

5146

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. C. JOHNSON -- 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, in relation to providing an education investment tax credit

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Statement of legislative intent. The legislature hereby  
2 finds and declares that:

3 (a) One of the most vexing problems facing policy makers and educators  
4 is the funding of our educational system. When crafting annual school  
5 budgets, school officials must grapple with rising costs, fluctuating  
6 state and federal aid, and an often-unstable local tax base. As a result  
7 of these ever-changing dynamics, valuable educational programs are often  
8 reduced, eliminated or never actually started.

9 (b) The legislature further finds it necessary to encourage greater  
10 private sector support of educational opportunities for children.  
11 Private sector resources, from both individuals and businesses, would  
12 not only help stabilize the school budget process but would allow  
13 schools to maintain, expand or begin worthwhile programs.

14 (c) In pursuance of the foregoing objectives an education investment  
15 tax credit is established by this act to involve the private sector,  
16 both individuals and corporations, by stimulating donations to public,  
17 independent and religious schools and educational programs, benefiting  
18 children attending such schools.

19 S 2. Section 606 of the tax law is amended by adding a new subsection  
20 (qq) to read as follows:

21 (QQ) EDUCATION INVESTMENT TAX CREDIT. (1) FOR PURPOSES OF THIS  
22 SUBSECTION:

23 (A) "ELIGIBLE CHARITABLE CONTRIBUTION" SHALL MEAN A CHARITABLE  
24 CONTRIBUTION MADE BY THE TAXPAYER TO A QUALIFIED ELEMENTARY AND SECOND-

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

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1 ARY SCHOOL ORGANIZATION, A QUALIFIED PROGRAM AND/OR A SCHOLARSHIP FUND  
2 AS DEFINED IN THIS SUBSECTION.

3 (B) "QUALIFIED PROGRAM OR SCHOLARSHIP FUND" SHALL MEAN A NON-PROFIT  
4 PROGRAM OR SCHOLARSHIP FUND WHICH IS INTENDED TO PROVIDE EDUCATIONAL  
5 BENEFITS TO STUDENTS ATTENDING A QUALIFIED ELEMENTARY OR SECONDARY  
6 SCHOOL OR SCHOOLS AND WHICH UTILIZES NO MORE THAN THIRTEEN PERCENT OF  
7 CHARITABLE CONTRIBUTIONS FOR ADMINISTRATIVE PURPOSES AND WHICH IS REGIS-  
8 TERED WITH THE DEPARTMENT FOR THE PURPOSES OF THIS SECTION.

9 (C) "QUALIFIED ELEMENTARY OR SECONDARY SCHOOL ORGANIZATION" SHALL MEAN  
10 A NON-PROFIT ENTITY ESTABLISHED TO RECEIVE CHARITABLE CONTRIBUTIONS  
11 DESIGNED TO SUPPORT THE EDUCATIONAL PROGRAMS AND OPERATION OF A SCHOOL  
12 DISTRICT, GROUP OF ELEMENTARY AND/OR SECONDARY SCHOOLS OR A SCHOOL AND  
13 WHICH IS REGISTERED WITH THE DEPARTMENT FOR THE PURPOSES OF THIS  
14 SECTION.

15 (D) "AUTHORIZED CERTIFICATE OF RECEIPT" SHALL MEAN A CERTIFICATE  
16 DESIGNED BY THE COMMISSIONER FOR THE PURPOSE OF ACKNOWLEDGING RECEIPT OF  
17 A CHARITABLE CONTRIBUTION BY THE CHIEF EXECUTIVE OFFICER OF A QUALIFIED  
18 ELEMENTARY AND SECONDARY SCHOOL ORGANIZATION, A QUALIFIED PROGRAM AND/OR  
19 A SCHOLARSHIP FUND AND SHALL ALSO SERVE THE PURPOSE OF PROVIDING ASSUR-  
20 ANCE BY THE CHIEF EXECUTIVE OFFICER THAT THE CONTRIBUTION WILL BE USED  
21 EXCLUSIVELY TO PROVIDE THE BENEFITS AS INTENDED BY THE INDIVIDUAL MAKING  
22 SUCH CONTRIBUTION.

23 (E) "QUALIFIED ELEMENTARY AND SECONDARY SCHOOLS" SHALL MEAN:

24 (I) ANY ELEMENTARY AND/OR SECONDARY SCHOOL OF A PUBLIC SCHOOL  
25 DISTRICT, OR A CHARTER SCHOOL, LOCATED IN THIS STATE, HOWEVER CREATED;  
26 AND

27 (II) ANY NON-PROFIT INDEPENDENT OR RELIGIOUS ELEMENTARY AND/OR SECOND-  
28 ARY SCHOOL IN THIS STATE WHICH:

29 (I) PROVIDES INSTRUCTION IN ACCORDANCE WITH SECTION THIRTY-TWO HUNDRED  
30 FOUR OF THE EDUCATION LAW;

31 (II) IS ENTITLED TO TOTAL EXEMPTION FROM FEDERAL TAXATION UNDER  
32 SECTION FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C)(3) OF THE FEDERAL  
33 INTERNAL REVENUE CODE; AND

34 (III) HAS NOT BEEN FOUND IN VIOLATION OF TITLE VI OF THE CIVIL RIGHTS  
35 ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT. 252, 42 USC SECTION  
36 2000(D), AS IT MAY BE AMENDED FROM TIME TO TIME.

37 (2) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-  
38 SAND EIGHT, A TAXPAYER WHO SUBMITS WITH HIS TAX RETURN AN AUTHORIZED  
39 CERTIFICATE OF RECEIPT SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS  
40 HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE  
41 AMOUNT OF SUCH CREDIT SHALL BE SEVENTY-FIVE PERCENT OF THE AMOUNT OF THE  
42 CONTRIBUTION MADE IN ONE TAX YEAR OR NINETY PERCENT OF THE AMOUNT OF THE  
43 CONTRIBUTION MADE OVER TWO TAX YEARS TO A QUALIFIED ELEMENTARY AND  
44 SECONDARY SCHOOL ORGANIZATION, A QUALIFIED PROGRAM AND/OR A SCHOLARSHIP  
45 FUND SERVING STUDENTS ATTENDING SUCH QUALIFIED SCHOOL OR SCHOOLS. SUCH  
46 CREDIT SHALL BE IN ADDITION TO ANY DEDUCTIONS OTHERWISE ALLOWED UNDER  
47 THIS ARTICLE FOR CHARITABLE CONTRIBUTIONS. WHERE SUCH CREDIT EXCEEDS THE  
48 TAXPAYER'S TAX FOR SUCH YEAR, THE TAXPAYER MAY ELECT TO RECEIVE SUCH  
49 EXCESS AS A REFUND OR CARRY OVER SUCH EXCESS TO THE FOLLOWING YEAR OR  
50 YEARS TO BE DEDUCTED FROM THE TAXPAYER'S TAX IN SUCH YEAR OR YEARS.

51 (3) SUCH CREDIT SHALL BE CLEARLY SPECIFIED AND A LINE ENTITLED "EDUCA-  
52 TION INVESTMENT TAX CREDIT" SHALL BE PROVIDED ON RETURNS REQUIRED PURSU-  
53 ANT TO SECTION SIX HUNDRED FIFTY-ONE OF THIS ARTICLE.

54 S 3. Section 210 of the tax law is amended by adding a new subdivision  
55 41 to read as follows:

1 41. EDUCATION INVESTMENT TAX CREDIT. (A) FOR PURPOSES OF THIS SUBDIVI-  
2 SION:

3 (1) "ELIGIBLE CHARITABLE CONTRIBUTION" SHALL MEAN A CHARITABLE  
4 CONTRIBUTION MADE BY THE TAXPAYER TO A QUALIFIED ELEMENTARY AND SECOND-  
5 ARY SCHOOL ORGANIZATION, A QUALIFIED PROGRAM AND/OR A SCHOLARSHIP FUND  
6 AS DEFINED IN THIS SUBDIVISION.

7 (2) "QUALIFIED PROGRAM OR SCHOLARSHIP FUND" SHALL MEAN A NON-PROFIT  
8 INSTRUCTIONAL PROGRAM OR SCHOLARSHIP FUND WHICH IS INTENDED TO PROVIDE  
9 EDUCATIONAL BENEFITS TO STUDENTS ATTENDING A QUALIFIED ELEMENTARY OR  
10 SECONDARY SCHOOL OR SCHOOLS AND WHICH UTILIZES NO MORE THAN THIRTEEN  
11 PERCENT OF CHARITABLE CONTRIBUTIONS FOR ADMINISTRATIVE PURPOSES AND  
12 WHICH IS REGISTERED WITH THE DEPARTMENT FOR THE PURPOSES OF THIS  
13 SECTION.

14 (3) "QUALIFIED ELEMENTARY OR SECONDARY SCHOOL ORGANIZATION" SHALL MEAN  
15 A NON-PROFIT ENTITY ESTABLISHED TO RECEIVE CHARITABLE CONTRIBUTIONS  
16 DESIGNED TO SUPPORT THE EDUCATIONAL PROGRAMS AND OPERATION OF A SCHOOL  
17 DISTRICT, GROUP OF ELEMENTARY AND/OR SECONDARY SCHOOLS OR A SCHOOL AND  
18 WHICH IS REGISTERED WITH THE DEPARTMENT FOR THE PURPOSES OF THIS  
19 SECTION.

20 (4) "AUTHORIZED CERTIFICATE OF RECEIPT" SHALL MEAN A CERTIFICATE  
21 DESIGNED BY THE COMMISSIONER FOR THE PURPOSE OF ACKNOWLEDGING RECEIPT OF  
22 A CHARITABLE CONTRIBUTION BY THE CHIEF EXECUTIVE OFFICER OF A QUALIFIED  
23 ELEMENTARY AND SECONDARY SCHOOL ORGANIZATION, A QUALIFIED PROGRAM AND/OR  
24 A SCHOLARSHIP FUND AND SHALL ALSO SERVE THE PURPOSE OF PROVIDING ASSUR-  
25 ANCE BY THE CHIEF EXECUTIVE OFFICER THAT THE CONTRIBUTION WILL BE USED  
26 EXCLUSIVELY TO PROVIDE THE BENEFIT AS INTENDED BY THE INDIVIDUAL MAKING  
27 SUCH CONTRIBUTION.

28 (5) "QUALIFIED ELEMENTARY AND SECONDARY SCHOOLS" SHALL MEAN:

29 (I) ANY ELEMENTARY AND/OR SECONDARY SCHOOL OF A PUBLIC SCHOOL  
30 DISTRICT, OR A CHARTER SCHOOL, LOCATED IN THIS STATE, HOWEVER CREATED;  
31 AND

32 (II) ANY NON-PROFIT INDEPENDENT OR RELIGIOUS ELEMENTARY AND/OR SECOND-  
33 ARY SCHOOL IN THIS STATE WHICH:

34 (I) PROVIDES INSTRUCTION IN ACCORDANCE WITH SECTION THIRTY-TWO HUNDRED  
35 FOUR OF THE EDUCATION LAW;

36 (II) IS ENTITLED TOTAL EXEMPTION FROM FEDERAL TAXATION UNDER SECTION  
37 FIVE HUNDRED ONE (A) AND FIVE HUNDRED ONE (C)(3) OF THE FEDERAL INTERNAL  
38 REVENUE CODE; AND

39 (III) HAS NOT BEEN FOUND IN VIOLATION OF TITLE VI OF THE CIVIL RIGHTS  
40 ACT OF NINETEEN HUNDRED SIXTY-FOUR, 78 STAT. 252, 42 USC SECTION 2000  
41 (D), AS IT MAY BE AMENDED FROM TIME TO TIME.

42 (B) FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY FIRST, TWO THOU-  
43 SAND EIGHT, A TAXPAYER WHO SUBMITS WITH HIS TAX RETURN AN AUTHORIZED  
44 CERTIFICATE OF RECEIPT SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS  
45 HEREINAFTER PROVIDED, AGAINST THE TAX IMPOSED BY THIS ARTICLE. THE  
46 AMOUNT OF SUCH CREDIT SHALL BE SEVENTY-FIVE PERCENT OF THE AMOUNT OF THE  
47 CONTRIBUTION MADE IN ONE TAX YEAR OR NINETY PERCENT OF THE AMOUNT OF THE  
48 CONTRIBUTION MADE OVER TWO TAX YEARS TO A QUALIFIED ELEMENTARY AND  
49 SECONDARY SCHOOL ORGANIZATION, A QUALIFIED PROGRAM AND/OR A SCHOLARSHIP  
50 FUND SERVING STUDENTS ATTENDING SUCH QUALIFIED SCHOOL OR SCHOOLS. SUCH  
51 CREDIT SHALL BE IN ADDITION TO ANY DEDUCTIONS OTHERWISE ALLOWED UNDER  
52 THIS ARTICLE FOR CHARITABLE CONTRIBUTIONS. WHERE SUCH CREDIT EXCEEDS THE  
53 TAXPAYER'S TAX FOR SUCH YEAR, THE TAXPAYER MAY ELECT TO RECEIVE SUCH  
54 EXCESS AS A REFUND OR CARRY OVER SUCH EXCESS TO THE FOLLOWING YEAR OR  
55 YEARS TO BE DEDUCTED FROM THE TAXPAYER'S TAX IN SUCH YEAR OR YEARS. NO

1 SUCH CREDIT SHALL BE ALLOWED ON CONTRIBUTIONS EXCEEDING TWO HUNDRED  
2 FIFTY THOUSAND DOLLARS.

3 (C) SUCH CREDIT SHALL BE CLEARLY SPECIFIED AND A LINE ENTITLED "EDUCA-  
4 TION INVESTMENT TAX CREDIT" SHALL BE PROVIDED ON RETURNS REQUIRED PURSU-  
5 ANT TO THIS ARTICLE.

6 S 4. Section 171 of the tax law is amended by adding a new subdivision  
7 twenty-ninth to read as follows:

8 TWENTY-NINTH. FOR THE PURPOSE OF IMPLEMENTING THE PROVISIONS OF  
9 SUBSECTION (QQ) OF SECTION SIX HUNDRED SIX AND SUBDIVISION FORTY-ONE OF  
10 SECTION TWO HUNDRED TEN OF THIS CHAPTER, THE COMMISSIONER SHALL:

11 (1) REGISTER QUALIFIED ELEMENTARY AND SECONDARY SCHOOL ORGANIZATIONS,  
12 QUALIFIED PROGRAMS AND SCHOLARSHIP FUNDS ON A FORM AND IN A MANNER WHICH  
13 THE COMMISSIONER MAY REQUIRE, PROVIDED HOWEVER, THAT SUCH REGISTRATION  
14 SHALL INDICATE WHETHER SUCH ORGANIZATION, PROGRAM OR FUND BENEFITS  
15 PUBLIC SCHOOL OR INDEPENDENT/RELIGIOUS SCHOOL STUDENTS; AND

16 (2) MAKE NO MORE THAN TWO HUNDRED MILLION DOLLARS IN CREDITS AVAILABLE  
17 IN ANY SINGLE TAX YEAR PROVIDED FURTHER THAT FIFTY PERCENT OF SUCH CRED-  
18 IT SHALL BE AFFORDED TO TAXPAYERS WHO MAKE DONATIONS TO ORGANIZATIONS,  
19 PROGRAMS AND/OR FUNDS BENEFITING PUBLIC SCHOOL STUDENTS AND FIFTY  
20 PERCENT OF SUCH CREDITS SHALL BE AFFORDED TO TAXPAYERS WHO MAKE  
21 DONATIONS TO ORGANIZATIONS, PROGRAMS AND/OR FUNDS BENEFITING INDEPENDENT  
22 OR RELIGIOUS SCHOOL STUDENTS.

23 THE DEPARTMENT SHALL PREPARE A WRITTEN REPORT BEFORE DECEMBER THIRTY-  
24 FIRST OF EACH CALENDAR YEAR, WHICH SHALL CONTAIN STATISTICAL INFORMATION  
25 REGARDING THE CREDITS ALLOWED PURSUANT TO SUBSECTION (QQ) OF SECTION SIX  
26 HUNDRED SIX AND SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN OF THIS  
27 CHAPTER FOR THE PREVIOUS CALENDAR YEAR. COPIES OF SUCH REPORT SHALL BE  
28 SUBMITTED BY THE DEPARTMENT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF  
29 THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE CHAIRMAN OF THE SENATE  
30 FINANCE COMMITTEE AND THE CHAIRMAN OF THE ASSEMBLY WAYS AND MEANS  
31 COMMITTEE. SUCH REPORTS SHALL CONTAIN, BUT NEED NOT BE LIMITED TO, THE  
32 NUMBER OF CREDITS AND THE AMOUNT OF SUCH CREDITS ALLOWED TO TAXPAYERS.

33 S 5. This act shall take effect immediately.