

# STATE OF NEW YORK

5011

2017-2018 Regular Sessions

## IN SENATE

March 6, 2017

Introduced by Sens. GOLDEN, SAVINO, FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law and the education law, in relation to enacting the "education affordability act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "education affordability act".

3 § 2. The tax law is amended by adding a new section 43 to read as  
4 follows:

5 § 43. Education affordability tax credit. (a) Definitions. For the  
6 purposes of this section, the following terms shall have the same defi-  
7 inition as provided for in article twenty-five of the education law:

8 "Authorized contribution";

9 "Contribution";

10 "Educational program";

11 "Educational scholarship organization";

12 "Eligible pupil";

13 "Local education fund";

14 "Nonpublic school";

15 "Public education entity";

16 "Public school";

17 "Qualified contribution";

18 "Qualified educator";

19 "Qualified school";

20 "Scholarship"; and

21 "School improvement organization".

22 (b) Allowance of credit. A taxpayer subject to tax under article  
23 nine-A or twenty-two of this chapter shall be allowed credit against  
24 such tax, pursuant to the provisions referenced in subdivision (l) of

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 this section, with respect to qualified contributions made during the  
2 taxable year.

3 (c) Amount of credit. For taxpayers whose federal adjusted gross  
4 income is less than three hundred thousand dollars for the taxable year  
5 during which such taxpayer made at least one qualified contribution, the  
6 amount of the credit shall be ninety percent of the taxpayer's total  
7 qualified contributions, capped at eight hundred seventy-five thousand  
8 dollars. For taxpayers whose federal adjusted gross income is greater  
9 than or equal to three hundred thousand dollars for the taxable year  
10 during which such taxpayer made at least one qualified contribution, the  
11 amount of credit shall be seventy-five percent of the taxpayer's total  
12 qualified contributions, capped at eight hundred seventy-five thousand  
13 dollars. A taxpayer that is a partner in a partnership, member of a  
14 limited liability company or shareholder in an S corporation shall be  
15 allowed to claim its pro rata share of the credit earned by the partner-  
16 ship, limited liability company or S corporation, provided that such a  
17 taxpayer shall not claim credit in excess of eight hundred seventy-five  
18 thousand dollars.

19 (d) Information to be posted on the department's website. The commis-  
20 sioner shall maintain on the department's website a running total of the  
21 amount of available credit for which taxpayers may apply pursuant to  
22 this section. Such running total shall be updated on a daily basis.  
23 Additionally, the commissioner shall maintain on the department's  
24 website a list of the school improvement organizations, local education  
25 funds and educational scholarship organizations approved to issue  
26 certificates of receipt pursuant to article twenty-five of the education  
27 law. The commissioner shall also maintain on the department's website a  
28 list of public education entities, school improvement organizations,  
29 local education funds and educational scholarship organizations whose  
30 approval to issue certificates of receipt has been revoked along with  
31 the date of revocation.

32 (e) Applications for contribution authorization certificates. Prior to  
33 making a contribution to a public education entity, school improvement  
34 organization, local education fund, or educational scholarship organiza-  
35 tion, the taxpayer shall apply to the department for a contribution  
36 authorization certificate for such contribution. Such application shall  
37 be in the form and manner prescribed by the department. The department  
38 may allow taxpayers to make multiple applications on the same form,  
39 provided that each contribution listed on such application shall be  
40 treated as a separate application and that the department shall issue  
41 separate contribution authorization certificates for each such applica-  
42 tion.

43 (f) Contribution authorization certificates. 1. Issuance of certif-  
44 icates. The commissioner shall issue contribution authorization certif-  
45 icates in two phases. In phase one, which begins on the first day of  
46 January and ends on the thirty-first day of January, the commissioner  
47 shall accept applications for contribution authorization certificates.  
48 Commencing after the fifth day of February, the commissioner shall issue  
49 contribution authorization certificates for applications received during  
50 phase one, provided that if the aggregate total of the contributions for  
51 which applications have been received during phase one exceeds the  
52 amount of the credit cap in subdivision (h) of this section, then phase  
53 one of the credit cap application shall be allocated in two steps. In  
54 step one, the allocation shall equal the contribution cap divided by the  
55 total number of applications for contributions, rounded down to the  
56 nearest cent. Each application requesting an amount which is less than

1 or equal to the allocation in step one shall receive the amount on their  
2 application for contribution and the difference, which shall be referred  
3 to as "excess distributions" for the purposes of this subdivision, shall  
4 be available for allocation in step two. Each application requesting an  
5 amount which exceeds the allocation in step one shall be allocated cred-  
6 its in step two. In step two, if excess distributions equal zero then  
7 each application shall receive the allocation amount from step one,  
8 otherwise each application shall receive an amount equal to the sum of  
9 the (i) the allocation amount in step one and (ii) a pro rata share of  
10 aggregate excess distributions based on the difference between the  
11 amount on their application for contribution and the allocation in step  
12 one. For the purposes of this subdivision, multiple applications by the  
13 same taxpayer shall be treated as one application. If the credit cap is  
14 not exceeded, phase two commences on February twentieth and ends on  
15 October thirty-first. During phase two the commissioner shall issue  
16 contribution authorization certificates on a first-come first serve  
17 basis based upon the date the department received the taxpayer's appli-  
18 cation for such certificate. Contribution authorization certificates  
19 for applications received during phase one shall be mailed no later than  
20 the twentieth day of February. Contribution authorization certificates  
21 for applications received during phase two shall be mailed within five  
22 days of receipt of such applications.

23 2. Contribution authorization certificate contents. Each contribution  
24 authorization certificate shall state (i) the date such certificate was  
25 issued, (ii) the date by which the authorized contribution listed on the  
26 certificate must be made, which shall be no later than December thirty-  
27 first of the year for which the contribution authorization certificate  
28 was issued, (iii) the amount of authorized contribution, (iv) the  
29 certificate number, (v) the taxpayer's name and address, (vi) the name  
30 and address of the public education entity, school improvement organiza-  
31 tion, local education fund or educational scholarship organization to  
32 which the taxpayer may make the authorized contribution, and (vii) any  
33 other information that the commissioner deems necessary.

34 3. Notification of the issuance of a contribution authorization  
35 certificate. Upon the issuance of a contribution authorization certif-  
36 icate to a taxpayer, the commissioner shall notify the public education  
37 entity, school improvement organization, local education fund or educa-  
38 tional scholarship organization of the issuance of such contribution  
39 authorization certificate. Such notification shall include (i) the  
40 taxpayer's name and address, (ii) the date such certificate was issued,  
41 (iii) the date by which the authorized contribution listed in the  
42 notification must be made by the taxpayer, (iv) the amount of the  
43 authorized contribution, (v) the contribution authorization certif-  
44 icate's certificate number, and (vi) any other information that the  
45 commissioner deems necessary.

46 (g) Certificate of receipt. 1. In general. No public education entity,  
47 school improvement organization, local education fund, or educational  
48 scholarship organization shall issue a certificate of receipt for any  
49 contribution made by a taxpayer unless such public education entity,  
50 school improvement organization, local education fund, or educational  
51 scholarship organization has been approved to issue certificates of  
52 receipt pursuant to article twenty-five of the education law. No public  
53 education entity, school improvement organization, local education fund,  
54 or educational scholarship organization shall issue a certificate of  
55 receipt for a contribution made by a taxpayer unless such public educa-  
56 tion entity, school improvement organization, local education fund, or

1 educational scholarship organization has received notice from the  
2 department that the department issued a contribution authorization  
3 certificate to the taxpayer for such contribution.

4 2. Timely contribution. If a taxpayer makes an authorized contribution  
5 to the public education entity, school improvement organization, local  
6 education fund, or educational scholarship organization set forth on the  
7 contribution authorization certificate issued to the taxpayer no later  
8 than the date by which such authorized contribution is required to be  
9 made, such public education entity, school improvement organization,  
10 local education fund, or educational scholarship organization shall,  
11 within thirty days of receipt of the authorized contribution, issue to  
12 the taxpayer a certificate of receipt; provided, however, that if the  
13 taxpayer contributes an amount that is less than the amount listed on  
14 the taxpayer's contribution authorization certificate, the taxpayer  
15 shall not be issued a certificate of receipt for such contribution.

16 3. Certificate of receipt contents. Each certificate of receipt shall  
17 state (i) the name and address of the issuing public education entity,  
18 school improvement organization, local education fund, or educational  
19 scholarship organization, (ii) the taxpayer's name and address, (iii)  
20 the date for each contribution, (iv) the amount of each contribution and  
21 the corresponding contribution authorization certificate number, (v) the  
22 total amount of contributions, (vi) certificate of receipt number and  
23 (vii) any other information that the commissioner may deem necessary.

24 4. Notification to the department for the issuance of a certificate of  
25 receipt. Upon the issuance of a certificate of receipt, the issuing  
26 public education entity, school improvement organization, local educa-  
27 tion fund, or educational scholarship organization shall, within thirty  
28 days of issuing the certificate of receipt, provide the department with  
29 notification of the issuance of such certificate in the form and manner  
30 prescribed by the department.

31 5. Notification to the department of the non-issuance of a certificate  
32 of receipt. Each public education entity, school improvement organiza-  
33 tion, local education fund, or educational scholarship organization that  
34 received notification from the department pursuant to subdivision (f) of  
35 this section regarding the issuance of a contribution authorization  
36 certificate to a taxpayer shall, within thirty days of the expiration  
37 date for such authorized contribution, provide notification to the  
38 department for each taxpayer that failed to make the authorized contrib-  
39 ution to such public education entity, school improvement organization,  
40 local education fund, or educational scholarship organization in the  
41 form and manner prescribed by the department.

42 6. Failure to notify the department. Within thirty days of the discov-  
43 ery of the failure of any public education entity, school improvement  
44 program, local education fund, or educational scholarship organization  
45 to comply with the notification requirements prescribed by paragraphs  
46 four and five of this subdivision, the commissioner shall issue a notice  
47 of compliance failure to such entity, program, fund, or organization.  
48 Such entity, program, fund, or organization shall have thirty days from  
49 the date of such notice to make the notifications prescribed by para-  
50 graphs four and five of this subdivision. Such period may be extended  
51 for an additional thirty days upon the request of the entity, program,  
52 fund, or organization. Upon the expiration of period for compliance set  
53 forth in the notice prescribed by this paragraph, the commissioner shall  
54 notify the commissioner of education that such entity, program, fund, or  
55 organization failed to make the notifications prescribed by paragraphs  
56 four and five of this subdivision.

1 (h) Credit cap. The maximum permitted credits under this section  
2 available to all taxpayers for qualified contributions for calendar year  
3 two thousand eighteen shall be one hundred fifty million dollars. In  
4 calendar year two thousand nineteen, the maximum permitted credits under  
5 this section available to all taxpayers shall be two hundred twenty-five  
6 million dollars plus any amounts that are required to be added to the  
7 cap pursuant to subdivision (i) of this section. For calendar year two  
8 thousand twenty and each calendar year thereafter, the maximum permitted  
9 credits available to all taxpayers shall be three hundred million  
10 dollars plus any amounts that are required to be added to the cap pursu-  
11 ant to subdivision (i) of this section. The maximum permitted credits  
12 under this section for qualified contributions shall be allocated fifty  
13 percent to public education entities, school improvement organizations,  
14 and local education funds and fifty percent to educational scholarship  
15 organizations.

16 (i) Additions to credit cap. Unissued certificates of receipt. Any  
17 amounts for which the department receives notification of non-issuance  
18 of a certificate of receipt shall be added to the cap prescribed in  
19 subdivision (h) of this section for the immediately following year.

20 (j) Regulations. The commissioner is hereby authorized to promulgate  
21 and adopt on an emergency basis regulations necessary for the implemen-  
22 tation of this section.

23 (k) Written report. On or before the last day of June for each calen-  
24 dar year, for the immediately preceding year, the commissioner and the  
25 commissioner of education shall jointly submit a written report to the  
26 governor, the temporary president of the senate, the speaker of the  
27 assembly, the chairman of the senate finance committee and the chairman  
28 of the assembly ways and means committee regarding the education afford-  
29 ability tax credit. Such report shall contain information for articles  
30 nine-A and twenty-two, respectively, regarding: (i) the number of appli-  
31 cations received; (ii) the number of and aggregate value of the contrib-  
32 ution authorization certificates issued for contributions to public  
33 education entities, school improvement organizations, local education  
34 funds, and scholarship organizations, respectively; (iii) the geograph-  
35 ical distribution by county of (A) the applications for contribution  
36 authorization certificates, distribution by county of (B) the public  
37 education entities, school improvement organizations, local education  
38 funds, and educational scholarship organizations listed on the issued  
39 contribution authorization certificates; and (iv) information, including  
40 geographical distribution by county, of the number of eligible pupils  
41 that received scholarships, the number of qualified schools attended by  
42 eligible pupils that received such scholarships, and the average value  
43 of scholarships received by such eligible pupils. The commissioner and  
44 designated employees of the department, the commissioner of education  
45 and designated employees of the state education department, shall be  
46 allowed and are directed to share and exchange information regarding the  
47 school improvement organizations, local education funds and educational  
48 scholarship organizations that applied for approval to be authorized to  
49 receive qualified contributions; and the public education entities,  
50 school improvement organizations, local education funds, and educational  
51 scholarship organizations authorized to issue certificates of receipt,  
52 including information contained in or derived from application forms and  
53 reports submitted to the commissioner of education.

54 (l) Cross references. For application of the credit provided for in  
55 this section, see the following provisions of this chapter:

56 1. Article 9-A: section 210-B; subdivision 49;

2. Article 22: section 606; subsections (i) and (ccc).

§ 3. Paragraph (b) of subdivision 9 of section 208 of the tax law is amended by adding a new subparagraph 22 to read as follows:

(22) The amount of any deduction allowed pursuant to section one hundred seventy of the internal revenue code for which a credit is claimed pursuant to subdivision forty-nine of section two hundred ten-B of this article.

§ 4. Section 210-B of the tax law is amended by adding a new subdivision 49 to read as follows:

49. Education affordability tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-two of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for that year to less than the higher of the amounts prescribed in paragraphs (c) or (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for qualified contributions for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the succeeding five years and may be deducted from the taxpayer's tax for such year or years.

§ 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xlili) to read as follows:

|                                          |                                          |
|------------------------------------------|------------------------------------------|
| <u>(xlili) Education affordability</u>   | <u>Amount of credit under</u>            |
| <u>tax credit under subsection (ccc)</u> | <u>subdivision forty-nine of section</u> |
|                                          | <u>two hundred ten-B</u>                 |

§ 6. Section 606 of the tax law is amended by adding two new subsections (w) and (w-1) to read as follows:

(w) Home-based instructional materials credit. (1) For taxable years beginning on or after January first, two thousand eighteen, a taxpayer shall be allowed a credit against the tax imposed by this article for the purchase of instructional materials approved by the education department for use in non-public home-based educational programs; provided, that the amount of credit claimed does not exceed the lesser of two hundred dollars or one hundred percent of the cost of such purchases made by the taxpayer during the taxable year.

(2) A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

(3) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(w-1) Instructional materials and supplies credit. (1) For taxable years beginning on and after January first, two thousand eighteen, a taxpayer shall be allowed a credit equal to the lesser of the amount paid by the taxpayer during the taxable year for instructional materials and supplies, or two hundred dollars; provided that the taxpayer is a teacher or instructor in a qualified school, as defined in section forty-three of this chapter, for at least nine hundred hours during a school year. For purposes of this subsection, the term "materials and supplies" means instructional materials or supplies that are used in the classroom in any qualified school.

(2) A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

(3) If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

§ 7. Section 606 of the tax law is amended by adding a new subsection (ccc) to read as follows:

(ccc) Education affordability tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit to be computed as provided in section forty-three of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any qualified contributions for any taxable year exceeds the taxpayer's tax for such year, the excess may be carried over to the succeeding five years and may be deducted from the taxpayer's tax for such year or years.

§ 8. Subsection (c) of section 615 of the tax law is amended by adding a new paragraph 9 to read as follows:

(9) The amount of any federal deduction for contributions made for which a taxpayer claims a credit under subsection (ccc) of section six hundred six of this article.

§ 9. Section 606 of the tax law is amended by adding a new subsection (hhh) to read as follows:

(hhh) Helping open opportunities to learn tax credit. (1) General. A resident low and middle income taxpayer shall be allowed a credit, to be computed as provided in paragraph three of this subsection, against the tax imposed by this article for the qualified primary or secondary education tuition expenses paid by the taxpayer during the taxable year.

(2) Definitions. For purposes of this subsection, the following terms shall have the following meanings:

(A) "Resident low and middle income taxpayer" shall mean a taxpayer who is a full-year resident of this state and whose federal taxable income is equal to or less than seven hundred twenty percent of the federal poverty guidelines, as promulgated annually by the United States department of health and human services, for the taxable year for which this credit is claimed.

(B) "Qualified primary or secondary education tuition expenses" shall mean the tuition required for the enrollment or attendance of an eligible student at a qualified school, as defined in section forty-three of this chapter. Provided, however, that any tuition payments made for such eligible student pursuant to the receipt of financial aid or one or more scholarships shall be excluded from the definition of the term "qualified primary or secondary education tuition expenses" for such eligible student.

(C) "Eligible student" shall mean any dependent of the taxpayer with respect to whom the taxpayer is allowed an exemption under section six hundred sixteen of this article for the taxable year who is enrolled in, and for whom qualified primary and secondary education tuition expenses have been paid for, kindergarten or grade one through twelve in a qualified school.

(3) Amount of credit. The amount of credit that a resident low and middle income taxpayer may claim for the qualified primary or secondary education tuition expenses paid for each eligible student shall equal the lesser of twelve percent of the total per pupil state public school

expenditures or fifteen percent of the qualified primary or secondary education tuition expenses paid by the taxpayer during the taxable year for such eligible student. The total state public school expenditures shall equal the school aid, as reported in the state enacted budget financial plan for the taxable year in which the school year began, divided by the total number of students enrolled in kindergarten and grades one through twelve at public schools in this state as published by the department of education for such taxable year.

(4) Application of credit. If the amount of the credit allowed under this subsection for any taxable year shall exceed the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest shall be paid thereon.

(5) Husband and wife. In the case of a husband and wife who file a joint federal return, but who are required to determine their New York taxes separately, the credit allowed pursuant to this subsection may be applied against the tax imposed of either or divided between them as they may elect.

§ 10. The education law is amended by adding a new article 25 to read as follows:

#### ARTICLE 25

#### EDUCATION AFFORDABILITY PROGRAM

#### Section 1209. Short title.

#### 1210. Definitions.

#### 1211. Approval to issue certificates of receipt.

#### 1212. Applications for approval to issue certificates of receipt.

#### 1213. Application approval.

#### 1214. Revocation of approval to issue certificates of receipt.

#### 1215. Recordkeeping.

#### 1216. Joint annual report.

#### 1217. Commissioner; powers.

§ 1209. Short title. This article shall be known and may be cited as the "education affordability program".

§ 1210. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Authorized contribution" means the contribution amount listed on the contribution authorization certificate issued to a taxpayer.

2. "Contribution" means a donation paid by cash, check, electronic funds transfer, debit card or credit card made by the taxpayer during the tax year.

3. "Educational program" means an academic program of a public school that enhances the curriculum, or provides or expands a pre-kindergarten program or an after-school program to the public school. For purposes of this definition, the instruction, materials, programs or other activities offered by or through an educational program may include, but are not limited to, the following features: (a) instruction or materials promoting health, physical education, and family and consumer sciences; literary, performing and visual arts; mathematics, social studies, technology and scientific achievement; (b) instruction or programming to meet the education needs of at-risk students or students with disabilities, including tutoring or counseling; or (c) use of specialized instructional materials, instructors or instruction not provided by a public school.

1 4. "Educational scholarship organization" means a not-for-profit enti-  
2 ty which (a) is exempt from taxation under paragraph three of subsection  
3 (c) of section five hundred one of the internal revenue code, (b)  
4 commits for the expenditure of at least ninety percent of the revenue  
5 from qualified contributions received during the calendar year and any  
6 income derived from qualified contributions for scholarships, (c) depos-  
7 its and holds qualified contributions and any income derived from quali-  
8 fied contributions in an account that is separate from the organiza-  
9 tion's operating or other funds until such qualified contributions or  
10 income are withdrawn for use, and (d) provides scholarships to eligible  
11 pupils for use at no fewer than three qualified schools.

12 5. "Eligible pupil" means a child who (a) is a resident of this state,  
13 (b) is school age in accordance with subdivision one of section thirty-  
14 two hundred two of this chapter or who is four years of age on or before  
15 December first of the year in which they are enrolled in a pre-kinder-  
16 garten program, (c) attends or is about to attend a qualified school,  
17 and (d) resides in a household that has a federal adjusted gross income  
18 of five hundred thousand dollars or less, provided however, for house-  
19 holds with three or more dependent children, such income level shall be  
20 increased by ten thousand dollars per dependent child in excess of two,  
21 not to exceed five hundred fifty thousand dollars.

22 6. "Local education fund" means a not-for-profit entity which (a) is  
23 exempt from taxation under paragraph three of subsection (c) of section  
24 five hundred one of the internal revenue code, (b) is established for  
25 the purpose of supporting an educational program in at least one public  
26 school, or public school district, (c) uses at least ninety percent of  
27 the qualified contributions received during the calendar year and any  
28 income derived from qualified contributions to support the public school  
29 or schools or public school district or districts that such fund has  
30 been established to support, and (d) deposits and holds qualified  
31 contributions and any income derived from qualified contributions in an  
32 account that is separate from the fund's operating or other funds until  
33 such qualified contributions or income are withdrawn for use.

34 7. "Nonpublic school" means any not-for-profit pre-kindergarten  
35 program or elementary, secondary sectarian or nonsectarian school  
36 located in this state, other than a public school, that is providing  
37 instruction at one or more locations to a student in accordance with  
38 subdivision two of section thirty-two hundred four of this chapter.

39 8. "Public education entity" means a public school or a public school  
40 district, provided that such public school, or public school district  
41 deposits and holds qualified contributions and any income derived from  
42 qualified contributions in an account that is separate from the public  
43 school or public school district's operating or other funds until such  
44 qualified contributions or income are withdrawn for use, and is approved  
45 to issue certificates of receipt pursuant to this article.

46 9. "Public school" means any free elementary or secondary school in  
47 this state guaranteed by article eleven of the constitution or charter  
48 school authorized by article fifty-six of this chapter.

49 10. "Qualified contribution" means the authorized contribution made by  
50 a taxpayer to the public education entity, school improvement organiza-  
51 tion, local education fund, or educational scholarship organization that  
52 is listed on the contribution authorization certificate issued to the  
53 taxpayer and for which the taxpayer has received a certificate of  
54 receipt from such entity, fund, or organization. A contribution does  
55 not qualify if the taxpayer designates the taxpayer's contribution to an

1 entity or organization for the direct benefit of any particular or spec-  
2 ified student.

3 11. "Qualified educator" means an individual who is a teacher or  
4 instructor in a qualified school for at least nine hundred hours during  
5 a school year.

6 12. "Qualified school" means a public school or nonpublic school.

7 13. "Scholarship" means an educational scholarship which provides a  
8 tuition grant awarded to an eligible pupil to attend a qualified school  
9 in an amount not to exceed the tuition charged to attend such school  
10 less any other educational scholarship received by such eligible pupil  
11 or his or her parent, parents or guardian for such eligible pupil's  
12 tuition; provided, however, in the case of an eligible pupil attending a  
13 public school in a public school district of which such pupil is not a  
14 resident, the amount of the educational scholarship awarded may not  
15 exceed the tuition charged by the public school pursuant to paragraph d  
16 of subdivision four of section thirty-two hundred two of this chapter  
17 less any other educational scholarship received by such eligible pupil  
18 or his or her parent, parents or guardian for such eligible pupil's  
19 tuition, but only if the public school district of which such pupil is a  
20 resident is not required to pay for such tuition.

21 14. "School improvement organization" means a not-for-profit entity  
22 which (a) is exempt from taxation under paragraph three of subsection  
23 (c) of section five hundred one of the internal revenue code, (b) uses  
24 at least ninety percent of the qualified contributions received during  
25 the calendar year and any income derived from such qualified contrib-  
26 utions to assist public schools or public school districts located in  
27 this state in their provision of educational programs, either by making  
28 contributions to one or more public schools or public school districts  
29 located in this state or providing educational programs to, or in  
30 conjunction with, one or more public schools or public school districts  
31 located in this state, (c) deposits and holds qualified contributions  
32 and any income derived from such qualified contributions in an account  
33 that is separate from the organization's operating or other funds until  
34 such qualified contributions or income are withdrawn for use, and (d) is  
35 approved to issue certificates of receipt pursuant to this article. Such  
36 entity may allow the taxpayer to choose to donate to a program, project  
37 or initiative identified by a qualified educator for use in a public  
38 school.

39 § 1211. Approval to issue certificates of receipt. 1. Public schools  
40 and public school districts. All public schools and public school  
41 districts shall be approved to issue certificates of receipt provided,  
42 that a public school or public school district shall not be approved if  
43 either (a) the public school or public school district fails to deposit  
44 and hold qualified contributions and any income derived from qualified  
45 contributions in an account that is separate from the school or school  
46 district's operating or other funds until such qualified contributions  
47 or income are withdrawn for use, or (b) the commissioner has revoked  
48 such approval for such public school or public school district pursuant  
49 to section twelve hundred fourteen of this article.

50 2. School improvement organizations, educational scholarship organiza-  
51 tions and local education funds. No school improvement organization,  
52 educational scholarship organization or local education fund shall issue  
53 any certificates of receipt without filing an application pursuant to  
54 section twelve hundred twelve of this article and receiving approval  
55 pursuant to section twelve hundred thirteen of this article.

1     § 1212. Applications for approval to issue certificates of receipt.  
2     Each school improvement organization, educational scholarship organiza-  
3     tion, and local education fund shall submit an application to the  
4     commissioner for approval to issue certificates of receipt in the form  
5     and manner prescribed by the commissioner; provided that such applica-  
6     tion shall include: (a) submission of documentation that such school  
7     improvement organization, local education fund or educational scholar-  
8     ship organization has been granted exemption from taxation under para-  
9     graph three of subsection (c) of section five hundred one of the inter-  
10    nal revenue code; (b) the most recent annual financial audit, which  
11    shall be completed by an independent certified public accountant and a  
12    list of names and addresses of all members of the governing board of the  
13    school improvement organization, local education fund or educational  
14    scholarship organization; and (c) an educational scholarship organiza-  
15    tion shall provide criteria for the awarding of scholarships to eligible  
16    students. Neither the commissioner or the department shall require any  
17    other information for such application except as authorized in this  
18    article or by section forty-three of the tax law.

19    § 1213. Application approval. The commissioner shall review each  
20    application to issue certificates of receipt pursuant to this article.  
21    Approval or denial of an application shall be made within sixty days of  
22    receipt of such application.

23    § 1214. Revocation of approval to issue certificates of receipt. The  
24    commissioner, in consultation with the commissioner of taxation and  
25    finance, may revoke the approval of a school improvement organization,  
26    educational scholarship organization, local education fund, public  
27    school or public school district to issue certificates of receipt upon a  
28    finding that such organization, fund, school or school district has  
29    violated this article or section forty-three of the tax law. These  
30    violations shall include, but not be limited to, any of the following:  
31    (a) failure to meet the requirements of this article or section forty-  
32    three of the tax law, (b) the failure to maintain full and adequate  
33    records with respect to the receipt of qualified contributions, (c) the  
34    failure to supply such records to the commissioner or the department of  
35    taxation and finance when requested by the department or the department  
36    of taxation and finance, or (d) the failure to provide notice to the  
37    department of taxation and finance of the issuance or nonissuance of  
38    certificates of receipt pursuant to section forty-three of the tax law;  
39    provided however, that the commissioner shall not revoke approval pursu-  
40    ant to this section based upon a violation of the tax law unless the  
41    commissioner of taxation and finance agrees that revocation is  
42    warranted; and provided further that the commissioner shall not revoke  
43    approval pursuant to this section when the failure to comply is due to  
44    clerical error and not negligence or intentional disregard for the law.  
45    Within five days of the determination revoking approval, the commis-  
46    sioner shall provide notice of such revocation to the educational scholar-  
47    ship organization, school improvement organization, local education  
48    fund, public school, or public school district and to the department of  
49    taxation and finance.

50    § 1215. Recordkeeping. Each school improvement organization, educa-  
51    tional scholarship organization, local education fund, public school and  
52    public school district that issued at least one certificate of receipt  
53    shall maintain records including (a) notifications received from the  
54    department of taxation and finance, (b) notifications made to the  
55    department of taxation and finance, (c) copies of qualified contrib-  
56    utions received, (d) copies of the deposit of such qualified contrib-

utions, (e) copies of issued certificates of receipt, (f) annual financial statements, (g) in the case of school improvement organizations, educational scholarship organizations and local education funds, the application submitted pursuant to section twelve hundred twelve of this article and the approval issued by the commissioner, and (h) any other information as prescribed by regulation promulgated by the commissioner.

§ 1216. Joint annual report. On or before the last day of June for each calendar year, the commissioner of taxation and finance and the commissioner, jointly, shall submit a written report as provided in subdivision (k) of section forty-three of the tax law.

§ 1217. Commissioner; powers. The commissioner shall promulgate on an emergency basis regulations necessary for the implementation of this section. The commissioner shall make any application required to be filed pursuant to this article available to applicants within sixty days of the effective date of this article.

§ 11. The education law is amended by adding a new section 1503-a to read as follows:

§ 1503-a. Power to accept and solicit gifts and donations. 1. All school districts organized by special laws or pursuant to the provisions of a general law are hereby authorized and empowered to accept gifts, donations, and contributions to the district and to solicit the same.

2. Notwithstanding any other provision of this chapter or of any other general or special law to the contrary, the receipt of such gifts, donations, contributions and other funds, and any income derived therefrom, shall be disregarded for the purposes of all apportionments, computations, and determinations of state aid.

§ 12. Severability. If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

§ 13. This act shall take effect immediately and shall apply to taxable years beginning after December 31, 2017.