

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0480.01 Nicole Myers x4326

SENATE BILL 17-039

SENATE SPONSORSHIP

Lundberg, Holbert, Lambert, Marble, Neville T.

HOUSE SPONSORSHIP

(None),

Senate Committees
Finance

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE CREATION OF INCOME TAX CREDITS FOR NONPUBLIC**
102 **EDUCATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill establishes a private school tuition income tax credit for income tax years commencing on or after January 1, 2018, that allows any taxpayer to claim a credit when the taxpayer enrolls a dependent qualified child in a private school or the taxpayer provides a scholarship to a qualified child for enrollment in a private school and the private school issues the taxpayer a credit certificate for either enrolling a dependent

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

qualified child in the private school or providing a scholarship to a qualified child for enrollment in the private school.

The credit may be carried forward for 3 years but may not be refunded, and the department of revenue is granted rule-making authority. In addition, the credit may be transferred, subject to certain limitations.

The amount of the credit is:

- ! For any qualified child attending a private school on a full-time basis as described in the state board of education rules, an amount equal to either the tuition paid or the scholarship provided to a qualified child, as applicable, or 50% of the previous year's state average per pupil revenues, whichever is less; and
- ! For any qualified child attending a private school on a half-time basis as described in the state board of education rules, an amount equal to either the tuition paid or the scholarship provided to a qualified child, as applicable, or 25% of the previous year's state average per pupil revenues, whichever is less.

The bill also establishes an income tax credit for income tax years commencing on or after January 1, 2018, that allows any taxpayer who uses home-based education for a qualified child to claim an income tax credit in an amount equal to:

- ! \$1,000 for a taxpayer who uses home-based education for a qualified child who was enrolled on a full-time basis as described in the state board of education rules in a public school in the state prior to being taught at home; and
- ! \$500 for a taxpayer who uses home-based education for a qualified child who was enrolled on a half-time basis as described in the state board of education rules in a public school in the state prior to being taught at home.

The credit may be carried forward for 3 years but may not be refunded. In addition, the credit may be transferred, subject to certain limitations.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Short title.** The short title of this act is the "Quality
3 Education and Budget Reduction Act".

4 **SECTION 2. Legislative declaration.** (1) The general assembly
5 finds, determines, and declares that:

6 (a) Every student in the state of Colorado should have as much
7 access as possible to the educational formats that best fit their needs and

- 1 learning styles;
- 2 (b) Private schools and home-schools can often best meet those
- 3 needs for many Colorado students;
- 4 (c) Public funds for education are limited and should be directed
- 5 to the most cost-efficient means of delivering educational opportunities
- 6 for all Colorado students; and
- 7 (d) Parents have the fundamental right and responsibility to direct
- 8 the education of their children.
- 9 (2) The general assembly further finds, determines, and declares
- 10 that the intent of the "Quality Education and Budget Reduction Act" is to
- 11 give parents and students more educational choices while optimizing the
- 12 use of public funds designated for educational purposes.

13 **SECTION 3.** In Colorado Revised Statutes, **add** 39-22-539 and

14 39-22-540 as follows:

15 **39-22-539. Private school tuition income tax credit - rules -**

16 **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT

17 OTHERWISE REQUIRES:

18 (a) "CREDIT CERTIFICATE" MEANS A STATEMENT ISSUED BY A

19 PRIVATE SCHOOL CERTIFYING THAT A CHILD ENROLLED IN THE PRIVATE

20 SCHOOL IS A QUALIFIED CHILD AS DEFINED IN SUBSECTION (1)(d) OF THIS

21 SECTION AND THAT THE TAXPAYER IS ENTITLED TO AN INCOME TAX CREDIT

22 AS SPECIFIED IN THIS SECTION.

23 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

24 (c) "PRIVATE SCHOOL" HAS THE SAME MEANING AS SET FORTH IN

25 SECTION 22-30.5-103 (6.5).

26 (d) (I) "QUALIFIED CHILD" MEANS A CHILD ENROLLED ON A

27 FULL-TIME BASIS AS DESCRIBED IN THE STATE BOARD OF EDUCATION

1 RULES IN A PUBLIC SCHOOL IN THE STATE FOR THE SCHOOL YEAR PRIOR TO
2 ENROLLMENT IN A PRIVATE SCHOOL OR A DEPENDENT CHILD WHO WAS NOT
3 OLD ENOUGH TO ENROLL IN A KINDERGARTEN THROUGH TWELFTH GRADE
4 PROGRAM IN THE SCHOOL YEAR PRIOR TO ENROLLMENT IN A PRIVATE
5 SCHOOL, BUT DOES NOT INCLUDE:

6 (A) A CHILD ENROLLED IN A PRIVATE SCHOOL IN THE STATE FOR
7 THE SCHOOL YEAR PRIOR TO THE EFFECTIVE DATE OF THIS SECTION; OR

8 (B) A CHILD TAUGHT AT HOME IN THE STATE AS OF THE EFFECTIVE
9 DATE OF THIS SECTION.

10 (II) ONCE A CHILD IS A QUALIFIED CHILD AS SPECIFIED IN
11 SUBSECTION (1)(d)(I) OF THIS SECTION, THE CHILD WILL REMAIN A
12 QUALIFIED CHILD SO LONG AS HE OR SHE REMAINS ENROLLED IN A PRIVATE
13 SCHOOL IN THE STATE IN A KINDERGARTEN THROUGH TWELFTH GRADE
14 PROGRAM.

15 (e) "STATE AVERAGE PER PUPIL REVENUES" HAS THE SAME
16 MEANING AS SET FORTH IN SECTION 22-54-103 (12).

17 (f) "TAXPAYER" MEANS A RESIDENT INDIVIDUAL OR A DOMESTIC
18 OR FOREIGN CORPORATION SUBJECT TO THE PROVISIONS OF PART 3 OF THIS
19 ARTICLE 22, A PARTNERSHIP, LIMITED LIABILITY COMPANY, S
20 CORPORATION, OR OTHER SIMILAR PASS-THROUGH ENTITY, ESTATE, OR
21 TRUST, AND A PARTNER, MEMBER, AND SUBCHAPTER S SHAREHOLDER OF
22 SUCH PASS-THROUGH ENTITY.

23 (2) (a) (I) FOR INCOME TAX YEARS COMMENCING ON OR AFTER
24 JANUARY 1, 2018, A PRIVATE SCHOOL SHALL ISSUE A CREDIT CERTIFICATE
25 TO ANY TAXPAYER THAT ENROLLS A DEPENDENT QUALIFIED CHILD IN THE
26 PRIVATE SCHOOL OR THAT PROVIDES A SCHOLARSHIP TO A QUALIFIED
27 CHILD FOR ENROLLMENT IN THE PRIVATE SCHOOL. THE CREDIT

1 CERTIFICATE ALLOWS THE TAXPAYER TO CLAIM AN INCOME TAX CREDIT
2 WITH RESPECT TO THE INCOME TAXES IMPOSED BY THIS ARTICLE 22.

3 (II) A TAXPAYER THAT ENROLLS A DEPENDENT QUALIFIED CHILD
4 IN A PRIVATE SCHOOL OR THAT PROVIDES A SCHOLARSHIP TO A QUALIFIED
5 CHILD FOR ENROLLMENT IN A PRIVATE SCHOOL DURING THE 2017-18
6 STATE FISCAL YEAR OR ANY STATE FISCAL YEAR THEREAFTER IS ELIGIBLE
7 FOR THE INCOME TAX CREDIT SPECIFIED IN SUBSECTION (2)(a)(I) OF THIS
8 SECTION FOR THE INCOME TAX YEAR COMMENCING DURING THE STATE
9 FISCAL YEAR IN WHICH THE QUALIFIED CHILD IS ENROLLED OR IN WHICH
10 THE SCHOLARSHIP IS OFFERED; EXCEPT THAT A QUALIFIED CHILD SHALL
11 NOT GENERATE AN INCOME TAX CREDIT IN THE SAME INCOME TAX YEAR
12 FOR BOTH A TAXPAYER THAT ENROLLS THE QUALIFIED CHILD IN A PRIVATE
13 SCHOOL AND A TAXPAYER THAT PROVIDES A SCHOLARSHIP TO THE
14 QUALIFIED CHILD FOR ENROLLMENT IN A PRIVATE SCHOOL.

15 (b) A PRIVATE SCHOOL SHALL ISSUE ANY CREDIT CERTIFICATES
16 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION UPON APPLICATION FOR
17 A CREDIT BY A TAXPAYER.

18 (c) (I) (A) FOR ANY QUALIFIED CHILD ATTENDING A PRIVATE
19 SCHOOL ON A FULL-TIME BASIS AS DESCRIBED IN THE STATE BOARD OF
20 EDUCATION RULES, THE AMOUNT OF THE CREDIT AUTHORIZED IN THIS
21 SECTION EQUALS EITHER THE AMOUNT OF TUITION PAID FOR THE
22 QUALIFIED CHILD OR THE AMOUNT OF THE SCHOLARSHIP PROVIDED TO A
23 QUALIFIED CHILD, AS APPLICABLE, OR FIFTY PERCENT OF THE PREVIOUS
24 FISCAL YEAR'S STATE AVERAGE PER PUPIL REVENUES, WHICHEVER IS LESS.

25 (B) FOR ANY QUALIFIED CHILD ATTENDING PRIVATE SCHOOL ON A
26 HALF-TIME BASIS AS DESCRIBED IN THE STATE BOARD OF EDUCATION
27 RULES, THE AMOUNT OF THE CREDIT AUTHORIZED IN THIS SECTION EQUALS

1 EITHER THE AMOUNT OF TUITION PAID FOR THE QUALIFIED CHILD OR THE
2 AMOUNT OF THE SCHOLARSHIP PROVIDED TO A QUALIFIED CHILD, AS
3 APPLICABLE, OR TWENTY-FIVE PERCENT OF THE PREVIOUS FISCAL YEAR'S
4 STATE AVERAGE PER PUPIL REVENUES, WHICHEVER IS LESS.

5 (II) THE STATE AVERAGE PER PUPIL REVENUES SHALL BE PROVIDED
6 TO THE DEPARTMENT BY THE DEPARTMENT OF EDUCATION WITHIN THIRTY
7 DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION AND EVERY JANUARY
8 15 THEREAFTER.

9 (d) THE TAXPAYER SHALL SUBMIT THE CREDIT CERTIFICATE TO THE
10 DEPARTMENT WITH THE TAXPAYER'S INCOME TAX RETURN FOR THAT TAX
11 YEAR.

12 (3) IF THE CREDIT ALLOWED IN THIS SECTION EXCEEDS THE INCOME
13 TAXES OTHERWISE DUE ON THE TAXPAYER'S INCOME, THE AMOUNT OF THE
14 CREDIT NOT USED AS AN OFFSET AGAINST INCOME TAXES MAY BE CARRIED
15 FORWARD AS A TAX CREDIT AGAINST SUBSEQUENT YEARS' INCOME TAX
16 LIABILITY FOR A PERIOD NOT EXCEEDING THREE YEARS AND SHALL BE
17 APPLIED FIRST TO THE EARLIEST YEARS POSSIBLE. ANY CREDIT REMAINING
18 AFTER SAID PERIOD MAY NOT BE REFUNDED OR CREDITED TO THE
19 TAXPAYER.

20 (4) A TAXPAYER MAY TRANSFER ALL OR A PORTION OF A TAX
21 CREDIT GRANTED PURSUANT TO SUBSECTION (2) OF THIS SECTION TO
22 ANOTHER TAXPAYER FOR SUCH OTHER TAXPAYER, AS TRANSFEREE, TO
23 APPLY AS A CREDIT AGAINST THE TAXES IMPOSED BY THIS ARTICLE 22
24 SUBJECT TO THE FOLLOWING LIMITATIONS:

25 (a) THE TAXPAYER MAY ONLY TRANSFER SUCH PORTION OF THE
26 TAX CREDIT AS THE TAXPAYER HAS NOT APPLIED AGAINST THE INCOME
27 TAXES IMPOSED BY THIS ARTICLE 22;

1 (b) THE TAXPAYER MAY NOT TRANSFER A PRORATED PORTION OF
2 THE TAX CREDIT TO MORE THAN ONE TRANSFEREE;

3 (c) A TRANSFEREE MAY NOT ELECT TO HAVE ANY TRANSFERRED
4 CREDIT REFUNDED;

5 (d) FOR ANY TAX YEAR IN WHICH A TAX CREDIT IS TRANSFERRED
6 PURSUANT TO THIS SUBSECTION (4), BOTH THE TAXPAYER AND THE
7 TRANSFEREE SHALL FILE WRITTEN STATEMENTS WITH THEIR INCOME TAX
8 RETURNS SPECIFYING THE AMOUNT OF THE TAX CREDIT THAT HAS BEEN
9 TRANSFERRED. A TRANSFEREE MAY NOT CLAIM A CREDIT TRANSFERRED
10 PURSUANT TO THIS SUBSECTION (4) UNLESS THE TAXPAYER'S WRITTEN
11 STATEMENT VERIFIES THE AMOUNT OF THE TAX CREDIT CLAIMED BY THE
12 TRANSFEREE.

13 (e) TO THE EXTENT THAT A TRANSFEREE PAID VALUE FOR THE
14 TRANSFER OF A CREDIT ALLOWED PURSUANT TO THIS SECTION TO SUCH
15 TRANSFEREE, THE TRANSFEREE SHALL BE DEEMED TO HAVE USED THE
16 CREDIT TO PAY, IN WHOLE OR IN PART, THE INCOME TAX OBLIGATION
17 IMPOSED ON THE TRANSFEREE UNDER THIS ARTICLE 22, AND TO SUCH
18 EXTENT THE TRANSFEREE'S USE OF A TAX CREDIT FROM A TRANSFEROR
19 UNDER THIS SECTION TO PAY TAXES OWED SHALL NOT BE DEEMED A
20 REDUCTION IN THE AMOUNT OF INCOME TAXES IMPOSED BY THIS ARTICLE
21 22 ON THE TRANSFEREE;

22 (f) THE TRANSFEREE AND THE TRANSFEROR SHALL BOTH SUBMIT
23 TO THE DEPARTMENT, IN A FORM AND MANNER TO BE DETERMINED BY THE
24 DEPARTMENT, A STATEMENT THAT THE TRANSFEREE PURCHASED THE TAX
25 CREDIT FROM THE TRANSFEROR;

26 (g) A TRANSFEREE OF A TAX CREDIT SHALL PURCHASE THE CREDIT
27 PRIOR TO THE DUE DATE IMPOSED BY THIS ARTICLE 22, NOT INCLUDING

1 ANY EXTENSIONS, FOR FILING THE TRANSFEREE'S INCOME TAX RETURN;

2 (h) A TAX CREDIT HELD BY AN INDIVIDUAL EITHER DIRECTLY OR
3 AS A RESULT OF A DONATION BY A PASS-THROUGH ENTITY, BUT NOT A TAX
4 CREDIT HELD BY A TRANSFEREE UNLESS USED BY THE TRANSFEREE'S
5 ESTATE FOR TAXES OWED BY THE ESTATE, SHALL SURVIVE THE DEATH OF
6 THE INDIVIDUAL AND MAY BE CLAIMED OR TRANSFERRED BY THE
7 DECEDENT'S ESTATE;

8 (i) THE TAXPAYER WHO CLAIMED A TAX CREDIT PURSUANT TO
9 SUBSECTION (2) OF THIS SECTION AND TRANSFERRED THE CREDIT
10 PURSUANT TO THIS SUBSECTION (4) SHALL BE THE TAX MATTERS
11 REPRESENTATIVE IN ALL MATTERS WITH RESPECT TO THE CREDIT. THE TAX
12 MATTERS REPRESENTATIVE SHALL BE RESPONSIBLE FOR REPRESENTING
13 AND BINDING THE TRANSFEREES WITH RESPECT TO ALL ISSUES AFFECTING
14 THE CREDIT, INCLUDING, BUT NOT LIMITED TO, NOTIFICATIONS AND
15 CORRESPONDENCE FROM AND WITH THE DEPARTMENT, AUDIT
16 EXAMINATIONS, REFUNDS, SETTLEMENT AGREEMENTS, AND THE STATUTE
17 OF LIMITATIONS. THE TRANSFEREE SHALL BE SUBJECT TO THE SAME
18 STATUTE OF LIMITATIONS WITH RESPECT TO THE CREDIT AS THE
19 TRANSFEROR OF THE CREDIT.

20 (j) FINAL RESOLUTION OF DISPUTES REGARDING THE TAX CREDIT
21 BETWEEN THE DEPARTMENT AND THE TAX MATTERS REPRESENTATIVE,
22 INCLUDING FINAL DETERMINATIONS, COMPROMISES, PAYMENT OF
23 ADDITIONAL TAXES OR REFUNDS DUE, AND ADMINISTRATIVE AND JUDICIAL
24 DECISIONS, SHALL BE BINDING ON TRANSFEREES.

25 (5) IF A TAXPAYER RECEIVING A CREDIT ALLOWED IN THIS SECTION
26 IS A PARTNERSHIP, LIMITED LIABILITY COMPANY, S CORPORATION, OR
27 SIMILAR PASS-THROUGH ENTITY, THE TAXPAYER MAY ALLOCATE THE

1 CREDIT AMONG ITS PARTNERS, SHAREHOLDERS, MEMBERS, OR OTHER
2 CONSTITUENT TAXPAYERS IN ANY MANNER AGREED TO BY THE PARTNERS,
3 SHAREHOLDERS, MEMBERS, OR OTHER CONSTITUENT TAXPAYERS. THE
4 TAXPAYER SHALL CERTIFY TO THE DEPARTMENT THE AMOUNT OF THE
5 CREDIT ALLOCATED TO EACH PARTNER, SHAREHOLDER, MEMBER, OR
6 OTHER CONSTITUENT TAXPAYER. EACH PARTNER, SHAREHOLDER,
7 MEMBER, OR OTHER CONSTITUENT TAXPAYER MAY CLAIM THE AMOUNT
8 SUBJECT TO ANY RESTRICTIONS SET FORTH IN THIS SECTION.

9 (6) NO LATER THAN DECEMBER 15, 2018, AND NO LATER THAN
10 DECEMBER 15 OF EACH YEAR THEREAFTER, EACH PRIVATE SCHOOL THAT
11 ISSUES A CREDIT CERTIFICATE SHALL PROVIDE THE DEPARTMENT WITH AN
12 ELECTRONIC REPORT OF ANY CREDIT CERTIFICATE ISSUED FOR THAT
13 INCOME TAX YEAR THAT INCLUDES THE FOLLOWING INFORMATION:

14 (a) THE TAXPAYER'S NAME;

15 (b) THE TAXPAYER'S COLORADO ACCOUNT NUMBER OR SOCIAL
16 SECURITY NUMBER; AND

17 (c) ANY ASSOCIATED TAXPAYERS' NAMES AND COLORADO
18 ACCOUNT NUMBERS OR SOCIAL SECURITY NUMBERS IF THE CREDIT
19 ALLOWED IN THIS SECTION IS ALLOCATED FROM A PASS-THROUGH ENTITY
20 PURSUANT TO SUBSECTION (5) OF THIS SECTION.

21 (7) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT MAY
22 PROMULGATE RULES AS NECESSARY TO ADMINISTER AND ENFORCE ANY
23 PROVISION OF THIS SECTION. THE RULES SHALL BE PROMULGATED IN
24 ACCORDANCE WITH ARTICLE 4 OF TITLE 24.

25 (8) ANY TAXPAYER THAT OFFSETS A TAX DEFICIENCY WITH A
26 CREDIT AUTHORIZED IN THIS SECTION THAT IS DISALLOWED PURSUANT TO
27 THIS SECTION IS LIABLE FOR SUCH TAX DEFICIENCY, INTEREST, AND

1 PENALTIES AS MAY BE SPECIFIED IN THIS ARTICLE 22 OR OTHERWISE
2 PROVIDED BY LAW.

3 **39-22-540. Credit for taxpayers that use home-based**
4 **education for a qualified child - definitions.** (1) AS USED IN THIS
5 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

6 (a) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE.

7 (b) "HOME-BASED EDUCATION" MEANS THE EDUCATION OF A
8 QUALIFIED CHILD PURSUANT TO SECTION 22-33-104.5 OR TAUGHT AT
9 HOME UNDER THE SUPERVISION OF A PRIVATE SCHOOL.

10 (c) (I) "QUALIFIED CHILD" MEANS A DEPENDENT CHILD ENROLLED
11 ON A FULL-TIME OR HALF-TIME BASIS AS DESCRIBED IN THE STATE BOARD
12 OF EDUCATION RULES IN A PUBLIC SCHOOL IN THE STATE FOR THE SCHOOL
13 YEAR PRIOR TO BEING TAUGHT AT HOME OR A DEPENDENT CHILD WHO WAS
14 NOT OLD ENOUGH TO ENROLL IN A KINDERGARTEN THROUGH TWELFTH
15 GRADE PROGRAM IN THE SCHOOL YEAR PRIOR TO BEING TAUGHT AT HOME,
16 BUT DOES NOT INCLUDE A DEPENDENT CHILD WHO IS ENROLLED IN A
17 PRIVATE SCHOOL OR TAUGHT AT HOME IN THE STATE PRIOR TO THE
18 EFFECTIVE DATE OF THIS SECTION.

19 (II) ONCE A CHILD IS A QUALIFIED CHILD AS SPECIFIED IN
20 SUBSECTION (1)(c)(I) OF THIS SECTION, THE CHILD WILL REMAIN A
21 QUALIFIED CHILD SO LONG AS HE OR SHE CONTINUES TO BE TAUGHT AT
22 HOME IN THE STATE IN A KINDERGARTEN THROUGH TWELFTH GRADE
23 PROGRAM.

24 (2) (a) (I) FOR INCOME TAX YEARS COMMENCING ON OR AFTER
25 JANUARY 1, 2018, THERE IS ALLOWED AS A CREDIT AGAINST THE INCOME
26 TAXES IMPOSED BY THIS ARTICLE 22 AN AMOUNT EQUAL TO ONE
27 THOUSAND DOLLARS FOR ANY TAXPAYER WHO USES HOME-BASED

1 EDUCATION FOR A DEPENDENT QUALIFIED CHILD WHO WAS ENROLLED ON
2 A FULL-TIME BASIS AS DESCRIBED IN THE STATE BOARD OF EDUCATION
3 RULES IN A PUBLIC SCHOOL IN THE STATE PRIOR TO BEING TAUGHT AT
4 HOME OR WHO WAS NOT OLD ENOUGH TO ENROLL IN A KINDERGARTEN
5 THROUGH TWELFTH GRADE PROGRAM IN THE SCHOOL YEAR PRIOR TO
6 BEING TAUGHT AT HOME.

7 (II) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
8 1, 2018, THERE IS ALLOWED AS A CREDIT AGAINST THE INCOME TAXES
9 IMPOSED BY THIS ARTICLE 22 AN AMOUNT EQUAL TO FIVE HUNDRED
10 DOLLARS TO ANY TAXPAYER WHO USES HOME-BASED EDUCATION FOR A
11 DEPENDENT QUALIFIED CHILD WHO WAS ENROLLED ON A HALF-TIME BASIS
12 AS DESCRIBED IN THE STATE BOARD OF EDUCATION RULES IN A PUBLIC
13 SCHOOL IN THE STATE PRIOR TO BEING TAUGHT AT HOME OR WHO WAS NOT
14 OLD ENOUGH TO ENROLL IN A KINDERGARTEN THROUGH TWELFTH GRADE
15 PROGRAM IN THE SCHOOL YEAR PRIOR TO BEING TAUGHT AT HOME.

16 (b) A TAXPAYER WHO USES HOME-BASED EDUCATION FOR A
17 QUALIFIED CHILD DURING THE 2017-18 STATE FISCAL YEAR OR ANY STATE
18 FISCAL YEAR THEREAFTER, IS ELIGIBLE FOR THE INCOME TAX CREDIT
19 SPECIFIED IN SUBSECTION (2)(a) OF THIS SECTION FOR THE INCOME TAX
20 YEAR COMMENCING DURING THE STATE FISCAL YEAR IN WHICH THE
21 QUALIFIED CHILD IS TAUGHT AT HOME.

22 (3) IF THE CREDIT ALLOWED UNDER THIS SECTION EXCEEDS THE
23 INCOME TAXES OTHERWISE DUE ON THE TAXPAYER'S INCOME, THE
24 AMOUNT OF THE CREDIT NOT USED AS AN OFFSET AGAINST INCOME TAXES
25 MAY BE CARRIED FORWARD AS A TAX CREDIT AGAINST SUBSEQUENT
26 YEARS' INCOME TAX LIABILITY FOR A PERIOD NOT EXCEEDING THREE
27 YEARS AND SHALL BE APPLIED FIRST TO THE EARLIEST YEARS POSSIBLE.

1 ANY CREDIT REMAINING AFTER SAID PERIOD MAY NOT BE REFUNDED OR
2 CREDITED TO THE TAXPAYER.

3 (4) A TAXPAYER MAY TRANSFER ALL OR A PORTION OF A TAX
4 CREDIT GRANTED PURSUANT TO SUBSECTION (2) OF THIS SECTION TO
5 ANOTHER TAXPAYER FOR SUCH OTHER TAXPAYER, AS TRANSFEREE, TO
6 APPLY AS A CREDIT AGAINST THE TAXES IMPOSED BY THIS ARTICLE 22
7 SUBJECT TO THE FOLLOWING LIMITATIONS:

8 (a) THE TAXPAYER MAY ONLY TRANSFER SUCH PORTION OF THE
9 TAX CREDIT AS THE TAXPAYER HAS NOT APPLIED AGAINST THE INCOME
10 TAXES IMPOSED BY THIS ARTICLE 22;

11 (b) THE TAXPAYER MAY NOT TRANSFER A PRORATED PORTION OF
12 THE TAX CREDIT TO MORE THAN ONE TRANSFEREE;

13 (c) A TRANSFEREE MAY NOT ELECT TO HAVE ANY TRANSFERRED
14 CREDIT REFUNDED;

15 (d) FOR ANY TAX YEAR IN WHICH A TAX CREDIT IS TRANSFERRED
16 PURSUANT TO THIS SUBSECTION (4), BOTH THE TAXPAYER AND THE
17 TRANSFEREE SHALL FILE WRITTEN STATEMENTS WITH THEIR INCOME TAX
18 RETURNS SPECIFYING THE AMOUNT OF THE TAX CREDIT THAT HAS BEEN
19 TRANSFERRED. A TRANSFEREE MAY NOT CLAIM A CREDIT TRANSFERRED
20 PURSUANT TO THIS SUBSECTION (4) UNLESS THE TAXPAYER'S WRITTEN
21 STATEMENT VERIFIES THE AMOUNT OF THE TAX CREDIT CLAIMED BY THE
22 TRANSFEREE.

23 (e) TO THE EXTENT THAT A TRANSFEREE PAID VALUE FOR THE
24 TRANSFER OF A CREDIT ALLOWED PURSUANT TO THIS SECTION TO SUCH
25 TRANSFEREE, THE TRANSFEREE SHALL BE DEEMED TO HAVE USED THE
26 CREDIT TO PAY, IN WHOLE OR IN PART, THE INCOME TAX OBLIGATION
27 IMPOSED ON THE TRANSFEREE UNDER THIS ARTICLE 22, AND TO SUCH

1 EXTENT THE TRANSFEREE'S USE OF A TAX CREDIT FROM A TRANSFEROR
2 UNDER THIS SECTION TO PAY TAXES OWED SHALL NOT BE DEEMED A
3 REDUCTION IN THE AMOUNT OF INCOME TAXES IMPOSED BY THIS ARTICLE
4 22 ON THE TRANSFEREE;

5 (f) THE TRANSFEREE AND THE TRANSFEROR SHALL BOTH SUBMIT
6 TO THE DEPARTMENT, IN A FORM AND MANNER TO BE DETERMINED BY THE
7 DEPARTMENT, A STATEMENT THAT THE TRANSFEREE PURCHASED THE TAX
8 CREDIT FROM THE TRANSFEROR;

9 (g) A TRANSFEREE OF A TAX CREDIT SHALL PURCHASE THE CREDIT
10 PRIOR TO THE DUE DATE IMPOSED BY THIS ARTICLE 22, NOT INCLUDING
11 ANY EXTENSIONS, FOR FILING THE TRANSFEREE'S INCOME TAX RETURN;

12 (h) A TAX CREDIT HELD BY AN INDIVIDUAL EITHER DIRECTLY OR
13 AS A RESULT OF A DONATION BY A PASS-THROUGH ENTITY, BUT NOT A TAX
14 CREDIT HELD BY A TRANSFEREE UNLESS USED BY THE TRANSFEREE'S
15 ESTATE FOR TAXES OWED BY THE ESTATE, SHALL SURVIVE THE DEATH OF
16 THE INDIVIDUAL AND MAY BE CLAIMED OR TRANSFERRED BY THE
17 DECEDENT'S ESTATE;

18 (i) THE TAXPAYER WHO CLAIMED A TAX CREDIT PURSUANT TO
19 SUBSECTION (2) OF THIS SECTION AND TRANSFERRED THE CREDIT
20 PURSUANT TO THIS SUBSECTION (4) SHALL BE THE TAX MATTERS
21 REPRESENTATIVE IN ALL MATTERS WITH RESPECT TO THE CREDIT. THE TAX
22 MATTERS REPRESENTATIVE SHALL BE RESPONSIBLE FOR REPRESENTING
23 AND BINDING THE TRANSFEREES WITH RESPECT TO ALL ISSUES AFFECTING
24 THE CREDIT, INCLUDING, BUT NOT LIMITED TO, NOTIFICATIONS AND
25 CORRESPONDENCE FROM AND WITH THE DEPARTMENT, AUDIT
26 EXAMINATIONS, REFUNDS, SETTLEMENT AGREEMENTS, AND THE STATUTE
27 OF LIMITATIONS. THE TRANSFEREE SHALL BE SUBJECT TO THE SAME

1 STATUTE OF LIMITATIONS WITH RESPECT TO THE CREDIT AS THE
2 TRANSFEROR OF THE CREDIT.

3 (j) FINAL RESOLUTION OF DISPUTES REGARDING THE TAX CREDIT
4 BETWEEN THE DEPARTMENT AND THE TAX MATTERS REPRESENTATIVE,
5 INCLUDING FINAL DETERMINATIONS, COMPROMISES, PAYMENT OF
6 ADDITIONAL TAXES OR REFUNDS DUE, AND ADMINISTRATIVE AND JUDICIAL
7 DECISIONS, SHALL BE BINDING ON TRANSFEREES.

8 **SECTION 4. Act subject to petition - effective date.** This act
9 takes effect at 12:01 a.m. on the day following the expiration of the
10 ninety-day period after final adjournment of the general assembly (August
11 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
12 referendum petition is filed pursuant to section 1 (3) of article V of the
13 state constitution against this act or an item, section, or part of this act
14 within such period, then the act, item, section, or part will not take effect
15 unless approved by the people at the general election to be held in
16 November 2018 and, in such case, will take effect on the date of the
17 official declaration of the vote thereon by the governor.