AMENDED IN ASSEMBLY MARCH 18, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 279

Introduced by Assembly Member Duvall

February 12, 2009

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:

SECTION 1. This act shall be known and may be cited as the Great Schools Tax Credit Act.

SEC. 2. Section 17053.99 is added to the Revenue and Taxation Code, to read:

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

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Provides the qualified taxpayer with a Franchise Tax Board-approved receipt substantiating the contribution made by 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:

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

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

~~(11)~~

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

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

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

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

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

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

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

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

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

(3) The total number and dollar amount of educational scholarships awarded during the previous calendar year, the total number and total dollar amount of educational scholarships awarded during the previous year to eligible students qualifying for the federal free and reduced price lunch program, and the percentage of first-time recipients of educational scholarships who were continuously enrolled in a public school during the previous 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~~ *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. 3. Section 23699 is added to the Revenue and Taxation Code, to read:

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

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Provides the qualified taxpayer with an Franchise Tax Board-approved receipt substantiating the contribution made by 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:

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

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

~~(11)~~

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

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

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

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

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

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

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

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

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

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

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