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CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2421

Introduced by Assembly Member Nestande
(Coauthors: Assembly 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 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 taxes imposed under that law for 50% of monetary contributions to qualified K-College education scholarship organizations, as defined, to fund qualified K-College education scholarships, as defined. 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-served basis, and that the credit would have an aggregate cap of \$10,000,000 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’s
18 education system demand innovative ways to deliver vital
19 education services to public and private pupils in kindergarten and
20 grades 1 to 12, inclusive, and in college, charitable giving for
21 educational purposes should be stimulated.

22 (f) California benefits from ensuring the accessibility and
23 viability of strong public, as well as, private school and college
24 options in educating students, especially for those with the greatest
25 needs: 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, *not to exceed*
31 *two hundred thousand dollars (\$200,000)*, an amount equal to 50
32 percent of ~~the~~ *an approved* monetary contribution made by a

1 taxpayer during the taxable year, not to exceed two hundred
2 thousand dollars (\$200,000) year to a qualified K-College
3 education scholarship organization to fund qualified K-College
4 education scholarships. *scholarships in accordance with this*
5 *section.*

6 (b) For purposes of this section:

7 (1) “Credit certificate” means the certificate issued by the State
8 Department of Education pursuant to subdivision (c).

9 (1)

10 (2) “Qualified K-College education scholarship organization”
11 or “ESO” means an organization in this state that *the State*
12 *Department of Education has determined* meets the following
13 requirements:

14 (A) Is organized and operated with a purpose of providing
15 qualified K-College education scholarships to specified pupils
16 attending a public, charter, or private school in California.

17 (B) (i) If the organization has three or more years of audited
18 financial statements, distributes to specified pupils at least 80
19 percent of contributions for which a credit is claimed for qualified
20 K-College education scholarships .

21 (ii) If the organization has fewer than three years of audited
22 financial statements, distributes at least 90 percent of contributions
23 for which a credit is claimed for qualified K-College education
24 scholarships .

25 (C) Makes qualified K-College education scholarships available
26 for specified pupils from more than one school.

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

31 (E) Submits to the ~~Franchise Tax Board~~ *State Department of*
32 *Education* financial and compliance audit reports performed by a
33 certified public accountant.

34 (F) Submits to the State Department of Education quarterly
35 reports on the number of qualified K-College education scholarship
36 recipients and the schools that the recipients attend.

37 (G) Applies to participate in this credit program with the State
38 Department of Education.

39 (H) Is formed as any of the following:

1 (i) A nonprofit public benefit corporation described in Part 2
2 (commencing with Section 5110) of Division 2 of Title 1 of the
3 Corporations Code.

4 (ii) A nonprofit religious corporation described in Part 4
5 (commencing with Section 9110) of Division 2 of Title 1 of the
6 Corporations Code.

7 (iii) A duly authorized foreign nonprofit corporation that has
8 complied with the registration requirements under Section 6910
9 of, and Chapter 21 (commencing with Section 2100) of Division
10 1 of Title 1 of, the Corporations Code.

11 (I) Is exempt from federal income tax as an organization
12 described in Section 501(c)(3) of the Internal Revenue Code.

13 ~~(2)~~

14 (3) “Qualified education-related expenses” means expenses paid
15 or incurred for the purchase of books, services, and other materials
16 that support academic success, including computers, software,
17 tutoring, and other academic support.

18 ~~(3)~~

19 (4) “Qualified K-College education scholarship” means any of
20 the following:

21 (A) Financial assistance for a specified pupil to partially or fully
22 pay for the fees associated with the general costs of transportation
23 to attend a public, charter, or private school or to attend
24 school-related activities and other educationally beneficial
25 programs.

26 (B) Financial assistance for a specified pupil to attend college
27 courses after graduation from high school provided by any public
28 college or independent, nonprofit college where the specified pupil
29 has been admitted to attend.

30 (C) Financial assistance for a specified pupil attending a public,
31 charter, or private school for qualified education-related expenses,
32 not provided by the McKinney-Vento Homeless Assistance Act
33 of 1987 (Public Law 100-77).

34 ~~(4)~~

35 (5) “Specified pupil” means an individual who has applied for
36 a K-College education scholarship and who is either within foster
37 care, has been placed in a foster care system within the State of
38 California, or has been placed with a relative caretaker through
39 child protective services at any time prior to graduating high
40 school, or who was at any time prior to graduating high school, or

1 is currently a homeless youth as defined in Section 11139.3 of the
2 Government Code or the McKinney-Vento Homeless Assistance
3 Act of 1987 (Public Law 100-77). A specified pupil is not required
4 to be previously enrolled in a public school or charter school to
5 participate.

6 ~~(5)~~

7 (6) (A) “Private school” means a person, firm, association,
8 partnership, limited liability company, or corporation offering or
9 conducting private school instruction in the State of California on
10 the elementary or high school level, that meets all of the following
11 requirements:

12 (i) Is accredited by the Western Association of Schools and
13 Colleges or an affiliated organization.

14 (ii) Has filed a current private school affidavit with the State
15 Department of Education in accordance with Section 33190 of the
16 Education Code.

17 (iii) Complies with applicable provisions of the Health and
18 Safety Code.

19 (iv) Complies with applicable provisions of the California Fair
20 Employment and Housing Act (Part 2.8 (commencing with Section
21 12900) of Division 3 of Title 2 of the Government Code).

22 (v) Utilizes background checks in connection with hiring all
23 school employees, consistent with the standards set forth in
24 subdivision (a) of Section 44237 of the Education Code.

25 (vi) Requires a specified pupil to take a nationally available
26 norm-referenced test.

27 (vii) Has obtained, if it has been in operation for less than three
28 years, a surety bond or letter of credit in an amount equal to the
29 value of the education scholarship payments for one quarter.

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 ~~(e) The taxpayer shall receive a certification by the State~~
39 ~~Department of Education upon a determination that the contribution~~
40 ~~meets the requirements of this section.~~

1 (c) *In a form and manner prescribed by the State Department*
2 *of Education, a taxpayer seeking a credit under this section for a*
3 *monetary contribution to a qualified K-College education*
4 *scholarship organization shall request approval to make a specified*
5 *contribution and tax credit amount from the State Department of*
6 *Education. After receiving approval to make a contribution, the*
7 *taxpayer may make the approved contribution. The State*
8 *Department of Education and the qualified K-College education*
9 *scholarship shall verify the amount and date of the contribution*
10 *and issue a tax credit certificate to the taxpayer reflecting the*
11 *approved amount of the tax credit, and notify the Franchise Tax*
12 *Board of the contribution and approved credit amount. A taxpayer*
13 *shall make a contribution within 30 calendar days of the date the*
14 *contribution has been approved by the State Department of*
15 *Education in order to claim the credit. The taxpayer shall provide*
16 *a copy of the credit certificate upon request to the Franchise Tax*
17 *Board.*

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

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

25 ~~(f) *This credit shall be claimed on a timely filed original return.*~~

26 (f) *The credit allowed under this section shall be claimed on a*
27 *timely filed original return and only with respect to contributions*
28 *where the taxpayer has received a tax credit certificate from the*
29 *State Department of Education.*

30 (g) *The State Department of Education may prescribe rules,*
31 *guidelines, or procedures appropriate to carry out the purposes*
32 *of this section, including any guidelines regarding the limitation*
33 *on total credits allowable under this section.*

34 ~~(g)~~

35 (h) (1) *The aggregate amount of credits allowed under this*
36 *section shall not exceed ten million dollars (\$10,000,000) for each*
37 *calendar year.*

38 (2) *The allocation of credits shall be on a first-come, first-served*
39 *basis.*

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

1 ~~(h)~~

2 (i) ~~The Franchise Tax Board and the State Department of~~
3 Education shall ~~administer this credit.~~ *do all of the following:*

4 (1) *Establish application forms and procedures to determine*
5 *eligibility of an entity as a qualified K-College educational*
6 *scholarship organization, including the following:*

7 (A) *Accept and evaluate applications received that an applicant*
8 *meets the requirements of a qualified K-College education*
9 *scholarship organization. The State Department of Education may*
10 *suspend or revoke an organization's qualified K-College education*
11 *scholarship organization status if the State Department of*
12 *Education finds that the organization no longer meets the*
13 *requirements of this section.*

14 (B) *Determine and designate organizations that meet the*
15 *requirements of a qualified K-College education scholarship*
16 *organization.*

17 (C) *Maintain and post a listing of qualified K-College education*
18 *scholarship organizations on the State Department of Education's*
19 *Internet Web site. The list shall be published annually by March*
20 *1.*

21 (2) *On or after January 1, 2015, and before January 1, 2020,*
22 *allocate tax credits to taxpayers that make an approved monetary*
23 *contribution.*

24 (A) *Establish a procedure for taxpayers to file with the State*
25 *Department of Education a written application, on a form jointly*
26 *prescribed by the State Department of Education and the Franchise*
27 *Tax Board for the approval of a monetary contribution in*
28 *accordance with this section. The application shall include, but*
29 *not be limited to, the following information:*

30 (i) *The name and taxpayer identification number of the donor.*

31 (ii) *The name and taxpayer identification number of the qualified*
32 *K-College education scholarship organization.*

33 (iii) *The proposed amount of monetary contribution.*

34 (B) *Establish criteria, consistent with the requirements of this*
35 *section, for allocating tax credits.*

36 (C) (i) *Process and approve, or reject, all requests for approval*
37 *of a monetary contribution on a first-come-first-served basis, based*
38 *on the date the request for approval is received by the State*
39 *Department of Education.*

1 (ii) If requests for approval of a monetary contribution are
2 received from two or more taxpayers on the same day, and the
3 amount of credits of those requests exceeds the amount of credits
4 available for allocation, the remaining available credits shall be
5 allocated among those taxpayers on a pro rata basis.

6 (D) Subject to the annual cap established as provided in
7 subdivision (h), allocate credits under this section.

8 (3) Certify and issue tax credit certificates to taxpayers for
9 approved monetary contributions made.

10 (A) Establish a verification procedure for the amount of
11 monetary contributions made to qualified K-College education
12 scholarship organizations.

13 (B) Establish audit requirements that shall be satisfied before
14 a credit certificate may be issued by the State Department of
15 Education.

16 (4) Track aggregate amount of tax credits allocated to taxpayers.

17 (5) Provide the Franchise Tax Board with a list of taxpayers
18 and the tax credit amounts allocated to each qualified taxpayer
19 by the State Department of Education. The list shall include the
20 names and taxpayer identification numbers, including taxpayer
21 identification numbers of each partner or shareholder, as
22 applicable, of the qualified taxpayer.

23 ~~(1)~~

24 (j) The Franchise Tax Board shall perform all of the following:

25 ~~(A) Adopt rules and regulations as necessary or appropriate to~~
26 ~~implement this credit.~~

27 ~~(B) Track credits claimed.~~

28 ~~(C) Post aggregate totals of the credits claimed on the Internet~~
29 ~~Web site of the Franchise Tax Board.~~

30 ~~(D) Determine when the aggregate total of the credits reaches~~
31 ~~ten million dollars (\$10,000,000) for a calendar year.~~

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

33 ~~(A) Adopt rules and regulations necessary to determine whether~~
34 ~~the following meet the requirements of this section:~~

35 ~~(i) An ESO;~~

36 ~~(ii) A contribution.~~

37 ~~(B) Submit a list of eligible ESOs that comply with the~~
38 ~~requirements of this section to the Franchise Tax Board annually~~
39 ~~by March 15.~~

40 ~~(C) Establish application forms and procedures.~~

1 ~~(D)~~ Certify that the contributions meet the requirements of this
2 section.

3 (1) Assist the State Department of Education in creating a form
4 for taxpayers to submit requesting approval of a monetary
5 contribution to a qualified K-College education scholarship
6 organization for the credit under this section and a certificate to
7 be provided to taxpayers of the approved tax credit amount.

8 (2) Establish a procedure to verify that the amount of tax credit
9 claimed on a tax return has been approved and certified by the
10 State Department of Education.

11 ~~(i)~~

12 (k) 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 ~~(j)~~

16 (l) 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.