

Regular Session, 2011

HOUSE BILL NO. 298

BY REPRESENTATIVE TALBOT

TAX CREDITS: Authorizes a tax credit for individuals and corporations which donate to certain school tuition organizations

1 AN ACT

2 To enact R.S. 47:6038, relative to tax credits; to authorize a tax credit against any Louisiana
3 income or corporation franchise tax for certain donations to certain school tuition
4 organizations; to provide for certain definitions, requirements, and limitations; to
5 provide for the maximum amount of tax credits; to provide for the approval and
6 issuance of tax credits; to authorize the Department of Revenue to conduct a
7 financial review or audit of a school tuition organization under certain
8 circumstances; to authorize the promulgation of rules and regulations; to provide for
9 an effective date; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 47:6038 is hereby enacted to read as follows:

12 §6038. Tax credits; contributions to school tuition organizations

13 A.(1) There shall be allowed a credit against any Louisiana income or
14 corporation franchise tax for contributions a taxpayer makes during a taxable year
15 to a school tuition organization which provides scholarships or grants to qualified
16 students to attend a qualified school. The amount of the credit authorized by this
17 Section shall be equal to the actual amount of the taxpayer's contribution to a school
18 tuition organization.

19 (2) In order for a contribution from a taxpayer to qualify for the tax credit,
20 the contribution shall be used by the school tuition organization to provide
21 scholarships for tuition and fees for students to attend a qualified school in
22 accordance with the provisions of this Section. No more than three percent of a

1 contribution shall be used by the school tuition organization for administrative or
2 promotional costs.

3 B.(1)(a) For purposes of this Section, the term "school tuition organization"
4 shall mean a tax exempt organization organized under Section 501(c)(3) of the
5 Internal Revenue Code and from which no less than ninety-seven percent of the
6 monies from donations for scholarships is dedicated to providing scholarships to
7 students for attendance at a qualified nonpublic school of their parent's choice. The
8 amount of scholarships awarded each year by a school tuition organization shall
9 equal the amount of contributions the organization receives from taxpayers, minus
10 allowable administrative or promotional costs. In addition, a school tuition
11 organization shall provide educational scholarships or tuition grants to students
12 without limiting available scholarships and grants to students of only one qualified
13 school.

14 (b) The maximum amount of a scholarship provided by the school tuition
15 organization shall not exceed seventy percent of the state average Minimum
16 Foundation Program per pupil funding amount for the previous year for tuition for
17 a qualified student to attend an elementary school, and the maximum amount of a
18 scholarship provided by the school tuition organization shall not exceed ninety-four
19 percent of the state average Minimum Foundation Program per pupil funding amount
20 for the previous year for a qualified student to attend a secondary school.

21 (c) A school tuition organization which provides scholarships or tuition
22 grants to qualified students shall do all of the following:

23 (i) Notify the Department of Revenue of its intent to provide educational
24 scholarships to qualified students attending qualified schools.

25 (ii) Provide documentary evidence that it has been granted an exemption
26 from the federal income tax and established as an organization described in Section
27 501(c)(3) of the Internal Revenue Code.

28 (iii) Periodically distribute scholarship payments as checks made out to a
29 parent of a qualified student and mailed to the qualifying school where the qualified

1 student is enrolled. The parent shall endorse the check before it can be deposited by
2 the qualified school.

3 (iv) Provide a receipt to all taxpayers making contributions on a form
4 approved by the Department of Revenue.

5 (v) Perform criminal background checks on all of its employees and board
6 members.

7 (vi) Ensure that scholarships granted to qualified students are portable during
8 the school year and can be used at any qualifying school that accepts a qualified
9 student. If the parent of a qualified student who is receiving a scholarship desires the
10 student to move to a new qualified school during a school year, the scholarship
11 amount may be prorated.

12 (vii) Provide a public report to the Department of Revenue which contains
13 information regarding all scholarships awarded or granted in the previous calendar
14 year. The report shall be prepared by a certified public accountant and shall be
15 submitted to the department no later than the first day of June each year. The report
16 shall contain the name and address of the school tuition organization, the total
17 number and total dollar amount of contributions received during the previous
18 calendar year, and the total number and total dollar amount of educational
19 scholarships or tuition grants awarded to qualified students during the previous
20 calendar year.

21 (viii) Annually demonstrate its financial accountability by submitting a
22 financial information report that complies with uniform financial accounting
23 standards. The report shall be prepared by a certified public accountant and shall be
24 submitted to the Department of Revenue. The report shall contain a certification
25 from an auditor that the report is free of material misstatements.

26 (2)(a) For purposes of this Section, a "qualified school" shall mean a
27 nonpublic elementary or secondary school in this state which is approved by the
28 Board of Elementary and Secondary Education. A qualified school shall do all of
29 the following:

1 (i) Provide written verification to a school tuition organization that the
2 school complies with all health and safety laws or codes that apply to all nonpublic
3 schools.

4 (ii) Conduct criminal background checks on its employees and exclude from
5 employment any person not permitted by state law to work in a nonpublic school.

6 (iii) Annually administer either the state achievement tests or nationally
7 recognized norm-referenced tests that measure learning gains in math and language
8 arts to all participating students in grades that require testing under the state's
9 accountability testing laws for public schools. The qualified school shall provide the
10 parents of each student who was tested with a copy of the student's test results on an
11 annual basis, beginning with the first year the student is tested.

12 (b) Any qualified school that receives more than fifty thousand dollars in
13 scholarship donations from a school tuition organization shall demonstrate its
14 financial viability by filing, prior to the start of a school year, a surety bond payable
15 to the school tuition organization in an amount equal to the aggregate amount of
16 contributions expected to be received during the school year or by filing, prior to the
17 start of a school year, financial information with the qualified school tuition
18 organization demonstrating its financial viability; however, a qualified school which
19 has been in business for more than five years shall not be required to post a surety
20 bond.

21 (3) For purposes of this Section, a "qualified student" shall mean a child who
22 is a member of a household whose annual income, the year before the child receives
23 an educational scholarship, does not exceed an amount equal to two hundred fifty
24 percent of the federal poverty level based on the family size. A qualified student
25 shall also be a student who is entering kindergarten for the first time, a student who
26 attended a public school the previous year, or who received a scholarship from a
27 school tuition organization for the previous school year and shall reside in Louisiana
28 while receiving an educational scholarship or grant.

1 (4) For purposes of this Section, a "parent" shall mean a guardian, custodian,
2 or other person with authority to act on behalf of the child.

3 C.(1) The Department of Revenue may promulgate rules and regulations in
4 accordance with the provisions of the Administrative Procedure Act, as are necessary
5 to implement the provisions of this Section. The department shall provide a
6 standardized format for a receipt to be issued by a school tuition organization to a
7 taxpayer to indicate the value of a contribution received by the organization. The
8 department shall require a taxpayer to provide a copy of this receipt when claiming
9 the tax credit authorized by this Section.

10 (2) The Department of Revenue may conduct either a financial review or
11 audit of a school tuition organization if the department possesses evidence of fraud.
12 The department may bar a school tuition organization from participating in the
13 provisions of this Section if the school tuition organization intentionally and
14 substantially fails to comply with the requirements of this Section.

15 D. The total amount of tax credits that shall be issued pursuant to the
16 provisions of this Section shall not exceed five million dollars per year; however, in
17 any year in which the amount of tax credits awarded reaches ninety percent of the
18 five million dollar annual cap, the annual cap for the next year shall be increased by
19 ten percent. The Department of Revenue shall approve tax credits on a first-come,
20 first-served basis until the maximum amount of tax credits has been issued; however,
21 all tax credit requests received on the same business day shall be treated as received
22 at the same time, and if the aggregate amount of the tax credit requests received on
23 a single business day exceed the total amount of available tax credits, tax credits
24 shall be approved on a pro rata basis.

25 E. If the tax credit against Louisiana income tax for resident individuals
26 provided for by this Section exceeds the amount of a taxpayer's tax liability, then any
27 unused credit may be carried forward as a credit against subsequent tax liability for
28 a period not to exceed three years.

1 Section 2. This Act shall become effective upon signature by the governor or, if not
 2 signed by the governor, upon expiration of the time for bills to become law without signature
 3 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 4 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 5 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Talbot

HB No. 298

Abstract: Authorizes a tax credit for contributions to school tuition organizations equal to the actual amount donated. Provides for an annual cap of \$5 million which can be adjusted under certain circumstances.

Proposed law authorizes a credit against any La. income or corporation franchise tax for contributions a taxpayer makes during a taxable year to a school tuition organization which provides scholarships or grants to qualified students to attend a qualified school. The amount of the credit shall be equal to the actual amount of the taxpayer's contribution to a school tuition organization.

Proposed law requires that in order for a taxpayer's contribution to qualify for the tax credit, the contribution shall be used by the school tuition organization to provide scholarships for tuition. No more than 3% of a contribution shall be used for administrative or promotional costs.

Proposed law defines a "school tuition organization" as a §501(c)(3) tax exempt organization which donates no less than 97% of the monies from contributions to providing scholarships to students for attendance at a qualified nonpublic school of their parent's choice. Proposed law limits the maximum amount of a scholarship for an elementary school student to 70% of the state average MFP per pupil funding amount for the previous year, and the maximum amount of a scholarship for a secondary school student to 94% of the state average MFP per pupil funding amount for the previous year.

Proposed law requires school tuition organizations to do all of the following:

- (1) Notify the Dept. of Revenue (DOR) of its intent to provide educational scholarships.
- (2) Provide evidence of its Section 501(c)(3) status.
- (3) Periodically distribute scholarship payments.
- (4) Provide a receipt to all taxpayers making contributions on a form approved by DOR.
- (5) Perform criminal background checks on all of its employees and board members.
- (6) Ensure that scholarships granted to qualified students are portable during the school year and can be used at any qualifying school that accepts a qualified student.

- (7) Provide a public report to DOR each year which contains information regarding all scholarships awarded or granted in the previous calendar year.
- (8) Annually demonstrate its financial accountability.

Proposed law defines a "qualified school" as a nonpublic elementary or secondary school in this state which is approved by the Board of Elementary and Secondary Education.

Proposed law requires a qualified school to do all of the following:

- (1) Provide written verification to a school tuition organization that the school complies with all health and safety laws or codes that apply to all nonpublic schools.
- (2) Conduct criminal background checks on its employees and exclude from employment any person not permitted by state law to work in a nonpublic school.
- (3) Annually administer either the state achievement tests or nationally recognized norm-referenced tests that measure learning gains in math and language arts to all participating students in grades that require testing.

Proposed law requires any qualified school that receives more than \$50,000 in scholarship donations from a school tuition organization to demonstrate its financial viability by filing, prior to the start of a school year, either a surety bond payable to the school tuition organization in an amount equal to the aggregate amount of contributions expected to be received during the school year or by filing financial information demonstrating its financial viability; however, a qualified school which has been in business for more than five years shall not be required to post a surety bond.

Proposed law defines a "qualified student" as a child who is a member of a household whose annual income the year before the child receives an educational scholarship, does not exceed 250% of the federal poverty level based on the family size.

Proposed law authorizes DOR to promulgate rules and regulations in accordance with the APA, as are necessary to implement the provisions of proposed law. Further requires the department to provide a standardized format for a receipt to be issued by a school tuition organization to indicate the value of a contribution received by the organization.

Proposed law authorizes DOR to conduct either a financial review or audit of a school tuition organization if the department possesses evidence of fraud. Further authorizes DOR to bar a school tuition organization from participating in the provisions of proposed law if the school tuition organization intentionally and substantially fails to comply with the requirements of proposed law.

Proposed law limits the total amount of tax credits to \$5 million per year; however, in any year in which the amount of tax credits awarded reaches 90% of the \$5 million annual cap, the annual cap for the next year shall be increased by 10% percent. Requires DOR to approve tax credits on a first-come, first-served basis until the maximum amount of tax credits has been issued.

Proposed law provides that if the tax credit exceeds the amount of a taxpayer's tax liability, then any unused credit may be carried forward as a credit against subsequent tax liability for a period not to exceed three years.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 47:6038)