

STATE OF NEW YORK

5573

2021-2022 Regular Sessions

IN SENATE

March 11, 2021

Introduced by Sen. LANZA -- 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 and the education law, in relation to enacting the "education affordability act"

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "education affordability act".

3 § 2. The tax law is amended by adding a new section 45 to read as
4 follows:

5 § 45. Education affordability tax credit. (a) Definitions. For the
6 purposes of this section, the following terms shall have the same defi-
7 nitions as provided for in article twenty-five of the education law:

8 "Authorized contribution";

9 "Contribution";

10 "Educational program";

11 "Educational scholarship organization";

12 "Eligible pupil";

13 "Local education fund";

14 "Nonpublic school";

15 "Public education entity";

16 "Public school";

17 "Qualified contribution";

18 "Qualified educator";

19 "Qualified school";

20 "Scholarship"; and

21 "School improvement organization".

22 (b) Allowance of credit. A taxpayer subject to tax under article
23 nine-A or twenty-two of this chapter shall be allowed credit against
24 such tax, pursuant to the provisions referenced in subdivision (1) of

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

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1 this section, with respect to qualified contributions made during the
2 taxable year.

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

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

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

43 (f) Contribution authorization certificates. 1. Issuance of certif-
44 icates. The commissioner shall issue contribution authorization certif-
45 icates in two phases. In phase one, which begins on the first day of
46 January and ends on the thirty-first day of January, the commissioner
47 shall accept applications for contribution authorization certificates.
48 Commencing after the fifth day of February, the commissioner shall issue
49 contribution authorization certificates for applications received during
50 phase one, provided that if the aggregate total of the contributions for
51 which applications have been received during phase one exceeds the
52 amount of the credit cap in subdivision (h) of this section, then phase
53 one of the credit cap application shall be allocated in two steps. In
54 step one, the allocation shall equal the contribution cap divided by the
55 total number of applications for contributions, rounded down to the
56 nearest cent. Each application requesting an amount which is less than

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

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

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

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

1 educational scholarship organization has received notice from the
2 department that the department issued a contribution authorization
3 certificate to the taxpayer for such contribution.

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

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

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

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

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

1 (h) Credit cap. The maximum permitted credits under this section
2 available to all taxpayers for qualified contributions for calendar year
3 two thousand twenty-two shall be one hundred fifty million dollars. In
4 calendar year two thousand twenty-three the maximum permitted credits
5 under this section available to all taxpayers shall be two hundred twen-
6 ty-five million dollars plus any amounts that are required to be added
7 to the cap pursuant to subdivision (i) of this section. For calendar
8 year two thousand twenty-four and each calendar year thereafter, the
9 maximum permitted credits available to all taxpayers shall be three
10 hundred million dollars plus any amounts that are required to be added
11 to the cap pursuant to subdivision (i) of this section. The maximum
12 permitted credits under this section for qualified contributions shall
13 be allocated fifty percent to public education entities, school improve-
14 ment organizations, and local education funds and fifty percent to
15 educational scholarship organizations.

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

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

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

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

1 1. Article 9-A: section 210-B; subdivision 55;

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

3 § 3. Paragraph (b) of subdivision 9 of section 208 of the tax law is
4 amended by adding a new subparagraph 27 to read as follows:

5 (27) The amount of any deduction allowed pursuant to section one
6 hundred seventy of the internal revenue code for which a credit is
7 claimed pursuant to subdivision fifty-five of section two hundred ten-B
8 of this article.

9 § 4. Section 210-B of the tax law is amended by adding a new subdivi-
10 sion 55 to read as follows:

11 55. Education affordability tax credit. (a) Allowance of credit. A
12 taxpayer shall be allowed a credit, to be computed as provided in
13 section forty-five of this chapter, against the tax imposed by this
14 article.

15 (b) Application of credit. The credit allowed under this subdivision
16 for any taxable year shall not reduce the tax due for that year to less
17 than the higher of the amounts prescribed in paragraphs (c) or (d) of
18 subdivision one of section two hundred ten of this article. However, if
19 the amount of credit allowed under this subdivision for qualified
20 contributions for any taxable year reduces the tax to such amount, any
21 amount of credit not deductible in such taxable year may be carried over
22 to the succeeding five years and may be deducted from the taxpayer's tax
23 for such year or years.

24 § 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
25 of the tax law is amended by adding a new clause (xlvi) to read as
26 follows:

27 <u>(xlvi) Education affordability</u>	<u>Amount of credit under</u>
28 <u>tax credit under subsection (kkk)</u>	<u>subdivision fifty-five of section</u>
29	<u>two hundred ten-B</u>

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

32 (w) Home-based instructional materials credit. (1) For taxable years
33 beginning on or after January first, two thousand twenty-two, a taxpayer
34 shall be allowed a credit against the tax imposed by this article for
35 the purchase of instructional materials approved by the education
36 department for use in non-public home-based educational programs;
37 provided, that the amount of credit claimed does not exceed the lesser
38 of two hundred dollars or one hundred percent of the cost of such
39 purchases made by the taxpayer during the taxable year.

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

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

48 (w-1) Instructional materials and supplies credit. (1) For taxable
49 years beginning on and after January first, two thousand twenty-two, a
50 taxpayer shall be allowed a credit equal to the lesser of the amount
51 paid by the taxpayer during the taxable year for instructional materials
52 and supplies, or two hundred dollars; provided that the taxpayer is a
53 teacher or instructor in a qualified school, as defined in section
54 forty-five of this chapter, for at least nine hundred hours during a
55 school year. For purposes of this subsection, the term "materials and

1 supplies" means instructional materials or supplies that are used in the
2 classroom in any qualified school.

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

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

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

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

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

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

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

26 § 9. Section 606 of the tax law is amended by adding a new subsection
27 (lll) to read as follows:

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

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

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

41 (B) "Qualified primary or secondary education tuition expenses" shall
42 mean the tuition required for the enrollment or attendance of an eligi-
43 ble student at a qualified school, as defined in section forty-five of
44 this chapter. Provided, however, that any tuition payments made for such
45 eligible student pursuant to the receipt of financial aid or one or more
46 scholarships shall be excluded from the definition of the term "quali-
47 fied primary or secondary education tuition expenses" for such eligible
48 student.

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

55 (3) Amount of credit. The amount of credit that a resident low and
56 middle income taxpayer may claim for the qualified primary or secondary

1 education tuition expenses paid for each eligible student shall equal
2 the lesser of twelve percent of the total per pupil state public school
3 expenditures or fifteen percent of the qualified primary or secondary
4 education tuition expenses paid by the taxpayer during the taxable year
5 for such eligible student. The total state public school expenditures
6 shall equal the school aid, as reported in the state enacted budget
7 financial plan for the taxable year in which the school year began,
8 divided by the total number of students enrolled in kindergarten and
9 grades one through twelve at public schools in this state as published
10 by the department of education for such taxable year.

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

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

21 § 10. The education law is amended by adding a new article 25 to read
22 as follows:

23 ARTICLE 25

24 EDUCATION AFFORDABILITY PROGRAM

25 Section 1209. Short title.

26 1210. Definitions.

27 1211. Approval to issue certificates of receipt.

28 1212. Applications for approval to issue certificates of 29 receipt.

30 1213. Application approval.

31 1214. Revocation of approval to issue certificates of receipt.

32 1215. Recordkeeping.

33 1216. Joint annual report.

34 1217. Commissioner; powers.

35 § 1209. Short title. This article shall be known and may be cited as
36 the "education affordability program".

37 § 1210. Definitions. As used in this article, the following terms
38 shall have the following meanings:

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

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

44 3. "Educational program" means an academic program of a public school
45 that enhances the curriculum, or provides or expands a pre-kindergarten
46 program or an after-school program to the public school. For purposes of
47 this definition, the instruction, materials, programs or other activ-
48 ities offered by or through an educational program may include, but are
49 not limited to, the following features: (a) instruction or materials
50 promoting health, physical education, and family and consumer sciences;
51 literary, performing and visual arts; mathematics, social studies, tech-
52 nology and scientific achievement; (b) instruction or programming to
53 meet the education needs of at-risk students or students with disabili-
54 ties, including tutoring or counseling; or (c) use of specialized
55 instructional materials, instructors or instruction not provided by a
56 public school.

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

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

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

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

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

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

49 10. "Qualified contribution" means the authorized contribution made by
50 a taxpayer to the public education entity, school improvement organiza-
51 tion, local education fund, or educational scholarship organization that
52 is listed on the contribution authorization certificate issued to the
53 taxpayer and for which the taxpayer has received a certificate of
54 receipt from such entity, fund, or organization. A contribution does
55 not qualify if the taxpayer designates the taxpayer's contribution to an

1 entity or organization for the direct benefit of any particular or spec-
2 ified student.

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

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

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

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

39 § 1211. Approval to issue certificates of receipt. 1. Public schools
40 and public school districts. All public schools and public school
41 districts shall be approved to issue certificates of receipt provided,
42 that a public school or public school district shall not be approved if
43 either (a) the public school or public school district fails to deposit
44 and hold qualified contributions and any income derived from qualified
45 contributions in an account that is separate from the school or school
46 district's operating or other funds until such qualified contributions
47 or income are withdrawn for use, or (b) the commissioner has revoked
48 such approval for such public school or public school district pursuant
49 to section twelve hundred fourteen of this article.

50 2. School improvement organizations, educational scholarship organiza-
51 tions and local education funds. No school improvement organization,
52 educational scholarship organization or local education fund shall issue
53 any certificates of receipt without filing an application pursuant to
54 section twelve hundred twelve of this article and receiving approval
55 pursuant to section twelve hundred thirteen of this article.

1 § 1212. Applications for approval to issue certificates of receipt.
2 Each school improvement organization, educational scholarship organiza-
3 tion, and local education fund shall submit an application to the
4 commissioner for approval to issue certificates of receipt in the form
5 and manner prescribed by the commissioner; provided that such applica-
6 tion shall include: (a) submission of documentation that such school
7 improvement organization, local education fund or educational scholar-
8 ship organization has been granted exemption from taxation under para-
9 graph three of subsection (c) of section five hundred one of the inter-
10 nal revenue code; (b) the most recent annual financial audit, which
11 shall be completed by an independent certified public accountant and a
12 list of names and addresses of all members of the governing board of the
13 school improvement organization, local education fund or educational
14 scholarship organization; and (c) an educational scholarship organiza-
15 tion shall provide criteria for the awarding of scholarships to eligible
16 students. Neither the commissioner or the department shall require any
17 other information for such application except as authorized in this
18 article or by section forty-five of the tax law.

19 § 1213. Application approval. The commissioner shall review each
20 application to issue certificates of receipt pursuant to this article.
21 Approval or denial of an application shall be made within sixty days of
22 receipt of such application.

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

50 § 1215. Recordkeeping. Each school improvement organization, educa-
51 tional scholarship organization, local education fund, public school and
52 public school district that issued at least one certificate of receipt
53 shall maintain records including (a) notifications received from the
54 department of taxation and finance, (b) notifications made to the
55 department of taxation and finance, (c) copies of qualified contrib-
56 utions received, (d) copies of the deposit of such qualified contrib-

utions, (e) copies of issued certificates of receipt, (f) annual financial statements, (g) in the case of school improvement organizations, educational scholarship organizations and local education funds, the application submitted pursuant to section twelve hundred twelve of this article and the approval issued by the commissioner, and (h) any other information as prescribed by regulation promulgated by the commissioner.

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

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

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

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

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

§ 12. Severability. If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

§ 13. This act shall take effect immediately and shall apply to taxable years beginning after December 31, 2021.