

House Bill 217 (AS PASSED HOUSE AND SENATE)

By: Representatives Carson of the 46th, Kelley of the 16th, Knight of the 130th, Ehrhart of the 36th, Stephens of the 164th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,
2 relating to imposition, rate, computation, and exemptions from state income taxes, so as to
3 increase the amount of the aggregate cap on contributions to certain scholarship
4 organizations in order to receive income tax credits; to provide for an increase in the limit
5 of tax credits and for reporting the increase in the limit; to provide for procedures, conditions,
6 and limitations; to amend Chapter 2A of Title 20 of the Official Code of Georgia Annotated,
7 relating to student scholarship organizations, so as to provide for new expenditure limits; to
8 provide for additional reporting and auditing requirements; to amend Code Section 48-8-3
9 of the Official Code of Georgia Annotated, relating to exemptions from sales and use taxes,
10 so as to provide a sales tax exemption for the sale or use of noncommercial written materials
11 or mailings by an organization which is exempt from taxation under Section 501(c)(3) of the
12 Internal Revenue Code; to amend an Act relating to education and to revenue and taxation
13 authorizing the Public Education Innovation Fund Foundation to receive private donations
14 to be used for grants to public schools and providing for an income tax credit for qualified
15 education donations, approved April 27, 2017 (Ga L. 2017, p. 100), so as to extend an
16 uncodified sunset provision; to provide for related matters; to provide for an effective date
17 and applicability; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 SECTION 1.

20 Article 2 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to
21 imposition, rate, computation, and exemptions from state income taxes, is amended by
22 revising subsection (f) of Code Section 48-7-29.16, relating to the qualified education tax
23 credit, as follows:

24 "(f)(1) ~~In no event shall the~~ The aggregate amount of tax credits allowed under this Code
25 section shall not exceed:

26 (A) Fifty-eight \$58 million per dollars for the tax year ending on December 31, 2018;

27 (B) One hundred million dollars for tax years beginning on January 1, 2019, and
 28 ending on December 31, 2028; and

29 (C) Fifty-eight million dollars for the tax year beginning on January 1, 2029, and for
 30 all subsequent tax years.

31 (2) The commissioner shall allow the tax credits on a first come, first served basis.

32 (3) For the purposes of paragraph (1) of this subsection, a student scholarship
 33 organization shall notify a potential donor of the requirements of this Code section.
 34 Before making a contribution to a student scholarship organization, the taxpayer shall
 35 electronically notify the department, in a manner specified by the department, of the total
 36 amount of contributions that the taxpayer intends to make to the student scholarship
 37 organization. The commissioner shall preapprove, or deny, or prorate the requested
 38 amount within 30 days after receiving the request from the taxpayer and shall provide
 39 notice to the taxpayer and the student scholarship organization of such preapproval, or
 40 denial, or proration which shall not require any signed release or notarized approval by
 41 the taxpayer. In order to receive a tax credit under this Code section, the taxpayer shall
 42 make the contribution to the student scholarship organization within 60 days after
 43 receiving notice from the department that the requested amount was preapproved. If the
 44 taxpayer does not comply with this paragraph, the commissioner shall not include this
 45 preapproved contribution amount when calculating the limit prescribed in paragraph (1)
 46 of this subsection. The department shall establish a web based donation approval process
 47 to implement this subsection.

48 (4) Preapproval of contributions by the commissioner shall be based solely on the
 49 availability of tax credits subject to the aggregate total limit established under
 50 paragraph (1) of this subsection. The department shall maintain an ongoing, current list
 51 on its website of the amount of tax credits available under this Code section.

52 (5) Notwithstanding any laws to the contrary, the department shall not take any adverse
 53 action against donors to student scholarship organizations if the commissioner
 54 preapproved a donation for a tax credit prior to the date the student scholarship
 55 organization is removed from the Department of Education list pursuant to Code Section
 56 20-2A-7, and all such donations shall remain as preapproved tax credits subject only to
 57 the donor's compliance with paragraph (3) of this subsection.

58 (6) In addition to the reporting requirements in Code Section 20-2A-3, each student
 59 scholarship organization shall file an annual report with the department showing any fees
 60 or assessments retained by the student scholarship organization during the calendar year."

61

SECTION 2.

62 Chapter 2A of Title 20 of the Official Code of Georgia Annotated, relating to student
63 scholarship organizations, is amended by restating the introductory language, revising
64 paragraphs (1) and (5), and adding a new paragraph in Code Section 20-2A-2, relating to
65 requirements for student scholarship organizations, as follows:

66 "Each student scholarship organization:

67 (1) With respect to the first \$1.5 million of its annual revenue received from donations
68 for scholarships or tuition grants, must obligate at least ~~90~~ 92 percent of such revenue for
69 scholarships or tuition grants; with respect to its annual revenue received from donations
70 for scholarships or tuition grants in excess of \$1.5 million and up to and including \$10
71 million, must obligate at least ~~93~~ 94 percent of such revenue for scholarships and tuition
72 grants; with respect to its annual revenue received from donations for scholarships or
73 tuition grants in excess of \$10 million and up to and including \$20 million, must obligate
74 at least ~~94~~ 95 percent of such revenue for scholarships and tuition grants; and, with
75 respect to its annual revenue received from donations for scholarships or tuition grants
76 in excess of \$20 million, must obligate at least ~~95~~ 96 percent of such revenue for
77 scholarships and tuition grants. On or before the end of the calendar year following the
78 calendar year in which a student scholarship organization receives revenues from
79 donations and obligates them for the awarding of scholarships or tuition grants, the
80 student scholarship organization shall designate the obligated revenues for specific
81 student recipients. Once the student scholarship organization designates obligated
82 revenues for specific student recipients, in the case of multiyear scholarships or tuition
83 grants, the student scholarship organization may distribute the entire obligated and
84 designated revenues to a qualified school or program to be held in accordance with
85 Department of Revenue rules for distribution to the specified recipients during the years
86 in which the recipients are projected in writing by the private school to be enrolled at the
87 qualified school or program. In making a multiyear distribution to a qualified school or
88 program, the student scholarship organization shall require that if the designated student
89 becomes ineligible or for any other reason the qualified school or program elects not to
90 continue disbursement of the multiyear scholarship or tuition grant to the designated
91 student for all the projected years, then the qualified school or program shall immediately
92 return the remaining funds to the student scholarship organization. Once the student
93 scholarship organization designates obligated revenues for specific student recipients, in
94 the case of multiyear scholarships or tuition grants for which the student scholarship
95 organization distributes the obligated and designated revenues to a qualified school or
96 program annually rather than the entire amount, if the designated student becomes
97 ineligible or for any other reason the student scholarship organization elects not to

98 continue disbursement for all years, then the student scholarship organization shall
 99 designate any remaining previously obligated revenues for a new specific student
 100 recipient on or before the end of the following calendar year. The maximum scholarship
 101 amount given by the student scholarship organization in any given year shall not exceed
 102 the average state and local expenditures per student in fall enrollment in public
 103 elementary and secondary education for this state. The Department of Education shall
 104 determine and publish such amount annually, no later than January 1;"

105 "(5) Must conduct an audit of its accounts by an independent certified public accountant
 106 within 120 days after the completion of the student scholarship organization's fiscal year
 107 verifying that it has complied with all requirements of this Code section, including, but
 108 not limited to, financial requirements. Each student scholarship organization shall
 109 provide a copy of such audit to the Department of Revenue in accordance with Code
 110 Section 20-2A-3. Notwithstanding Code Sections 20-2A-7, 48-2-15, 48-7-60, and
 111 48-7-61, if the copy of the audit submitted fails to verify that the student scholarship
 112 organization obligated its annual revenue received from donations for scholarships or
 113 tuition grants as required under paragraph (1) of this Code section; that obligated
 114 revenues were designated for specific student recipients within the time frame required
 115 by paragraph (1) of this Code section; and that all obligated and designated revenue
 116 distributed to a qualified school or program for the funding of multiyear scholarships or
 117 tuition grants complied with all applicable Department of Revenue rules, then the
 118 Department of Revenue shall post on its website the details of such failure to verify.
 119 Until any such noncompliant student scholarship organization submits an amended audit,
 120 which, to the satisfaction of the Department of Revenue, contains the verifications
 121 required under this Code section, the Department of Revenue shall not preapprove any
 122 contributions to the noncompliant student scholarship organization; and

123 (5.1) In addition to the audit required by paragraph (5) of this Code section, in 2023, the
 124 state auditor shall issue an economic analysis report on the performance of this tax credit
 125 to the chairpersons of the House Committee on Ways and Means and the Senate Finance
 126 Committee. An economic analysis shall include, but not be limited to, a good faith
 127 estimate, on both a direct and indirect basis, as to the:

128 (A) Net change in state revenue;

129 (B) Net change in state expenditures, which shall include, but not be limited to, costs
 130 of administering the tax credit;

131 (C) Net change in economic activity; and

132 (D) Net change in public benefit; and"

SECTION 3.

133
134 Said chapter is further amended by revising Code Section 20-2A-3, relating to taxation
135 reporting requirements for student scholarship organizations, as follows:

136 "20-2A-3.

137 (a) Each student scholarship organization must report annually to the Department of
138 Revenue, on a date determined by the Department of Revenue and on a form provided by
139 the Department of Revenue,~~by January 12 of each tax year~~ the following:

140 (1) The total number and dollar value of individual contributions and tax credits
141 approved. Individual contributions shall include contributions made by those filing
142 income tax returns as a single individual or head of household and those filing joint
143 returns;

144 (2) The total number and dollar value of corporate contributions and tax credits
145 approved;

146 (3) The total number and dollar value of scholarships awarded to eligible students;

147 (4) ~~The total number of families of scholarship recipients who fall within each quartile~~
148 ~~of Georgia whose family's adjusted gross income as defined and reported annually by the~~
149 ~~Department of Revenue and the average number of dependents of recipients for each~~
150 ~~quartile, and falls:~~

151 (A) Under 125 percent of the federal poverty level;

152 (B) Between 125 and 250 percent of the federal poverty level;

153 (C) Between 250 and 400 percent of the federal poverty level; and

154 (D) Above 400 percent of the federal poverty level;

155 (5) The average scholarship dollar amount by adjusted gross income category as
156 provided in paragraph (4) of this subsection; and

157 (6) A list of donors, including the dollar value of each donation and the dollar value of
158 each approved tax credit.

159 Such report shall also include a copy of the audit conducted pursuant to paragraph (5) of
160 Code Section 20-2A-2. The Department of Revenue shall post on its website the
161 information received from each student scholarship organization pursuant to paragraphs
162 (1) through ~~(4)~~(5) of this subsection.

163 (b) Except for the information reported pursuant to paragraphs (1) through ~~(4)~~(5) of
164 subsection (a) of this Code section, all information or reports provided by student
165 scholarship organizations to the Department of Revenue shall be confidential taxpayer
166 information, governed by Code Sections 48-2-15, 48-7-60, and 48-7-61, whether it relates
167 to the donor or the student scholarship organization."

168 **SECTION 4.**

169 Code Section 48-8-3 of the Official Code of Georgia Annotated, relating to exemptions from
 170 state sales and use taxes, is amended by deleting "or" at the end of paragraph (99), by
 171 replacing the period with "; or" at the end of paragraph (100), and by adding a new paragraph
 172 to read as follows:

173 "(101)(A) The sale or use of noncommercial written materials or mailings by an
 174 organization which is exempt from taxation under Section 501(c)(3) of the Internal
 175 Revenue Code, if the organization is located in this state and provides such materials
 176 to charity supporters for educational, charitable, religious, or fundraising purposes, to
 177 the extent provided in subparagraph (B) of this paragraph.

178 (B) This exemption shall apply from July 1, 2018, until July 1, 2021. A qualifying
 179 organization must pay sales and use tax on all purchases and uses of tangible personal
 180 property and may obtain the benefit of this exemption from sales and use taxes by filing
 181 a claim for refund of tax paid on qualifying items. All refunds made pursuant to this
 182 paragraph shall not include interest."

183 **SECTION 5.**

184 An Act relating to education and to revenue and taxation authorizing the Public Education
 185 Innovation Fund Foundation to receive private donations to be used for grants to public
 186 schools and providing for an income tax credit for qualified education donations, approved
 187 April 27, 2017 (Ga L. 2017, p. 100), is amended by revising Section 3 to read as follows:

188 "SECTION 3.

189 (a) This Act shall become effective upon its approval by the Governor or upon its
 190 becoming law without such approval and shall be applicable to all taxable years beginning
 191 on or after January 1, 2018.

192 (b) This Act shall be automatically repealed on December 31, 2023."

193 **SECTION 6.**

194 This Act shall become effective upon its approval by the Governor or upon its becoming law
 195 without such approval. Sections 1, 2, and 3 of this Act shall be applicable to tax years
 196 beginning on or after January 1, 2019.

197 **SECTION 7.**

198 All laws and parts of laws in conflict with this Act are repealed.