Sixty-seventh
Legislative Assembly
of North Dakota

SENATE BILL NO. 2288

Introduced by

Senators Dwyer, Kannianen, J. Roers

Representatives Fisher, B. Koppelman, Steiner

A BILL for an Act to create and enact a new section to chapter 57-38 and a new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code, relating to an education scholarship tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 57-38 of the North Dakota Century Code is created and enacted as follows:

Education scholarship tax credit.

1. A taxpayer is entitled to a credit against the income tax liability under section 57-38-30 or 57-38-30.3 for contributions made to an organization that provides educational scholarships to eligible students. The credit is equal to seventy-five percent of the amount contributed by the taxpayer to a scholarship-granting organization for educational scholarships during the taxable year.
2. The credit must be claimed in the taxable year in which the charitable contribution is made to a scholarship-granting organization. The credit under this section may not exceed the taxpayer's liability as determined under this chapter for any taxable year. If the amount of the credit determined under this section exceeds the taxpayer's liability for tax under this chapter, the excess may be carried forward to each of the five succeeding taxable years.
3. A passthrough entity entitled to the credit under this section must be considered to be the taxpayer for purposes of calculating the credit. The amount of the allowable credit must be determined at the passthrough entity level. The total credit determined at the entity level must be passed through to the partners, shareholders, or members in proportion to their respective interests in the passthrough entity.

4. The aggregate amount of credits allowed ~~each~~in calendar year 2021 under this section may not exceed three million dollars. However, if the maximum amount of allowable credits are claimed in ~~any~~ calendar year 2021, the aggregate amount of tax credits allowed ~~in the succeeding calendar year~~ must be increased by ten percent for the succeeding tax years. If the aggregate limit is increased in any tax year, the tax commissioner shall use the new limit as the base aggregate limit for succeeding tax years until a new aggregate limit is established under this subsection. By August first of each year after 2021, the tax commissioner shall determine whether the requirement for increasing the allowable credit limit under this subsection for the succeeding taxable year has been met.

~~4. If the aggregate amount of credits claimed under this section exceeds the amount available in a calendar year, the tax commissioner shall prorate the credits among the claimants.~~

5. The tax commissioner shall approve the amount of tax credits for taxpayers on a first-come, first-served basis and post a notice on the tax department's website advising taxpayers when the aggregate limit is in effect. The tax commissioner may develop an internet-based registration system that provides donors with the opportunity to obtain preapproval for a tax credit before making a contribution.

6. For purposes of this section:

a. "Educational scholarship" means a grant to an eligible student to cover all or part of the cost of the student's tuition and fees at a qualifying school.

b. "Eligible student" means a student who is a resident of this state, is or will be five years of age or older by September tenth of the year in which the educational scholarship will be disbursed, and is under nineteen years of age.

c. "Low-income eligible student" means a student who is a resident of this state, is a member of a household whose total income, the year before the student enters the program, did not exceed three hundred percent of the income standard for the federal poverty line, is or will be five years of age or older by September tenth of the year in which the educational scholarship will be disbursed, and is under nineteen years of age.

d. "Parent" means a resident of this state who is a parent, conservator, legal guardian, custodian, or other individual with legal authority to act on behalf of a program participant.

~~d.~~e. "Program" means the program established under this section.

~~e.~~f. "Program participant" means a child participating in the program.

~~f.~~g. "Qualifying school" means a nonprofit, nonpublic elementary or secondary school located in this state; or a tribally controlled school on a federally recognized Indian reservation which operates within the boundaries of this state; which is accredited by the department of public instruction and has notified a scholarship granting organization of the school's intention to participate in the program and comply with the requirements of the program.

~~g.~~h. "Scholarship-granting organization" means a charitable organization that is exempt from federal income taxation under section 501(c)(3) of the United States Internal Revenue Code [26 U.S.C. 501(c)(3)], complies with the requirements of the program, and provides educational scholarships with an average value of not more than eighty percent of the state's share of the per student payment made to a public school for the applicable year.

~~6.~~7. Each scholarship granting organization shall:

a. Notify annually the tax commissioner of the organization's intent to provide educational scholarships;

b. Ensure at least ninety percent of contributions the organization received which qualify for a tax credit under this section are used to fund educational scholarships;

c. Award scholarships exclusively to low-income eligible students through June thirtieth of each year, after which time scholarships may be awarded to eligible students and low-income eligible students. If sufficient funding is available, once a student meets the initial income eligibility requirement, the student remains income eligible for three years, or if the student is entering high school, until the student graduates high school, regardless of household income. After the initial period of income eligibility, the student remains eligible if the student is a member of a household whose total annual income in the prior year did not exceed three hundred percent of the income standard for the federal poverty line;

d. Disburse periodic scholarship payments from an educational scholarship fund account as checks payable to an eligible student's parent and mailed to the qualifying school at which the eligible student is enrolled. The parent shall endorse the check before the check is deposited;

~~d.~~e. Ensure scholarships are portable during the school year and, upon a parent's request, may be used at any qualifying school to which the scholarship-granting organization grants scholarships and in which the eligible student enrolls;

~~e.~~f. Carry forward no more than ~~twenty-five~~fifty percent of the organization's revenue from contributions deposited in the educational scholarship fund account from the fiscal year in which the contributions were received into the next fiscal year;

~~f.~~g. Maintain separate accounts for scholarship funds and operating funds;

~~g.~~h. Provide a receipt approved by the tax commissioner to each taxpayer for contributions made by the taxpayer to the organization for educational scholarships;

~~h.~~i. Provide the tax commissioner the names and addresses of all members of the organization's board of directors or other governing body and documentation confirming criminal background checks have been conducted on all employees and members of the governing body;

~~i.~~j. Exclude from employment and governance positions any individual who reasonably may pose a risk to the appropriate use of contributions; and

~~j.~~k. Report to the tax commissioner by June first of each year a financial report prepared by a certified public accountant providing the total number and total dollar amount of contributions received in the preceding year and the total number and total dollar amount of educational scholarships awarded in the preceding year.

~~7.~~8. The tax commissioner:

a. ~~Shall~~May adopt rules and procedures as necessary to implement this section;

b. Shall develop and make available a standardized format for a receipt to be issued by a scholarship-granting organization to a taxpayer on which the amount of the taxpayer's contribution for educational scholarships may be recorded; and

c. May conduct financial reviews or audits of a scholarship-granting organization if the commissioner has evidence the organization engaged in fraud~~; and~~

~~d. May exclude a scholarship-granting organization from participating in the program if the commissioner determines the organization intentionally or substantially failed to comply with this section. If the commissioner excludes a scholarship-granting organization from participating in the program, the commissioner shall notify students receiving scholarships from the organization and the students' parents as soon as practicable.~~

9. If a scholarship-granting organization is not in compliance with this section, the tax commissioner shall provide the organization written notice of the specific failures and the organization has thirty days from the date of the notice to correct the deficiencies. If the organization fails to correct all deficiencies within thirty days from the date of the notice, the tax commissioner shall provide a final written notice of the failure of the organization to correct the deficiencies. The organization may appeal the tax commissioner's determination of failure to comply within thirty days of the date of the final written notice. The provisions of chapter 28-32 apply to and govern the administrative hearing procedure, including appeals from any decision rendered by the tax commissioner.

a. If a scholarship-granting organization does not seek review of the tax commissioner's determination, or if the dispute is not resolved, the tax commissioner shall issue a final determination.

b. The final determination must provide that the scholarship-granting organization:

(1) Will be removed from the list of eligible scholarship-granting organizations and notified of the removal; and

(2) Shall within fifteen calendar days of the receipt of the notice provided under paragraph 1 cease all operations as a scholarship-granting organization and transfer all scholarship account funds to a properly operating scholarship-granting organization.

SECTION 2. A new subdivision to subsection 7 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Education scholarship tax credit under section 1 of this Act.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2020.