

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 345
92ND GENERAL ASSEMBLY

Reported from the Committee on Tax Policy April 17, 2003, with recommendation that the House Committee Substitute for House Bill No. 345 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

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AN ACT

To repeal section 163.036, RSMo, and to enact in lieu thereof two new sections relating to a tax credit for certain education-related charitable donations.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 163.036, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 135.827 and 163.036, to read as follows:

135.827. 1. As used in this section, the following terms mean:

- (1) "Designated nonprofit oversight organization", a charitable organization in this state that is exempt from federal taxation pursuant to the Internal Revenue Code, as amended, designated to certify nonprofit educational assistance organizations, accept qualifying contributions, approve applications for the tax credit allowed by this section, distribute qualifying contributions to certified nonprofit educational assistance organizations, and coordinate with the director in administering the tax credit allowed by this section. A designated nonprofit oversight organization may be subject to an audit by the director. To qualify for designation, a nonprofit organization shall:**
- (a) Have the administrative capability to promote the success of the tax credit allowed by this section by recruiting and coordinating activities with all interested nonprofit educational assistance organizations in this state and certifying those nonprofit educational assistance organizations that meet the certification criteria set forth in subdivision (4) of this section;**
- (b) Demonstrate the ability to handle large volumes of and amounts of financial transactions and be able to resolve Internal Revenue Service compliance issues;**
- (c) Review the staff qualifications, evaluate fundraising capabilities, and confirm exempt status of the nonprofit educational assistance organizations;**

19 (d) Create a standardized application for use by nonprofit educational assistance
20 organizations;

21 (e) Produce an annual report for the general assembly; and

22 (f) Complete other duties as required by the director.

23 (2) "Director", the director of the department of economic development;

24 (3) "Income eligible student", any elementary or secondary school student whose
25 parents' or guardians' income would make the student eligible for a free or reduced price
26 school lunch pursuant to the National School Lunch Act;

27 (4) "Nonprofit educational assistance organization", a charitable organization in
28 this state that is exempt from federal taxation pursuant to the Internal Revenue Code, as
29 amended, is certified by the director through a designated nonprofit oversight
30 organization, and that allocates at least ninety percent of its annual revenue derived from
31 contributions for which a credit is claimed pursuant to this section for educational
32 assistance, that meets the following conditions:

33 (a) At least seventy percent of all qualifying contributions it receives during any
34 given state fiscal year are allocated for the purpose of providing scholarships to any
35 qualified student who attends a qualified school, and the organization gives priority in
36 awarding scholarships to those students who demonstrate the greatest need for such
37 scholarships, as defined by: children of inmates; children residing in a low-performing
38 schools area; children residing within the boundaries of schools targeted for improvement
39 under the No Child Left Behind Act of 2001 pursuant to public law 107-110; children
40 residing within the boundaries of concerned schools and academically deficient schools
41 pursuant to section 160.538, RSMo; children of schools in provisionally accredited
42 districts; children attending schools in districts that participate in federal court ordered
43 desegregation; or, children enrolled in classes that do not meet the Missouri school
44 improvement minimum standards for class size used for accreditation purposes.
45 Scholarship moneys may be used to cover applicable tuition, transportation, textbooks,
46 supplies, and other related educational or extracurricular expenses. Any qualifying
47 contributions not required to be allocated in accordance with this paragraph may be used
48 to provide scholarships for income eligible students who attend qualified schools or may
49 be used for the purposes set forth in paragraph (c) of this subdivision;

50 (b) Does not provide any scholarship to any qualified student for a single school
51 year that exceeds three thousand four hundred dollars, which amount shall annually be
52 increased for inflation based on increases in the Consumer Price Index rounded to the
53 nearest fifty dollar increment, except that the nonprofit educational assistance organization
54 may award scholarships to children with disabilities who are age three or older in any

55 amount that is substantially comparable to the amount the state would have paid for such
56 child, and except that scholarships may be awarded in amounts in excess of the limitation
57 if the increased amount of any such scholarships is offset by a reduction in the monetary
58 amount of the scholarships provided by the nonprofit educational assistance organization
59 to nonqualifying students. To qualify for a scholarship, children with disabilities are not
60 required to meet the income eligible student definition if the disabled child's parents or
61 guardians have unreimbursed medical expenses in excess of seven and one-half percent of
62 federal adjusted gross income;

63 (c) A nonprofit education assistance organization may allocate up to thirty percent
64 of any qualifying contributions it receives during any given state fiscal year that are not
65 required to be allocated pursuant to paragraphs (a) and (b) of this subdivision to directly
66 assist any income eligible student who attends a public school in defraying the costs of
67 private instructional assistance, including any related private educational supplies; for
68 transportation to any public school to the extent that such transportation is not paid for
69 by a school district or the state; for offsetting fees for out-of-school programs; for
70 apprenticeship programs; for scholarship assistance for dropouts to pursue a GED or its
71 equivalent; for grants for public school academic or extracurricular programs or for
72 income eligible or qualified students to attend a qualified school;

73 (d) All interest accruing from contributions shall be used for educational
74 assistance; and

75 (e) The amount of a qualifying contribution which may be accepted by a nonprofit
76 educational assistance organization is limited to the amount needed to provide scholarships
77 for qualifying students which the organization has identified and for which vacancies in
78 eligible nonpublic schools have been identified.

79

80 The term nonprofit educational assistance organization does not include an organization
81 that only provides scholarships to students of a particular school;

82 (5) "Qualified school", any elementary or secondary school situated in this state
83 which a child may attend to satisfy the requirements of section 167.031, RSMo, and is not
84 in violation of the Civil Rights Act of 1964;

85 (6) "Qualified student", an income eligible student who in the previous school year
86 was enrolled in a state-funded school or who had received a scholarship as a qualified
87 student and is not enrolled in a state-funded public school in the year in which the
88 nonprofit educational assistance organization is providing a scholarship to that student.

89 The term shall include all income eligible kindergarten students;

90 (7) "Qualifying contribution", a donation of cash, stock, bonds, or other

91 marketable securities for purposes of claiming a tax credit pursuant to this section;

92 (8) "State tax liability", any liability incurred by a taxpayer pursuant to chapters
93 143, 147, and 153, RSMo, excluding withholding taxes pursuant to sections 143.191 to
94 143.265, RSMo, and related provisions;

95 (9) "Taxpayer", an individual subject to the state income tax imposed in chapter
96 143, RSMo, an individual, a firm, a partner in a firm, corporation, or a shareholder in an
97 S corporation doing business in this state and subject to the state income tax imposed by
98 chapter 143, RSMo, or a corporation subject to the annual corporation franchise tax
99 imposed by chapter 147, RSMo, or an express company which pays an annual tax on its
100 gross receipts in this state pursuant to chapter 153, RSMo.

101 2. For all tax years beginning on or after January 1, 2003, any taxpayer who makes
102 contributions to a nonprofit educational assistance organization may claim a credit against
103 the tax otherwise due pursuant to chapter 143, RSMo, other than taxes withheld pursuant
104 to sections 143.191 to 143.265, RSMo, and chapters 147 and 153, RSMo, in an amount
105 equal to fifty percent of the amount the taxpayer contributed during the tax year for which
106 the credit is claimed; except that, no taxpayer shall claim a credit pursuant to this section
107 for any contribution made by the taxpayer, or an agent of the taxpayer, on behalf of the
108 taxpayer's dependent, or in the case of a business taxpayer, on behalf of the business's
109 agent's dependent. Any amount of contribution subtracted from federal adjusted gross
110 income shall be added back in the determination of Missouri adjusted gross income before
111 the credit can be claimed.

112 3. The amount of the tax credit claimed shall not exceed the amount of the
113 taxpayer's state tax liability for the tax year that the credit is claimed. Any amount of
114 credit that the taxpayer is prohibited by this section from claiming in a tax year may be
115 carried forward to any of the taxpayer's four subsequent taxable years. Except for any
116 credit carried over pursuant to this section, no taxpayer shall claim a credit pursuant to
117 this section unless the amount contributed to a nonprofit educational assistance
118 organization is two hundred dollars or more.

119 4. The cumulative amount of tax credits which may be claimed by all taxpayers
120 contributing to a nonprofit educational assistance organization in any one fiscal year shall
121 not exceed five million dollars. The director shall establish a procedure by which, from the
122 beginning of the fiscal year until some point in time later in the fiscal year to be determined
123 by the director, the cumulative amount of tax credits are apportioned among all nonprofit
124 educational assistance organizations. To the maximum extent possible, the director shall
125 establish the procedure described in this subsection in such a manner as to ensure that
126 taxpayers can claim all the tax credits possible up to the cumulative amount of tax credits

127 available for the fiscal year.

128 **5. The director shall determine, at least annually, which organizations in this state**
129 **may be classified as a nonprofit educational assistance organization. The director may**
130 **require a charity seeking classification as a nonprofit educational assistance organization**
131 **to provide any information reasonably necessary to make such a determination. The**
132 **director shall classify an organization as a nonprofit educational assistance organization**
133 **if the organization qualifies as a nonprofit educational assistance organization as defined**
134 **in this section.**

135 **6. The director shall establish a procedure by which a taxpayer can determine if**
136 **an organization has been classified as a nonprofit educational assistance organization, and**
137 **by which taxpayers can claim the tax credit pursuant to this section.**

138 **7. The funding authorized in this section shall be considered private, voluntary,**
139 **nongovernmental funding. The providing of assistance by a nonprofit educational**
140 **assistance organization shall not be construed to be a public appropriation, or the**
141 **providing of public assistance to any school.**

142 **8. The director shall determine the savings attributable to the drop in average daily**
143 **attendance attributable to the tax credit program described in this section versus the**
144 **amount of tax credits claimed. The net savings attributable to the program shall be**
145 **distributed on a basis proportional to the number of such students in the last public school**
146 **attended directly to the school district.**

147 **9. The director shall certify and enter into a contract with a designated nonprofit**
148 **organization for the purpose of administering this section.**

149 **10. This section is subject to the provisions of section 1.140, RSMo, and no rule or**
150 **portion of a rule promulgated pursuant to the authority of this section shall become**
151 **effective unless it has been promulgated pursuant to chapter 536, RSMo.**

163.036. 1. In computing the amount of state aid a school district is entitled to receive
2 under section 163.031, a school district may use an estimate of the number of eligible pupils for
3 the ensuing year, the number of eligible pupils for the immediately preceding year or the number
4 of eligible pupils for the second preceding school year, whichever is greater, **except that the**
5 **eligible pupil count shall be adjusted such that no school district shall receive state aid for**
6 **any pupil who is no longer enrolled in the school district as the result of using the proceeds**
7 **of an educational scholarship to transfer to another qualified school provided pursuant to**
8 **section 135.827, RSMo.** Except as otherwise provided in subsection 3 of this section, any error
9 made in the apportionment of state aid because of a difference between the actual number of
10 eligible pupils and the estimated number of eligible pupils shall be corrected as provided in
11 section 163.091, except that if the amount paid to a district estimating eligible pupils exceeds the

12 amount to which the district was actually entitled by more than five percent, interest at the rate
13 of six percent shall be charged on the excess and shall be added to the amount to be deducted
14 from the district's apportionment the next succeeding year.

15 2. Notwithstanding the provisions of subsection 1 of this section or any other provision
16 of law, the state board of education shall make an adjustment for the immediately preceding year
17 for any increase in the actual number of eligible pupils above the number on which the state aid
18 in section 163.031 was calculated. Said adjustment shall be made in the manner providing for
19 correction of errors under subsection 1 of this section.

20 3. (1) For any district which has, for at least five years immediately preceding the year
21 in which the error is discovered, adopted a calendar for the school term in which elementary
22 schools are in session for twelve months of each calendar year, any error made in the
23 apportionment of state aid to such district because of a difference between the actual number of
24 eligible pupils and the estimated number of eligible pupils shall be corrected as provided in
25 section 163.091 and subsection 1 of this section, except that if the amount paid exceeds the
26 amount to which the district was actually entitled by more than five percent and the district
27 provides written application to the state board requesting that the deductions be made pursuant
28 to subdivision (2) of this subsection, then the amounts shall be deducted pursuant to subdivision
29 (2) of this subsection.

30 (2) For deductions made pursuant to this subdivision, interest at the rate of six percent
31 shall be charged on the excess and shall be included in the amount deducted and the total amount
32 of such excess plus accrued interest shall be deducted from the district's apportionment in equal
33 monthly amounts beginning with the succeeding school year and extending for a period of
34 months specified by the district in its written request and no longer than sixty months.

35 4. For the purposes of distribution of state school aid pursuant to section 163.031, a
36 school district may elect to use the district's equalized assessed valuation for the preceding year,
37 or an estimate of the current year's assessed valuation if the current year's equalized assessed
38 valuation is estimated to be more than ten percent less than the district's equalized assessed
39 valuation for the preceding year. A district shall give prior notice to the department of its
40 intention to use the current year's assessed valuation pursuant to this subsection. Any error made
41 in the apportionment of state aid because of a difference between the actual equalized assessed
42 valuation for the current year and the estimated equalized assessed valuation for the current year
43 shall be corrected as provided in section 163.091, except that if the amount paid to a district
44 estimating current equalized assessed valuation exceeds the amount to which the district was
45 actually entitled, interest at the rate of six percent shall be charged on the excess and shall be
46 added to the amount to be deducted from the district's apportionment the next succeeding year.

47 5. For the purposes of distribution of state school aid pursuant to section 163.031, a

48 school district with ten percent or more of its assessed valuation that is owned by one person or
49 corporation as commercial or personal property who is delinquent in a property tax payment may
50 elect, after receiving notice from the county clerk on or before March fifteenth, except in the year
51 enacted, that more than ten percent of its current taxes due the preceding December thirty-first
52 by a single property owner are delinquent, to use on line 2 of the state aid formula the district's
53 equalized assessed valuation for the preceding year or the actual assessed valuation of the year
54 for which the taxes are delinquent less the assessed valuation of property for which the current
55 year's property tax is delinquent. To qualify for use of the actual assessed valuation of the year
56 for which the taxes are delinquent less the assessed valuation of property for which the current
57 year's property tax is delinquent, a district must notify the department of elementary and
58 secondary education on or before April first, except in the year enacted, of the current year
59 amount of delinquent taxes, the assessed valuation of such property for which delinquent taxes
60 are owed and the total assessed valuation of the district for the year in which the taxes were due
61 but not paid. Any district giving such notice to the department of elementary and secondary
62 education shall present verification of the accuracy of such notice obtained from the clerk of the
63 county levying delinquent taxes. When any of the delinquent taxes identified by such notice are
64 paid during a four-year period following the due date, the county clerk shall give notice to the
65 district and the department of elementary and secondary education, and state aid paid to the
66 district shall be reduced by an amount equal to the delinquent taxes received plus interest. The
67 reduction in state aid shall occur over a period not to exceed five years and the interest rate on
68 excess state aid not refunded shall be six percent annually.

69 6. If a district receives state aid based on equalized assessed valuation as determined by
70 subsection 5 of this section and if prior to such notice the district was paid state aid pursuant to
71 subdivision (2) of subsection 5 of section 163.031, the amount of state aid paid during the year
72 of such notice and the first year following shall equal the sum of state aid paid pursuant to line
73 1 minus line 10 as defined in subsections 1, 2, 3 and 6 of section 163.031 plus the difference
74 between the state aid amount being paid after such notice minus the amount of state aid the
75 district would have received pursuant to line 1 minus line 10 as defined in subsections 1, 2, 3 and
76 6 of section 163.031 before such notice. To be eligible to receive state aid based on this
77 provision the district must levy during the first year following such notice at least the maximum
78 levy permitted school districts by article X, section 11(b) of the Missouri Constitution and have
79 a voluntary rollback of its tax rate which is no greater than one cent per one hundred dollars
80 assessed valuation.