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SENATE BILL 1080

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO TAXATION; ENACTING A NEW SECTION OF THE INCOME TAX ACT TO PROVIDE A TAX CREDIT FOR A DONATION TO A SCHOOL TUITION ORGANIZATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted to read:

"[NEW MATERIAL] SCHOOL TUITION ORGANIZATION TAX CREDIT.--

A. A taxpayer who files an individual New Mexico income tax return for a taxable year beginning on or after January 1, 2007 and who donates money to a school tuition organization after January 1, 2007 may apply for, and the department shall allow, a school tuition organization tax credit of up to seventy-five percent of the donation pursuant to the provisions of this section.

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1           B. The department shall, by September 1, 2007,  
2 develop rules for the issuance of tax credit certificates to  
3 eligible taxpayers on a first-come, first-served basis until  
4 total approved tax credits have been reached.

5           C. A school tuition organization that receives a  
6 voluntary cash contribution pursuant to this section shall  
7 report to the department, on a form prescribed by the  
8 department, by January 12 of each tax year all of the following  
9 information:

10                   (1) the name and address of the members and  
11 the chair of the governing board of the school tuition  
12 organization;

13                   (2) the total number and dollar value of  
14 contributions received and the total number and dollar value of  
15 the tax credits approved during the previous tax year;

16                   (3) a list of the individual donors for the  
17 previous tax year that includes the dollar value of each  
18 donation and the dollar value of each approved tax credit;

19                   (4) the total number of children using tuition  
20 grants for the school year in progress and the total dollar  
21 value of the grants; and

22                   (5) the name and address of each represented  
23 school at which tuition grants are currently being used,  
24 detailing the number of tuition grant students and the total  
25 dollar value of grants being used at each school served by the

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1 school tuition organization.

2 D. A taxpayer is eligible for the school tuition  
3 organization tax credit if:

4 (1) a deduction pursuant to Section 170 of the  
5 Internal Revenue Code for any amount of the contribution is not  
6 taken for state tax purposes; or

7 (2) the contribution does not designate that  
8 any part of the contribution be used for the direct benefit of  
9 any dependent of the taxpayer or any other student designated  
10 by the taxpayer.

11 E. A portion of the school tuition organization tax  
12 credit that remains unused in a taxable year is not refundable  
13 but may be carried forward for a maximum of five consecutive  
14 taxable years following the taxable year in which the credit  
15 originates until fully expended.

16 F. A husband and wife who file separate returns or  
17 file separately on a combined return form shall determine the  
18 school tuition organization tax credit based upon their  
19 combined net income and allocate the total credit amount to  
20 each spouse in the proportion that each spouse's respective net  
21 income bears to the total combined net income. Nonresidents or  
22 part-time residents of New Mexico shall determine their tax  
23 credit in the ratio of their New Mexico source net income to  
24 all sources of net income. Nonresidents or part-time residents  
25 who are married and elect to file separate returns or to file

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1 separately on a combined return form shall allocate the tax  
2 credit between the spouses in the ratio of each spouse's New  
3 Mexico source net income to the combined New Mexico source net  
4 income of the spouses.

5 G. The department shall adopt rules establishing  
6 procedures to provide certification of school tuition  
7 organizations for purposes of obtaining a school tuition  
8 organization tax credit. The rules shall provide for:

9 (1) the issuance of a tax credit certificate  
10 to a taxpayer from whom a donation was made for attachment by  
11 the taxpayer to the taxpayer's return; the certificate shall  
12 contain the taxpayer's name, address, tax identification  
13 number, the amount of the contribution, the amount of the  
14 credit and other information required by the department;

15 (2) the names and addresses of school tuition  
16 organization members to be provided to the department and made  
17 available to the public;

18 (3) a school tuition organization to register  
19 with the department the organization's proof of section  
20 501(c)(3) of the Internal Revenue Code status and list of the  
21 schools the school tuition organization serves; and

22 (4) each school that is served by a school  
23 tuition organization to submit a participation form annually to  
24 the department by October 15 that provides:

25 (a) certified enrollment as of the third

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1 Friday of September; and

2 (b) the name of the school tuition  
3 organization that represents the school.

4 H. As used in this section:

5 (1) "certified enrollment" means the  
6 enrollment at schools served by school tuition organizations as  
7 indicated by participation forms provided to the department  
8 each October;

9 (2) "eligible student" means a student who is  
10 a member of a household whose total annual income during the  
11 calendar year before the student receives a tuition grant for  
12 purposes of this section does not exceed an amount equal to  
13 three times the most recently published federal poverty  
14 guidelines in the federal register by the United States  
15 department of health and human services;

16 (3) "qualified school" means a nonpublic  
17 elementary or secondary school in this state that is accredited  
18 and adheres to the provisions of the federal Civil Rights Act  
19 of 1964;

20 (4) "school tuition organization" means a  
21 charitable organization in this state that is exempt from  
22 federal taxation under Section 501(c)(3) of the Internal  
23 Revenue Code and that:

24 (a) is controlled by a board of  
25 directors consisting of seven members;

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1 (b) allocates at least ninety percent of  
2 tax credit revenue in tuition grants for children to allow them  
3 to attend a qualified school of their parents' choice;

4 (c) only awards tuition grants to  
5 children who reside in New Mexico;

6 (d) provides tuition grants to students  
7 without limiting availability to only students of one school;

8 (e) only provides tuition grants to  
9 eligible students; and

10 (f) prepares an annual reviewed  
11 financial statement certified by a public accounting firm;

12 (5) "total approved tax credits" means, for  
13 tax years beginning on or after January 1, 2007, five million  
14 dollars (\$5,000,000); and

15 (6) "tuition grant" means grants to students  
16 to cover all or part of the tuition at a qualified school."

17 Section 2. EMERGENCY.--It is necessary for the public  
18 peace, health and safety that this act take effect immediately.