

HOUSE BILL No. 2400

By Committee on Taxation

3-12

1 AN ACT concerning schools; enacting the corporate education tax credit
2 scholarship program act; providing for educational scholarships;
3 authorizing a tax credit; amending K.S.A. 2012 Supp. 79-32,138 and
4 repealing the existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. The provisions of sections 1 through 7, and
8 amendments thereto, shall be known and may be cited as the corporate
9 education tax credit scholarship program act.

10 New Sec. 2. As used in the corporate education tax credit scholarship
11 program act:

12 (a) "Contributions" means monetary gifts or donations and in-kind
13 contributions, gifts or donations that have an established market value;

14 (b) "department" means the Kansas department of revenue;

15 (c) "educational scholarship" means an amount not to exceed \$8,000
16 provided to eligible students to cover all or a portion of the costs of tuition,
17 fees and expenses of a qualified school and, if applicable, the costs of
18 transportation to a qualified school if provided by such qualified school;

19 (d) "eligible student" means a child who:

20 (1) (A) Is a member of a household whose total annual income during
21 the year prior to receiving an educational scholarship under this program
22 does not exceed 185% of the most recent federal poverty income
23 guidelines published in the calendar year by the United States department
24 of health and human services;

25 (B) has an individualized education program and is considered a child
26 with a disability, as defined by K.S.A. 72-962(z), and amendments thereto;
27 or

28 (C) has received an educational scholarship under this program and
29 has not graduated from high school or reached 21 years of age;

30 (2) resides in Kansas while receiving an educational scholarship; and

31 (3) (A) was enrolled in any public school in the previous school year;
32 or

33 (B) is eligible to be enrolled in any public school in the school year in
34 which an educational scholarship is first sought for the child and the child
35 is under the age of six years;

36 (e) "individualized education program" shall have the meaning

1 ascribed thereto in K.S.A. 72-962, and amendments thereto;

2 (f) "parent" includes a guardian, custodian or other person with
3 authority to act on behalf of the child;

4 (g) "program" means the corporate education tax credit scholarship
5 program established in sections 1 through 7, and amendments thereto;

6 (h) "public school" means a school operated by a school district;

7 (i) "qualified school" means any nonpublic school that provides
8 education to elementary and secondary students, has notified the state
9 board of their intention to participate in the program and complies with the
10 requirements of the program;

11 (j) "scholarship granting organization" means an organization that
12 complies with the requirements of this program and provides educational
13 scholarships to students attending qualified schools of their parents'
14 choice;

15 (k) "school district" or "district" means any unified school district
16 organized and operating under the laws of this state;

17 (l) "school year" shall have the meaning ascribed thereto in K.S.A.
18 72-6408, and amendments thereto;

19 (m) "secretary" means the secretary of revenue; and

20 (n) "state board" means the state board of education.

21 New Sec. 3. (a) There is hereby established the corporate education
22 tax credit scholarship program. The program shall provide eligible students
23 with an opportunity to attend schools of their parents' choice.

24 (b) Each scholarship granting organization shall issue a receipt, in a
25 form prescribed by the secretary, to each contributing taxpayer indicating
26 the value of the contribution received. Each taxpayer shall provide a copy
27 of such receipt when claiming the tax credit established in section 7, and
28 amendments thereto.

29 (c) Prior to awarding an educational scholarship to an eligible
30 student, unless such student is under the age of six years, the scholarship
31 granting organization shall receive written verification from the state board
32 that such student is an eligible student under this program, provided the
33 state board and the board of education of the school district in which the
34 eligible student was enrolled the previous school year have received
35 written consent from such eligible student's parent authorizing the release
36 of such information.

37 (d) Upon receipt of information in accordance with subsection (a)(2)
38 of section 4, and amendments thereto, the state board shall inform the
39 scholarship granting organization if such student has already been
40 designated to receive an educational scholarship by another scholarship
41 granting organization.

42 (e) In each school year, each eligible student under this program shall
43 not receive more than one educational scholarship under this program.

1 (f) An eligible student's participation in this program by receiving an
2 educational scholarship constitutes a waiver to special education services
3 provided by any school district, unless such school district agrees to
4 provide such services to the qualified school.

5 New Sec. 4. (a) To be eligible to participate in the program, a
6 scholarship granting organization shall comply with the following:

7 (1) The scholarship granting organization shall notify the secretary
8 and the state board of the scholarship granting organization's intent to
9 provide educational scholarships to students attending qualified schools;

10 (2) upon granting an educational scholarship to an eligible student,
11 the scholarship granting organization shall report such information to the
12 state board;

13 (3) the scholarship granting organization shall provide verification to
14 the secretary that the scholarship granting organization is exempt from
15 federal income taxation pursuant to section 501(c)(3) of the federal
16 internal revenue code of 1986;

17 (4) upon receipt of contributions in an aggregate amount or value in
18 excess of \$50,000 during a school year, a scholarship granting
19 organization shall file with the state board either:

20 (A) A surety bond payable to the state in an amount equal to the
21 aggregate amount of contributions expected to be received during the
22 school year; or

23 (B) financial information demonstrating the scholarship granting
24 organization's ability to pay an aggregate amount equal to the amount of
25 the contributions expected to be received during the school year, which
26 must be reviewed and approved of in writing by the state board;

27 (5) scholarship granting organizations that provide other nonprofit
28 services in addition to providing educational scholarships shall not
29 commingle contributions made under the program with other contributions
30 made to such organization. A scholarship granting organization under this
31 subsection shall also file with the state board, prior to the commencement
32 of each school year, either:

33 (A) A surety bond payable to the state in an amount equal to the
34 aggregate amount of contributions expected to be received during the
35 school year; or

36 (B) financial information demonstrating the nonprofit organization's
37 ability to pay an aggregate amount equal to the amount of the
38 contributions expected to be received during the school year, which must
39 be reviewed and approved of in writing by the state board;

40 (6) the scholarship granting organization shall ensure that each
41 qualified school receiving educational scholarships from the scholarship
42 granting organization is in compliance with the requirements of the
43 program;

1 (7) at the end of the calendar year, the scholarship granting
2 organization shall have its accounts examined and audited by a certified
3 public accountant. Such audit shall include, but not be limited to,
4 information verifying that the educational scholarships awarded by the
5 scholarship granting organization were distributed to the eligible students
6 determined by the state board under subsection (c) of section 3, and
7 amendments thereto, and information specified in section 4, and
8 amendments thereto. Prior to filing a copy of the audit with the state board,
9 such audit shall be duly verified and certified by a certified public
10 accountant; and

11 (8) if a scholarship granting organization decides to limit the number
12 or type of qualified schools who will receive educational scholarships, the
13 scholarship granting organization shall provide, in writing, the name or
14 names of those qualified schools to any contributor and the state board.

15 (b) No scholarship granting organization shall provide an educational
16 scholarship for any eligible student to attend any qualified school with
17 paid staff or paid board members, or relatives thereof, in common with the
18 scholarship granting organization.

19 (c) The scholarship granting organization shall disburse not less than
20 90% of contributions received pursuant to the program to eligible students
21 in the form of educational scholarships within 36 months of receipt of such
22 contributions. If such contributions have not been disbursed within the
23 applicable 36-month time period, then the scholarship granting
24 organization shall not accept new contributions until 90% of the received
25 contributions have been disbursed in the form of educational scholarships.
26 Any income earned from contributions must be disbursed in the form of
27 educational scholarships.

28 (d) A scholarship granting organization may continue to provide an
29 educational scholarship to an eligible student who received an educational
30 scholarship under this program in the year immediately preceding the
31 current school year.

32 (e) A scholarship granting organization shall direct payments of an
33 educational scholarship to the qualified school on behalf of the eligible
34 student. Payment shall be made by check made payable to both the parent
35 and the qualified school. If an eligible student transfers to a new qualified
36 school during a school year, the scholarship granting organization shall
37 direct payment in a prorated amount to the original qualified school and
38 the new qualified school based on the eligible student's attendance. If the
39 eligible student transfers to a public school and enrolls in such public
40 school after September 20 of the current school year, the scholarship
41 granting organization shall direct payment in a prorated amount to the
42 original qualified school and the public school based on the eligible
43 student's attendance. The prorated amount to the public school shall be

1 considered a donation and shall be paid to the school district of such public
2 school in accordance with K.S.A. 72-8210, and amendments thereto, to
3 provide for the education of such eligible student.

4 (f) By June 1 of each year, a scholarship granting organization shall
5 submit a report to the state board for the educational scholarships provided
6 in the immediately preceding 12 months. Such report shall be in a form
7 and manner as prescribed by the state board, approved and signed by a
8 certified public accountant, and shall contain the following information:

9 (1) The name and address of the scholarship granting organization;

10 (2) the name and address of each eligible student receiving an
11 educational scholarship by the scholarship granting organization;

12 (3) the total number and total dollar amount of contributions received
13 during the 12-month reporting period; and

14 (4) the total number and total dollar amount of educational
15 scholarships awarded during the 12-month reporting period, the total
16 number and total dollar amount of educational scholarships awarded
17 during the 12-month reporting period to eligible students who qualified
18 under subsection (d)(1)(A) of section 2, and amendments thereto, and total
19 number and total dollar amount of educational scholarships awarded
20 during the 12-month reporting period to eligible students who qualified
21 under subsection (d)(1)(B) of section 2, and amendments thereto.

22 (g) No scholarship granting organization shall:

23 (1) Provide an eligible student with an educational scholarship
24 established by funding from any contributions made by any relative of
25 such eligible student; or

26 (2) accept a contribution from any source with the express or implied
27 condition that such contribution be directed toward an educational
28 scholarship for a particular eligible student.

29 New Sec. 5. On or before the first day of the legislative session in
30 2014, and each year thereafter, the state board shall prepare and submit a
31 report to the legislature on the program. Annual reports shall include
32 information reported to the state board under subsection (f) of section 4,
33 and amendments thereto, and a summary of such information.

34 New Sec. 6. (a) (1) To qualify for the tax credit allowed by this act,
35 the scholarship granting organization shall apply each tax year to the state
36 board for a certification that the scholarship granting organization is in
37 substantial compliance with the program based on information received in
38 the annual audit and yearly report filed by the scholarship granting
39 organization with the state board.

40 (2) The state board shall prescribe the form of the application, which
41 shall include, but not be limited to, the information set forth in subsection
42 (a)(1).

43 (b) If the state board determines that the requirements under this

1 section were met by the scholarship granting organization, the state board
2 shall issue a certificate of compliance to the director of taxation.

3 (c) The state board shall adopt rules and regulations to implement the
4 provisions of this section.

5 New Sec. 7. (a) There shall be allowed a credit against the corporate
6 income tax liability imposed upon a taxpayer pursuant to the Kansas
7 income tax act, the privilege tax liability imposed upon a taxpayer
8 pursuant to the privilege tax imposed upon any national banking
9 association, state bank, trust company or savings and loan association
10 pursuant to article 11 of chapter 79 of the Kansas Statutes Annotated, and
11 amendments thereto, and the premium tax liability imposed upon a
12 taxpayer pursuant to the premiums tax and privilege fees imposed upon an
13 insurance company pursuant to K.S.A. 40-252, and amendments thereto,
14 for tax years commencing after December 31, 2012, an amount equal to
15 70% of the amount contributed to a scholarship granting organization
16 authorized pursuant to section 1 et seq., and amendments thereto.

17 (b) The credit shall be claimed and deducted from the taxpayer's tax
18 liability during the tax year which immediately follows the tax year in
19 which the contribution was made to any such scholarship granting
20 organization.

21 (c) For each tax year, in no event shall the total amount of credits
22 allowed under this section exceed \$10,000,000 for any one tax year.

23 (d) If the amount of any such tax credit claimed by a taxpayer
24 exceeds the taxpayer's income, privilege or premium tax liability, such
25 excess amount may be carried over for deduction from the taxpayer's
26 income, privilege or premium tax liability in the next succeeding year or
27 years until the total amount of the credit has been deducted from tax
28 liability.

29 (e) The secretary shall adopt rules and regulations regarding filing of
30 documents that support the amount of credit claimed pursuant to this
31 section.

32 Sec. 8. K.S.A. 2012 Supp. 79-32,138 is hereby amended to read as
33 follows: 79-32,138. (a) Kansas taxable income of a corporation taxable
34 under this act shall be the corporation's federal taxable income for the
35 taxable year with the modifications specified in this section.

36 (b) There shall be added to federal taxable income: (i) The same
37 modifications as are set forth in subsection (b) of K.S.A. 79-32,117, and
38 amendments thereto, with respect to resident individuals, except
39 subsections (b)(xix), (b)(xx), (b)(xxi), (b)(xxii) and (b)(xxiii).

40 (ii) The amount of all depreciation deductions claimed for any
41 property upon which the deduction allowed by K.S.A. 2012 Supp. 79-
42 32,221, 79-32,227, 79-32,232, 79-32,237, 79-32,249, 79-32,250, 79-
43 32,255 or 79-32,256, and amendments thereto, is claimed.

1 (iii) The amount of any charitable contribution deduction claimed for
2 any contribution or gift to or for the use of any racially segregated
3 educational institution.

4 (iv) *The amount of any charitable contribution deduction claimed for*
5 *any contribution or gift made to a scholarship granting organization to the*
6 *extent the same is claimed as the basis for the credit allowed pursuant to*
7 *section 7, and amendments thereto.*

8 (c) There shall be subtracted from federal taxable income: (i) The
9 same modifications as are set forth in subsection (c) of K.S.A. 79-32,117,
10 and amendments thereto, with respect to resident individuals, except
11 subsection (c)(xx).

12 (ii) The federal income tax liability for any taxable year commencing
13 prior to December 31, 1971, for which a Kansas return was filed after
14 reduction for all credits thereon, except credits for payments on estimates
15 of federal income tax, credits for gasoline and lubricating oil tax, and for
16 foreign tax credits if, on the Kansas income tax return for such prior year,
17 the federal income tax deduction was computed on the basis of the federal
18 income tax paid in such prior year, rather than as accrued. Notwithstanding
19 the foregoing, the deduction for federal income tax liability for any year
20 shall not exceed that portion of the total federal income tax liability for
21 such year which bears the same ratio to the total federal income tax
22 liability for such year as the Kansas taxable income, as computed before
23 any deductions for federal income taxes and after application of
24 subsections (d) and (e) of this section as existing for such year, bears to the
25 federal taxable income for the same year.

26 (iii) An amount for the amortization deduction allowed pursuant to
27 K.S.A. 2012 Supp. 79-32,221, 79-32,227, 79-32,232, 79-32,237, 79-
28 32,249, 79-32,250, 79-32,255 or 79-32,256, and amendments thereto.

29 (iv) For all taxable years commencing after December 31, 1987, the
30 amount included in federal taxable income pursuant to the provisions of
31 section 78 of the internal revenue code.

32 (v) For all taxable years commencing after December 31, 1987, 80%
33 of dividends from corporations incorporated outside of the United States or
34 the District of Columbia which are included in federal taxable income.

35 (d) If any corporation derives all of its income from sources within
36 Kansas in any taxable year commencing after December 31, 1979, its
37 Kansas taxable income shall be the sum resulting after application of
38 subsections (a) through (c) hereof. Otherwise, such corporation's Kansas
39 taxable income in any such taxable year, after excluding any refunds of
40 federal income tax and before the deduction of federal income taxes
41 provided by subsection (c)(ii) shall be allocated as provided in K.S.A. 79-
42 3271 to K.S.A. 79-3293, inclusive, and amendments thereto, plus any
43 refund of federal income tax as determined under paragraph (iv) of

1 subsection (b) of K.S.A. 79-32,117, and amendments thereto, and minus
2 the deduction for federal income taxes as provided by subsection (c)(ii)
3 shall be such corporation's Kansas taxable income.

4 (e) A corporation may make an election with respect to its first
5 taxable year commencing after December 31, 1982, whereby no addition
6 modifications as provided for in subsection (b)(ii) of K.S.A. 79-32,138,
7 and amendments thereto, and subtraction modifications as provided for in
8 subsection (c)(iii) of K.S.A. 79-32,138, and amendments thereto, as those
9 subsections existed prior to their amendment by this act, shall be required
10 to be made for such taxable year.

11 Sec. 9. K.S.A. 2012 Supp. 79-32,138 is hereby repealed

12 Sec. 10. This act shall take effect and be in force from and after its
13 publication in the statute book.