

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1104

Short Title: Scholarship Funding Corporate Tax Credit. (Public)

Sponsors: Representatives Stam, Brisson, Hager, and Brandon (Primary Sponsors).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Education, if favorable, Finance.

May 24, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE A TAX CREDIT FOR CORPORATIONS MAKING DONATIONS
3 TO FUND EDUCATION SCHOLARSHIPS.

4 Whereas, the State has a Constitutional obligation to fund the delivery of a sound
5 basic education to children; and

6 Whereas, children of families with limited financial resources need expanded
7 educational opportunities; and

8 Whereas, a solid educational foundation can help reduce the socioeconomic
9 achievement gap; and

10 Whereas, by creating educational environments that enable all of North Carolina's
11 children to learn, the State can improve the quality of the education it funds; Now, therefore,
12 The General Assembly of North Carolina enacts:

13 **SECTION 1.** Subchapter I of Chapter 105 of the General Statutes is amended by
14 adding a new Article to read:

15 "Article 3L.

16 "Equal Opportunity Scholarship Tax Credit.

17 **"§ 105-129.100. Definitions.**

18 For purposes of this Article, a "scholarship-funding organization" is an organization
19 certified by the Division of Nonpublic Education of the Department of Administration pursuant
20 to G.S. 115C-562.2.

21 **"§ 105-129.101. Credit for donations to fund scholarships.**

22 (a) Credit. – A taxpayer that makes and substantiates, as required by G.S. 105-129.103,
23 a monetary donation to a scholarship-funding organization is allowed a tax credit equal to the
24 amount of the donation reduced by the difference between the amount of federal corporate
25 income tax taking into account the credit granted by this Article and the amount of federal
26 corporate income tax without application of the credit granted by this Article.

27 (b) Taxes Credited. – The credit provided in this section is allowed against the excise
28 tax levied in Part 4 of Article 2C of this Chapter, the income taxes levied in Part 1 of Article 4
29 of this Chapter, or the insurance gross premium tax levied under Article 8B of this Chapter.
30 The taxpayer shall elect the tax against which a credit will be claimed when filing the return on
31 which the first installment of the credit is claimed. This election is binding. A credit allowed in
32 this Article may not exceed the amount of tax against which it is claimed for the taxable period,
33 reduced by the sum of all other credits allowed against that tax, except tax payments made by
34 or on behalf of the taxpayer. This limitation applies to the cumulative amount of the credit,
35 including carryforwards, claimed by the taxpayer under this Article against each tax for the



1 taxable period. Any unused portion of a credit claimed against the income taxes levied in Part 1
2 of Article 4 of this Chapter or the insurance gross premium tax levied under Article 8B of this
3 Chapter may be carried forward for the succeeding five years. Any unused portion of a credit
4 claimed against the excise tax levied in Part 4 of Article 2C of this Chapter may be carried
5 forward for the succeeding five months. Any carryforward of a credit shall be claimed against
6 the same tax.

7 **"§ 105-129.102. Cap; limitations.**

8 (a) Aggregate Cap. – From July 1, 2012, to December 31, 2012, the total amount of tax
9 credits allowable under this Article for monetary donations made may not exceed two million
10 dollars (\$2,000,000). For the calendar year beginning on January 1, 2013, the total amount of
11 tax credits allowable under this Article for monetary donations made in the calendar year may
12 not exceed forty million dollars (\$40,000,000). For calendar years beginning on or after
13 January 1, 2014, the total amount of all tax credits allowable under this Article for monetary
14 donations made in a calendar year is the amount for the preceding calendar year, unless the
15 total amount is increased by thirty-five percent (35%) as a result of a triggering event. A
16 triggering event occurs when at least ninety percent (90%) of the total amount of tax credits
17 allowable for the preceding year were claimed.

18 (b) No Double Benefit. – A taxpayer that claims a credit under this section for a
19 monetary donation to a nonprofit scholarship-funding organization is not allowed to deduct this
20 donation under any other provision of this Chapter.

21 **"§ 105-129.103. Substantiation.**

22 (a) Request for Written Certification. – To be eligible for the tax credit provided in this
23 Article, the taxpayer shall obtain from the Secretary a written certification that the sum of the
24 tax credit for a donation and the tax credit for all other donations for which the Secretary has
25 issued a written certification does not exceed the total amount of all tax credits allowed under
26 this Article for the calendar year in which the donation is made. A request for a written
27 certification shall be on a form prescribed by the Secretary and shall include any relevant
28 supporting documentation the Secretary may require.

29 (b) Written Certification. – The Secretary shall respond to a request within seven days
30 and may not issue a written certification after December 31 of the calendar year in which the
31 donation is made. Within 10 days of the date the Secretary issues the written certification, the
32 taxpayer shall submit the donation with the written certification to the eligible nonprofit
33 scholarship-funding organization or shall notify the Department that the donation was not
34 made. The Secretary shall determine and publish, on a weekly basis, the number and amount of
35 tax credits for which certified donations have been made. The Secretary shall approve each
36 request submitted in the order the requests were received until the total amount of all tax credits
37 for certified donations equals the total amount of all tax credits allowed under
38 G.S. 105-129.102. Except as provided in subsection (c) of this section, each request received on
39 the same business day shall be treated as received at the same time. Every taxpayer claiming a
40 credit under this section shall submit to the Department any receipt for a donation received
41 from a scholarship-funding organization within seven days of receipt and shall maintain and
42 make available for inspection by the Secretary any records the Secretary considers necessary to
43 determine and verify that the donation has been timely made. The burden of proving eligibility
44 for the credit and the amount of the credit shall rest upon the taxpayer, and no credit shall be
45 allowed to a taxpayer that fails to maintain adequate records or to make them available for
46 inspection.

47 (c) Time-Shifted Credits. – If a taxpayer has (i) obtained from the Secretary a written
48 certification under subsection (a) of this section, (ii) timely made a donation under subsection
49 (b) of this section, and (iii) failed to receive a tax credit because donations made pursuant to
50 previously issued written certifications because the total amount of all tax credits for certified
51 donations equals the total amount of all tax credits allowed under G.S. 105-129.102, then the

1 donation shall be treated as if it were made on January 1 of the next succeeding year. A tax
2 credit earned under this subsection shall have priority over all other tax credits earned under
3 this Article for the calendar year to which it is transferred."

4 **SECTION 2.** Article 39 of Chapter 115C of the General Statutes is amended by
5 adding a new Part to read:

6 "Part 2A. Scholarship-Funding Organizations.

7 **"§ 115C-562.1. Definitions.**

8 The following definitions apply in this Part:

- 9 (1) Division. – The Division of Nonpublic Education, Department of
10 Administration.
- 11 (2) Donations. – Money given to a scholarship-funding organization for which a
12 taxpayer may be allowed a tax credit pursuant to G.S. 105-129.101.
- 13 (3) Donation scholarships. – Scholarships awarded by a scholarship-funding
14 organization using money given to a scholarship-funding organization for
15 which a taxpayer may be allowed a tax credit pursuant to G.S. 105-129.101.
- 16 (4) Eligible students. – A student who has not yet received a high school
17 diploma and who meets all of the following requirements:
- 18 1. Whose enrollment status is one of the following:
- 19 a. Was a full-time student at a public school during the previous
20 semester.
- 21 b. Received a scholarship from an eligible scholarship-funding
22 organization during the previous school year.
- 23 c. Is entering kindergarten or the first grade.
- 24 2. Belongs to a household with an income level not in excess of two
25 hundred twenty-five percent (225%) of the federal poverty level.
- 26 (5) Nonpublic school. – A school that meets the requirements of Part 1 or 2 of
27 this Article.
- 28 (6) Scholarship-funding organization. – A North Carolina charitable
29 organization certified by the Division to meet all criteria for eligibility to
30 receive donations.

31 **"§ 115C-562.2. Certification of eligible scholarship funding organizations.**

32 (a) A North Carolina charitable organization shall apply annually to the Division for
33 certification as a scholarship-funding organization in a form prescribed by the Division.
34 Applications shall be received by the Division for certification for the next calendar year no
35 later than June 1. The Division shall issue certifications to organizations meeting the criteria in
36 subsection (b) of this section no later than August 1. A scholarship-funding organization may
37 receive donations and award donation scholarships upon issuance of certification by the
38 Division.

39 (b) The Division shall certify an organization as an eligible scholarship-funding
40 organization upon a finding that the organization meets the following criteria:

- 41 (1) Is an exempt organization under section 501(c)(3) of the Internal Revenue
42 Code.
- 43 (2) Uses one hundred percent (100%) of donations to fund donation scholarships
44 if the organization has been certified for 24 consecutive months or less, or
45 uses at least ninety-one percent (91%) of donations to fund donation
46 scholarships if the organization has been certified for more than 24
47 consecutive months.
- 48 (3) Does not award donation scholarships to students within five degrees of
49 kinship, as defined in G.S. 104A-1, of family of paid staff or board members
50 of the scholarship-funding organization.

- 1 (4) Does not permit donors to designate donation scholarships for the direct
2 benefit of a particular nonpublic school or eligible student.
- 3 (5) Is not affiliated with a nonpublic school attended by an eligible student
4 receiving a donation scholarship from the organization.
- 5 (6) Does not discriminate on the basis of race, color, ethnicity, or national
6 origin.
- 7 (7) Funds donation scholarships of not more than four thousand dollars (\$4,000)
8 per year per eligible student for tuition and fees for books, transportation,
9 equipment, or other items required by the nonpublic school.
- 10 (8) Awards donation scholarships to eligible students to attend any nonpublic
11 school and does not limit availability to students of only one school.
- 12 (9) Awards donation scholarships to eligible students in the order in which the
13 applications are received. Notwithstanding this requirement, a
14 scholarship-funding organization may give priority to donation scholarship
15 awards to eligible students who received a donation scholarship from the
16 scholarship-funding organization during the previous school year.
- 17 (10) Restricts award of donation scholarships to eligible students.
- 18 (11) Permits an eligible student receiving a donation scholarship to enroll in a
19 different nonpublic school and remain eligible. An eligible student receiving
20 a donation scholarship who transfers to another nonpublic school during the
21 year may be eligible to receive a pro rata share of any unexpended portion of
22 the donation scholarship for tuition and fees at the nonpublic school to which
23 the student transfers.
- 24 (12) Has no paid staff in the scholarship-funding organization that has been
25 convicted of any crime listed in G.S. 115C-238.29K.

26 (c) The Division shall provide an annual list of certified scholarship-funding
27 organizations to the Department of Revenue no later than December 1, and shall notify the
28 Department of Revenue of any changes to the annual list within three business days. A current
29 copy of the list shall also be maintained on the Division's Web site.

30 **"§ 115C-562.3. Obligations of scholarship-funding organizations.**

31 (a) A scholarship-funding organization shall submit the following information to the
32 Division:

- 33 (1) An annual financial and compliance audit of all accounts and records
34 pertaining to donations and donation scholarships conducted by an
35 independent certified public accountant. The audit shall be conducted in
36 compliance with generally accepted auditing standards. The report must
37 include a report on financial statements presented in accordance with
38 generally accepted accounting principles for nonprofit organizations and a
39 determination of compliance with the statutory eligibility and expenditure
40 requirements set forth in this Part. Audits shall be provided to the Division
41 no later than October 1.
- 42 (2) An annual report to the Division no later than July 15 on donation
43 scholarship awards, including the following information:
- 44 a. Total number, grade level, race, ethnicity, and sex of eligible students
45 awarded donation scholarships.
- 46 b. Amount of donation scholarship funding awarded.
- 47 c. Percentage of first-time recipients of donation scholarships who were
48 enrolled at a public school during the previous semester.
- 49 d. The local school administrative unit or charter school in which an
50 eligible student was enrolled in the prior semester, when applicable.

- 1 e. The nonpublic schools at which donation scholarship recipients are
2 enrolled.
- 3 f. Other information necessary for the Division to perform its duties.
- 4 (b) A scholarship-funding organization shall maintain separate accounts for donation
5 scholarship funds and operating funds.
- 6 (c) A scholarship fund shall carry forward no more than twenty percent (20%) of
7 donations to the following fiscal year. Any donations remaining on June 30 of each year in
8 excess of the twenty percent (20%) that may be carried forward shall be returned to the State
9 Treasurer for deposit in the State General Fund.
- 10 (d) The Division shall give written notice to a scholarship-funding organization that
11 fails to comply with the requirements of this Part. The scholarship-funding organization shall
12 have 90 days to correct all deficiencies. If a scholarship-funding organization fails to correct all
13 deficiencies within 90 days, the Division shall revoke the certification of the
14 scholarship-funding organization, and shall immediately notify the Department of Revenue of
15 the revocation. The scholarship-funding organization shall notify the parent or guardian of any
16 eligible student receiving a donation scholarship from the scholarship-funding organization of
17 the loss of certification.
- 18 (e) A scholarship-funding organization shall require taxpayers making donations to
19 provide to the scholarship-funding organization a copy of the written certification issued to the
20 taxpayer pursuant to G.S. 105-129.103. Within five business days of receipt of a donation, a
21 scholarship-funding organization shall report to the Department of Revenue the amount of the
22 donation from the taxpayer and a copy of the taxpayer's written certification.
- 23 **§ 115C-562.4. Obligations of nonpublic schools receiving scholarship funds.**
- 24 (a) A nonpublic school that accepts scholarship funds from a scholarship-funding
25 organization shall comply with the following:
- 26 (1) Provide to the scholarship-funding organization documentation for required
27 tuition and fees charged to the student by the nonpublic school.
- 28 (2) Conduct a criminal background check for the staff member with the highest
29 decision-making authority, as defined by the bylaws or articles of
30 incorporation, to ensure that person has not been convicted of any crime
31 listed in G.S. 115C-239.29K.
- 32 (3) Provide to the parent or guardian of an eligible student whose tuition and
33 fees are paid in whole or in part with a donation scholarship an annual
34 written explanation of the student's progress, including the student's scores
35 on any standardized achievement tests.
- 36 (4) Submit to the Division by July 15 of each year the test scores of any
37 nationally standardized achievement test administered to any student
38 receiving a scholarship. Test performance data reported to the Division is
39 not a public record under Chapter 132 of the General Statutes.
- 40 (5) Provide to the Division graduation rates of the students participating in the
41 program in a manner consistent with nationally recognized standards.
- 42 (6) Contract with an independent certified accountant to perform a financial
43 review, consistent with generally accepted accounting principles, for each
44 school year in which the school receives more than five hundred thousand
45 dollars (\$500,000) in donation scholarships awarded under this section.
- 46 (b) A nonpublic school enrolling more than 25 students whose tuition and fees are paid
47 in whole or in part with a donation scholarship shall report to the Division on the aggregate
48 standardized test performance of eligible students. Test performance data reported to the
49 Division is not a public record under Chapter 132 of the General Statutes. Test performance
50 data may be shared with public or private institutions of higher education located in North
51 Carolina and shall be provided to an independent research organization selected by the Division

1 for research purposes as permitted by the Federal Education Rights and Privacy Act, 20 U.S.C.
2 § 1232g.

3 (c) A nonpublic school accepting donation scholarship funds that fails to comply with
4 the requirements of this section shall be deemed ineligible to receive future scholarships from a
5 scholarship-funding organization. The nonpublic school shall notify the parent or guardian of
6 any enrolled student receiving a donation scholarship that the nonpublic school is no longer
7 eligible to receive future scholarships. The Division shall notify scholarship-funding
8 organizations of any school that is determined to be ineligible for receipt of scholarships.

9 **"§ 115C-562.5. Scholarship endorsement.**

10 The scholarship-funding organization shall remit, at least two times each school year, a
11 scholarship payment certificate to the nonpublic school for endorsement by at least one of the
12 student's parents or guardians. The parent or guardian shall restrictively endorse the scholarship
13 award to the nonpublic school for deposit into the account of the nonpublic school. The parent
14 or guardian shall not designate any entity or individual associated with the nonpublic school as
15 the parent's attorney-in-fact to endorse the scholarship payment certificate, but shall endorse the
16 scholarship payment certificate in person at the site of the nonpublic school. A parent or
17 guardian's failure to comply with this section shall result in forfeit of the scholarship. A
18 donation scholarship forfeited for failure to comply with this section shall be returned to the
19 scholarship-funding organization to be awarded to another student for that school year.

20 **"§ 115C-562.6. Division reporting requirements.**

21 (a) The Division shall report to the Department of Public Instruction annually, no later
22 than August 1, the number of students who have received scholarships through a
23 scholarship-funding organization and who were enrolled the prior semester in a local school
24 administrative unit or charter school, by previously attended local school administrative unit or
25 charter school. The Department of Public Instruction shall adjust the allotments of local school
26 administrative units or charter schools based on the number of students awarded a scholarship
27 who attended a local school administrative unit or charter school during the prior semester. The
28 amount of the adjustment shall equal the average per pupil allocation for average daily
29 membership from the local school administrative unit or charter school.

30 (b) The Division shall report annually, no later than March 1, to the Joint Legislative
31 Education Oversight Committee on the following:

- 32 (1) Number and name of scholarship-funding organizations certified by the
33 Division.
- 34 (2) Total number, grade level, race, ethnicity, and sex of eligible students
35 participating in the scholarship program.
- 36 (3) Amount of scholarship funding awarded, by scholarship-funding
37 organization.
- 38 (4) Number of students previously enrolled in local school administrative units
39 or charter schools in the prior semester, by previously attended local school
40 administrative unit or charter school.
- 41 (5) Nonpublic schools in which scholarship recipients are enrolled, including
42 numbers of scholarship students at each nonpublic school.
- 43 (6) Revocations of certification of scholarship-funding organizations and
44 nonpublic schools deemed ineligible to receive scholarships.
- 45 (7) Number of contributors and dollar amounts of contributions received by
46 scholarship-funding organizations.

47 (c) The Division shall report annually, no later than October 1, to the Department of
48 Public Instruction and the Joint Legislative Education Oversight Committee on the learning
49 gains of students receiving donation scholarships. This report shall be conducted by an
50 independent research organization to be selected by the Division, which may be a public or
51 private entity or university. The independent research organization shall report to the Division

1 on the learning gains of participating students on a statewide basis and shall compare, to the
2 extent possible, the learning gains of eligible students by nonpublic school to the statewide
3 learning gains of public school students with similar socioeconomic backgrounds, using
4 aggregate standardized test performance data provided to the Division by nonpublic schools
5 and by the Department of Public Instruction."

6 **SECTION 3.** Section 1 of this act is effective for taxable years beginning on or
7 after January 1, 2012, and applies to monetary donations made on or after July 1, 2012. The
8 Department of Revenue shall develop the necessary reporting and application forms required
9 for a credit under Article 3L of Chapter 105 of the General Statutes, as enacted by this act, on
10 or before July 1, 2012. The Division of Nonpublic Education shall select an independent
11 research organization as required by G.S. 115C-562.6, beginning with the 2013-2014 school
12 year. Notwithstanding the application deadlines established by G.S. 115C-562.2 for
13 certification of eligible scholarship-funding organizations, applications for certification for
14 2012 shall be submitted to the Division no later than August 1, 2012, and the Division shall
15 issue certifications no later than August 15, 2012, and shall provide a list to the Department of
16 Revenue within three business days. The first financial review for a nonpublic school that
17 accepts scholarship funds from a scholarship-funding organization, as required by
18 G.S. 115C-562.4, as enacted by this act, shall not be required until the 2014-2015 school year.
19 The first learning gains report required by G.S. 115C-562.6, as enacted by this act, shall not be
20 due until October 1, 2014. The remainder of this act is effective when it becomes law.