

By: Paxton

H.B. No. 1115

A BILL TO BE ENTITLED

AN ACT

relating to a franchise or insurance premium tax credit for contributions made to certain nonprofit educational assistance organizations.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter K to read as follows:

SUBCHAPTER K. TAX CREDIT FOR CONTRIBUTIONS TO CERTAIN NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATIONS

Sec. 171.601. DEFINITIONS. In this subchapter:

(1) "Educational expenses" means expenses for student tuition, fees, transportation costs, textbooks, school supplies, and tutoring related to:

(A) a course at a public school or charter school that is part of the required curriculum under Section 28.002, Education Code, or a course that is the equivalent at a private school;

(B) a high school equivalency certificate; or

(C) an apprenticeship training program under Chapter 133, Education Code.

(2) "Eligible student" means a student who is a resident of this state and has not been issued a high school diploma or a high school diploma equivalency certificate. For purposes of this subchapter, a student who attends a juvenile justice

1 alternative education program under Section 37.011, Education  
2 Code, is not an eligible student.

3 (3) "First priority student" is an eligible student:

4 (A) whose household income is not more than 110  
5 percent of the maximum household income that would make the student  
6 eligible to participate in the national free or reduced-price lunch  
7 program established under 42 U.S.C. Section 1751 et seq.;

8 (B) who is in foster care;

9 (C) who is eligible for special education  
10 services under Subchapter A, Chapter 29, Education Code;

11 (D) who attends a campus that failed to satisfy  
12 any standard under Section 39.054(e), Education Code; or

13 (E) whose parent is incarcerated in an adult or  
14 juvenile, state or local correctional institution.

15 (4) "Second priority student" means an eligible  
16 student whose household income is greater than 110 percent but not  
17 more than 120 percent of the maximum household income that would  
18 make the student eligible to participate in the national free or  
19 reduced-price lunch program established under 42 U.S.C. Section  
20 1751 et seq.

21 (5) "Third priority student" means an eligible student  
22 who attends a public school.

23 Sec. 171.602. ELIGIBILITY AND AMOUNT OF CREDIT. (a) Except  
24 as otherwise provided by this subchapter, a taxable entity that  
25 makes a contribution to a certified nonprofit educational  
26 assistance organization may claim a credit for a contribution of at  
27 least \$500 against the tax imposed under this chapter.

1       (b) Subject to Section 171.607, the amount of the credit is  
2 equal to the lesser of 50 percent of total contributions made to a  
3 certified nonprofit educational assistance organization during the  
4 calendar year that contains the end of the accounting period on  
5 which the report is based or 75 percent of the taxable entity's tax  
6 liability under this chapter.

7       (c) If a taxable entity is eligible for a credit that  
8 exceeds the limitation prescribed by Subsection (b) or Section  
9 171.607, the taxable entity may carry the unused credit forward for  
10 not more than two consecutive reports.

11       (d) A taxable entity may not claim a credit under this  
12 subchapter for a contribution made to a certified nonprofit  
13 educational assistance organization if:

14               (1) the taxable entity requires that the contribution  
15 benefit a particular student or school; or

16               (2) the contribution is used to pay educational  
17 expenses of an employee of the taxable entity or of a spouse or  
18 dependent of an employee of the taxable entity.

19       Sec. 171.603. ELIGIBILITY REQUIREMENTS FOR CERTIFICATION  
20 OF NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION. (a) An  
21 organization may apply to the comptroller for certification as a  
22 certified nonprofit educational assistance organization. To  
23 qualify for certification, the organization:

24               (1) must be exempt from federal tax under Section  
25 501(a) of the Internal Revenue Code by being listed as an exempt  
26 organization in Section 501(c)(3) of that code;

27               (2) must be in good standing with the state;

1           (3) must agree to allocate at least 90 percent of its  
2 annual revenue from contributions received from taxable entities to  
3 provide scholarships to eligible students for educational  
4 expenses;

5           (4) must agree not to award 100 percent of the  
6 scholarships described by Subdivision (3) to students who attend a  
7 particular school or to pay educational expenses incurred only at a  
8 particular school;

9           (5) must agree to not accept or reject an award of a  
10 scholarship described by Subdivision (3) on the basis of a  
11 student's race, color, ethnicity, gender, or national origin;

12           (6) must agree to deposit contributions from taxable  
13 entities that are allocated for scholarships described by  
14 Subdivision (3) in a bank account separate from any other account  
15 the organization may have;

16           (7) must agree to not award a scholarship described by  
17 Subdivision (3) in an amount that exceeds the amount prescribed by  
18 Section 171.606; and

19           (8) must not be owned or operated by a person who:

20                   (A) has during the previous seven state fiscal  
21 years filed for bankruptcy; or

22                   (B) also owns or operates a private school.

23           (b) For purposes of Subsection (a)(8), a person is  
24 considered to operate an organization if the person has the ability  
25 to directly influence or direct the management, expenditures, or  
26 policies of the organization.

27           (c) The comptroller may certify an organization as a

1 certified nonprofit educational assistance organization only if  
2 the organization qualifies under Subsection (a) and also agrees to:

3 (1) notify the comptroller of the organization's  
4 intent to provide scholarships described by Subsection (a)(3);

5 (2) submit a financial information report as provided  
6 by Section 171.605;

7 (3) cooperate with the comptroller when conducting a  
8 criminal background check on the owner or operator of the  
9 organization; and

10 (4) pay the comptroller the amount of any revenue that  
11 is not awarded as required by Section 171.604(a) or (b).

12 Sec. 171.604. AWARD OF SCHOLARSHIPS. (a) Except as  
13 provided by Subsection (b), a certified nonprofit educational  
14 assistance organization must award all revenue from a contribution  
15 from a taxable entity allocated to provide scholarships to eligible  
16 students for educational expenses not later than the first  
17 anniversary of the date the contribution was made.

18 (b) A certified nonprofit educational assistance  
19 organization may carry forward not more than 10 percent of the  
20 revenue described by Subsection (a) for an additional year, but  
21 must award that revenue not later than the second anniversary of the  
22 date the contribution was made.

23 (c) If a certified nonprofit educational assistance  
24 organization does not award revenue described by Subsection (a), as  
25 provided by Subsections (a) and (b), the organization shall pay the  
26 comptroller an amount equal to the amount of revenue not awarded as  
27 provided by those subsections not later than the 30th day after the

1 last day the revenue was required to be distributed.

2 (d) A certified nonprofit educational assistance  
3 organization must give priority when awarding a scholarship under  
4 this subchapter in the order of first priority students, second  
5 priority students, and third priority students. An organization  
6 may not award a scholarship to an eligible student unless all  
7 eligible students with a higher priority who applied for a  
8 scholarship at that time have been awarded a scholarship.

9 Sec. 171.605. BIENNIAL REPORT. (a) Not later than June 30  
10 and December 31 of each year, each certified nonprofit educational  
11 assistance organization shall report to the Texas Education Agency:

12 (1) the name and address of the organization;

13 (2) the total number and dollar amount of  
14 contributions from taxable entities received by the organization  
15 under this subchapter and Chapter 230, Insurance Code, since the  
16 previous report was submitted;

17 (3) the total number and dollar amount of scholarships  
18 awarded by the organization under this subchapter and Chapter 230,  
19 Insurance Code, since the previous report was submitted;

20 (4) the percentage of the organization's revenue from  
21 contributions used to award scholarships under this subchapter and  
22 Chapter 230, Insurance Code, since the previous report was  
23 submitted;

24 (5) the name and address of each school attended by an  
25 eligible student who was awarded a scholarship by the organization  
26 under this subchapter and Chapter 230, Insurance Code, since the  
27 previous report was submitted;

1           (6) the total number and dollar amount of scholarships  
2 awarded to eligible students by the organization under this  
3 subchapter and Chapter 230, Insurance Code, per school since the  
4 previous report was submitted; and

5           (7) any other information the Texas Education Agency  
6 or the comptroller requires.

7           (b) The report must:

8           (1) comply with generally accepted accounting  
9 principles; and

10           (2) be certified as free of material misstatements by  
11 a certified public accountant.

12           (c) The Texas Education Agency shall post on its website for  
13 at least three years each report submitted under this section.

14           (d) The Texas Education Agency, after consulting with the  
15 comptroller, may adopt rules and forms to implement this section.

16           Sec. 171.606. SCHOLARSHIP LIMIT AMOUNT. The maximum  
17 scholarship amount a certified nonprofit educational assistance  
18 organization may award under this subchapter may not exceed 75  
19 percent of the amount of funding equal to the statewide average  
20 amount to which a school district would be entitled under the  
21 Foundation School Program under Chapter 42, Education Code, for a  
22 student in average daily attendance.

23           Sec. 171.607. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

24           (a) For the 2012 state fiscal year, the total amount of tax credits  
25 that may be claimed by all taxable entities under this subchapter is  
26 \$100 million. For other state fiscal years, if the total amount of  
27 tax credits claimed in that year is equal to at least 90 percent of

1 the previous year's cap amount, the total amount of tax credits that  
2 may be claimed in the following year is increased by 10 percent.

3 (b) The comptroller shall publish on the comptroller's  
4 website the total amount of tax credits available for each state  
5 fiscal year.

6 (c) The comptroller by rule shall prescribe procedures by  
7 which the comptroller may allocate credits under this subchapter.  
8 The procedures must provide that credits are allocated on a  
9 "first-come, first-served" basis, based on the date the  
10 contribution was initially made.

11 (d) The comptroller may require an entity to notify the  
12 comptroller of the amount the entity intends or expects to claim  
13 under this subchapter before the beginning of a state fiscal year or  
14 at any other time required by the comptroller.

15 Sec. 171.608. IDENTIFICATION OF CERTIFIED NONPROFIT  
16 EDUCATIONAL ASSISTANCE ORGANIZATION. The comptroller shall  
17 establish a procedure by which a taxable entity can:

18 (1) know if an organization is a certified nonprofit  
19 educational assistance organization; and

20 (2) claim a credit under this subchapter.

21 Sec. 171.609. NATURE OF FUNDING. The funding authorized by  
22 this subchapter or Chapter 230, Insurance Code, is private,  
23 voluntary, nongovernmental funding. The provision of assistance by  
24 a certified nonprofit educational assistance organization is not an  
25 appropriation of public money or the provision of public assistance  
26 to any school.

27 Sec. 171.610. APPLICATION FOR CREDIT. A taxable entity



1 must apply for a credit under this subchapter on or with the tax  
2 report for the period for which the credit is claimed.

3 Sec. 171.611. RULES; PROCEDURES; FORMS. The comptroller  
4 shall adopt rules, procedures, and forms to administer this  
5 subchapter.

6 Sec. 171.612. ASSIGNMENT PROHIBITED; EXCEPTION. A taxable  
7 entity may not convey, assign, or transfer the credit allowed under  
8 this subchapter to another taxable entity unless all assets of the  
9 taxable entity are conveyed, assigned, or transferred in the same  
10 transaction.

11 Sec. 171.613. REVOCATION. (a) The comptroller shall  
12 revoke a certification provided under Section 171.603 if the  
13 comptroller finds that a certified nonprofit educational  
14 assistance organization:

15 (1) is no longer eligible under Section 171.603(a);  
16 (2) intentionally and substantially violated an  
17 agreement made under Section 171.603; or

18 (3) intentionally and substantially violates this  
19 subchapter.

20 (b) Revocation of a certification under this section does  
21 not affect the validity of a tax credit relating to a contribution  
22 made before the date of revocation.

23 SECTION 2. Subtitle B, Title 3, Insurance Code, is amended  
24 by adding Chapter 230 to read as follows:

1 CHAPTER 230. TAX CREDIT AGAINST PREMIUM TAXES FOR CERTAIN

2 CONTRIBUTIONS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 230.001. DEFINITIONS. In this chapter:

5 (1) "Certified nonprofit educational assistance  
6 organization" means an organization certified by the comptroller  
7 under Section 171.603, Tax Code.

8 (2) "State premium tax liability" means any liability  
9 incurred by an entity under Chapters 221 through 226.

10 Sec. 230.002. AWARD OF SCHOLARSHIPS. A certified nonprofit  
11 educational assistance organization shall comply with any  
12 requirement prescribed by Subchapter K, Chapter 171, Tax Code, in  
13 relation to awarding scholarships under that subchapter.

14 [Sections 230.003-230.050 reserved for expansion]

15 SUBCHAPTER B. CREDIT

16 Sec. 230.051. ELIGIBILITY AND AMOUNT OF CREDIT. (a) An  
17 entity is eligible for a credit for a contribution of \$500 or more  
18 against the entity's state premium tax liability in the amount and  
19 under the conditions and limitations provided by this chapter.

20 (b) Subject to Section 230.052, the amount of the credit is  
21 equal to the lesser of 50 percent of contributions made to a  
22 certified nonprofit educational assistance organization or 75  
23 percent of the entity's state premium tax liability if the  
24 contribution and the organization that received the contribution  
25 meet the requirements prescribed by Subchapter K, Chapter 171, Tax  
26 Code.

27 (c) If an entity is eligible for a credit that exceeds the

1 limitation prescribed by Subsection (b) or Section 230.052, the  
2 entity may carry the unused credit forward for two years following  
3 the year in which the contribution was made.

4 (d) An entity may not claim a credit under this chapter for a  
5 contribution made to a certified nonprofit educational assistance  
6 organization if:

7 (1) the entity requires that the contribution benefit  
8 a particular student or school; or

9 (2) the contribution is used to pay educational  
10 expenses of an employee of the taxable entity or of a spouse or  
11 dependent of an employee of the taxable entity.

12 Sec. 230.052. TOTAL AMOUNT OF CREDITS THAT MAY BE CLAIMED.

13 (a) For the 2012 state fiscal year, the total amount of tax credits  
14 that may be claimed by all entities under this chapter is \$25  
15 million. For other state fiscal years, if the total amount of tax  
16 credits claimed in that year is equal to at least 90 percent of the  
17 previous year's cap amount, the total amount of tax credits that may  
18 be claimed in the following year is increased by 10 percent.

19 (b) The comptroller shall publish on the comptroller's  
20 website the total amount of tax credits available for each state  
21 fiscal year.

22 (c) The comptroller by rule shall prescribe procedures by  
23 which the comptroller may allocate credits under this chapter. The  
24 procedures must provide that credits are allocated on a  
25 "first-come, first-served" basis, based on the date the  
26 contribution was initially made.

27 (d) The comptroller may require an entity to notify the

1 comptroller of the amount the entity intends or expects to claim  
2 under this chapter before the beginning of a state fiscal year or at  
3 any other time required by the comptroller.

4 Sec. 230.053. APPLICATION FOR CREDIT. An entity must apply  
5 for a credit under this chapter on or with a tax report for which the  
6 credit is claimed.

7 Sec. 230.054. RULES; PROCEDURES; FORMS. The comptroller  
8 shall adopt rules, procedures, and forms to administer this  
9 chapter.

10 Sec. 230.055. ASSIGNMENT PROHIBITED; EXCEPTION. An entity  
11 may not convey, assign, or transfer the credit allowed under this  
12 chapter to another entity unless all assets of the entity are  
13 conveyed, assigned, or transferred in the same transaction.

14 SECTION 3. A taxable entity may claim a credit under  
15 Subchapter K, Chapter 171, Tax Code, as added by this Act, or  
16 Chapter 230, Insurance Code, as added by this Act, only for a  
17 contribution made on or after the effective date of this Act and  
18 only in relation to taxes due on or after the effective date of this  
19 Act.

20 SECTION 4. (a) Except as provided by Subsection (b), this  
21 Act takes effect January 1, 2012.

22 (b) Section 171.611, Tax Code, as added by this Act, and  
23 Section 230.054, Insurance Code, as added by this Act, take effect  
24 September 1, 2011.