STATE OF NEW YORK

5010--A

2017-2018 Regular Sessions

IN SENATE

March 6, 2017

Introduced by Sens. GOLDEN, SAVINO, FELDER, PHILLIPS -- 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, 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:

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

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

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

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

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

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately and shall apply to taxable years beginning after December 31, 2018.