

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10 and be deemed repealed June 30, [~~2017~~] 2022.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.

LBD13015-06-7

act shall expire and be deemed repealed June 30, ~~[2017]~~ 2022 provided, further, that notwithstanding any provision of article 5 of the general construction law, on June 30, ~~[2017]~~ 2022 the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14, paragraphs b, d, and e of subdivision 15, and subdivisions 17 and 21 of section 2554 of the education law as repealed by section three of this act, subdivision 1 of section 2590-b of the education law as repealed by section six of this act, paragraph (a) of subdivision 2 of section 2590-b of the education law as repealed by section seven of this act, section 2590-c of the education law as repealed by section eight of this act, paragraph c of subdivision 2 of section 2590-d of the education law as repealed by section twenty-six of this act, subdivision 1 of section 2590-e of the education law as repealed by section twenty-seven of this act, subdivision 28 of section 2590-h of the education law as repealed by section twenty-eight of this act, subdivision 30 of section 2590-h of the education law as repealed by section twenty-nine of this act, subdivision 30-a of section 2590-h of the education law as repealed by section thirty of this act shall be revived and be read as such provisions existed in law on the date immediately preceding the effective date of this act;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

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

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

(a-1) A charter school whose charter has been surrendered, revoked or terminated, including a charter that has not been renewed by action of its charter entity, shall not be counted toward the numerical limits established by this subdivision and instead shall be returned to the pool it was originally issued from and may be reissued by the board of regents either upon application directly to the board of regents or on 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 commission-
33 er 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.