

PROGRAM BILL # 2

Legislative Bill Drafting Commission
12011-02-5

S. _____
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

EDUCLA
(Enacts the "Parental Choice in
Education Act")

Ed L. tax credit

AN ACT

to amend the education law and the
tax law, in relation to enacting the
"parental choice in education act"

The People of the State of New
York, represented in Senate and
Assembly, do enact as follows:

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal

s15 Addabbo	s49 Farley	s63 Kennedy	s40 Murphy	s10 Sanders
s46 Amedore	s17 Felder	s34 Klein	s54 Nozzolio	s23 Savino
s11 Avella	s02 Flanagan	s28 Krueger	s58 O'Mara	s41 Serino
s42 Bonacic	s55 Funke	s24 Lanza	s62 Ortt	s29 Serrano
s04 Boyle	s59 Gallivan	s39 Larkin	s60 Panepinto	s51 Seward
s44 Breslin	s12 Gianaris	s37 Latimer	s21 Parker	s09 Skelos
s38 Carlucci	s22 Golden	s01 LaValle	s13 Feralta	s26 Squadron
s14 Comrie	s47 Griffo	s52 Libous	s30 Perkins	s16 Stavisky
s03 Croci	s20 Hamilton	s45 Little	s61 Ranzenhofer	s35 Stewart-
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s48 Ritchie	Cousins
s32 Diaz	s36 Hassell-	s43 Marchione	s33 Rivera	s53 Valesky
s18 Dilan	Thompson	s07 Martins	s56 Robach	s08 Venditto
s31 Espallat	s27 Hoylman	s25 Montgomery	s19 Sampson	s57 Young

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a053 Davila	a077 Joyner	a133 Nojaj	a076 Seawright
a092 Abinanti	a034 DenDekker	a020 Kaminsky	a037 Nolan	a087 Sepulveda
a084 Arroyo	a054 Dilan	a094 Katz	a130 Oaks	a065 Silver
a035 Aubry	a081 Dinowitz	a074 Kavanagh	a069 O'Donnell	a027 Simanowitz
a120 Barclay	a147 DiPietro	a142 Kearns	a051 Ortiz	a052 Simon
a106 Barrett	a115 Duprey	a040 Kim	a091 Otis	a036 Simotas
a060 Barron	a004 Englebright	a131 Kolb	a132 Palmesano	a104 Skartados
a082 Benedetto	a109 Fahy	a105 Lalor	a002 Palumbo	a099 Skoufis
a042 Bichotte	a071 Farrell	a013 Lavine	a088 Paulin	a022 Solages
a079 Blake	a126 Finch	a134 Lawrence	a141 Peoples-	a114 Stec
a117 Blankenbush	a008 Fitzpatrick	a050 Lentol	Stokes	a110 Steck
a062 Borelli	a124 Friend	a125 Lifton	a058 Perry	a127 Stirpe
a098 Brabenec	a095 Galef	a072 Linares	a059 Persaud	a112 Tedisco
a026 Braunstein	a137 Gantt	a102 Lopez	a086 Pichardo	a101 Tenney
a044 Brennan	a007 Garbarino	a123 Lupardo	a089 Pretlow	a001 Thiele
a119 Brindisi	a148 Giglio	a010 Lupinacci	a073 Quart	a061 Titone
a138 Bronson	a080 Gjonaj	a121 Magee	a019 Ra	a031 Titus
a046 Brook-Krasny	a066 Glick	a129 Magnarelli	a012 Raia	a055 Walker
a093 Buchwald	a023 Goldfeder	a064 Malliotakis	a006 Ramos	a146 Walter
a118 Butler	a150 Goodell	a030 Markey	a078 Rivera	a141 Weinstein
a103 Cahill	a075 Gottfried	a090 Mayer	a128 Roberts	a024 Weprin
a145 Ceretto	a005 Graf	a108 McDonald	a056 Robinson	a113 Woerner
a033 Clark	a100 Gunther	a014 McDonough	a068 Rodriguez	a143 Wozniak
a047 Colton	a139 Hawley	a017 McKeVitt	a067 Rosenthal	a070 Wright
a032 Cook	a083 Heastie	a107 McLaughlin	a025 Rozic	a096 Zebrowski
a144 Corwin	a028 Hevesi	a038 Miller	a116 Russell	a029
a085 Crespo	a048 Hiking	a015 Montesano	a149 Ryan	a043
a122 Crouch	a018 Hooper	a136 Morelle	a009 Saladino	
a021 Curran	a097 Jaffee	a057 Mosley	a111 Santabarbara	
a063 Cusick	a011 Jean-Pierre	a039 Moya	a016 Schimel	
a045 Cymbrowitz	a135 Johns	a003 Murray	a140 Schimminger	

1) Single House Bill (introduced and printed separately in either or both
houses). Uni-Bill (introduced simultaneously in both houses and printed as one
bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed
copies of bill and 4 copies of memorandum in support (single house); or 4 signed
copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. This act shall be known and may be cited as the "parental
2 choice in education act".

3 § 2. The education law is amended by adding a new article 25 to read
4 as follows:

5 ARTICLE 25

6 EDUCATION SCHOLARSHIP AND PROGRAM TAX CREDIT

7 Section 1209. Short title.

8 1210. Definitions.

9 1211. Approval to issue certificates of receipt.

10 1212. Applications for approval to issue certificates of
11 receipt.

12 1213. Application approval for certificates of receipts.

13 1214. Revocation of approval to issue certificates of receipt.

14 1215. Reporting and recordkeeping.

15 1216. Joint annual report.

16 1217. Commissioner; powers.

17 § 1209. Short title. This article shall be known and may be cited as
18 the "education scholarship and program tax credit".

19 § 1210. Definitions. For the purposes of this section, the following
20 terms shall have the following meanings:

21 1. "Authorized contribution" means the contribution amount that is
22 listed on the contribution authorization certificate issued to a taxpay-
23 er.

24 2. "Contribution" means a donation paid by cash, check, electronic
25 funds transfer, debit card or credit card that is made by a taxpayer
26 during the taxable year.

27 3. "Educational program" means an academic or similar program of a
28 public school that enhances the curriculum or academic program of the

1 public school, or provides a pre-kindergarten program to a public
2 school. For purposes of this definition, the instruction, materials,
3 programs and other activities offered by or through an educational
4 program may include, but are not limited to, the following features: (a)
5 instruction or materials promoting health, physical education, and fami-
6 ly and consumer sciences; literary, performing and visual arts; math-
7 ematics, social studies, technology and scientific achievement; (b)
8 instruction or programming to meet the education needs of at-risk
9 students or students with disabilities, including tutoring or coun-
10 seling; or (c) the use of specialized instructional materials, instruc-
11 tors or instruction not provided by a public school.

12 4. "Educational scholarship organization" means an entity that: (a) is
13 exempt from taxation under paragraph three of subsection (c) of section
14 five hundred one of the internal revenue code; (b) uses at least ninety
15 percent of the qualified contributions received during the calendar year
16 and any income derived from qualified contributions during such year for
17 scholarships; (c) provides more than fifty percent of its scholarships
18 during a calendar year to eligible pupils who reside in a household that
19 has an income not to exceed one hundred fifty percent of the income
20 qualification required for the reduced price school lunches under the
21 National School Lunch Act, provided however for the purposes of an
22 educational scholarship organization fulfilling such requirement, an
23 educational scholarship organization may enter into an agreement with
24 another educational scholarship organization or organizations to jointly
25 report their scholarship information to meet such requirement; (d)
26 deposits and holds qualified contributions and any income derived from
27 qualified contributions in an account that is separate from the organ-
28 ization's operating or other funds until such qualified contributions or

1 income are withdrawn for use; (e) provides scholarships to eligible
2 pupils for use at not fewer than three qualified schools; and (f) is
3 approved to issue certificates of receipt pursuant to this article.

4 5. "Eligible pupil" means a child who is: (a) a resident of this
5 state; (b) of school age in accordance with subdivision one of section
6 thirty-two hundred two of this chapter or who is four years of age on or
7 before December first of the year in which such child is enrolled in a
8 pre-kindergarten program; (c) attends or is about to attend a qualified
9 school; and (d) resides in a household which has a federal adjusted
10 gross income of two hundred fifty thousand dollars or less, provided
11 however, for households with three or more dependent children, such
12 income level shall be increased by ten thousand dollars per dependent
13 child, not to exceed three hundred thousand dollars.

14 6. "Local education fund" means a not-for-profit entity which: (a) is
15 exempt from taxation under paragraph three of subsection (c) of section
16 five hundred one of the internal revenue code; (b) is established for
17 the purpose of supporting at least one public school or a public school
18 district located in this state; (c) uses at least ninety percent of the
19 qualified contributions received during the calendar year and any income
20 derived from qualified contributions during such months to support the
21 public school or schools or public school district or districts that
22 such fund has been established to support; (d) deposits and holds quali-
23 fied contributions and any income derived from qualified contributions
24 in an account that is separate from the fund's operating or other funds
25 until such qualified contributions or income are withdrawn for use; and
26 (e) is approved to issue certificates of receipt pursuant to this arti-
27 cle.

1 7. "Non-public school" means any not-for-profit pre-kindergarten
2 program or elementary or secondary sectarian or nonsectarian school
3 located in this state, other than a public school, that provides
4 instruction at one or more locations to an eligible pupil in accordance
5 with subdivision two of section thirty-two hundred four of this chapter.

6 8. "Public education entity" means a public school district or a
7 public school in this state, provided that such public school district
8 or public school: (a) deposits and holds qualified contributions and any
9 income derived from such qualified contributions in an account that is
10 separate from the public school or public school district's operating or
11 other funds until such qualified contributions or income are withdrawn
12 for use; and (b) is approved to receive authorized contributions and
13 issue certificates of receipt pursuant to this article.

14 9. "Public school" means any free elementary or secondary school in
15 this state pursuant to article eleven of the constitution, but shall not
16 include a charter school authorized by article fifty-six of this chap-
17 ter.

18 10. "Qualified contribution" means the authorized contribution made by
19 a taxpayer to a public education entity, school improvement organiza-
20 tion, local education fund, or educational scholarship organization
21 listed in the contribution authorization certificate issued to the
22 taxpayer for which the taxpayer has received a certificate of receipt
23 from such entity, fund or organization. A contribution does not qualify
24 if the taxpayer designates the taxpayer's contribution to an entity or
25 organization for the direct benefit of any particular or specified
26 student.

27 11. "Qualified school" means a public school or non-public school
28 located in this state.

1 12. "Scholarship" means an educational scholarship or tuition grant
2 awarded to an eligible pupil to attend a qualified school in an amount
3 not to exceed the tuition charged to attend such school less any other
4 educational scholarship or tuition grant received by such eligible pupil
5 or his or her parent, parents, legal guardian, or legal guardians for
6 such eligible pupil's tuition; provided, however, in the case of an
7 eligible pupil attending a public school of a district of which such
8 pupil is not a resident, the amount of the educational scholarship or
9 tuition grant awarded may not exceed the tuition charged by the public
10 school pursuant to paragraph d of subdivision four of section thirty-two
11 hundred two of this chapter, but only if the school district of which
12 such pupil is a resident is not required to pay for such tuition.

13 13. "School improvement organization" means a not-for-profit entity
14 which: (a) is exempt from taxation under paragraph three of subsection
15 (c) of section five hundred one of the internal revenue code; (b) uses
16 at least ninety percent of the qualified contributions received during
17 the calendar year and any income derived from qualified contributions
18 during such months to assist public schools or public school districts
19 located in this state in their provision of educational programs, either
20 by making contributions to one or more public schools or public school
21 districts located in this state or providing educational programs to, or
22 in conjunction with, one or more public schools or public school
23 districts located in this state; (c) deposits and holds qualified
24 contributions and any income derived from qualified contributions in an
25 account that is separate from the organization's operating or other
26 funds until such qualified contributions or income are withdrawn for
27 use; and (d) is approved to issue certificates of receipt pursuant to
28 this article. Such term includes a pre-kindergarten program or not-for-

1 profit entity that allows the taxpayer to choose to donate to a program,
2 project or initiative for use in a public school.

3 § 1211. Approval to issue certificates of receipt. 1. Public schools
4 and public school districts. All public schools and public school
5 districts shall be approved to issue certificates of receipt for quali-
6 fied contributions in accordance with section forty-two of the tax law,
7 provided, that such public school or public school district shall not be
8 approved if either: (a) such public school or public school district
9 fails to deposit and hold qualified contributions and any income derived
10 from qualified contributions in an account that is separate from the
11 school or school district's operating or other funds until such quali-
12 fied contributions or income are withdrawn for use; or (b) the commis-
13 sioner has revoked such approval for such public school or public school
14 district pursuant to section twelve hundred fourteen of this article.

15 2. School improvement organizations, educational scholarship organiza-
16 tions and local education funds. No school improvement organization,
17 educational scholarship organization or local education fund shall issue
18 any certificates of receipt without filing an application pursuant to
19 section twelve hundred twelve of this article and receiving approval
20 pursuant to section twelve hundred thirteen of this article.

21 § 1212. Applications for approval to issue certificates of receipt.
22 Each school improvement organization, educational scholarship organiza-
23 tion and local education fund shall submit an application to the commis-
24 sioner for approval to issue certificates of receipt in the form and
25 manner prescribed by the commissioner, provided that such application
26 shall include: (a) submission of documentation that such school improve-
27 ment organization, local education fund or educational scholarship
28 organization has been granted exemption from taxation under paragraph

1 three of subsection (c) of section five hundred one of the internal
2 revenue code; (b) a list of names and addresses of all members of the
3 governing board of the school improvement organization, local education
4 fund or educational scholarship organization; and (c) an educational
5 scholarship organization shall provide criteria for the awarding of
6 scholarships to eligible students.

7 § 1213. Application approval for certificates of receipt. 1. In gener-
8 al. The commissioner shall review each application to issue certif-
9 icates of receipt pursuant to this article. The commissioner shall
10 publish criteria used to determine selection and establish an appeals
11 process for applications that are not approved.

12 2. Notification. Applicants shall be notified of the commissioner's
13 determination within five business days of the determination.

14 § 1214. Revocation of approval to issue certificates of receipt. The
15 commissioner, in consultation with the commissioner of taxation and
16 finance, may revoke the approval of a school improvement organization,
17 educational scholarship organization, local education fund, public
18 school or public school district to issue certificates of receipt upon a
19 finding that such organization, fund, school or school district has
20 violated this article or section forty-two of the tax law. These
21 violations shall include, but not be limited to, any of the following:
22 (a) failure to meet the requirements of this article or section forty-
23 two of the tax law; (b) the failure to maintain full and adequate
24 records with respect to the receipt of qualified contributions; (c) the
25 failure to supply such records to the commissioner, department of taxa-
26 tion and finance, or the department when requested; or (d) the failure
27 to provide notice to the department of taxation and finance of the issu-
28 ance or non-issuance of certificates of receipt pursuant to section

1 forty-two of the tax law; provided, however, that the commissioner shall
2 not revoke approval pursuant to this section based upon a violation of
3 tax law unless the commissioner of taxation and finance agrees that
4 revocation is warranted; and provided further that the commissioner
5 shall not revoke approval pursuant to this section when the failure to
6 comply is due to clerical error and not negligence or intentional disre-
7 gard for the law. Within five days of the determination revoking
8 approval, the commissioner shall provide notice of such revocation to
9 the educational scholarship organization, school improvement organiza-
10 tion, local education fund, public school, or public school district and
11 to the department of taxation and finance. The commissioner shall estab-
12 lish an appeals process for determinations revoking approvals.

13 § 1215. Reporting and recordkeeping. 1. Reporting. Each educational
14 scholarship organization, school improvement organization, local educa-
15 tion fund, public school and public school district that receives quali-
16 fied contributions shall report to the commissioner and the department
17 of taxation and finance by January thirty-first of each calendar year.
18 Such report shall be in the form and manner prescribed by the commis-
19 sioner in consultation with the commissioner of taxation and finance.

20 2. Recordkeeping. Each educational scholarship organization, school
21 improvement organization, local education fund, public school and public
22 school district that issued at least one certificate of receipt shall
23 maintain records including: (a) notifications received from the depart-
24 ment of taxation and finance; (b) notifications made to the department
25 of taxation and finance; (c) copies of qualified contributions received;
26 (d) copies of the deposit of such qualified contributions; (e) copies of
27 issued certificates of receipt; (f) annual financial statements; (g) in
28 the case of school improvement organizations, educational scholarship

1 organizations and local education funds, the application submitted
2 pursuant to section twelve hundred twelve of this article and the
3 approval issued by the commissioner; and (h) any other information
4 prescribed by the commissioner. Such records shall be maintained by the
5 entity or organization for five years.

6 § 1216. Joint annual report. On or before the last day of May for each
7 calendar year, the commissioner of taxation and finance and the commis-
8 sioner, jointly, shall submit a written report as provided in subdivi-
9 sion (k) of section forty-two of the tax law.

10 § 1217. Commissioner; powers. The commissioner shall promulgate on an
11 emergency basis regulations necessary for the implementation of this
12 section. The commissioner shall make any application required to be
13 filed pursuant to this article available to applicants within sixty days
14 of the effective date of this article.

15 § 3. The education law is amended by adding a new section 1503-a to
16 read as follows:

17 § 1503-a. Power to accept and solicit gifts and donations. 1. The
18 trustees or boards of education of all school districts organized by
19 special laws or pursuant to the provisions of a general law are hereby
20 authorized and empowered to accept gifts, donations, and contributions
21 to the district and to solicit the same.

22 2. Notwithstanding any other provision of this chapter or of any other
23 general or special law to the contrary, the receipt of such gifts,
24 donations and contributions made pursuant to article twenty-five of this
25 chapter, and any income derived therefrom, shall be disregarded for the
26 purposes of all apportionments, computations, and determinations of
27 state aid.

1 § 4. The tax law is amended by adding a new section 42 to read as
2 follows:

3 § 42. Education scholarship and program tax credit. (a) Definitions.
4 For the purposes of this section, the following terms have the same
5 definition as in section twelve hundred ten of the education law:
6 "Authorized contribution", "Contribution", "Educational program",
7 "Educational scholarship organization", "Eligible pupil", "Local educa-
8 tion fund", "Non-public school", "Public education entity", "Public
9 school", "Qualified contribution", "Qualified school", "Scholarship",
10 and "School improvement organization".

11 (b) Allowance of credit. A taxpayer subject to tax under article
12 nine-A or twenty-two of this chapter shall be allowed an education scho-
13 larship and program tax credit against such tax, pursuant to the
14 provisions referenced in subdivision (1) of this section, with respect
15 to qualified contributions made during the taxable year.

16 (c) Amount of credit. The amount of the credit shall be the lesser of
17 seventy-five percent of the taxpayer's total qualified contributions or
18 one million dollars. If the taxpayer is a partner in a partnership or
19 shareholder of a New York S corporation, then the cap imposed by the
20 preceding sentence shall be applied at the entity level, so that the
21 aggregate credit allowed to all the partners or shareholders of each
22 such entity in the taxable year does not exceed one million dollars.

23 (d) Information to be posted on the department's website. Beginning on
24 the sixteenth day of January of each year, the commissioner shall main-
25 tain on the department's website a running total of the amount of avail-
26 able credit for which taxpayers may apply pursuant to this section.
27 Additionally, the commissioner shall maintain on the department's
28 website a list of the school improvement organizations, local education

1 funds and educational scholarship organizations approved to issue
2 certificates of receipt pursuant to article twenty-five of the education
3 law. The commissioner shall also maintain on the department's website a
4 list of public education entities, school improvement organizations,
5 local education funds and educational scholarship organizations whose
6 approval to issue certificates of receipt has been revoked along with
7 the date of such revocation.

8 (e) Applications for contribution authorization certificates. Prior to
9 making a contribution to a public education entity, school improvement
10 organization, local education fund, or educational scholarship organiza-
11 tion, the taxpayer shall apply to the department for a contribution
12 authorization certificate for such contribution. Such application shall
13 be in the form and manner prescribed by the department. The department
14 may allow taxpayers to make multiple applications on the same form,
15 provided that each contribution listed on such application shall be
16 treated as a separate application and that the department shall issue
17 separate contribution authorization certificates for each such applica-
18 tion.

19 (f) Contribution authorization certificates. 1. Issuance of certif-
20 icates. The commissioner shall issue contribution authorization certif-
21 icates in two phases. In phase one, which begins on the first day of
22 January and ends on the fifteenth day of January, the commissioner shall
23 accept applications for contribution authorization certificates but
24 shall not issue any such certificates. Commencing after the sixteenth
25 day of January, the commissioner shall issue contribution authorization
26 certificates for applications received during phase one, provided that
27 if the aggregate total of the contributions for which applications have
28 been received during phase one exceeds the amount of the credit cap in

1 subdivision (h) of this section, the authorized contribution amount
2 listed on each contribution authorization certificate shall equal the
3 pro-rata share of the credit cap. If the credit cap is not exceeded,
4 phase two commences on January sixteenth and ends on November first. The
5 commissioner shall issue contribution authorization certificates on a
6 first-come first serve basis based upon the date the department received
7 the taxpayer's application for such certificate; provided, however, that
8 if on any day the department receives applications requesting contrib-
9 ution authorization certificates for contributions that in the aggregate
10 exceed the amount of the remaining available credit on such day, the
11 authorized contribution amount listed in each contribution authorization
12 certificate shall be the taxpayer's pro-rata share of the remaining
13 available credit. For purposes of determining a taxpayer's pro-rata
14 share of remaining available credit, the commissioner shall multiply the
15 amount of remaining available credit by a fraction, the numerator of
16 which equals the total contribution amount listed on the taxpayer's
17 application and the denominator of which equals the aggregate amount of
18 contributions listed on the applications for contribution authorization
19 certificates received on such day. Contribution authorization certif-
20 icates for applications received during phase one shall be mailed no
21 later than the fifth day of February. Contribution authorization certif-
22 icates for applications received during phase two shall be mailed within
23 twenty days of receipt of such applications. Provided, however, that no
24 contribution authorization certificates for applications received during
25 phase two shall be issued until all of the contribution authorization
26 certificates for applications received during phase one have been
27 issued.

1 2. Contribution authorization certificate contents. Each contribution
2 authorization certificate shall state: (i) the date such certificate was
3 issued; (ii) the date by which the authorized contributions listed in
4 the certificate must be made, which shall be no later than November
5 thirtieth of the year for which the contribution authorization certif-
6 icate was issued; (iii) the taxpayer's name and address; (iv) the amount
7 of authorized contributions; (v) the contribution authorization certif-
8 icate's certificate number; (vi) the name and address of the public
9 education entity, school improvement organization, local education fund
10 or educational scholarship organization for which the taxpayer may make
11 the authorized contribution; and (vii) any other information that the
12 commissioner deems necessary.

13 3. Notification of the issuance of a contribution authorization
14 certificate. Upon issuance of a contribution authorization certificate,
15 the commissioner shall notify the educational scholarship organization,
16 public education entity, school improvement organization or local educa-
17 tion fund of the issuance of the contribution authorization certificate
18 to a taxpayer. Such notification shall include: (i) the taxpayer's name
19 and address; (ii) the date such certificate was issued; (iii) the date
20 by which the authorized contribution listed in the notification must be
21 made by the taxpayer; (iv) the amount of the authorized contribution;
22 (v) contribution authorization certificate; and (vi) any other informa-
23 tion that the commissioner deems necessary.

24 (g) Certificate of receipt. 1. In general. No public education entity,
25 school improvement organization, local education fund, or educational
26 scholarship organization shall issue a certificate of receipt for any
27 contribution made by a taxpayer unless such public education entity,
28 school improvement organization, local education fund, or educational

1 scholarship organization has been approved to issue certificates of
2 receipt pursuant to article twenty-five of the education law. No public
3 education entity, school improvement organization, local education fund,
4 or educational scholarship organization shall issue a certificate of
5 receipt for a contribution made by a taxpayer unless such public educa-
6 tion entity, school improvement organization, local education fund, or
7 educational scholarship organization has received notice from the
8 department that the department issued a credit authorization certificate
9 to the taxpayer for such contribution.

10 2. Timely contribution. If a taxpayer makes an authorized contribution
11 to the public education entity, school improvement organization, local
12 education fund, or educational scholarship organization set forth on the
13 authorization certificate issued to the taxpayer no later than the date
14 by which such authorized contribution is required to be made, such
15 public education entity, school improvement organization, local educa-
16 tion fund, or educational scholarship organization shall, within thirty
17 days of receipt of the authorized contribution, issue to the taxpayer a
18 written certificate of receipt; provided, however, that if the taxpayer
19 contributes an amount that is less than the amount listed on the taxpay-
20 er's contribution authorization certificate, the taxpayer shall not be
21 issued a certificate of receipt for such contribution.

22 3. Certificate of receipt contents. Each certificate of receipt shall
23 state: (i) the name and address of the issuing public education entity,
24 school improvement organization, local education fund, or educational
25 scholarship organization; (ii) the taxpayer's name and address; (iii)
26 the date for each contribution; (iv) the amount of each contribution and
27 the corresponding contribution authorization certificate number; (v) the

1 total amount of contributions; and (vi) any other information that the
2 commissioner deems necessary.

3 4. Notification to the department for the issuance of a certificate of
4 receipt. Upon the issuance of a certificate of receipt, the issuing
5 public education entity, school improvement organization, local educa-
6 tion fund, or educational scholarship organization shall, within thirty
7 days of issuing the certificate of receipt, provide the department with
8 notification of the issuance of such certificate in the form and manner
9 prescribed by the department.

10 5. Notification to the department of the non-issuance of a certificate
11 of receipt. Each public education entity, school improvement organiza-
12 tion, local education fund, or educational scholarship organization that
13 received notification from the department pursuant to subdivision (d) of
14 this section regarding the issuance of a contribution authorization
15 certificate to a taxpayer shall, within thirty days of the expiration
16 date for such authorized contribution, provide notification to the
17 department for each taxpayer that failed to make the authorized contrib-
18 ution to such public education entity, school improvement organization,
19 local education fund, or educational scholarship organization in the
20 form and manner prescribed by the department.

21 6. Failure to notify the department. Within thirty days of discovery
22 of the failure of any public education entity, school improvement organ-
23 ization, local education fund, or educational scholarship organization
24 to comply with the notification requirements prescribed by paragraphs
25 four and five of this subdivision, the commissioner shall issue a notice
26 of compliance failure to such entity, program fund or organization. Such
27 entity, program fund or organization shall have thirty days from the
28 date of such notice to make the notifications prescribed by paragraphs

1 four and five of this subdivision. Such period may be extended for an
2 additional thirty days upon the request of the entity, program fund or
3 organization. Upon the expiration of the period for compliance set forth
4 in the notice prescribed by this paragraph, the commissioner shall noti-
5 fy the commissioner of education that such entity, program fund or
6 organization failed to make the notifications prescribed by paragraphs
7 four and five of this subdivision.

8 (h) Credit cap. The maximum permitted credits under this section
9 available annually for calendar year two thousand sixteen and all
10 following years to all taxpayers for qualified contributions to public
11 education entities, school improvement organizations, and local educa-
12 tion funds shall be twenty million dollars. The maximum permitted cred-
13 its under this section available annually for calendar year two thousand
14 sixteen and all following years to all taxpayers for qualified contrib-
15 utions to educational scholarship organizations shall be fifty million
16 dollars.

17 (i) Additions to the credit cap. Unissued certificates of receipt. Any
18 amounts for which the department receives notification of non-issuance
19 of a certificate of receipt shall be added to the cap prescribed in
20 subdivision (h) of this section for the immediately following year.

21 (j) Other requirements; miscellaneous. 1. Record keeping. Each taxpay-
22 er shall, for each taxable year for which the education scholarship and
23 program tax credit provided for under this section is claimed, maintain
24 records of the following information: (i) contribution authorization
25 certificates obtained pursuant to subdivision (f) of this section, and
26 (ii) certificates of receipt obtained pursuant to subdivision (g) of
27 this section.

1 2. Regulations. The commissioner is hereby authorized to promulgate
2 and adopt on an emergency basis regulations necessary for the implemen-
3 tation of this section.

4 (k) Joint annual report. On or before the last day of May for each
5 calendar year, for the immediately preceding year, the commissioner and
6 the commissioner of education shall jointly submit a written report to
7 the governor, the temporary president of the senate, the speaker of the
8 assembly, the chairman of the senate finance committee and the chairman
9 of the assembly ways and means committee regarding the credit. Such
10 report shall contain information for articles nine-A and twenty-two of
11 this chapter, respectively, regarding: (i) the number of applications
12 received; (ii) the number of and aggregate value of the contribution
13 authorization certificates issued for contributions to public education
14 entities, school improvement organizations, local education funds, and
15 educational scholarship organizations, respectively; (iii) the geograph-
16 ical distribution by county, to the extent feasible, of (A) the applica-
17 tions for contribution authorization certificates, distribution by the
18 county, to the extent feasible, of (B) the public education entities,
19 school improvement organizations, local education funds, and educational
20 scholarship organizations listed on the issued contribution authori-
21 zation certificates; and (iv) information, including geographical
22 distribution by county, to the extent feasible, of the number of eligi-
23 ble pupils that received scholarships, the number of qualified schools
24 attended by eligible pupils that received such scholarships, and the
25 average value of scholarships received by such eligible pupils. The
26 commissioner and designated employees of the department and the commis-
27 sioner of education and designated employees of the department of educa-
28 tion shall be allowed and are directed to share and exchange information

1 regarding the school improvement organizations, local education funds
2 and educational scholarship organizations that applied for approval to
3 be authorized to receive qualified contributions; and the public educa-
4 tion entities, school improvement organizations, local education funds,
5 and educational scholarship organizations authorized to issue certifi-
6 icates of receipt, including information contained in or derived from
7 application forms and reports submitted to the department of education
8 or the commissioner of education.

9 (1) Cross references. For application of the credit provided for in
10 this section, see the following provisions of this chapter:

11 (1) Article 9-A: section 210-B; subdivision 51;

12 (2) Article 22: section 606, subsection (ccc);

13 § 5. Paragraph (b) of subdivision 9 of section 208 of the tax law is
14 amended by adding a new subparagraph 22 to read as follows:

15 (22) The amount of any federal deduction for charitable contributions
16 allowed under section one hundred seventy of the internal revenue code
17 to the extent such contributions are used as the basis of the calcu-
18 lation of the education scholarship and program tax credit allowed under
19 subdivision fifty-one of section two hundred ten-B of this article.

20 § 6. Section 210-B of the tax law is amended by adding a new subdivi-
21 sion 51 to read as follows:

22 51. Education scholarship and program tax credit. (a) Allowance of
23 credit. A taxpayer shall be allowed a credit, to be computed as provided
24 in section forty-two of this chapter, against the tax imposed by this
25 article.

26 (b) Application of credit. The credit allowed under this subdivision
27 for any taxable year shall not reduce the tax due for that year to less
28 than the amount prescribed in paragraph (d) of subdivision one of

1 section two hundred ten of this article. If the amount of credit allow-
 2 able under this subdivision for any taxable year reduces the tax to such
 3 amount or if the taxpayer otherwise pays tax on the fixed dollar minimum
 4 the excess allowed for a taxable year may be carried over to the follow-
 5 ing year or years for up to five years and may be deducted from the
 6 taxpayer's tax for such year or years.

7 § 7. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
 8 of the tax law is amended by adding a new clause (xli) to read as
 9 follows:

10 <u>(xli) Education scholarship</u>	<u>Amount of credit under</u>
11 <u>and program tax credit under</u>	<u>subdivision fifty-one of section</u>
12 <u>subsection (ccc)</u>	<u>two hundred ten-B</u>

13 § 8. Section 606 of the tax law is amended by adding a new subsection
 14 (ccc) to read as follows:

15 (ccc) Education scholarship and program tax credit. Allowance of cred-
 16 it. A taxpayer shall be allowed a credit to be computed as provided in
 17 section forty-two of this chapter, against the tax imposed by this arti-
 18 cle. If the amount of credit allowable under this subsection for any
 19 taxable year shall exceed the taxpayer's tax for such year, the excess
 20 allowed for a taxable year may be carried over to the following year or
 21 years for up to five years and may be deducted from the taxpayer's tax
 22 for such year or years.

23 § 9. Subsection (c) of section 615 of the tax law is amended by adding
 24 a new paragraph 9 to read as follows:

25 (9) With respect to an individual who has claimed the education schol-
 26 arship and program tax credit for qualified contributions pursuant to
 27 subdivision (ccc) of section six hundred six of this article, the

1 taxpayer's New York itemized deduction shall be reduced by any charita-
2 ble contribution deduction allowed under section one hundred seventy of
3 the internal revenue code with respect to such qualified contributions.

4 § 10. Section 606 of the tax law is amended by adding a new subsection
5 (v) to read as follows:

6 (v) Instructional materials and supplies credit. (1) A taxpayer shall
7 be allowed a credit in the amount paid by the taxpayer during the taxa-
8 ble year for instructional materials and supplies with respect to class-
9 room based instruction in a public school. However, the amount of the
10 credit cannot exceed two hundred dollars. To be eligible for this cred-
11 it, the taxpayer must be a teacher or instructor at a free elementary or
12 secondary school in this state pursuant to article eleven of the consti-
13 tution, including a charter school authorized by article fifty-six of
14 the education law, for at least nine hundred hours during a school year.
15 For purposes of this subsection, the term "materials and supplies" means
16 instructional materials or supplies that are designated for classroom
17 use in any public school.

18 (2) If the amount of the credit allowed under this subsection for any
19 taxable year shall exceed the taxpayer's tax for such year, the excess
20 shall be treated as an overpayment of tax to be credited or refunded in
21 accordance with the provisions of section six hundred eighty-six of this
22 article, provided, however, that no interest shall be paid thereon.

23 (3) The maximum amount of credit that shall be allowed annually under
24 this subsection shall be ten million dollars. In order to claim a credit
25 under this subsection, a taxpayer shall be required to apply to the
26 department for approval during the taxable year. The taxpayer shall be
27 required to submit documentation demonstrating that the taxpayer
28 purchased materials and supplies. The department shall review the appli-

1 cation and provide a taxpayer with a certificate that specifies how much
2 credit the taxpayer is entitled to claim. If required by the commission-
3 er, the taxpayer must submit that certificate with his or her tax
4 return. The commissioner shall allocate the credits on a first come
5 first served basis and prescribe the necessary procedures for reviewing
6 the applications and producing the certificates.

7 § 11. Section 606 of the tax law is amended by adding a new subsection
8 (w) to read as follows:

9 (w) Family choice education credit. (1) General. A resident taxpayer
10 shall be allowed a credit, to be computed as provided in paragraph four
11 of this subsection, against the tax imposed by this article, for quali-
12 fied primary or secondary education tuition expenses.

13 (2) Definitions. For the purposes of this credit:

14 (A) The term "eligible student" shall mean any dependent of the
15 taxpayer with respect to whom the taxpayer is allowed an exemption under
16 section six hundred sixteen of this article for the taxable year.

17 (B) The term "qualified primary or secondary education tuition
18 expenses" shall mean the tuition required for the enrollment or attend-
19 ance of an eligible student at a non-public school, as defined in
20 section forty-two of this chapter. Provided, however, tuition payments
21 made pursuant to the receipt of any scholarships or financial aid shall
22 be excluded from the definition of "qualified primary or secondary
23 education tuition expenses".

24 (3) To be eligible for this credit, the New York adjusted gross income
25 of the taxpayer for the taxable year, or in the case of a married couple
26 filing a joint return, the New York adjusted gross income of the married
27 couple for the taxable year, may not exceed sixty thousand dollars.

1 (4) Amount of credit. The amount of the credit shall be equal to the
2 lesser of five hundred dollars per eligible student or the actual amount
3 of qualified primary or secondary education tuition expenses paid by the
4 taxpayer per eligible student during the taxable year.

5 (5) Refundability. If the amount of the credit allowed under this
6 subsection for any taxable year shall exceed the taxpayer's tax for such
7 year, the excess shall be treated as an overpayment of tax to be credit-
8 ed or refunded in accordance with the provisions of section six hundred
9 eighty-six of this article, provided, however, that no interest shall be
10 paid thereon.

11 § 12. Severability. If any provision of this section or the applica-
12 tion thereof to any person or circumstances is held invalid, such inva-
13 lidity shall not affect other provisions or applications of the section
14 which can be given effect without the invalid provision or application,
15 and to this end the provisions of this section are declared to be sever-
16 able.

17 § 13. This act shall take effect immediately and shall apply to taxa-
18 ble years beginning on or after January 1, 2016.

