

# STATE OF NEW YORK

4366--A

2017-2018 Regular Sessions

## IN SENATE

February 10, 2017

Introduced by Sens. GOLDEN, SAVINO, FELDER, ADDABBO, MARCHIONE, SERINO  
-- read twice and ordered printed, and when printed to be committed to  
the Committee on Investigations and Government Operations -- committee  
discharged, bill amended, ordered reprinted as amended and recommitted  
to said committee

AN ACT to amend the tax law and the education law, in relation to enact-  
ing the "education affordability act"

The People of the State of New York, represented in Senate and Assem-  
bly, 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 44 to read as  
4 follows:  
5 § 44. 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".

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

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1 (b) Allowance of credit. A taxpayer subject to tax under article  
2 nine-A or twenty-two of this chapter shall be allowed credit against  
3 such tax, pursuant to the provisions referenced in subdivision (1) of  
4 this section, with respect to qualified contributions made during the  
5 taxable year.

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

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

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

46 (f) Contribution authorization certificates. 1. Issuance of certif-  
47 icates. The commissioner shall issue contribution authorization certif-  
48 icates in two phases. In phase one, which begins on the first day of  
49 January and ends on the thirty-first day of January, the commissioner  
50 shall accept applications for contribution authorization certificates.  
51 Commencing after the fifth day of February, the commissioner shall issue  
52 contribution authorization certificates for applications received during  
53 phase one, provided that if the aggregate total of the contributions for  
54 which applications have been received during phase one exceeds the  
55 amount of the credit cap in subdivision (h) of this section, then phase  
56 one of the credit cap application shall be allocated in two steps. In

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

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

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

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

1 or educational scholarship organization shall issue a certificate of  
2 receipt for a contribution made by a taxpayer unless such public educa-  
3 tion entity, school improvement organization, local education fund, or  
4 educational scholarship organization has received notice from the  
5 department that the department issued a contribution authorization  
6 certificate to the taxpayer for such contribution.

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

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

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

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

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

1 notify the commissioner of education that such entity, program, fund, or  
2 organization failed to make the notifications prescribed by paragraphs  
3 four and five of this subdivision.

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

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

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

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

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

1. Article 9-A: section 210-B; subdivision 53;
2. Article 22: section 606; subsections (i) and (jjj).

§ 3. Paragraph (b) of subdivision 9 of section 208 of the tax law is amended by adding a new subparagraph 23 to read as follows:

(23) 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 fifty-three of section two hundred ten-B of this article.

§ 4. Section 210-B of the tax law is amended by adding a new subdivision 53 to read as follows:

53. Education affordability tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-four 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 such year to less than the sixth dollar minimum amount prescribed in paragraph (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 (xliv) to read as follows:

<u>(xliv) Education affordability</u>	<u>Amount of credit under</u>
<u>tax credit under subsection (jjj)</u>	<u>subdivision fifty-three 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 nineteen, 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 nineteen, 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-four of this chapter, for at least nine hundred hours during a

1 school year. For purposes of this subsection, the term "materials and  
2 supplies" means instructional materials or supplies that are used in the  
3 classroom in any qualified school.

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

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

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

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

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

22 § 8. Subsection (c) of section 615 of the tax law is amended by adding  
23 a new paragraph 10 to read as follows:

24 (10) The amount of any federal deduction for contributions made for  
25 which a taxpayer claims a credit under subsection (jjj) of section six  
26 hundred six of this article.

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

29 ARTICLE 25

30 EDUCATION AFFORDABILITY PROGRAM

31 Section 1209. Short title.

32 1210. Definitions.

33 1211. Approval to issue certificates of receipt.

34 1212. Applications for approval to issue certificates of  
35 receipt.

36 1213. Application approval.

37 1214. Revocation of approval to issue certificates of receipt.

38 1215. Recordkeeping.

39 1216. Joint annual report.

40 1217. Commissioner; powers.

41 § 1209. Short title. This article shall be known and may be cited as  
42 the "education affordability program".

43 § 1210. Definitions. As used in this article, the following terms  
44 shall have the following meanings:

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

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

50 3. "Educational program" means an academic program of a public school  
51 that enhances the curriculum, or provides or expands a pre-kindergarten  
52 program or an after-school program to the public school. For purposes of  
53 this definition, the instruction, materials, programs or other activ-  
54 ities offered by or through an educational program may include, but are  
55 not limited to, the following features: (a) instruction or materials  
56 promoting health, physical education, and family and consumer sciences;

1 literary, performing and visual arts; mathematics, social studies, tech-  
2 nology and scientific achievement; (b) instruction or programming to  
3 meet the education needs of at-risk students or students with disabili-  
4 ties, including tutoring or counseling; or (c) use of specialized  
5 instructional materials, instructors or instruction not provided by a  
6 public school.

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

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

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

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

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

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

55 10. "Qualified contribution" means the authorized contribution made by  
56 a taxpayer to the public education entity, school improvement organiza-



1 tion, local education fund, or educational scholarship organization that  
2 is listed on the contribution authorization certificate issued to the  
3 taxpayer and for which the taxpayer has received a certificate of  
4 receipt from such entity, fund, or organization. A contribution does  
5 not qualify if the taxpayer designates the taxpayer's contribution to an  
6 entity or organization for the direct benefit of any particular or spec-  
7 ified student.

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

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

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

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

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

55 2. School improvement organizations, educational scholarship organiza-  
56 tions and local education funds. No school improvement organization,

1 educational scholarship organization or local education fund shall issue  
2 any certificates of receipt without filing an application pursuant to  
3 section twelve hundred twelve of this article and receiving approval  
4 pursuant to section twelve hundred thirteen of this article.

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

23 § 1213. Application approval. The commissioner shall review each  
24 application to issue certificates of receipt pursuant to this article.  
25 Approval or denial of an application shall be made within sixty days of  
26 receipt of such application.

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

54 § 1215. Recordkeeping. Each school improvement organization, educa-  
55 tional scholarship organization, local education fund, public school and  
56 public school district that issued at least one certificate of receipt

1 shall maintain records including (a) notifications received from the  
2 department of taxation and finance, (b) notifications made to the  
3 department of taxation and finance, (c) copies of qualified contrib-  
4 utions received, (d) copies of the deposit of such qualified contrib-  
5 utions, (e) copies of issued certificates of receipt, (f) annual finan-  
6 cial statements, (g) in the case of school improvement organizations,  
7 educational scholarship organizations and local education funds, the  
8 application submitted pursuant to section twelve hundred twelve of this  
9 article and the approval issued by the commissioner, and (h) any other  
10 information as prescribed by regulation promulgated by the commissioner.

11 § 1216. Joint annual report. On or before the last day of June for  
12 each calendar year, the commissioner of taxation and finance and the  
13 commissioner, jointly, shall submit a written report as provided in  
14 subdivision (k) of section forty-four of the tax law.

15 § 1217. Commissioner; powers. The commissioner shall promulgate on an  
16 emergency basis regulations necessary for the implementation of this  
17 section. The commissioner shall make any application required to be  
18 filed pursuant to this article available to applicants within sixty days  
19 of the effective date of this article.

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

22 § 1503-a. Power to accept and solicit gifts and donations. 1. All  
23 school districts organized by special laws or pursuant to the provisions  
24 of a general law are hereby authorized and empowered to accept gifts,  
25 donations, and contributions to the district and to solicit the same.

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

31 § 11. Severability. If any provision of this section or the applica-  
32 tion thereof to any person or circumstances is held invalid, such inva-  
33 lidity shall not affect other provisions or applications of the section  
34 which can be given effect without the invalid provision or application,  
35 and to this end the provisions of this section are declared to be sever-  
36 able.

37 § 12. This act shall take effect immediately and shall apply to taxa-  
38 ble years beginning after December 31, 2018.