

# STATE OF NEW YORK

6569

2017-2018 Regular Sessions

## IN SENATE

June 4, 2017

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the education law, in relation to charter schools; to amend chapter 345 of the laws of 2009, amending the education law and other laws relating to the New York city board of education, chancellor, community councils and community superintendents, in relation to the effectiveness thereof; to amend chapter 91 of the laws of 2002, amending the education law and other laws relating to reorganization of the New York city school construction authority, board of education and community boards, in relation to the effectiveness thereof; and to amend the tax law and the education law, in relation to implementing the education affordability tax credit

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

1 Section 1. Subdivision 12 of section 17 of chapter 345 of the laws of  
2 2009, amending the education law and other laws relating to the New York  
3 city board of education, chancellor, community councils and community  
4 superintendents, as amended by section 2 of part 0 of chapter 73 of the  
5 laws of 2016, is amended to read as follows:

6 12. any provision in sections one, two, three, four, five, six, seven,  
7 eight, nine, ten and eleven of this act not otherwise set to expire  
8 pursuant to section 34 of chapter 91 of the laws of 2002, as amended, or  
9 section 17 of chapter 123 of the laws of 2003, as amended, shall expire  
10 and be deemed repealed June 30, [~~2017~~] 2022.

11 § 1-a. Section 34 of chapter 91 of the laws of 2002, amending the  
12 education law and other laws relating to reorganization of the New York  
13 city school construction authority, board of education and community  
14 boards, as amended by section 1 of part 0 of chapter 73 of the laws of  
15 2016, is amended to read as follows:

16 § 34. This act shall take effect July 1, 2002; provided, that sections  
17 one through twenty, twenty-four, and twenty-six through thirty of this

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

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1 act shall expire and be deemed repealed June 30, [~~2017~~] 2022 provided,  
2 further, that notwithstanding any provision of article 5 of the general  
3 construction law, on June 30, [~~2017~~] 2022 the provisions of subdivisions  
4 3, 5, and 8, paragraph b of subdivision 13, subdivision 14, paragraphs  
5 b, d, and e of subdivision 15, and subdivisions 17 and 21 of section  
6 2554 of the education law as repealed by section three of this act,  
7 subdivision 1 of section 2590-b of the education law as repealed by  
8 section six of this act, paragraph (a) of subdivision 2 of section  
9 2590-b of the education law as repealed by section seven of this act,  
10 section 2590-c of the education law as repealed by section eight of this  
11 act, paragraph c of subdivision 2 of section 2590-d of the education law  
12 as repealed by section twenty-six of this act, subdivision 1 of section  
13 2590-e of the education law as repealed by section twenty-seven of this  
14 act, subdivision 28 of section 2590-h of the education law as repealed  
15 by section twenty-eight of this act, subdivision 30 of section 2590-h of  
16 the education law as repealed by section twenty-nine of this act, subdi-  
17 vision 30-a of section 2590-h of the education law as repealed by  
18 section thirty of this act shall be revived and be read as such  
19 provisions existed in law on the date immediately preceding the effec-  
20 tive date of this act; provided, however, that sections seven and eight  
21 of this act shall take effect on November 30, 2003; provided further  
22 that the amendments to subdivision 25 of section 2554 of the education  
23 law made by section two of this act shall be subject to the expiration  
24 and reversion of such subdivision pursuant to section 12 of chapter 147  
25 of the laws of 2001, as amended, when upon such date the provisions of  
26 section four of this act shall take effect.

27 § 2. Subdivision 9 of section 2852 of the education law, as amended  
28 by section 2 of subpart A of part B of chapter 20 of the laws of 2015,  
29 is amended to read as follows:

30 9. The total number of charters issued pursuant to this article state-  
31 wide shall not exceed [~~four hundred sixty~~] five hundred ten. (a) All  
32 charters issued on or after July first, two thousand fifteen and counted  
33 toward the numerical limits established by this subdivision shall be  
34 issued by the board of regents upon application directly to the board of  
35 regents or on the recommendation of the board of trustees of the state  
36 university of New York pursuant to a competitive process in accordance  
37 with subdivision nine-a of this section; provided that a city of one  
38 million or more shall receive no more than forty percent of the remain-  
39 ing charters available in each year. [~~Fifty of such charters issued on~~  
40 ~~or after July first, two thousand fifteen, and no more, shall be granted~~  
41 ~~to a charter for a school to be located in a city having a population of~~  
42 ~~one million or more.~~] The failure of any body to issue the regulations  
43 authorized pursuant to this article shall not affect the authority of a  
44 charter entity to propose a charter to the board of regents or the board  
45 of regents' authority to grant such charter. A conversion of an existing  
46 public school to a charter school, or the renewal or extension of a  
47 charter approved by any charter entity, shall not be counted toward the  
48 numerical limits established by this subdivision.

49 (a-1) A charter school whose charter has been surrendered, revoked or  
50 terminated, including a charter that has not been renewed by action of  
51 its charter entity, shall not be counted toward the numerical limits  
52 established by this subdivision and instead shall be returned to the  
53 pool it was originally issued from and may be reissued by the board of  
54 regents either upon application directly to the board of regents or on  
55 the recommendation of the board of trustees of the state university of

1 New York pursuant to a competitive process in accordance with subdivi-  
2 sion nine-a of this section.

3 (b) A charter that has been surrendered, revoked or terminated [~~on or~~  
4 ~~before July first, two thousand fifteen~~], including a charter that has  
5 not been renewed by action of its charter entity, may be reissued pursu-  
6 ant to paragraph (a) of this subdivision by the board of regents either  
7 upon application directly to the board of regents or on the recommenda-  
8 tion of the board of trustees of the state university of New York pursu-  
9 ant to a competitive process in accordance with subdivision nine-a of  
10 this section. Provided that such reissuance shall not be counted toward  
11 the statewide numerical limit established by this subdivision[, ~~and~~  
12 ~~provided further that no more than twenty-two charters may be reissued~~  
13 ~~pursuant to this paragraph~~].

14 (c) For purposes of determining the total number of charters issued  
15 within the numerical limits established by this subdivision, the  
16 approval date of the charter entity shall be the determining factor.

17 (d) Notwithstanding any provision of this article to the contrary, any  
18 charter authorized to be issued by chapter fifty-seven of the laws of  
19 two thousand seven effective July first, two thousand seven, and that  
20 remains unissued as of July first, two thousand fifteen, may be issued  
21 pursuant to the provisions of law applicable to a charter authorized to  
22 be issued by such chapter in effect as of June fifteenth, two thousand  
23 fifteen[, ~~provided however that nothing in this paragraph shall be~~  
24 ~~construed to increase the numerical limit applicable to a city having a~~  
25 ~~population of one million or more as provided in paragraph (a) of this~~  
26 ~~subdivision, as amended by a chapter of the laws of two thousand fifteen~~  
27 ~~which added this paragraph~~].

28 § 3. Paragraph (a-1) of subdivision 3 of section 2854 of the education  
29 law, as amended by section 1 of subpart A of part B of chapter 20 of the  
30 laws of 2015, is amended to read as follows:

31 (a-1) The board of trustees of a charter school shall employ and  
32 contract with necessary teachers, administrators and other school  
33 personnel. Such teachers shall be certified in accordance with the  
34 requirements applicable to other public schools; provided, however, that  
35 teachers employed by a high-performing public charter school with a  
36 rigorous teacher training program will have three school years from  
37 their employment start date before they must satisfy certification  
38 requirements; and a charter school may employ as teachers (i) uncerti-  
39 fied teachers with at least three years of elementary, middle or second-  
40 ary classroom teaching experience; (ii) tenured or tenure track college  
41 faculty; (iii) individuals with two years of satisfactory experience  
42 through the Teach for America program; and (iv) individuals who possess  
43 exceptional business, professional, artistic, athletic, or military  
44 experience, provided, however, that such teachers described in clauses  
45 (i), (ii), (iii), and (iv) of this paragraph shall not in total comprise  
46 more than the sum of: (A) thirty per centum of the teaching staff of a  
47 charter school, or five teachers, whichever is [~~less~~] greater; plus (B)  
48 five teachers of mathematics, science, computer science, technology, or  
49 career and technical education; plus (C) five additional teachers. A  
50 teacher certified or otherwise approved by the commissioner shall not be  
51 included in the numerical limits established by the preceding sentence.

52 § 3-a. Subdivision 5 of section 2851 of the education law, as added  
53 by section 2 of part P of chapter 73 of the laws of 2016, is amended to  
54 read as follows:

55 5. Notwithstanding any provision of law, rule or regulation to the  
56 contrary [~~for a period of one year from the effective date of this~~

1 ~~subdivision~~], a charter school approved by a charter entity listed in  
2 subdivision three of this section may apply at any time [~~during this~~  
3 ~~period~~] to another charter entity, defined in paragraph (a), (b) or (c)  
4 of subdivision three of this section to request such other charter enti-  
5 ty to oversee and supervise such charter school. All standards and  
6 requirements established in the original charter agreement shall remain  
7 in effect until the scheduled expiration of such charter agreement and  
8 provided however that all obligations of the previous charter entity to  
9 oversee and supervise a charter school shall terminate upon the transfer  
10 of authorization of such charter school to a new charter entity, as  
11 defined in subdivision five of section twenty-eight hundred fifty-two of  
12 this article, and the previous charter entity shall provide in a timely  
13 fashion information relevant to the charter as requested by such other  
14 charter entity. A charter school that seeks to change its charter entity  
15 must have met all other requirements of this article and cannot be in  
16 violation of any legal requirement, in probationary status, or slated  
17 for closure.

18 § 4. The tax law is amended by adding a new section 44 to read as  
19 follows:

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

23 "Authorized contribution";  
24 "Contribution";  
25 "Educational program";  
26 "Educational scholarship organization";  
27 "Eligible pupil";  
28 "Local education fund";  
29 "Nonpublic school";  
30 "Public education entity";  
31 "Public school";  
32 "Qualified contribution";  
33 "Qualified educator";  
34 "Qualified school";  
35 "Scholarship"; and  
36 "School improvement organization".

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

42 (c) Amount of credit. For taxpayers whose federal adjusted gross  
43 income is less than three hundred thousand dollars for the taxable year  
44 during which such taxpayer made at least one qualified contribution, the  
45 amount of the credit shall be ninety percent of the taxpayer's total  
46 qualified contributions, capped at eight hundred seventy-five thousand  
47 dollars. For taxpayers whose federal adjusted gross income is greater  
48 than or equal to three hundred thousand dollars for the taxable year  
49 during which such taxpayer made at least one qualified contribution, the  
50 amount of credit shall be seventy-five percent of the taxpayer's total  
51 qualified contributions, capped at eight hundred seventy-five thousand  
52 dollars. A taxpayer that is a partner in a partnership, member of a  
53 limited liability company or shareholder in an S corporation shall be  
54 allowed to claim its pro rata share of the credit earned by the partner-  
55 ship, limited liability company or S corporation, provided that such a

1 taxpayer shall not claim credit in excess of eight hundred seventy-five  
2 thousand dollars.

3 (d) Information to be posted on the department's website. The commis-  
4 sioner shall maintain on the department's website a running total of the  
5 amount of available credit for which taxpayers may apply pursuant to  
6 this section. Such running total shall be updated on a daily basis.  
7 Additionally, the commissioner shall maintain on the department's  
8 website a list of the school improvement organizations, local education  
9 funds and educational scholarship organizations approved to issue  
10 certificates of receipt pursuant to article twenty-five of the education  
11 law. The commissioner shall also maintain on the department's website a  
12 list of public education entities, school improvement organizations,  
13 local education funds and educational scholarship organizations whose  
14 approval to issue certificates of receipt has been revoked along with  
15 the date of revocation.

16 (e) Applications for contribution authorization certificates. Prior to  
17 making a contribution to a public education entity, school improvement  
18 organization, local education fund, or educational scholarship organiza-  
19 tion, the taxpayer shall apply to the department for a contribution  
20 authorization certificate for such contribution. Such application shall  
21 be in the form and manner prescribed by the department. The department  
22 may allow taxpayers to make multiple applications on the same form,  
23 provided that each contribution listed on such application shall be  
24 treated as a separate application and that the department shall issue  
25 separate contribution authorization certificates for each such applica-  
26 tion.

27 (f) Contribution authorization certificates. 1. Issuance of certifi-  
28 icates. The commissioner shall issue contribution authorization certifi-  
29 icates in two phases. In phase one, which begins on the first day of  
30 January and ends on the thirty-first day of January, the commissioner  
31 shall accept applications for contribution authorization certificates.  
32 Commencing after the fifth day of February, the commissioner shall issue  
33 contribution authorization certificates for applications received during  
34 phase one, provided that if the aggregate total of the contributions for  
35 which applications have been received during phase one exceeds the  
36 amount of the credit cap in subdivision (h) of this section, then phase  
37 one of the credit cap application shall be allocated in two steps. In  
38 step one, the allocation shall equal the contribution cap divided by the  
39 total number of applications for contributions, rounded down to the  
40 nearest cent. Each application requesting an amount which is less than  
41 or equal to the allocation in step one shall receive the amount on their  
42 application for contribution and the difference, which shall be referred  
43 to as "excess distributions" for the purposes of this subdivision, shall  
44 be available for allocation in step two. Each application requesting an  
45 amount which exceeds the allocation in step one shall be allocated cred-  
46 its in step two. In step two, if excess distributions equal zero then  
47 each application shall receive the allocation amount from step one,  
48 otherwise each application shall receive an amount equal to the sum of  
49 the (i) the allocation amount in step one and (ii) a pro rata share of  
50 aggregate excess distributions based on the difference between the  
51 amount on their application for contribution and the allocation in step  
52 one. For the purposes of this subdivision, multiple applications by the  
53 same taxpayer shall be treated as one application. If the credit cap is  
54 not exceeded, phase two commences on February twentieth and ends on  
55 October thirty-first. During phase two the commissioner shall issue  
56 contribution authorization certificates on a first-come first serve

1 basis based upon the date the department received the taxpayer's appli-  
2 cation for such certificate. Contribution authorization certificates  
3 for applications received during phase one shall be mailed no later than  
4 the twentieth day of February. Contribution authorization certificates  
5 for applications received during phase two shall be mailed within five  
6 days of receipt of such applications.

7 2. Contribution authorization certificate contents. Each contribution  
8 authorization certificate shall state (i) the date such certificate was  
9 issued, (ii) the date by which the authorized contribution listed on the  
10 certificate must be made, which shall be no later than December thirty-  
11 first of the year for which the contribution authorization certificate  
12 was issued, (iii) the amount of authorized contribution, (iv) the  
13 certificate number, (v) the taxpayer's name and address, (vi) the name  
14 and address of the public education entity, school improvement organiza-  
15 tion, local education fund or educational scholarship organization to  
16 which the taxpayer may make the authorized contribution, and (vii) any  
17 other information that the commissioner deems necessary.

18 3. Notification of the issuance of a contribution authorization  
19 certificate. Upon the issuance of a contribution authorization certif-  
20 icate to a taxpayer, the commissioner shall notify the public education  
21 entity, school improvement organization, local education fund or educa-  
22 tional scholarship organization of the issuance of such contribution  
23 authorization certificate. Such notification shall include (i) the  
24 taxpayer's name and address, (ii) the date such certificate was issued,  
25 (iii) the date by which the authorized contribution listed in the  
26 notification must be made by the taxpayer, (iv) the amount of the  
27 authorized contribution, (v) the contribution authorization certif-  
28 icate's certificate number, and (vi) any other information that the  
29 commissioner deems necessary.

30 (g) Certificate of receipt. 1. In general. No public education entity,  
31 school improvement organization, local education fund, or educational  
32 scholarship organization shall issue a certificate of receipt for any  
33 contribution made by a taxpayer unless such public education entity,  
34 school improvement organization, local education fund, or educational  
35 scholarship organization has been approved to issue certificates of  
36 receipt pursuant to article twenty-five of the education law. No public  
37 education entity, school improvement organization, local education fund,  
38 or educational scholarship organization shall issue a certificate of  
39 receipt for a contribution made by a taxpayer unless such public educa-  
40 tion entity, school improvement organization, local education fund, or  
41 educational scholarship organization has received notice from the  
42 department that the department issued a contribution authorization  
43 certificate to the taxpayer for such contribution.

44 2. Timely contribution. If a taxpayer makes an authorized contribution  
45 to the public education entity, school improvement organization, local  
46 education fund, or educational scholarship organization set forth on the  
47 contribution authorization certificate issued to the taxpayer no later  
48 than the date by which such authorized contribution is required to be  
49 made, such public education entity, school improvement organization,  
50 local education fund, or educational scholarship organization shall,  
51 within thirty days of receipt of the authorized contribution, issue to  
52 the taxpayer a certificate of receipt; provided, however, that if the  
53 taxpayer contributes an amount that is less than the amount listed on  
54 the taxpayer's contribution authorization certificate, the taxpayer  
55 shall not be issued a certificate of receipt for such contribution.

1 3. Certificate of receipt contents. Each certificate of receipt shall  
2 state (i) the name and address of the issuing public education entity,  
3 school improvement organization, local education fund, or educational  
4 scholarship organization, (ii) the taxpayer's name and address, (iii)  
5 the date for each contribution, (iv) the amount of each contribution and  
6 the corresponding contribution authorization certificate number, (v) the  
7 total amount of contributions, (vi) certificate of receipt number and  
8 (vii) any other information that the commissioner may deem necessary.

9 4. Notification to the department for the issuance of a certificate of  
10 receipt. Upon the issuance of a certificate of receipt, the issuing  
11 public education entity, school improvement organization, local educa-  
12 tion fund, or educational scholarship organization shall, within thirty  
13 days of issuing the certificate of receipt, provide the department with  
14 notification of the issuance of such certificate in the form and manner  
15 prescribed by the department.

16 5. Notification to the department of the non-issuance of a certificate  
17 of receipt. Each public education entity, school improvement organiza-  
18 tion, local education fund, or educational scholarship organization that  
19 received notification from the department pursuant to subdivision (f) of  
20 this section regarding the issuance of a contribution authorization  
21 certificate to a taxpayer shall, within thirty days of the expiration  
22 date for such authorized contribution, provide notification to the  
23 department for each taxpayer that failed to make the authorized contrib-  
24 ution to such public education entity, school improvement organization,  
25 local education fund, or educational scholarship organization in the  
26 form and manner prescribed by the department.

27 6. Failure to notify the department. Within thirty days of the discov-  
28 ery of the failure of any public education entity, school improvement  
29 program, local education fund, or educational scholarship organization  
30 to comply with the notification requirements prescribed by paragraphs  
31 four and five of this subdivision, the commissioner shall issue a notice  
32 of compliance failure to such entity, program, fund, or organization.  
33 Such entity, program, fund, or organization shall have thirty days from  
34 the date of such notice to make the notifications prescribed by para-  
35 graphs four and five of this subdivision. Such period may be extended  
36 for an additional thirty days upon the request of the entity, program,  
37 fund, or organization. Upon the expiration of period for compliance set  
38 forth in the notice prescribed by this paragraph, the commissioner shall  
39 notify the commissioner of education that such entity, program, fund, or  
40 organization failed to make the notifications prescribed by paragraphs  
41 four and five of this subdivision.

42 (h) Credit cap. The maximum permitted credits under this section  
43 available to all taxpayers for qualified contributions for calendar year  
44 two thousand eighteen shall be one hundred fifty million dollars. In  
45 calendar year two thousand nineteen, the maximum permitted credits under  
46 this section available to all taxpayers shall be two hundred twenty-five  
47 million dollars plus any amounts that are required to be added to the  
48 cap pursuant to subdivision (i) of this section. For calendar year two  
49 thousand twenty and each calendar year thereafter, the maximum permitted  
50 credits available to all taxpayers shall be three hundred million  
51 dollars plus any amounts that are required to be added to the cap pursu-  
52 ant to subdivision (i) of this section. The maximum permitted credits  
53 under this section for qualified contributions shall be allocated fifty  
54 percent to public education entities, school improvement organizations,  
55 and local education funds and fifty percent to educational scholarship  
56 organizations.

1 (i) Additions to credit cap; unissued certificates of receipt. Any  
2 amounts for which the department receives notification of non-issuance  
3 of a certificate of receipt shall be added to the cap prescribed in  
4 subdivision (h) of this section for the immediately following year.

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

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

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

41 1. Article 9-A: section 210-B; subdivision 53;

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

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

45 (23) The amount of any deduction allowed pursuant to section one  
46 hundred seventy of the internal revenue code for which a credit is  
47 claimed pursuant to subdivision fifty-three of section two hundred ten-B  
48 of this article.

49 § 6. Section 210-B of the tax law is amended by adding a new subdivi-  
50 sion 53 to read as follows:

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

55 (b) Application of credit. The credit allowed under this subdivision  
56 for any taxable year shall not reduce the tax due for that year to less

1 than the higher of the amounts prescribed in paragraph (d) of subdivi-  
 2 sion one of section two hundred ten of this article. However, if the  
 3 amount of credit allowed under this subdivision for qualified contrib-  
 4 utions for any taxable year reduces the tax to such amount, any amount  
 5 of credit not deductible in such taxable year may be carried over to the  
 6 succeeding five years and may be deducted from the taxpayer's tax for  
 7 such year or years.

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

11 <u>(xliv) Education affordability</u>	<u>Amount of credit under</u>
12 <u>tax credit under subsection (ccc)</u>	<u>subdivision fifty-three of section</u>
13	<u>two hundred ten-B</u>

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

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

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

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

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

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

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

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

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

55 (2) Application of credit. If the amount of the credit allowed under  
 56 this subsection for any qualified contributions for any taxable year

1 exceeds the taxpayer's tax for such year, the excess may be carried over  
 2 to the succeeding five years and may be deducted from the taxpayer's tax  
 3 for such year or years.

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

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

9 § 11. Title 1 of the education law is amended by adding a new article  
 10 25 to read as follows:

#### 11 ARTICLE 25

#### 12 EDUCATION AFFORDABILITY PROGRAM

13 Section 1209. Short title.

14 1210. Definitions.

15 1211. Approval to issue certificates of receipt.

16 1212. Applications for approval to issue certificates of  
 17 receipt.

18 1213. Application approval.

19 1214. Revocation of approval to issue certificates of receipt.

20 1215. Recordkeeping.

21 1216. Joint annual report.

22 1217. Commissioner; powers.

23 § 1209. Short title. This article shall be known and may be cited as  
 24 the "education affordability program".

25 § 1210. Definitions. As used in this article, the following terms  
 26 shall have the following meanings:

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

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

32 3. "Educational program" means an academic program of a public school  
 33 that enhances the curriculum, or provides or expands a pre-kindergarten  
 34 program or an after-school program to the public school. For purposes of  
 35 this definition, the instruction, materials, programs or other activ-  
 36 ities offered by or through an educational program may include, but are  
 37 not limited to, the following features: (a) instruction or materials  
 38 promoting health, physical education, and family and consumer sciences;  
 39 literary, performing and visual arts; mathematics, social studies, tech-  
 40 nology and scientific achievement; (b) instruction or programming to  
 41 meet the education needs of at-risk students or students with disabili-  
 42 ties, including tutoring or counseling; or (c) use of specialized  
 43 instructional materials, instructors or instruction not provided by a  
 44 public school.

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

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

11 6. "Local education fund" means a not-for-profit entity which (a) is  
12 exempt from taxation under paragraph three of subsection (c) of section  
13 five hundred one of the internal revenue code, (b) is established for  
14 the purpose of supporting an educational program in at least one public  
15 school, or public school district, (c) uses at least ninety percent of  
16 the qualified contributions received during the calendar year and any  
17 income derived from qualified contributions to support the public school  
18 or schools or public school district or districts that such fund has  
19 been established to support, and (d) deposits and holds qualified  
20 contributions and any income derived from qualified contributions in an  
21 account that is separate from the fund's operating or other funds until  
22 such qualified contributions or income are withdrawn for use.

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

28 8. "Public education entity" means a public school or a public school  
29 district, provided that such public school, or public school district  
30 deposits and holds qualified contributions and any income derived from  
31 qualified contributions in an account that is separate from the public  
32 school or public school district's operating or other funds until such  
33 qualified contributions or income are withdrawn for use, and is approved  
34 to issue certificates of receipt pursuant to this article.

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

38 10. "Qualified contribution" means the authorized contribution made by  
39 a taxpayer to the public education entity, school improvement organiza-  
40 tion, local education fund, or educational scholarship organization that  
41 is listed on the contribution authorization certificate issued to the  
42 taxpayer and for which the taxpayer has received a certificate of  
43 receipt from such entity, fund, or organization. A contribution does  
44 not qualify if the taxpayer designates the taxpayer's contribution to an  
45 entity or organization for the direct benefit of any particular or spec-  
46 ified student.

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

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

51 13. "Scholarship" means an educational scholarship which provides a  
52 tuition grant awarded to an eligible pupil to attend a qualified school  
53 in an amount not to exceed the tuition charged to attend such school  
54 less any other educational scholarship received by such eligible pupil  
55 or his or her parent, parents or guardian for such eligible pupil's  
56 tuition; provided, however, in the case of an eligible pupil attending a

1 public school in a public school district of which such pupil is not a  
2 resident, the amount of the educational scholarship awarded may not  
3 exceed the tuition charged by the public school pursuant to paragraph d  
4 of subdivision four of section thirty-two hundred two of this chapter  
5 less any other educational scholarship received by such eligible pupil  
6 or his or her parent, parents or guardian for such eligible pupil's  
7 tuition, but only if the public school district of which such pupil is a  
8 resident is not required to pay for such tuition.

9 14. "School improvement organization" means a not-for-profit entity  
10 which (i) is exempt from taxation under paragraph three of subsection  
11 (c) of section five hundred one of the internal revenue code, (ii) uses  
12 at least ninety percent of the qualified contributions received during  
13 the calendar year and any income derived from such qualified contribu-  
14 tions to assist public schools or public school districts located in  
15 this state in their provision of educational programs, either by making  
16 contributions to one or more public schools or public school districts  
17 located in this state or providing educational programs to, or in  
18 conjunction with, one or more public schools or public school districts  
19 located in this state, (iii) deposits and holds qualified contributions  
20 and any income derived from such qualified contributions in an account  
21 that is separate from the organization's operating or other funds until  
22 such qualified contributions or income are withdrawn for use, and (iv)  
23 is approved to issue certificates of receipt pursuant to this article.  
24 Such entity may allow the taxpayer to choose to donate to a program,  
25 project or initiative identified by a qualified educator for use in a  
26 public school.

27 § 1211. Approval to issue certificates of receipt. 1. Public schools  
28 and public school districts. All public schools and public school  
29 districts shall be approved to issue certificates of receipt provided,  
30 that a public school or public school district shall not be approved if  
31 either (a) the public school or public school district fails to deposit  
32 and hold qualified contributions and any income derived from qualified  
33 contributions in an account that is separate from the school or school  
34 district's operating or other funds until such qualified contributions  
35 or income are withdrawn for use, or (b) the commissioner has revoked  
36 such approval for such public school or public school district pursuant  
37 to section twelve hundred fourteen of this article.

38 2. School improvement organizations, educational scholarship organiza-  
39 tions and local education funds. No school improvement organization,  
40 educational scholarship organization or local education fund shall issue  
41 any certificates of receipt without filing an application pursuant to  
42 section twelve hundred twelve of this article and receiving approval  
43 pursuant to section twelve hundred thirteen of this article.

44 § 1212. Applications for approval to issue certificates of receipt.  
45 Each school improvement organization, educational scholarship organiza-  
46 tion, and local education fund shall submit an application to the  
47 commissioner for approval to issue certificates of receipt in the form  
48 and manner prescribed by the commissioner; provided that such applica-  
49 tion shall include: (a) submission of documentation that such school  
50 improvement organization, local education fund or educational scholar-  
51 ship organization has been granted exemption from taxation under para-  
52 graph three of subsection (c) of section five hundred one of the inter-  
53 nal revenue code; (b) the most recent annual financial audit, which  
54 shall be completed by an independent certified public accountant and a  
55 list of names and addresses of all members of the governing board of the  
56 school improvement organization, local education fund or educational

1 scholarship organization; and (c) an educational scholarship organiza-  
2 tion shall provide criteria for the awarding of scholarships to eligible  
3 students. Neither the commissioner or the department shall require any  
4 other information for such application except as authorized in this  
5 article or by section forty-four of the tax law.

6 § 1213. Application approval. The commissioner shall review each  
7 application to issue certificates of receipt pursuant to this article.  
8 Approval or denial of an application shall be made within sixty days of  
9 receipt of such application.

10 § 1214. Revocation of approval to issue certificates of receipt. The  
11 commissioner, in consultation with the commissioner of taxation and  
12 finance, may revoke the approval of a school improvement organization,  
13 educational scholarship organization, local education fund, public  
14 school or public school district to issue certificates of receipt upon a  
15 finding that such organization, fund, school or school district has  
16 violated this article or section forty-four of the tax law. These  
17 violations shall include, but not be limited to, any of the following:  
18 (a) failure to meet the requirements of this article or section forty-  
19 four of the tax law, (b) the failure to maintain full and adequate  
20 records with respect to the receipt of qualified contributions, (c) the  
21 failure to supply such records to the commissioner or the department of  
22 taxation and finance when requested by the department or the department  
23 of taxation and finance, or (d) the failure to provide notice to the  
24 department of taxation and finance of the issuance or nonissuance of  
25 certificates of receipt pursuant to section forty-four of the tax law;  
26 provided however, that the commissioner shall not revoke approval pursu-  
27 ant to this section based upon a violation of the tax law unless the  
28 commissioner of taxation and finance agrees that revocation is  
29 warranted; and provided further that the commissioner shall not revoke  
30 approval pursuant to this section when the failure to comply is due to  
31 clerical error and not negligence or intentional disregard for the law.  
32 Within five days of the determination revoking approval, the commis-  
33 sioner shall provide notice of such revocation to the educational scholar-  
34 ship organization, school improvement organization, local education  
35 fund, public school, or public school district and to the department of  
36 taxation and finance.

37 § 1215. Recordkeeping. Each school improvement organization, educa-  
38 tional scholarship organization, local education fund, public school and  
39 public school district that issued at least one certificate of receipt  
40 shall maintain records including (a) notifications received from the  
41 department of taxation and finance, (b) notifications made to the  
42 department of taxation and finance, (c) copies of qualified contrib-  
43 utions received, (d) copies of the deposit of such qualified contrib-  
44 utions, (e) copies of issued certificates of receipt, (f) annual finan-  
45 cial statements, (g) in the case of school improvement organizations,  
46 educational scholarship organizations and local education funds, the  
47 application submitted pursuant to section twelve hundred twelve of this  
48 article and the approval issued by the commissioner, and (h) any other  
49 information as prescribed by regulation promulgated by the commissioner.

50 § 1216. Joint annual report. On or before the last day of June for  
51 each calendar year, the commissioner of taxation and finance and the  
52 commissioner, jointly, shall submit a written report as provided in  
53 subdivision (k) of section forty-four of the tax law.

54 § 1217. Commissioner; powers. The commissioner shall promulgate on an  
55 emergency basis regulations necessary for the implementation of this  
56 section. The commissioner shall make any application required to be

1 filed pursuant to this article available to applicants within sixty days  
2 of the effective date of this article.

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

5 § 1503-a. Power to accept and solicit gifts and donations. 1. All  
6 school districts organized by special laws or pursuant to the provisions  
7 of a general law are hereby authorized and empowered to accept gifts,  
8 donations, and contributions to the district and to solicit the same.

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

14 § 13. Severability. If any provision of this section or the applica-  
15 tion thereof to any person or circumstances is held invalid, such inva-  
16 lidity shall not affect other provisions or applications of the section  
17 which can be given effect without the invalid provision or application,  
18 and to this end the provisions of this section are declared to be sever-  
19 able.

20 § 14. This act shall take effect immediately; provided, however that  
21 sections four, five, six, seven, eight, nine and ten of this act shall  
22 apply to taxable years beginning after December 31, 2017.