

## Appendix

### Act 247 of 2018 as Amended May 17, 2021

#### Educational Credit for Exceptional Needs Children's Fund

SECTION 1. Article 25, Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-3790. (A) As used in this section:

(1) "Eligible school" means an independent school including those religious in nature, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met, that:

(a) offers a general education to primary or secondary school students;

(b) does not discriminate on the basis of race, color, or national origin;

(c) is located in this State;

(d) has an educational curriculum that includes courses set forth in the state's diploma requirements, graduation certificate requirements for special needs children, and where the students attending are administered national achievement or state standardized tests, or both, at progressive grade levels to determine student progress;

(e) has school facilities that are subject to applicable federal, state, and local laws;

(f) is a member in good standing of the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, or Palmetto Association of Independent Schools; and

(g) provides a specially designed program or learning resource center to provide needed accommodations based on the needs of exceptional needs students or provides onsite educational services or supports to meet the needs of exceptional needs students, or is a school specifically existing to meet the needs of only exceptional needs students with documented disabilities.

(2) "Exceptional needs child" means a child:

(a) who has been evaluated in accordance with this state's evaluation criteria, as set forth in S.C. Code Ann. Regs. 43-243.1, and determined eligible as a child with a disability who needs special education and related services, in accordance with the requirements of Section 300.8 of the federal Individuals with Disabilities Education Act; or

(b) who has been diagnosed within the last three years by a licensed speech-language pathologist, psychiatrist, or medical, mental health, psychoeducational, or other comparable licensed health care provider as having a neurodevelopmental disorder, a substantial sensory or physical impairment such as deaf, blind, or orthopedic disability, or some other disability or acute or chronic condition that significantly impedes the student's ability to learn and succeed in school without specialized instructional and associated supports and services tailored to the child's unique needs.

(3) "Independent school" means a school, other than a public school, at which the compulsory attendance requirements of Section 59-65-10 may be met and that does not discriminate based on the grounds of race, color, religion, or national origin.

(4) "Parent" means the natural or adoptive parent or legal guardian of a child.

(5) "Qualifying student" means a student who is an exceptional needs child, a South Carolina resident, and who is eligible to be enrolled in a South Carolina secondary or elementary public school at the kindergarten or later year level for the applicable school year.

(6) "Resident public school district" means the public school district in which a student resides, or in the case of dependents of active military personnel, the public school district which the student may attend.

(7) "Transportation" means transportation to and from school only.

(8) "Tuition" means the total amount of money charged for the cost of a qualifying student to attend an independent school including, but not limited to, fees for attending the school, textbook fees, and school-related transportation.

(B)(1) There is created the "Educational Credit for Exceptional Needs Children's Fund" that is separate and distinct from the state general fund. The fund must be organized as a public charity as defined by the Internal Revenue Code under Section 509(a)(1) through (4) and consist only of contributions made to the fund. The fund may not receive an appropriation of public funds. The fund must receive and hold all contributions intended for it as well as all earnings until disbursed as provided in this section. Monies received in the fund must be used to provide scholarships to exceptional needs children attending eligible schools.

(2) The amounts on deposit in the fund do not constitute public funds and are not the property of the State. Amounts on deposit in the fund may not be commingled with public funds, and the State does not have a claim to or interest in the amounts on deposit. Agreements or contracts entered into by or on behalf of the fund do not constitute a debt or obligation of the State.

(3) The public charity disbursing contributions made to the fund is governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, two appointed by the Chairman of the Senate Finance Committee, and one appointed by the Governor. The directors of the public charity shall designate an executive director of the public charity.

(4) The public charity directors shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to five percent of the fund for administration and related costs. The public charity may not expend public funds to administer the program. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.

(5) By January fifteenth of each year, the public charity shall report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor:

(a) the number and total amount of grants issued to eligible schools in each year;

(b) the identity of the school and the amount of the grant for each grant issued to an eligible school in each year;

(c) an itemized and detailed explanation of fees or other revenues obtained from or on behalf of an eligible school;

(d) a copy of a compilation, review, or audit of the fund's financial statements, conducted by a certified public accounting firm; and

(e) the criteria and eligibility requirements for scholarship awards.

(C)(1) Grants may be awarded in an amount not exceeding eleven thousand dollars or the total annual cost of tuition, whichever is less, to a qualifying student at an eligible school. A qualifying student receiving a grant may not be charged tuition by an eligible school in an amount greater than the student would be charged if the student was not a qualifying student.

(2) Before awarding a grant, the public charity shall receive written documentation from the qualifying student's parent or guardian documenting that the qualifying student is an exceptional needs child. Upon approving the application, the public charity shall issue a check to the eligible school in the name of the qualifying student within either thirty days upon approval of the application or thirty days of the start of the school's semester.

(3) If a qualifying student leaves or withdraws from the school for any reason before the end of the semester or school year and does not reenroll within thirty days, then the eligible school shall return a prorated amount of the grant to the public charity based on the number of days the qualifying student was enrolled in the school during the semester or school year within sixty days of the qualifying student's departure.

(4) The public charity may not award grants only for the benefit of one school.

(5) The department or the public charity may not release personally identifiable information pertaining to students or donors or use information collected about donors, students, or schools for financial gain.

(6) The public charity shall develop a process to prioritize the awarding of grants to eligible incumbent grant recipients at eligible schools.

(D)(1)(a) Tax credits authorized by subsection (H)(1) and subsection (I) annually may not exceed cumulatively a total of twelve million dollars for contributions to the Educational Credit for Exceptional Needs Children's Fund, unless an increased limit is authorized in the annual general appropriations act. However, the fund may carry forward up to five million dollars of donations into the next year to provide credits in the next year. This carryforward amount does not in any way increase the cumulative tax credit amount set forth in this item for any one year.

(b) Tax credits authorized pursuant to subsection (H)(2) annually may not exceed cumulatively a total of two million dollars for tuition payments made on behalf of qualifying students, unless an

increased limit is authorized in the annual general appropriations act. However, if less than the maximum cumulative total of tax credits allowed pursuant to subitem (a) are authorized, then, the maximum cumulative total of tax credits allowed pursuant to this subitem may be increased by up to three million dollars, but the cumulative total of all tax credits authorized pursuant to this section may not be increased as a result.

(c) If the department determines that the total of the credits claimed by all taxpayers exceeds either limit amount as contained in subitems (a) or (b), it shall allow credits only up to those amounts on a first come, first-served basis.

(2)(a) The department shall establish an application process to determine the amount of credit available to be claimed. The receipt of the application by the department determines priority for the credit. The credit must be claimed on the return for the tax year that the contribution is made.

(b) A taxpayer may not claim more than seventy-five percent of his total tax liability for the year in contribution toward the tax credit authorized by subsection (H)(1) or subsection (I). This credit is nonrefundable. Any unused credit may be carried forward three tax years after the tax year in which the qualified contribution is first eligible to be claimed.

(c) If a taxpayer deducts the amount of the contribution on his federal return and claims the credit allowed by subsection (H)(1) or subsection (I), then he must add back the amount of the deduction for purposes of South Carolina income taxes.

(d) The department shall prescribe the form and manner of proof required to obtain the credit authorized by subsection (H)(1) or subsection (I). The department also shall develop a method of informing taxpayers if the credit limit is met any time during the tax year.

(e) A taxpayer only may claim a credit pursuant to subsection (H)(1) and subsection (I) for contributions made during the tax year.

(3) A corporation or entity entitled to a credit under subsection (H)(1) and subsection (I) may not convey, assign, or transfer the credit authorized by this section to another entity unless all of the assets of the entity are conveyed, assigned, or transferred in the same transaction.

(E)(1) By March first of each year, an independent school who participated in the program in the previous year and who desires to participate in the program in the current year shall reapply to the Education Oversight Committee. The independent school shall certify to the Education Oversight Committee that it continues to meet all program requirements and shall provide to the committee student test score data from the previous school year by June thirtieth. If student test score data is not submitted by June thirtieth, then the Education Oversight Committee shall remove the school from the program. An independent school desiring to participate in the program for the first time also shall apply by March first of each year. The Education Oversight Committee shall consult with the Southern Association of Colleges and Schools, the South Carolina Association of Christian Schools, the South Carolina Independent Schools Association, the Palmetto Association of Independent Schools, or the Diocese of Charleston to verify that the school is still a member in good standing and that the school continues to serve exceptional needs children. An independent school who did not participate in the program in the previous year but desires to participate in the program in the current year shall apply to the Education Oversight Committee. The Education Oversight Committee shall develop an application to be completed by the independent schools which must contain at least:

- (a) the number and total amount of grants received in the preceding school year;
  - (b) student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by the school receiving or entitled to receive scholarship grants pursuant to this section in the previous school year;
  - (c) a copy of a compilation, review, or compliance audit of the organization's financial statements as relating to the grants received, conducted by a certified public accounting firm; and
  - (d) a certification by the independent school that it meets the definition of an eligible school as that term is defined in subsection (A)(1) and that the report is true, accurate, and complete under penalty of perjury in accordance with Section 16-9-10.
- (2)(a) The Education Oversight Committee may waive the March first deadline contained in subsection (E) upon good cause shown by an independent school.
- (b) The Education Oversight Committee may waive some or all of the curriculum requirements contained in subsection (A)(1)(d) following consultation with the advisory committee.
- (3)(a) By March first of each year the Education Oversight Committee shall publish on its website a comprehensive list of independent schools certified as eligible institutions. The list must include for each eligible institution:
- (i) the institution's name, addresses, telephone numbers, and, if available, website addresses; and
  - (ii) the score reports and compliance audits received by the committee pursuant to subsection (E)(1)(b) and (c).
- (b) The Education Oversight Committee shall summarize or redact the score reports identified in subitem (a)(ii) if necessary to prevent the disclosure of personally identifiable information.
- (4) An independent school that does not apply for certification pursuant to this subsection may not be included on the list of eligible schools and contributions to that school may not be allowed for purposes of the tax credits permitted by this section.
- (5) An independent school that is denied certification pursuant to this section may seek review by filing a request for a contested case hearing with the Administrative Law Court in accordance with the court's rules of procedure.
- (6) Annually, the Education Oversight Committee shall issue a report to the General Assembly documenting the impact of the Educational Credit for Exceptional Needs Children Program on student achievement. In addition, the report must include information on individual schools if at least fifty-one percent of the total enrolled students in the private school participated in the Educational Credit for Exceptional Needs Children Program in the prior school year. The report must be according to each participating private school, and for participating students, in which there are at least thirty participating students who have scores for tests administered. If the Education Oversight Committee determines that the thirty participating-student cell size may be reduced without disclosing personally identifiable information of a participating student, the Education Oversight Committee may reduce the participating-student cell size, but the cell size may not be reduced to less than ten participating students.

(F)(1) The Education Oversight Committee shall establish an advisory committee made up of not more than nine members, including parents, and representatives of independent schools and independent school associations.

(2) The advisory committee shall:

(a) consult with the Education Oversight Committee concerning requests for exemptions from curriculum requirements; and

(b) provide recommendations on other matters requested by the Education Oversight Committee.

(G) Except as otherwise provided, the Department of Education, the Education Oversight Committee, and the Department of Revenue, or any other state agency may not regulate the educational program of an independent school that accepts students receiving scholarship grants pursuant to this section.

(H)(1) A taxpayer is entitled to a tax credit against income taxes imposed pursuant to this chapter for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the Educational Credit for Exceptional Needs Children's Fund up to the limits contained in subsection (D)(1)(a) if:

(a) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

(b) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(2)(a) A taxpayer is entitled to a refundable tax credit against income taxes imposed pursuant to this chapter for the amount of cash and the monetary value of any publicly traded securities, not exceeding eleven thousand dollars for each child, for tuition payments to an eligible school for an exceptional needs child within his custody or care who would be eligible for a grant pursuant to this section up to the limits contained in subsection (D)(1)(b).

(b) If a child within the care and custody of a taxpayer claiming a tax credit pursuant to this item also receives a grant from the Educational Credit for Exceptional Needs Children's Fund, then the taxpayer only may claim a credit equal to the difference of eleven thousand dollars or the cost of tuition, whichever is lower, and the amount of the grant.

(c) A child within the care and custody of a taxpayer claiming a tax credit pursuant to this item may not be charged tuition by an eligible school in an amount greater than the student would be charged if the student was not a qualifying student.

(I) A taxpayer is entitled to a tax credit against income taxes imposed pursuant to Chapter 11, Title 12 for the amount of cash and the monetary value of any publicly traded securities the taxpayer contributes to the Educational Credit for Exceptional Needs Children's Fund up to the limits contained in subsection (D)(1)(a) if:

(1) the contribution is used to provide grants for tuition to exceptional needs children enrolled in eligible schools who qualify for these grants under the provisions of this section; and

(2) the taxpayer does not designate a specific child or school as the beneficiary of the contribution.

(J)(1) The department shall conduct a comprehensive study of the Exceptional Needs Tax Credit program. The study must examine the following:

(a) the allocation of scholarship funds and tax credits among students, including the effect of funding limitations on the addition of new participants; the demographic and socio-economic data of the participants and their families, including the distribution of scholarship funds by income ranges, to be determined by the department, of scholarship recipients, and their legal guardians, as applicable; and the geographical distribution of the participants. In reporting the information required by this subitem, the department shall protect and may not display any personally identifiable information of scholarship recipients, their families or legal guardians, or taxpayers;

(b) the distribution of scholarship funds among all eligible schools; and

(c) any other aspect of the program that the department determines would be relevant and useful in making future policy decisions in regard to the program and its continued existence or expansion.

(2) The department shall submit a report of its study to the General Assembly no later than January fifteenth of each year.

HISTORY: 2018 Act No. 247 (H.4077), Section 1, eff May 18, 2018; 2021 Act No. 79 (H.3899), Sections 1 to 4, eff May 17, 2021.

#### Code Commissioner's Note

At the direction of the Code Commissioner, the amendments to (D)(1) made by 2021 Act No. 79, Sections 2.A and 4, were read together.

#### Editor's Note

2018 Act No. 247, Section 2, provides as follows:

"SECTION 2. This act takes effect upon approval of the Governor and applies to income tax years beginning after 2017. All tax credits earned as a result of a contribution made to the Educational Credit for the Exceptional Needs Children's Fund in 2018 apply to the cumulative total of twelve million dollars regardless of when in 2018 the contribution is made. All tax credits earned as a result of a tuition payment made by a taxpayer to an eligible school for an exceptional needs child within his custody or care in 2018 apply to the cumulative total of two million dollars regardless of when in 2018 the payment is made. All necessary reports and forms must be submitted as soon as practicable upon the enactment of this act."

#### Effect of Amendment

2021 Act No. 79, Section 1, in (B), in (3), in the second sentence, deleted ", along with the director of the department," following "public charity", in (4), in the first sentence, substituted "The public charity directors shall administer" for "In concert with the public charity directors, the department shall administer", in the second sentence, substituted "five percent" for "two percent", and in the third sentence, substituted "The public charity" for "The department and the public charity", and in (5), substituted "public charity" for "department".

2021 Act No. 79, Section 2.A, in (D)(1)(a), added the second and third sentences.

2021 Act No. 79, Section 2.B, in (D)(2)(b), in the first sentence, substituted "seventy-five percent" for "sixty percent", and added the third sentence.

2021 Act No. 79, Section 3, in (E)(1)(b), deleted the second, third, and fourth sentences, which related to schools providing individual student test scores on national achievement or state standardized tests.

2021 Act No. 79, Section 4, in (D)(1)(b), added the second sentence.

**Time effective**

SECTION 5. This act takes effect upon approval by the Governor.

Ratified the 13th day of May, 2021.

Approved the 17th day of May, 2021.