

(2) "Eligible student" means a student who is a resident of this state and has not been issued a high school diploma or a high school equivalency certificate. For purposes of this subchapter, a student who attends a juvenile justice alternative

1 education program under Section 37.011, Education Code, is not an
2 eligible student.

3 (3) "Qualified nonpublic school" means a nonpublic
4 primary or secondary school located in this state that is
5 accredited or actively in the process of accreditation by a state,
6 regional, or national organization that is recognized by the Texas
7 Private School Accreditation Commission.

8 Sec. 171.602. ELIGIBILITY AND AMOUNT OF CREDIT. (a) Except
9 as otherwise provided by this subchapter, a taxable entity that
10 makes a contribution of \$500 or more to a certified nonprofit
11 educational assistance organization may claim a credit against the
12 tax imposed under this chapter in the amount and under the
13 conditions and limitations provided by this subchapter.

14 (b) Subject to Section 171.607, the amount of the credit
15 that may be claimed on a report is equal to the lesser of 100 percent
16 of total contributions made to a certified nonprofit educational
17 assistance organization during the calendar year that contains the
18 end of the accounting period on which the report is based or 75
19 percent of the taxable entity's tax liability under this chapter.

20 (c) If a taxable entity is eligible for a credit that
21 exceeds the limitation prescribed by Subsection (b) or Section
22 171.607, the taxable entity may carry the unused credit forward for
23 not more than two consecutive reports.

24 (d) A taxable entity may not claim a credit under this
25 subchapter for a contribution made to a certified nonprofit
26 educational assistance organization if the taxable entity requires
27 that the contribution benefit a particular student or school.

1 Sec. 171.603. ELIGIBILITY REQUIREMENTS FOR CERTIFICATION
2 OF NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION. (a) An
3 organization may apply to the comptroller for certification as a
4 certified nonprofit educational assistance organization. To
5 qualify for certification, the organization:

6 (1) must be exempt from federal tax under Section
7 501(a) of the Internal Revenue Code of 1986 by being listed as an
8 exempt organization in Section 501(c)(3) of that code and meeting
9 all other applicable requirements for that exemption;

10 (2) must be in good standing with the state;

11 (3) must agree to allocate at least 90 percent of its
12 annual revenue from contributions received from taxable entities to
13 provide scholarships to eligible students for educational
14 expenses;

15 (4) must agree not to award 100 percent of the
16 scholarships described by Subdivision (3) to students who attend a
17 particular school or to pay educational expenses incurred only at a
18 particular school;

19 (5) must agree not to award or decline to award a
20 scholarship described by Subdivision (3) on the basis of a
21 student's race, color, ethnicity, gender, or national origin;

22 (6) must agree to deposit contributions from taxable
23 entities that are allocated for scholarships described by
24 Subdivision (3) in a bank account separate from any other account
25 the organization may have;

26 (7) must agree not to award a scholarship described by
27 Subdivision (3) in an amount that exceeds the amount prescribed by

1 Section 171.606;

2 (8) must agree not to award a scholarship described by
3 Subdivision (3) based solely on a student's athletic ability or
4 potential; and

5 (9) must not be owned or operated by a person who has
6 during the previous seven state fiscal years filed for bankruptcy.

7 (b) For purposes of Subsection (a)(9), a person is
8 considered to operate an organization if the person has the ability
9 to directly influence or direct the management, expenditures, or
10 policies of the organization.

11 (c) The comptroller may certify an organization as a
12 certified nonprofit educational assistance organization only if
13 the organization qualifies under Subsection (a) and also agrees to:

14 (1) notify the comptroller of the organization's
15 intent to provide scholarships described by Subsection (a)(3);

16 (2) submit an annual information report as provided by
17 Section 171.605;

18 (3) cooperate with the comptroller when conducting a
19 criminal background check on the owner or operator of the
20 organization;

21 (4) comply with the other requirements of this
22 subchapter, including Sections 171.604(d) and (f) and 171.606; and

23 (5) pay the comptroller the amount of any revenue that
24 is not awarded as required by Section 171.604.

25 Sec. 171.604. AWARD OF SCHOLARSHIPS. (a) Except as
26 provided by Subsection (b), a certified nonprofit educational
27 assistance organization shall award all revenue from a contribution

1 from a taxable entity allocated to provide scholarships to eligible
2 students for educational expenses not later than the first
3 anniversary of the date the contribution was made.

4 (b) A certified nonprofit educational assistance
5 organization may carry forward not more than 10 percent of the
6 revenue described by Subsection (a) for an additional year, but
7 shall award that revenue not later than the second anniversary of
8 the date the contribution was made.

9 (c) If a certified nonprofit educational assistance
10 organization does not award revenue described by Subsection (a) as
11 required by Subsections (a) and (b), the organization shall pay the
12 comptroller an amount equal to the amount of revenue not awarded as
13 required by those subsections not later than the 30th day after the
14 last day the revenue was required to be awarded.

15 (d) A certified nonprofit educational assistance
16 organization must award at least 25 percent of its annual revenue
17 used to provide scholarships to students described by Subsection
18 (e), unless the pool of eligible students who apply for a
19 scholarship is insufficient to meet the requirement.

20 (e) A scholarship provided to satisfy the requirement of
21 Subsection (d) must be provided to a student who:

22 (1) is educationally disadvantaged, as defined by
23 Section 5.001, Education Code; and

24 (2) attends school in a public school district or at a
25 campus that was assigned a performance rating that reflects
26 unacceptable performance in the most recent performance ratings
27 released under Section 39.054, Education Code.

1 (f) A certified nonprofit educational assistance
2 organization may not award a scholarship to a student to attend a
3 qualified nonpublic school unless the organization first obtains
4 the written consent of the student's parent or legal guardian.

5 Sec. 171.605. ANNUAL REPORT. (a) Not later than June 30 of
6 each year, each certified nonprofit educational assistance
7 organization shall report to the Texas Education Agency:

8 (1) the name and address of the organization;

9 (2) the total number and dollar amount of
10 contributions from taxable entities received by the organization
11 under this subchapter and Chapter 230, Insurance Code, since the
12 previous report was submitted;

13 (3) the total number and dollar amount of scholarships
14 awarded by the organization under this subchapter and Chapter 230,
15 Insurance Code, since the previous report was submitted;

16 (4) the percentage of the organization's revenue from
17 contributions used to award scholarships under this subchapter and
18 Chapter 230, Insurance Code, since the previous report was
19 submitted;

20 (5) the name and address of each school attended by an
21 eligible student who was awarded a scholarship by the organization
22 under this subchapter and Chapter 230, Insurance Code, since the
23 previous report was submitted;

24 (6) the total number and dollar amount of scholarships
25 awarded to eligible students by the organization under this
26 subchapter and Chapter 230, Insurance Code, per school since the
27 previous report was submitted; and

1 (7) any other information the Texas Education Agency
2 or the comptroller requires.

3 (b) The report must:

4 (1) comply with generally accepted accounting
5 principles; and

6 (2) be certified as free of material misstatements by
7 a certified public accountant.

8 (c) The Texas Education Agency shall post on its website for
9 at least three years each report submitted under this section.

10 (d) The Texas Education Agency, after consulting with the
11 comptroller, may adopt rules and forms to implement this section.

12 Sec. 171.606. SCHOLARSHIP LIMIT AMOUNT. (a) Subject to
13 Subsection (b), the maximum scholarship amount a certified
14 nonprofit educational assistance organization may award under this
15 subchapter may not exceed 75 percent of the amount of funding equal
16 to the statewide average amount to which a school district would be
17 entitled under the Foundation School Program under Chapter 42,
18 Education Code, for a student in average daily attendance.

19 (b) A certified nonprofit educational assistance
20 organization may award not more than \$500 per school year to an
21 eligible student who elects to use the scholarship to pay only the
22 cost of:

23 (1) transportation to attend a public school or
24 charter school located outside the school district in which the
25 student resides; or

26 (2) textbooks, school supplies, or tutoring related to
27 a course at a public school or charter school.

1 Sec. 171.607. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

2 (a) For contributions made during 2014, the total amount of tax
3 credits that may be claimed by all taxable entities under this
4 subchapter may not exceed \$100 million. For contributions made
5 during 2015 and subsequent years, the total amount of tax credits
6 that may be claimed by all taxable entities under this subchapter is
7 equal to:

8 (1) 100 percent of the maximum amount of tax credits
9 that could have been claimed by all taxable entities under this
10 subchapter for contributions made during the preceding year if the
11 total amount of tax credits actually claimed by taxable entities
12 under this subchapter for contributions made during the preceding
13 year was less than 90 percent of the maximum amount that could have
14 been claimed; and

15 (2) 110 percent of the maximum amount of tax credits
16 that could have been claimed by all taxable entities under this
17 subchapter for contributions made during the preceding year if the
18 total amount of tax credits actually claimed by taxable entities
19 under this subchapter for contributions made during the preceding
20 year was equal to or greater than 90 percent of the maximum amount
21 that could have been claimed.

22 (b) The comptroller shall publish on the comptroller's
23 website the total amount of tax credits available under this
24 subchapter for each year.

25 (c) The comptroller by rule shall prescribe procedures by
26 which the comptroller may allocate credits under this subchapter.
27 The procedures must provide that credits are allocated on a

1 "first-come, first-served" basis, based on the date the
2 contribution was initially made.

3 Sec. 171.608. IDENTIFICATION OF CERTIFIED NONPROFIT
4 EDUCATIONAL ASSISTANCE ORGANIZATION. The comptroller shall
5 establish a procedure by which a taxable entity can:

6 (1) determine whether an organization is a certified
7 nonprofit educational assistance organization; and

8 (2) claim a credit under this subchapter.

9 Sec. 171.609. NATURE OF FUNDING. The funding authorized by
10 this subchapter or Chapter 230, Insurance Code, is private,
11 voluntary, nongovernmental funding. The provision of assistance by
12 a certified nonprofit educational assistance organization is not an
13 appropriation of public money or the provision of public assistance
14 to any school.

15 Sec. 171.610. APPLICATION FOR CREDIT. A taxable entity
16 must apply for a credit under this subchapter on or with the tax
17 report for the period for which the credit is claimed.

18 Sec. 171.611. RULES; PROCEDURES; FORMS. The comptroller
19 shall adopt rules, procedures, and forms to administer this
20 subchapter.

21 Sec. 171.612. ASSIGNMENT PROHIBITED; EXCEPTION. A taxable
22 entity may not convey, assign, or transfer the credit allowed under
23 this subchapter to another taxable entity unless all assets of the
24 taxable entity are conveyed, assigned, or transferred in the same
25 transaction.

26 Sec. 171.613. REVOCATION. (a) The comptroller shall
27 revoke a certification provided under Section 171.603 if the

1 comptroller finds that a certified nonprofit educational
2 assistance organization:

- 3 (1) is no longer eligible under Section 171.603(a);
4 (2) intentionally and substantially violated an
5 agreement made under Section 171.603; or
6 (3) intentionally and substantially violates this
7 subchapter.

8 (b) Revocation of a certification under this section does
9 not affect the validity of a tax credit relating to a contribution
10 made before the date of revocation.

11 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended
12 by adding Chapter 230 to read as follows:

13 CHAPTER 230. TAX CREDIT AGAINST PREMIUM TAXES FOR CERTAIN
14 CONTRIBUTIONS

15 SUBCHAPTER A. GENERAL PROVISIONS

16 Sec. 230.001. DEFINITIONS. In this chapter:

17 (1) "Certified nonprofit educational assistance
18 organization" means an organization certified by the comptroller
19 under Section 171.603, Tax Code.

20 (2) "State premium tax liability" means any liability
21 incurred by an entity under Chapters 221 through 224.

22 Sec. 230.002. AWARD OF SCHOLARSHIPS. A certified nonprofit
23 educational assistance organization shall comply with any
24 requirement prescribed by Subchapter L, Chapter 171, Tax Code, in
25 relation to awarding scholarships under that subchapter.

26 [Sections 230.003-230.050 reserved for expansion]

SUBCHAPTER B. CREDIT

1 Sec. 230.051. ELIGIBILITY AND AMOUNT OF CREDIT. (a) An
2 entity that makes a contribution of \$500 or more to a certified
3 nonprofit educational assistance organization may claim a credit
4 against the entity's state premium tax liability in the amount and
5 under the conditions and limitations provided by this chapter.

6 (b) Subject to Section 230.052, the amount of the credit
7 that may be claimed on a report is equal to the lesser of 100 percent
8 of total contributions made to a certified nonprofit educational
9 assistance organization during the year or 75 percent of the
10 entity's state premium tax liability if the contribution and the
11 organization that received the contribution meet the requirements
12 prescribed by Subchapter L, Chapter 171, Tax Code.

13 (c) If an entity is eligible for a credit that exceeds the
14 limitation prescribed by Subsection (b) or Section 230.052, the
15 entity may carry the unused credit forward for not more than two
16 years following the year in which the contribution was made.

17 (d) An entity may not claim a credit under this chapter for a
18 contribution made to a certified nonprofit educational assistance
19 organization if the entity requires that the contribution benefit a
20 particular student or school.

21 Sec. 230.052. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

22 (a) For contributions made during 2014, the total amount of tax
23 credits that may be claimed by all entities under this chapter may
24 not exceed \$25 million. For contributions made during 2015 and
25 subsequent years, the total amount of tax credits that may be
26 claimed by all entities under this chapter is equal to:
27

1 (1) 100 percent of the maximum amount of tax credits
2 that could have been claimed by all entities under this chapter for
3 contributions made during the preceding year if the total amount of
4 tax credits actually claimed by entities under this chapter for
5 contributions made during the preceding year was less than 90
6 percent of the maximum amount that could have been claimed; and

7 (2) 110 percent of the maximum amount of tax credits
8 that could have been claimed by all entities under this chapter for
9 contributions made during the preceding year if the total amount of
10 tax credits actually claimed by entities under this chapter for
11 contributions made during the preceding year was equal to or
12 greater than 90 percent of the maximum amount that could have been
13 claimed.

14 (b) The comptroller shall publish on the comptroller's
15 website the total amount of tax credits available under this
16 chapter for each year.

17 (c) The comptroller by rule shall prescribe procedures by
18 which the comptroller may allocate credits under this chapter. The
19 procedures must provide that credits are allocated on a
20 "first-come, first-served" basis, based on the date the
21 contribution was initially made.

22 Sec. 230.053. APPLICATION FOR CREDIT. An entity must apply
23 for a credit under this chapter on or with a tax report for which the
24 credit is claimed.

25 Sec. 230.054. RULES; PROCEDURES; FORMS. The comptroller
26 shall adopt rules, procedures, and forms to administer this
27 chapter.

1 Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. An entity
2 may not convey, assign, or transfer the credit allowed under this
3 chapter to another entity unless all assets of the entity are
4 conveyed, assigned, or transferred in the same transaction.

5 SECTION 3. A taxable entity may claim a credit under
6 Subchapter L, Chapter 171, Tax Code, as added by this Act, or
7 Chapter 230, Insurance Code, as added by this Act, only for a
8 contribution made on or after January 1, 2014, and only in relation
9 to taxes due on or after January 1, 2014.

10 SECTION 4. (a) Except as provided by Subsection (b) of this
11 section, this Act takes effect January 1, 2014.

12 (b) Section 171.611, Tax Code, as added by this Act, and
13 Section 230.054, Insurance Code, as added by this Act, take effect
14 September 1, 2013.