

# STATE OF NEW YORK

5010

2017-2018 Regular Sessions

## IN SENATE

March 6, 2017

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

AN ACT to amend the tax law, in relation to establishing the helping open opportunities to learn tax credit

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

1 Section 1. Section 606 of the tax law is amended by adding a new  
2 subsection (hhh) to read as follows:

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

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

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

16 (B) "Qualified primary or secondary education tuition expenses" shall  
17 mean the tuition required for the enrollment or attendance of an eligi-  
18 ble student at a public or nonpublic school. Provided, however, that any  
19 tuition payments made for such eligible student pursuant to the receipt  
20 of financial aid or one or more scholarships shall be excluded from the  
21 definition of the term "qualified primary or secondary education tuition  
22 expenses" for such eligible student.

23 (C) "Eligible student" shall mean any dependent of the taxpayer with  
24 respect to whom the taxpayer is allowed an exemption under section six

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

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1 hundred sixteen of this article for the taxable year who is enrolled in,  
2 and for whom qualified primary and secondary education tuition expenses  
3 have been paid for, kindergarten or grade one through twelve in a quali-  
4 fied school.

5 (D) "Nonpublic school" means any not-for-profit pre-kindergarten  
6 program or elementary, secondary sectarian or nonsectarian school  
7 located in this state, other than a public school, that is providing  
8 instruction at one or more locations to a student in accordance with  
9 subdivision two of section thirty-two hundred four of the education law.

10 (E) "Public school" means any free elementary or secondary school in  
11 this state guaranteed by article eleven of the constitution or charter  
12 school authorized by article fifty-six of the education law.

13 (3) Amount of credit. The amount of credit that a resident low and  
14 middle income taxpayer may claim for the qualified primary or secondary  
15 education tuition expenses paid for each eligible student shall equal  
16 the lesser of twelve percent of the total per pupil state public school  
17 expenditures or fifteen percent of the qualified primary or secondary  
18 education tuition expenses paid by the taxpayer during the taxable year  
19 for such eligible student. The total state public school expenditures  
20 shall equal the school aid, as reported in the state enacted budget  
21 financial plan for the taxable year in which the school year began,  
22 divided by the total number of students enrolled in kindergarten and  
23 grades one through twelve at public schools in this state as published  
24 by the department of education for such taxable year.

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

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

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