

AMENDED IN ASSEMBLY MARCH 18, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 279**

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**Introduced by Assembly Member Duvall**

February 12, 2009

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An act to add Sections 17053.99 and 23699 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 279, as amended, Duvall. ~~Taxes: credits~~ *Income taxes: credit*: Great Schools Tax Credit Act.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, for each taxable year beginning on or after January 1, 2010, allow a credit in an amount equal to the total contributions made to a scholarship granting organization, as defined, by a qualified taxpayer, *as defined*, during the taxable year, not to exceed a specified amount. This bill would impose specified duties on the Franchise Tax Board in administering the credits.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 Great Schools Tax Credit Act.
- 3 SEC. 2. Section 17053.99 is added to the Revenue and Taxation
- 4 Code, to read:

1 17053.99. (a) For each taxable year beginning on or after  
2 January 1, 2010, there shall be allowed to a qualified taxpayer as  
3 a credit against the “net tax,” as defined in Section 17039, an  
4 amount equal to the total contributions made to a scholarship  
5 granting organization during the taxable year for which the credit  
6 is claimed, not to exceed 50 percent of the qualified taxpayer’s  
7 “net tax” for the taxable year.

8 (b) For purposes of this section:

9 (1) “Educational scholarship” means a grant made to an eligible  
10 student to cover all or part of the tuition and fees, including  
11 transportation to a qualified school outside of the eligible student’s  
12 resident school district, at either a public or nonpublic qualified  
13 school.

14 (2) (A) “Eligible student” means either of the following:

15 (i) A student who is a member of a household whose total annual  
16 income during the calendar year before he or she receives an  
17 educational scholarship from a scholarship granting organization  
18 does not exceed an amount equal to two and one-half times the  
19 income standard used to qualify for a free or reduced lunch price  
20 under the Richard B. Russell National School Lunch Act (42 U.S.C.  
21 Sec. 1751 et seq.), who was eligible to attend a public school in  
22 the semester preceding receipt of the educational scholarship or  
23 is attending school in California for the first time, and who resides  
24 in California while receiving the educational scholarship.

25 (ii) A student who qualifies for free or reduced price lunch under  
26 the Richard B. Russell National School Lunch Act (42 U.S.C. Sec.  
27 1751 et seq.).

28 (B) A student remains an “eligible student” under this section  
29 until he or she graduates high school or reaches 21 years of age,  
30 regardless of household income.

31 (3) “Parent” means a parent, a legal guardian, a conservator, a  
32 person acting as a parent of a child, or any other person with legal  
33 authority to act on behalf of the child.

34 (4) “Qualified school” means a public elementary or secondary  
35 school located in California that is outside of the eligible student’s  
36 resident school district or a nonpublic elementary or secondary  
37 school in California that complies with the requirements of this  
38 section. A qualified school shall comply with all state laws that  
39 apply to nonpublic schools regarding criminal background checks

1 for employees and exclude from employment any person not  
2 permitted by state law to work in a nonpublic school.

3 (5) “Qualified taxpayer” means a taxpayer who files an income  
4 tax return in this state and is not claimed as a dependent for income  
5 tax purposes by any other taxpayer.

6 (6) “Scholarship granting organization” means an organization  
7 that complies with the requirements of this section and provides  
8 educational scholarships to eligible students attending qualified  
9 schools of their ~~parents~~ *parent’s* choice.

10 (c) In the case where the credit allowed by this section exceeds  
11 the “net tax,” the excess may be carried over to reduce the “net  
12 tax” in the following year, and the three succeeding years if  
13 necessary, until the credit is exhausted.

14 (d) No credit shall be allowed pursuant to this section unless  
15 the scholarship granting organization does all of the following:

16 (1) Notifies the Franchise Tax Board of its intent to provide  
17 educational scholarships to eligible students attending qualified  
18 schools.

19 (2) Provides the Franchise Tax Board with the Internal Revenue  
20 Service’s Letter of Determination of tax-exempt status ~~under as~~  
21 *an organization described in* Section 501(c)(3) of the Internal  
22 Revenue Code.

23 (3) Provides the qualified taxpayer with a Franchise Tax  
24 Board-approved receipt substantiating the contribution made by  
25 the qualified taxpayer to the scholarship granting organization.

26 (4) Ensures that at least 90 percent of its revenue from donations  
27 is expended on educational scholarships.

28 (5) Spends a portion of expenditures each year on educational  
29 scholarships for students eligible under clause (ii) of subparagraph  
30 (A) of paragraph (2) of subdivision (b) equal to the percentage of  
31 low-income eligible students in the county where the scholarship  
32 granting organization expends the majority of its educational  
33 scholarships.

34 ~~(6) Ensures that at least \_\_\_\_% of first time recipients of~~  
35 ~~educational scholarships were not continuously enrolled in a~~  
36 ~~nonpublic school during the previous year.~~

37 ~~(7)~~

38 (6) Distributes periodic educational scholarship payments as  
39 checks made out to an eligible student’s parent and mailed to the

1 qualified school where the qualified student is enrolled. The check  
2 shall be endorsed by the parent or guardian prior to deposit.

3 ~~(8)~~

4 (7) Cooperates with the Franchise Tax Board, or its designee,  
5 in conducting criminal background checks of all of its employees  
6 and board members and excludes from employment or governance  
7 any individual who might reasonably pose a risk to the appropriate  
8 use of contributed funds.

9 ~~(9)~~

10 (8) Ensures that educational scholarships are portable during  
11 the school year and may be used at any qualified school that accepts  
12 the eligible student according to a parent's wishes. If an eligible  
13 student moves to a new qualified school during a school year, the  
14 educational scholarship may be prorated.

15 ~~(10)~~

16 (9) (A) Demonstrates its financial accountability to the  
17 Franchise Tax Board by submitting a financial information report,  
18 conducted by a certified public accountant, that complies with  
19 uniform financial accounting standards and is certified by an  
20 auditor as free of material misstatements.

21 (B) If the scholarship granting organization receives donations  
22 of fifty thousand dollars (\$50,000) or more during the school year,  
23 the scholarship granting organization shall demonstrate its financial  
24 accountability by either of the following:

25 (i) Filing a surety bond with Franchise Tax Board, payable to  
26 the State of California, in an amount equal to the aggregate amount  
27 of contributions expected to be received during the school year.

28 (ii) Filing financial information prior to the school year with  
29 Franchise Tax Board that demonstrates the financial viability of  
30 the scholarship granting organization.

31 ~~(11)~~

32 (10) Ensures that educational scholarships are not provided to  
33 eligible students to attend a qualified school with paid staff or  
34 board members, or relatives thereof, in common with the  
35 scholarship granting organization.

36 (e) No credit shall be allowed pursuant to this section unless a  
37 qualified school that accepts educational scholarships from a  
38 scholarship granting organization does all of the following:

39 (1) Complies with all health and safety laws or codes that apply  
40 to nonpublic schools.

1 (2) Obtains a valid occupancy permit for its grounds if required  
2 by its municipality.

3 (3) Certifies that it will not discriminate in ~~its admissions on~~  
4 ~~the basis of race, color, national origin, religion, or disability.~~  
5 *accordance with Section 1981 of Title 42 of the United States Code.*

6 (4) Provides academic accountability to ~~parents~~ *the parent* of  
7 eligible students who receive educational scholarships by regularly  
8 report to the parent on the student's progress.

9 (f) On or before June 1 of each calendar year, a scholarship  
10 granting organization shall report to the Franchise Tax Board the  
11 following information prepared by a certified public accountant  
12 regarding the previous calendar year's educational scholarships:

13 (1) The name and address of the scholarship granting  
14 organization.

15 (2) The total number and dollar amount of contributions received  
16 during the previous calendar year.

17 (3) The total number and dollar amount of educational  
18 scholarships awarded during the previous calendar year, the total  
19 number and total dollar amount of educational scholarships  
20 awarded during the previous year to eligible students qualifying  
21 for the federal free and reduced price lunch program, and the  
22 percentage of first-time recipients of educational scholarships who  
23 were continuously enrolled in a public school during the previous  
24 year.

25 (g) For purposes of this section, the Franchise Tax Board shall  
26 do all of the following:

27 (1) Promulgate any rules and regulations necessary to implement  
28 this section.

29 (2) Provide a standardized format for a receipt to be issued by  
30 a scholarship granting organization to a qualified taxpayer to  
31 indicate the value of a received contribution. The Franchise Tax  
32 Board shall require a qualified taxpayer to provide a copy of this  
33 receipt when claiming a credit under this section.

34 (3) Provide a standardized format for scholarship granting  
35 organizations to report the information required by paragraph ~~(11)~~  
36 ~~(10)~~ of subdivision (d).

37 (4) Conduct either a financial review or audit of a scholarship  
38 granting organization if in possession of evidence of fraud.

39 (5) (A) Bar a scholarship granting organization from  
40 ~~participating in the program~~ *being a scholarship granting*

1 *organization, as defined by this section*, if the Franchise Tax Board  
2 establishes that the scholarship granting organization has  
3 intentionally and substantially failed to comply with the  
4 requirements of this section.

5 (B) If the Franchise Tax Board bars a scholarship granting  
6 organization, it shall notify any affected eligible students and ~~their~~  
7 *parents his or her parent* of this decision as soon as possible.

8 (C) Allow a qualified taxpayer to divert a prorated share of state  
9 income tax withholdings to a scholarship granting organization of  
10 the qualified taxpayer's choice, up to the maximum credit allowed  
11 by law, including carryover credits. The Franchise Tax Board shall  
12 promulgate rules and regulation necessary to implement this  
13 subparagraph.

14 SEC. 3. Section 23699 is added to the Revenue and Taxation  
15 Code, to read:

16 23699. (a) For each taxable year beginning on or after January  
17 1, 2010, there shall be allowed to a qualified taxpayer as a credit  
18 against the "tax," as defined in Section 23036, an amount equal  
19 to the total contributions made to a scholarship granting  
20 organization during the taxable year for which the credit is claimed,  
21 not to exceed 50 percent of the qualified taxpayer's "tax" for the  
22 taxable year.

23 (b) For purposes of this section:

24 (1) "Educational scholarship" means a grant made to an eligible  
25 student to cover all or part of the tuition and fees, including  
26 transportation to a qualified school outside of the eligible student's  
27 resident school district, at either a public or nonpublic qualified  
28 school.

29 (2) (A) "Eligible student" means either of the following:

30 (i) A student who is a member of a household whose total annual  
31 income during the calendar year before he or she receives an  
32 educational scholarship from a scholarship granting organization  
33 does not exceed an amount equal to two and one-half times the  
34 income standard used to qualify for a free or reduced lunch price  
35 under the Richard B. Russell National School Lunch Act (42 U.S.C.  
36 Sec. 1751 et seq.), who was eligible to attend a public school in  
37 the semester preceding receipt of the educational scholarship or  
38 is attending school in California for the first time, and who resides  
39 in California while receiving the educational scholarship.

1 (ii) A student who qualifies for free or reduced price lunch under  
2 the Richard B. Russell National School Lunch Act (42 U.S.C. Sec.  
3 1751 et seq.).

4 (B) A student remains an eligible student under this section until  
5 he or she graduates high school or reaches 21 years of age,  
6 regardless of household income.

7 (3) “Parent” means a parent, a legal guardian, a conservator, a  
8 person acting as a parent of a child, or any other person with legal  
9 authority to act on behalf of the child.

10 (4) “Qualified school” means a public elementary or secondary  
11 school located in California that is outside of the eligible student’s  
12 resident school district or a nonpublic elementary or secondary  
13 school in California that complies with the requirements of this  
14 section. A qualified school shall comply with all state laws that  
15 apply to nonpublic schools regarding criminal background checks  
16 for employees and exclude from employment any person not  
17 permitted by state law to work in a nonpublic school.

18 (5) “Qualified taxpayer” means a taxpayer who files an income  
19 tax return in this state and is not claimed as a dependent for income  
20 tax purposes by any other taxpayer.

21 (6) “Scholarship granting organization” means an organization  
22 that complies with the requirements of this section and provides  
23 educational scholarships to eligible students attending qualified  
24 schools of their ~~parents~~ *parent’s* choice.

25 (c) In the case where the credit allowed by this section exceeds  
26 the “tax,” the excess may be carried over to reduce the “tax” in  
27 the following year, and the three succeeding years if necessary,  
28 until the credit is exhausted.

29 (d) No credit shall be allowed pursuant to this section unless  
30 the scholarship granting organization does all of the following:

31 (1) Notifies the Franchise Tax Board of its intent to provide  
32 educational scholarships to eligible students attending qualified  
33 schools.

34 (2) Provides the Franchise Tax Board with the Internal Revenue  
35 Service’s Letter of Determination of tax-exempt status ~~under~~ *as*  
36 *an organization described in* Section 501(c)(3) of the Internal  
37 Revenue Code.

38 (3) Provides the qualified taxpayer with an Franchise Tax  
39 Board-approved receipt substantiating the contribution made by  
40 the qualified taxpayer to the scholarship granting organization.

(4) Ensures that at least 90 percent of its revenue from donations is expended on educational scholarships.

(5) Spends a portion of expenditures each year on educational scholarships for students eligible under clause (ii) of subparagraph (A) of paragraph (2) of subdivision (b) equal to the percentage of low-income eligible students in the county where the scholarship granting organization expends the majority of its educational scholarships.

~~(6) Ensures that at least \_\_\_\_% of first time recipients of educational scholarships were not continuously enrolled in a nonpublic school during the previous year.~~

~~(7)~~

(6) Distributes periodic educational scholarship payments as checks made out to an eligible student's parent and mailed to the qualified school where the qualified student is enrolled. The check shall be endorsed by the parent or guardian prior to deposit.

~~(8)~~

(7) Cooperates with the Franchise Tax Board, or its designee, in conducting criminal background checks of all of its employees and board members and excludes from employment or governance any individual who might reasonably pose a risk to the appropriate use of contributed funds.

~~(9)~~

(8) Ensures that educational scholarships are portable during the school year and may be used at any qualified school that accepts the eligible student according to a parent's wishes. If an eligible student moves to a new qualified school during a school year, the educational scholarship may be prorated.

~~(10)~~

(9) (A) Demonstrates its financial accountability to the Franchise Tax Board by submitting a financial information report, conducted by a certified public accountant, that complies with uniform financial accounting standards and is certified by an auditor as free of material misstatements.

(B) If the scholarship granting organization receives donations of fifty thousand dollars (\$50,000) or more during the school year, the scholarship granting organization shall demonstrate its financial accountability by either of the following:

1 (i) Filing a surety bond with Franchise Tax Board, payable to  
2 the State of California, in an amount equal to the aggregate amount  
3 of contributions expected to be received during the school year.

4 (ii) Filing financial information prior to the school year with  
5 Franchise Tax Board that demonstrates the financial viability of  
6 the scholarship granting organization.

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8 (10) Ensures that educational scholarships are not provided to  
9 eligible students to attend a qualified school with paid staff or  
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16 to nonpublic schools.

17 (2) Obtains a valid occupancy permit for its grounds if required  
18 by its municipality.

19 (3) Certifies that it will not discriminate ~~in its admissions on~~  
20 ~~the basis of race, color, national origin, religion, or disability.~~  
21 *accordance with Section 1981 of Title 42 of the United States Code.*

22 (4) Provides academic accountability to parents of eligible  
23 students who receive educational scholarships by regularly report  
24 to the parent on the student's progress.

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34 scholarships awarded during the previous calendar year, the total  
35 number and total dollar amount of educational scholarships  
36 awarded during the previous year to eligible students qualifying  
37 for the federal free and reduced price lunch program, and the  
38 percentage of first-time recipients of educational scholarships who  
39 were continuously enrolled in a public school during the previous  
40 year.

(g) For purposes of this section, the Franchise Tax Board shall do all of the following:

(1) Promulgate any rules and regulations necessary to implement this section.

(2) Provide a standardized format for a receipt to be issued by a scholarship granting organization to a qualified taxpayer to indicate the value of a received contribution. The Franchise Tax Board shall require a qualified taxpayer to provide a copy of this receipt when claiming a credit under this section.

(3) Provide a standardized format for scholarship granting organizations to report the information required by paragraph ~~(11)~~ (10) of subdivision (d).

(4) Conduct either a financial review or audit of a scholarship granting organization if in possession of evidence of fraud.

(5) (A) Bar a scholarship granting organization from ~~participating in the program~~ *being a scholarship granting organization, as defined by this section*, if the Franchise Tax Board establishes that the scholarship granting organization has intentionally and substantially failed to comply with the requirements of this section.

(B) If the Franchise Tax Board bars a scholarship granting organization, it shall notify any affected eligible ~~students and their parents~~ *student and his or her parent* of this decision as soon as possible.

(C) Allow a qualified taxpayer to divert a prorated share of state income tax withholdings to a scholarship granting organization of the qualified taxpayer's choice, up to the maximum credit allowed by law, including carryover credits. The Franchise Tax Board shall promulgate rules and regulation necessary to implement this subparagraph.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.