

AMENDED IN ASSEMBLY APRIL 22, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2421

Introduced by Assembly Member Nestande
(~~Coauthor: Coauthors: Assembly Member Members Allen,~~
***Maienschein, and Olsen*)**
(Coauthor: Senator Cannella)

February 21, 2014

An act to add and repeal Section 23692 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2421, as amended, Nestande. Corporation Tax Law: credits: *Homeless and Foster Youth Opportunities Investment Act.*

The Corporation Tax Law allows various credits against the ~~tax~~ *taxes* imposed by that law.

This bill, for taxable years beginning on or after January 1, 2015, and before January 1, 2020, would allow a credit against the ~~tax~~ *taxes* imposed under that law for 50% of monetary contributions to ~~nonprofit~~ *qualified* education scholarship organizations, as defined, to fund qualified *college or K-12* scholarships for specified pupils to attend private schools, as defined, or for transportation costs to attend private, public, or charter schools. The bill would provide that the credit would not exceed \$200,000 per taxpayer, that the credit would be awarded on a first-come, first-serve basis, and that the credit would have an aggregate cap of \$50,000,000 for each calendar year. The bill would

require the Franchise Tax Board and the State Department of Education to administer the credit, as specified.

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 *Homeless and Foster Youth Opportunities Investment Act.*

3 SEC. 2. The Legislature finds and declares the following:

4 (a) Providing tax incentives to encourage private investments
5 for the common good is sound public policy.

6 (b) Expanding educational opportunities and improving the
7 quality of, and access to, educational services within the state are
8 valid public purposes that the Legislature may promote using its
9 sovereign power to determine tax policy.

10 (c) Creative tax policy can inspire greater charitable
11 contributions and public-private partnerships that ensure additional
12 resources for the education of all children in California.

13 (d) Encouraging voluntary support for education, without
14 prejudice for or against any state-sanctioned educational enterprise
15 promotes the state’s interest and common good in providing the
16 highest quality education to all children in the state.

17 (e) At a time when fiscal realities challenging California school
18 communities demand innovative ways to deliver vital education
19 services to public and private pupils in kindergarten and grades 1
20 to 12, inclusive, *and in college*, charitable giving for educational
21 purposes should be stimulated.

22 (f) California benefits from ensuring the accessibility and
23 viability of strong public, as well as, private school options in
24 educating students, especially for those with the greatest needs:
25 our *homeless and foster youth*.

26 SEC. 3. Section 23692 is added to the Revenue and Taxation
27 Code, to read:

28 23692. (a) For each taxable year beginning on or after January
29 1, 2015, and before January 1, 2020, there shall be allowed as a
30 credit against the “tax,” as defined in Section 23036, an amount
31 equal to 50 percent of the monetary contribution ~~provided~~ *made*
32 by a taxpayer *during the taxable year, not to exceed two hundred*

1 *thousand dollars (\$200,000) to a nonprofit qualified education*
2 *scholarship organization to fund qualified college or K-12*
3 *education scholarships for a specified pupil to attend private school*
4 *or to fund partial or full payments of fees associated with the*
5 *general costs of transportation to attend a private, public, or charter*
6 *school.*

7 (b) For purposes of this section:

8 (1) ~~“Education “Qualified education scholarship organization~~
9 ~~(ESO)” organization” or “ESO” means a charitable institution~~
10 ~~an organization~~ in this state that meets the following requirements:

11 (A) Is organized and operated with ~~the primary~~ a purpose of
12 providing qualified *college or K-12* education scholarships to
13 pupils attending a *public or private* school in California.

14 (B) (i) ~~Allocates~~ *If the organization has three or more years*
15 *of audited financial statements, distributes to specified pupils at*
16 *least 80 percent of contributions for which a credit is claimed for*
17 *qualified college or K-12 education scholarships for ESOs with*
18 ~~three or more years of audits.~~

19 (ii) ~~Allocates~~ *If the organization has fewer than three years of*
20 *audited financial statements, distributes at least 90 percent of*
21 *contributions for which a credit is claimed for qualified college or*
22 *K-12 education scholarships for ESOs with less than three years*
23 ~~of audits.~~

24 (C) Makes qualified *college or K-12* education scholarships
25 available for *specified* pupils from more than one school.

26 (D) Retains data on the progress of the *specified* pupils
27 participating in qualified *college or K-12* education scholarships
28 on nationally available norm-referenced tests to evaluate the
29 program’s efficacy.

30 (E) Submits to the Franchise Tax Board financial and
31 compliance audit reports performed by a certified public
32 accountant.

33 (F) Submits to the State Department of Education quarterly
34 reports on the number of qualified *college or K-12* education
35 scholarship recipients and the schools that the recipients attend.

36 (G) Applies to participate in this credit program with the
37 ~~Franchise Tax Board~~ *State Department of Education.*

38 (2) ~~“Nonprofit” means an organization that meets all of the~~
39 ~~following requirements:~~

40 (A)

- 1 (H) Is formed as any of the following:
- 2 (i) A nonprofit public benefit corporation described in Part 2
- 3 (commencing with Section 5110) of Division 2 of Title 1 of the
- 4 Corporations Code.
- 5 (ii) A nonprofit religious corporation described in Part 4
- 6 (commencing with Section 9110) of Division 2 of Title 1 of the
- 7 Corporations Code.
- 8 ~~(iii) Any other charitable corporation, as defined by Section~~
- 9 ~~12582.1 of the Government Code.~~
- 10 (iv)
- 11 (iii) A duly authorized foreign nonprofit corporation that has
- 12 complied with the registration requirements under Section 6910
- 13 of, and Chapter 21 (commencing with Section 2100) of Division
- 14 1 of Title 1 of, the Corporations Code.
- 15 ~~(B) An organization~~
- 16 (I) Is exempt from federal income tax as an organization
- 17 described in Section 501(c)(3) of the Internal Revenue Code.
- 18 ~~(3)~~
- 19 (2) “Qualified *college or* K-12 education scholarship” means
- 20 ~~either~~ *any* of the following:
- 21 (A) An award of tuition assistance amounting to at least 65
- 22 percent of the basic state per-pupil funding, or a private school’s
- 23 actual tuition and fees, whichever is less, that meets all of the
- 24 following requirements:
- 25 (i) An initial *college or* K-12 education scholarship shall be
- 26 awarded to a specified pupil in kindergarten through grade 12 *or*
- 27 *in college*.
- 28 (ii) May be renewed at the request of the specified pupil for
- 29 each school year until graduation from high school *or college*.
- 30 (iii) Shall be portable and follow the specified pupil from one
- 31 school to another.
- 32 (iv) Shall be provided to a private school of the specified pupil’s
- 33 choosing under the following conditions:
- 34 (I) Each ESO shall establish criteria for granting scholarships
- 35 that meet the requirements of this section.
- 36 (II) The pupil receiving the assistance shall remain a specified
- 37 pupil.
- 38 (III) The specified pupil shall attend a private school.

1 (IV) The specified pupil shall remain enrolled and in attendance
2 at the private school throughout the school year unless excused by
3 the applicable program for illness or other good cause.

4 (V) The specified pupil and a parent or legal guardian of the
5 specified pupil shall comply with all applicable policies of the
6 private school.

7 (VI) A parent or legal guardian of the specified pupil shall
8 ensure that the pupil has reliable transportation to and from the
9 applicable program.

10 (B) Financial assistance for a specified pupil to partially or fully
11 pay for the fees associated with the general costs of transportation
12 to attend a private, public, or charter school *or to attend*
13 *school-related activities and other educationally beneficial*
14 *programs.*

15 (C) Financial assistance for a specified pupil to attend college
16 courses after graduation from high school provided by any public
17 or independent college where the specified pupil has been admitted
18 to attend.

19 (D) *Financial assistance for a specified pupil to purchase books*
20 *and other materials to support academic success, including, but*
21 *not limited to, computers and software, tutoring, and other*
22 *academic support.*

23 ~~(4)~~

24 (3) “Specified pupil” means ~~a minor~~ *an individual* who has
25 applied for a *college or K-12 education scholarship and who is a*
26 *pupil either within foster care who or has been placed in a foster*
27 *care system within the State of California at any time prior to*
28 *graduating high school.*

29 ~~(A) A school, or who was at any time prior to graduating high~~
30 ~~school, or is currently a homeless youth as defined in Section~~
31 ~~11139.3 of the Government Code. A specified pupil is not required~~
32 ~~to be previously enrolled in a public school or charter school to~~
33 ~~participate.~~

34 ~~(B) A specified pupil remains eligible for a scholarship until he~~
35 ~~or she graduates from high school or leaves the foster care program.~~

36 ~~(5)~~

37 (4) (A) “Private school” means a person, firm, association,
38 partnership, *limited liability company*, or corporation offering or
39 conducting private school instruction in the State of California on

- 1 the elementary or high school level, that meets all of the following
- 2 requirements:
- 3 (A)
- 4 (i) Is accredited by the Western Association of Schools and
- 5 Colleges or an affiliated organization.
- 6 (B)
- 7 (ii) Has filed a current private school affidavit with the State
- 8 Department of Education in accordance with Section 33190 of the
- 9 Education Code.
- 10 (C)
- 11 (iii) Complies with applicable provisions of the Health and
- 12 Safety Code.
- 13 (D)
- 14 (iv) Complies with applicable provisions of the *California Fair*
- 15 *Employment and Housing Act* (Part 2.8 (commencing with Section
- 16 12900) of Division 3 of Title 2 of the Government Code).
- 17 (E)
- 18 (v) Utilizes background checks in connection with hiring all
- 19 school employees, consistent with the standards set forth in
- 20 subdivision (a) of Section 44237 of the Education Code.
- 21 (F)
- 22 (vi) Requires a specified pupil to take a nationally available
- 23 norm-referenced test.
- 24 (G)
- 25 (vii) Has obtained, if it has been in operation for less than three
- 26 years, a surety bond or letter of credit in an amount equal to the
- 27 value of the education scholarship payments for one quarter.
- 28 ~~(e) The amount of the credit shall not exceed two hundred~~
- 29 ~~thousand dollars (\$200,000) per taxpayer, per taxable year.~~
- 30 (B) *“Private school” also means an institution that meets the*
- 31 *definition of a “qualifying institution” in paragraph (1) of*
- 32 *subdivision (l) of Section 69432.7 of the Education Code.*
- 33 (C) *“Private school” does not include a program of instruction*
- 34 *offered by a tutor or a nonaccredited private school to a pupil who*
- 35 *is exempt from compulsory full-time education under Article 3*
- 36 *(commencing with Section 48220) of Chapter 2 of Part 27 of*
- 37 *Division 4 of Title 2 of the Education Code.*
- 38 (d)
- 39 (c) The taxpayer shall receive a certification by the ~~Franchise~~
- 40 ~~Tax Board~~ *State Department of Education* upon a determination

1 that the contribution meets the requirements of this section and
2 shall apply with the Franchise Tax Board to receive a credit.
3 section.

4 ~~(e)~~

5 (d) In the case where the credit allowed by this section exceeds
6 the “tax,” the excess may be carried over to reduce the “tax” in
7 the following year, and succeeding five years if necessary, until
8 the credit is exhausted.

9 ~~(f)~~

10 (e) This credit shall be in lieu of any other credit or deduction
11 that the taxpayer may otherwise claim pursuant to this part with
12 respect to a monetary contribution described in subdivision (a).

13 ~~(g)~~

14 (f) This credit shall be claimed on a timely filed original return.

15 ~~(h)~~

16 (g) (1) The aggregate amount of credits allowed under this
17 section shall not exceed fifty million dollars (\$50,000,000) for
18 each calendar year.

19 (2) The allocation of credits shall be on a first-come, first-serve
20 basis.

21 (3) The Legislature may increase the amount in paragraph (1).

22 ~~(i)~~

23 (h) The Franchise Tax Board and the State Department of
24 Education shall administer this credit.

25 (1) The Franchise Tax Board shall perform all of the following:
26 (A) ~~Promulgate~~ Adopt rules and regulations as necessary or
27 appropriate to implement this credit.

28 ~~(B) Establish application forms and procedures.~~

29 ~~(C)~~

30 (B) Track credits claimed.

31 ~~(D)~~

32 (C) Post aggregate totals of the credits claimed on the Internet
33 Web site of the Franchise Tax Board.

34 ~~(E)~~

35 (D) Determine when the aggregate total of the credits reaches
36 fifty million dollars (\$50,000,000) for a calendar year.

37 ~~(F) Certify that the contributions meet the requirements of this
38 section needed to receive a credit.~~

39 (2) The State Department of Education shall do the following:

- 1 (A) Adopt rules *and regulations* necessary to determine whether
- 2 the following meet the requirements of this section:
- 3 (i) An ESO.
- 4 (ii) A contribution.
- 5 (B) Submit a list of eligible ESOs that comply with the
- 6 requirements of this section to the Franchise Tax Board annually
- 7 by March 15.
- 8 (C) *Establish application forms and procedures.*
- 9 (D) *Certify that the contributions meet the requirements of this*
- 10 *section.*
- 11 ~~(j)~~
- 12 (i) Chapter 3.5 (commencing with Section 11340) of Part 1 of
- 13 Division 3 of Title 2 of the Government Code does not apply to
- 14 the guidelines or regulations adopted pursuant to this section.
- 15 ~~(k)~~
- 16 (j) This section shall remain in effect only until December 1,
- 17 2020, and as of that date is repealed.
- 18 SEC. 4. This act provides for a tax levy within the meaning of
- 19 Article IV of the Constitution and shall go into immediate effect.