NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A2551

SPONSOR: Cusick (MS)

TITLE OF BILL: An act to amend the tax law and the education law, in relation to enacting the "education investment incentives act"

PURPOSE OR GENERAL IDEA OF BILL:
This bill would provide incentives in the form of tax credit for donations to public education entities, local education funds, school improvement organizations and educational scholarship organizations, as well as tax credits for certain expenses incurred by qualified educators who purchase materials and supplies for classroom use.

SUMMARY OF SPECIFIC PROVISIONS:
Section one of this bill provides the short title, which is the "education investment incentives act." Section two of this bill provides the legislative findings and intent.

Section three of this bill adds new section 2 to the Tax Law, which is the education investment tax credit. New section 2 provides a tax credit to individuals and businesses paying the Article 22 personal income tax and to businesses paying the Article 9-A corporate franchise tax for qualified contributions to public education entities, school improvement organizations, local education funds, and educational scholarship organizations. Prior to making a contribution, a taxpayer must apply to the Department of Taxation and Finance ("DTF") for a contribution authorization certificate, which will list the amount of the authorized contribution and the entity, public school (but shall not include a charter school) or public school district for which the contribution is authorized. Taxpayers have from the issuance of the contribution authorization certificate until November 30th to make the contribution to the named entity, public school, or public school district. Upon receipt of a timely authorized contribution, the recipient entity will issue a certificate of receipt to the taxpayer. If a contribution is not timely received, the recipient named in the contribution authorization certificate will notify DTF. The amount of the authorized contribution will be added to the maximum amount of credit available in the immediately following calendar year.

The maximum amount of credit that a taxpayer may list in the application filed with DTF is up to $1 million, which also is the maximum amount of aggregate credits that a taxpayer may claim for any year, after the application of all other allowable credits, in which the tax return is filed, plus any amount carried over from a prior year. A taxpayer can claim as a credit 75 percent of the donation made
to an eligible entity. Any amount of qualified contributions in excess of the taxpayer's tax for the taxable year may be carried forward.

The credit is capped at $150 million for calendar year 2016, $225 million for calendar year 2017, and $300 million plus any amounts required to be added to the cap due to authorized contributions that were not timely made for each year beginning in calendar year 2018. One half of the annual cap will be available for qualified contributions made to public education entities, school improvement organizations and local education funds and one half of the annual cap will be available for donations to educational scholarship organizations.

Section three of this bill also provides definitions for terms such as "authorized contribution," "public education entity," "local education fund," and "educational scholarship organization." An "eligible student" who can receive a scholarship must reside in a household with not more than $250,000 in adjusted gross income; however, to ensure the needs of low-income communities are addressed, on educational scholarship organization must provide at least half its scholarships for students from households with income below 150% of the reduced-price lunch income thresholds.

Section three also provides reporting requirements for public education entities, including school improvement organizations (i.e., a non-profit entity supporting public schools); local education funds; and educational scholarship organizations, as well as a joint report from the Commissioner of Tax and Finance and the Commissioner of Education. The joint report shall include, among other things, statistics regarding the number of qualified contributions made to each type of recipient, the distribution of the recipients by county, and the aggregate amount of credit claimed.

Section four of this bill amends Tax Law section 208(9) (b) by adding a new subparagraph (22) to provide that if a taxpayer claims a charitable contribution deduction at the federal level for any amount claimed as a credit pursuant to Tax Law section 210-B(45), such amount must be added back to the taxpayer's entire net income computation in order to prevent obtaining a state tax deduction and state tax credit from the same donation.

Section five of this bill amends Tax Law section 210-B to add a new subdivision (49) to provide the mechanism for Article 9-A taxpayers to claim the education investment tax credit.

Section six of this bill amends Tax law section 606(i)(1)(B) to add a new clause (xli) to provide the mechanism for S Corporations to claim the education investment tax credit.

Section seven of this bill amends section 606 of the Tax Law to add a new subsection (w) to provide the classroom instructional materials and supplies credit for people employed at a public or non-public school. The amount of the credit is the lesser of $200 or 100% of the amounts used to purchase instructional materials and supplies for use in a classroom.

Section eight of this bill amends Tax Law section 606 by adding a new
subsection (ccc) to provide the mechanism for Article 22 taxpayers to claim the education investment tax credit.

Section nine of this bill amends Tax Law section 615(c) by adding a new paragraph (9) to provide that if a taxpayer claims a charitable contribution deduction at the federal level for any amount claimed as a credit pursuant to section 606(kk), such amount must be added back to the New York adjusted income computation in order to prevent obtaining a state tax deduction and state tax credit from the same donation.

Section ten of this bill amends the Education Law to add a new Article 25, entitled the "Education Investment Tax Credit Program." This new article provides the framework for public education entities, school improvement organizations, local education funds and educational scholarship organizations to apply for authorization to issue certificates of receipt. Authorized entities receiving tax-credited donations must submit an annual report in a form and manner required by the state Board of Regents. Additionally, any authorization granted may be revoked by the Regents for violations of applicable law. This new article contains the same short title and definitions, as well as the joint report requirement, provided in Tax law section 42, as added by section three of the bill.

Section eleven of the this bill adds a new section 1503-a to the education law to ensure public schools and school districts can accept charitable donations and that such donations shall be excluded for the purposes of determining state aid to public schools.

Section twelve of this bill contains the severability clause.

Section thirteen of this bill provides that this act shall take effect immediately and apply to taxable years beginning after December 31, 2015.

**EXISTING LAW:**

This is a new law.

**JUSTIFICATION:**

At a time when the state is considering ways of reducing the tax burden for New York State residents and educators are seeking an expansion of financial resources, charitable giving for educational purposes should be encouraged. Permitting public education entities such as school districts and individual public schools and non-profits that promote the arts, civics, and pre-k instruction, to accept and receive voluntary cash contributions will lessen the need for additional tax revenue, encouraging voluntary support for education without prejudice for or against any state-sponsored educational enterprise.

The provisions of this bill ensure against a taxpayer from taking a state tax deduction and this tax credit on the same donation, and guard against a taxpayer having a combined federal and state tax benefit that exceeds the donation level.
The bill promotes the state's interest in providing the highest quality education to all children in the state. The tax credit does not constitute public aid to non-public sectarian institutions. This bill also will enable children from low-income households in high-needs communities to continue with their education in non-public schools and mitigate the trend of private school closures, particularly in such areas, the result of which has added costs to public education, and contributed to higher property tax burdens and overcrowded classrooms in the state.

Permitting school personnel to claim a credit for the purchase of classroom instructional materials and supplies will insure a wider availability of such materials and supplies for all students.

PRIOR LEGISLATIVE HISTORY:
2013-2014: A.1826-D-Died in Ways and Means Committee;
2011-12: A.5081-C-Died in Ways and Means Committee.

FISCAL IMPLICATIONS:
$150 million for calendar year 2017, $225 million for calendar year 2016, and $300 million for calendar year 2018 and annually thereafter. This bill would generate $400 million in voluntary contributions to support K-12 education in New York State based on the credit equaling 75 percent of the charitable donation. Stabilizing the independent and religious school sector will significantly lessen the need for local school property tax increases as well as for the issuance of bonds for new public school construction, generating further savings for the state. In addition, another $50 million is projected to be forgone revenue from the instructional and materials supply credit for teachers and instructional personnel.

EFFECTIVE DATE:
This act shall take effect immediately and shall apply to taxable years beginning after December 31, 2015.
AN ACT to amend the tax law and the education law, in relation to enacting the "education investment incentives act"

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

1 Section 1. Short title. This act shall be known and may be cited as the "education investment incentives act".

2 § 2. Legislative findings and intent. The legislature hereby finds and declares that:

a. The education of the children of this state is one of the foundations of a strong society that requires an academically robust and financially sound school system, both public and non-public;

b. At a time when the state is considering ways of reducing the tax burden for New York state residents and educators are seeking an expansion of financial resources, charitable giving for educational purposes should be encouraged;

c. Permitting public education entities such as school districts and individual public schools to accept and receive voluntary cash contributions will be beneficial to taxpayers and educators;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [ ] is old law to be omitted.
d. Encouraging voluntary support for education, without prejudice for
or against any state-sanctioned educational enterprise, promotes the
state's interest in providing the highest quality education to all chil-
dren in the state;

e. The tax credit provided in this act is merely one of many credits
available to New York taxpayers;

f. The intended beneficiaries of the tax credits provided in this act
are the students who attend public schools, students who further their
education using tuition scholarships from educational scholarship organ-
izations, and teachers who purchase with personal funds to supply their
students and classrooms, and who seek charitable donations for classroom
projects and initiatives;

g. Permitting educators to claim a credit for the purchase of class-
room instructional materials and supplies will insure a wider availabil-
ity of such materials and supplies for all students.

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

§ 42. Education investment tax credit. (a) Definitions. For the
purposes of this section, the following terms shall have the following
meanings:

1. "Authorized contribution" means the contribution amount that is
listed on the contribution authorization certificate issued to the
taxpayer.

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

3. "Educational program" means an academic program of a public school
that enhances the curriculum or academic program of the public school,
or provides a pre-kindergarten program or an after school program to the
public school. For purposes of this definition, the instruction, materi-
als, programs and other activities offered by or through an educational
program may include, but are not limited to, the following features: (i)
instruction or materials promoting health, physical education, and fami-
ly and consumer sciences; literary, performing and visual arts; math-
ematics, social studies, technology and scientific achievement; (ii)
instruction or programming to meet the education needs of at-risk
students or students with disabilities, including tutoring or coun-
seling; or (iii) the use of specialized instructional materials,

4. "Educational scholarship organization" means an entity that (i) is
exempt from taxation under paragraph three of subsection (c) of section
five hundred one of the internal revenue code, (ii) commits for the
expenditure of at least ninety percent of the qualified contributions
received during the calendar year and any income derived from such qual-
ified contributions for scholarships, (iii) provides more than fifty
percent of its scholarships during a calendar year to eligible pupils
who reside in a household that has an income not to exceed one hundred
fifty percent of the income qualification required for the reduced price
school lunches under the National School Lunch Act, provided however,
for the purposes of an educational scholarship organization fulfilling
such requirement, an educational scholarship organization may enter into
an agreement with another educational scholarship organization or organ-
izations to jointly report their scholarship information to meet such
requirement, (iv) provides scholarships to eligible pupils for use at
not fewer than three non-public schools, (v) deposits and holds quali-
ified contributions and any income derived from qualified contributions
in an account that is separate from the organization’s operating or
other funds until such qualified contributions or income are withdrawn
for use, and (vi) is approved to receive authorized contributions and
issue certificates of receipt pursuant to article twenty-five of the
education law.

5. "Eligible pupil" means a child who (i) is a resident, (ii) is of
school age in accordance with subdivision one of section thirty-two
hundred two of the education law or who is four years of age on or
before December first of the year in which such child is enrolled in a
pre-kindergarten program, (iii) attends or is about to attend a quali-
fied school, and (iv) resides in a household that has a federal adjusted
gross income of two hundred fifty thousand dollars or less, provided
however, for households with three or more dependent children, such
income level shall be increased by ten thousand dollars per dependent
child, not to exceed three hundred thousand dollars.

6. "Local education fund" means a not-for-profit entity which (i) is
exempt from taxation under paragraph three of subsection (c) of section
ing one hundred one of the internal revenue code, (ii) is established for
the purpose of supporting at least one public school or a public school
district, (iii) uses at least ninety percent of the qualified contrib-
utions received during the calendar year and any income derived from
such qualified contributions to support the public school or schools or
public school district or districts that such fund has been established
to support, (iv) deposits and holds qualified contributions and any
income derived from qualified contributions in an account that is sepa-
rate from the fund’s operating or other funds until such qualified
contributions or income are withdrawn for use, and (v) is approved to
receive authorized contributions and issue certificates of receipt
pursuant to article twenty-five of the education law.

7. "Non-public school" means any not-for-profit pre-kindergarten
program or elementary or secondary sectarian or nonsectarian school
located in this state, other than a public school, that provides
instruction at one or more locations to students in accordance with
subdivision two of section thirty-two hundred four of the education law.

8. "Public education entity" means a public school or a public school
district, provided that such public school or public school district (i)
deposits and holds qualified contributions and any income derived from
such qualified contributions in an account that is separate from the
public school or public school district's operating or other funds until
such qualified contributions or income are withdrawn for use and (ii) is
approved to issue certificates of receipt pursuant to article twenty-
five of the education law.

9. "Public school" means any free elementary or secondary school in
this state pursuant to article eleven of the constitution, but shall not
include a charter school authorized by article fifty-six of the educa-
tion law.

10. "Qualified contribution" means the authorized contribution made by
a taxpayer to a public education entity, school improvement organiza-
tion, local education fund, or educational scholarship organization for
which the contribution authorization certificate has been issued to the
taxpayer for which the taxpayer has received a certificate of receipt
from such entity, fund or organization.

11. "Qualified educator" means an individual who is a teacher or
instructor in a qualified school for at least nine hundred hours during
a school year.
12. "Qualified school" means a public school or non-public school located in this state.

13. "Scholarship" means an educational scholarship which provides a tuition grant awarded to an eligible pupil to attend a qualified school in an amount not to exceed the tuition charged to attend such school less any other educational scholarship or tuition grant received by such eligible pupil or his or her parent, parents, legal guardian, or legal guardians for such eligible pupil's tuition; provided, however, in the case of an eligible pupil attending a public school in a district of which such pupil is not a resident, the amount of the educational scholarship awarded may not exceed the tuition charged by the public school pursuant to paragraph d of subdivision four of section thirty-two hundred two of the education law, but only if the school district of which such pupil is a resident is not required to pay for such tuition.

14. "School improvement organization" means a not-for-profit entity which (i) is exempt from taxation under paragraph three of subsection (c) of section five hundred one of the internal revenue code, (ii) uses at least ninety percent of the qualified contributions received during the calendar year and any income derived from qualified contributions during such months to assist public schools or public school districts located in this state in their provision of educational programs, either by making contributions to one or more public schools or public school districts located in this state or providing educational programs to, or in conjunction with, one or more public schools or public school districts located in this state, (iii) deposits and holds qualified contributions and any income derived from qualified contributions in an account that is separate from the organization's operating or other funds until such qualified contributions or income are withdrawn for use, and (iv) is approved to issue certificates of receipt pursuant to article twenty-five of the education law. Such term includes a pre-kindergarten program or not-for-profit entity that allows the taxpayer to choose to donate to a program, project or initiative identified by a qualified educator for use in a public school.

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

(c) Amount of credit. The amount of the credit shall be seventy-five percent of the taxpayer's total qualified contributions, capped at one million dollars. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in an S corporation shall be allowed to claim its pro rata share of the credit earned by the partnership, limited liability company or S corporation, provided that such a taxpayer shall not claim credit in excess of the limit imposed by this subdivision.

(d) Information to be posted on the department's website. The commissioner shall maintain on the department's website a running total of the amount of available credit for which taxpayers may apply pursuant to this section. Such running total shall be updated on a daily basis. Additionally, the commissioner shall maintain on the department's website a list of the school improvement organizations, local education funds and educational scholarship organizations approved to issue certificates of receipt pursuant to article twenty-five of the education law.
Applications for contribution authorization certificates. Prior to making a contribution to a public education entity, school improvement organization, local education fund, or educational scholarship organization, the taxpayer shall apply to the department for a contribution authorization certificate for such contribution. Such application shall be in the form and manner prescribed by the department. The department may allow taxpayers to make multiple applications on the same form, provided that each contribution listed on such application shall be treated as a separate application and that the department shall issue separate contribution authorization certificates for each such application.

(f) Contribution authorization certificates. 1. Issuance of certificates. The commissioner shall issue contribution authorization certificates in two phases. In phase one, which begins on the first day of January and ends on the fifteenth day of January, the commissioner shall accept applications for contribution authorization certificates. Commencing after the fifth day of February, the commissioner shall issue contribution authorization certificates for applications received during phase one, provided that if the aggregate total of the contributions for which applications have been received during phase one exceeds the amount of the credit cap in subdivision (h) of this section, the authorized contribution amount listed on each contribution authorization certificate shall equal the pro-rata share of the credit cap. If the credit cap is not exceeded, phase two commences on February first and ends on December thirty-first. The commissioner shall issue contribution authorization certificates on a first-come, first-serve basis based upon the date the department received the taxpayer's application for such certificate. Contribution authorization certificates for applications received during phase one shall be mailed no later than the twentieth day of February. Contribution authorization certificates for applications received during phase two shall be mailed within five days of receipt of such applications.

2. Contribution authorization certificate contents. Each contribution authorization certificate shall state (i) the date such certificate was issued, (ii) the date by which the authorized contributions listed in the certificate must be made, which shall be no later than December thirty-first of the year for which the contribution authorization certificate was issued, (iii) the taxpayer's name and address, (iv) the amount of authorized contributions, (v) the contribution authorization certificate's certificate number, (vi) the name and address of the public education entity, school improvement organization, local education fund or educational scholarship organization for which the taxpayer may make the authorized contribution, and (vii) any other information that the commissioner deems necessary.

3. Notification of the issuance of a contribution authorization certificate. Upon issuance of a contribution authorization certificate, the commissioner shall notify the educational scholarship organization, public education entity, school improvement organization or local education fund of the issuance of the contribution authorization certificate to a taxpayer. Such notification shall include (i) the taxpayer's name and address, (ii) the date such certificate was issued, (iii) the date by which the authorized contribution listed in the notification must be made by the taxpayer, (iv) the amount of the authorized contribution, (v) contribution authorization certificate, and (vi) any other information that the commissioner deems necessary.
(g) Certificate of receipt. 1. In general. No public education entity, school improvement organization, local education fund, or educational scholarship organization shall issue a certificate of receipt for any contribution made by a taxpayer unless such public education entity, school improvement organization, local education fund, or educational scholarship organization has been approved to issue certificates of receipt pursuant to article twenty-five of the education law. No public education entity, school improvement organization, local education fund, or educational scholarship organization shall issue a certificate of receipt for a contribution made by a taxpayer unless such public education entity, school improvement organization, local education fund, or educational scholarship organization has received notice from the department that the department issued a credit authorization certificate to the taxpayer for such contribution.

2. Timely contribution. If a taxpayer makes an authorized contribution to the public education entity, school improvement organization, local education fund, or educational scholarship organization set forth on the authorization certificate issued to the taxpayer no later than the date by which such authorized contribution is required to be made, such public education entity, school improvement organization, local education fund, or educational scholarship organization shall, within thirty days of receipt of the authorized contribution, issue to the taxpayer a written certificate of receipt; provided, however, that if the taxpayer contributes an amount that is less than the amount listed on the taxpayer's contribution authorization certificate, the taxpayer shall not be issued a certificate of receipt for such contribution.

3. Certificate of receipt contents. Each certificate of receipt shall state (i) the name and address of the issuing public education entity, school improvement organization, local education fund, or educational scholarship organization, (ii) the taxpayer's name and address, (iii) the date for each contribution, (iv) the amount of each contribution and the total amount of contributions, and (vi) any other information that the commissioner may deem necessary.

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

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

6. Failure to notify the department. Within thirty days of discovery of the failure of any public education entity, school improvement organization, local education fund, or educational scholarship organization to comply with the notification requirements prescribed by paragraphs
four and five of this subdivision, the commissioner shall issue a notice of compliance failure to such entity, program fund or organization. Such entity, program fund or organization shall have thirty days from the date of such notice to make the notifications prescribed by paragraphs four and five of this subdivision. Such period may be extended for an additional thirty days upon the request of the entity, program fund or organization. Upon the expiration of the period for compliance set forth in the notice prescribed by this paragraph, the commissioner shall notify the board of regents and the commissioner of education that such entity, program fund or organization failed to make the notifications prescribed by paragraphs four and five of this subdivision.

(h) Credit cap. The maximum permitted credits under this section available to all taxpayers for qualified contributions for calendar year two thousand sixteen shall be one hundred fifty million dollars. In calendar year two thousand seventeen, the maximum permitted credits under this section available to all taxpayers shall be two hundred twenty-five million dollars plus any amounts that are required to be added to the cap pursuant to subdivision (i) of this section. For calendar year two thousand eighteen and each calendar year thereafter, the maximum permitted credits under this section available to all taxpayers shall be three hundred million dollars, plus any amounts that are required to be added to the cap pursuant to subdivision (i) of this section. The maximum permitted credits under this section for qualified contributions shall be allocated fifty percent to public education entities, school improvement organizations, and local education funds and fifty percent to educational scholarship organizations.

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

(j) Reports. 1. Reports to the commissioner. On or before the last day of February for each calendar year, each public education entity, school improvement organization, local education fund, and educational scholarship organization that issued one or more certificates of receipt shall report to the commissioner the number of such certificates issued and the aggregate amount of qualified contributions made to such entity, fund, or organization during the immediately preceding calendar year.

2. Joint annual report. On or before the last day of June for each calendar year, for the immediately preceding year, the commissioner and the commissioner of education shall jointly submit a written report to the governor, the temporary president of the senate, the speaker of the assembly, the chairman of the senate finance committee and the chairman of the assembly ways and means committee regarding the credit. Such report shall contain information for articles nine-A and twenty-two, respectively, regarding: (i) the number of applications received; (ii) the number of and aggregate value of the contribution authorization certificates issued for contributions to public education entities, school improvement organizations, local education funds, and scholarship organizations, respectively; (iii) the geographical distribution by county of (A) the applications for contribution authorization certificates, distribution by county of (B) the public education entities, school improvement organizations, local education funds, and educational scholarship organizations listed on the issued contribution authorization certificates; and (iv) information, including geographical distribution by county, of the number of eligible pupils that received scholarships, the number of eligible pupils that reside in a household
that has an income not to exceed one hundred fifty percent of the income
qualification required for the reduced price school lunches under the
National School Lunch Act, the number of qualified schools attended by
eligible pupils that received such scholarships, and the average value
of scholarships received by such eligible pupils. The commissioner and
designated employees of the state education department, the board of
regents and all members of the board of regents, including the commis-
sioner of education, and designated employees of the state education
department, shall be allowed and are directed to share and exchange
information regarding the school improvement organizations, local educa-
tion funds and educational scholarship organizations that applied for
approval to be authorized to receive qualified contributions; and the
public education entities, school improvement organizations, local
education funds, and educational scholarship organizations authorized to
issue certificates of receipt, including information contained in or
derived from application forms and reports submitted to the state educa-
tion department or board of regents.

(k) Cross references. For application of the credit provided for in
this section, see the following provisions of this chapter:
1. Article 9-A: section 210-B; subdivision 49;
2. Article 22: section 606; subsections (i) and (ccc).

§ 4. Paragraph (b) of subdivision 9 of section 208 of the tax law is
amended by adding a new subparagraph 22 to read as follows:
(22) The amount of any deduction allowed pursuant to section one
hundred seventy of the internal revenue code for which credit is claimed
pursuant to subdivision forty-nine of section two hundred ten-B of this
article.

§ 5. Section 210-B of the tax law is amended by adding a new subdivi-
sion 49 to read as follows:
49. Education investment tax credit. (a) Allowance of credit. A
taxpayer shall be allowed a credit, to be computed as provided in
section forty-two of this chapter, against the tax imposed by this arti-
cle.

(b) Application of credit. The credit allowed under this subdivision
for any taxable year shall not reduce the tax due for that year to less
than the higher of the amounts prescribed in paragraph (d) of subdivi-
sion one of section two hundred ten of this article. However, if the
amount of credit allowed under this subdivision for qualified contrib-
utions for any taxable year reduces the tax to such amount, any amount
of credit thus not deductible in such taxable year may be carried over
to the succeeding five years and may be deducted from the taxpayer's tax
for such year or years.

§ 6. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
of the tax law is amended by adding a new clause (xli) to read as
follows:
(xli) Education investment tax credit under subdivision
Amount of credit under subdivision
forty-nine of section two hundred
ten-B

§ 7. Section 606 of the tax law is amended by adding a new subsection
(w) to read as follows:
(w) Instructional materials and supplies credit. (1) For taxable years
beginning on and after January first, two thousand sixteen, a taxpayer
shall be allowed a credit in the amount paid by the taxpayer during the
taxable year for instructional materials and supplies with respect to
classroom based instruction in a qualified school, or two hundred
dollars, whichever is less; provided that the taxpayer is a teacher or
instructor in a qualified school, as defined in section forty-two of this chapter, for at least nine hundred hours during a school year. For purposes of this subsection, the term "materials and supplies" means amounts paid for instructional materials or supplies that are designated for classroom use in any qualified school.

(2) A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

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

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

(ccc) Education investment tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit to be computed as provided in section forty-two of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any qualified contributions for any taxable year exceeds the taxpayer's tax for such year, the excess may be carried over to the succeeding five years and may be deducted from the taxpayer's tax for such year or years.

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

(9) The amount of any federal deduction for contributions made for which a taxpayer claims a credit under subsection (kk) of section six hundred six of this article.

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

ARTICLE 25

EDUCATION INVESTMENT TAX CREDIT PROGRAM

Section 1209. Short title.

1210. Definitions.

1211. Approval to issue certificates of receipt.

1212. Applications for approval to issue certificates of receipt.

1213. Application approval.

1214. Revocation of approval to issue certificates of receipt.

1215. Reporting and recordkeeping.

1216. Joint annual report.

1217. Commissioner; powers.

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

§ 1210. Definitions. As used in this article, the following terms shall have the following meanings:

1. "Authorized contribution" means the contribution amount listed on the contribution authorization certificate issued to a taxpayer.

2. "Contribution" means a donation paid by cash, check, electronic funds transfer, debit card or credit card made by the taxpayer during the tax year.

3. "Educational program" means an academic program of a public school that enhances the curriculum or academic program of the public school, or provides or expands a pre-kindergarten program or an after school program to the public school. For purposes of this definition, the instruction, materials, programs or other activities offered by or
through an educational program may include, but are not limited to, the
following features: (a) instruction or materials promoting health, phys-
ical education, and family and consumer sciences; literary, performing
and visual arts; mathematics, social studies, technology and scientific
achievement; (b) instruction or programming to meet the education needs
of at-risk students or students with disabilities, including tutoring or
counseling; or (c) use of specialized instructional materials, instruc-
tors or instruction not provided by a public school.

4. "Educational scholarship organization" means a not-for-profit enti-
ty which (i) is exempt from taxation under paragraph three of subsection
(c) of section five hundred one of the internal revenue code, (ii)
commits for the expenditure of or designates at least ninety percent of
the revenue from qualified contributions received during the calendar
year and any income derived from qualified contributions for scholar-
ships, (iii) provides more than fifty percent of its scholarships during
a calendar year to eligible pupils who reside in a household that has an
income not to exceed one hundred fifty percent of the income qualifica-
tion required for the reduced price school lunches under the National
School Lunch Act, provided however for the purposes of an educational
scholarship organization fulfilling such requirement, an educational
scholarship organization may enter into an agreement with another educa-
tional scholarship organization or organizations to jointly report their
scholarship information to meet such requirement; (iv) deposits and
holds qualified contributions and any income derived from qualified
contributions in an account that is separate from the organization's
operating or other funds until such qualified contributions or income
are withdrawn for use, and (v) provides scholarships to eligible pupils
for use at not fewer than three non-public schools.

5. "Eligible pupil" means a child who (i) is a resident of this state,
(ii) is school age in accordance with subdivision one of section thir-
ty-two hundred two of this chapter or who is four years of age on or
before December first of the year in which they are enrolled in a pre-
kindergarten program, (iii) attends or is about to attend a qualified
school, and (iv) resides in a household which has a federal adjusted
gross income of two hundred fifty thousand dollars or less, provided
however, for households with three or more dependent children, such
income level shall be increased by ten thousand dollars per dependent
child, not to exceed three hundred thousand dollars.

6. "Local education fund" means a not-for-profit entity which (i) is
exempt from taxation under paragraph three of subsection (c) of section
five hundred one of the internal revenue code, (ii) is established for
the purpose of supporting at least one public school, or a public school
district, (iii) uses at least ninety percent of the qualified contribu-
tions received during the calendar year and any income derived from
such qualified contributions to support the public school or schools or
public school district or districts that such fund has been established
to support, and (iv) deposits and holds qualified contributions and any
income derived from qualified contributions in an account that is sepa-
rate from the fund's operating or other funds until such qualified
contributions or income are withdrawn for use.

7. "Non-public school" means any not-for-profit pre-kindergarten
program or elementary, secondary sectarian or nonsectarian school, other
than a public school, that is providing instruction at one or more
locations to an eligible pupil in accordance with subdivision two of
section thirty-two hundred four of this chapter.
8. "Public education entity" means a public school district or a public school, provided that such public school district or public school deposits and holds qualified contributions and any income derived from qualified contributions in an account that is separate from the public school or public school district's operating or other funds until such qualified contributions or income are withdrawn for use from operating or other funds and is approved to receive authorized contributions and issue certificates of receipt pursuant to this article.

9. "Public school" means any free elementary or secondary school in this state pursuant to article eleven of the New York constitution, but shall not include a charter school authorized by article fifty-six of this chapter.

10. "Qualified contribution" means the authorized contribution made by a taxpayer to a public education entity, local education fund, school improvement district or educational scholarship organization that is listed on the contribution authorization certificate issued to the taxpayer and for which the taxpayer has received a certificate of receipt from such entity, fund, or organization.

11. "Qualified educator" means an individual who is a teacher or instructor in a qualified school for at least nine hundred hours during a school year.

12. "Qualified school" means a public school or non-public school located in this state.

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

14. "School improvement organization" means a not-for-profit entity which (i) is exempt from taxation under paragraph three of subsection (c) of section five hundred one of the internal revenue code, (ii) uses at least ninety percent of the qualified contributions received during the calendar year and any income derived from qualified contributions during such months to assist public schools or public school districts located in this state in their provision of educational programs, either by making contributions to one or more public schools or public school districts located in this state or providing educational programs to, or in conjunction with, one or more public schools or public school districts located in this state, (iii) deposits and holds qualified contributions and any income derived from qualified contributions in an account that is separate from the organization's operating or other funds until such qualified contributions or income are withdrawn for use, and (iv) is approved to issue certificates of receipt pursuant to this article. Such term includes a pre-kindergarten program or not-for-profit entity that allows the taxpayer to choose to donate to a program.
§ 1211. Approval to issue certificates of receipt. 1. Public schools and public school districts. All public schools and public school districts shall be approved to issue certificates of receipt provided, that a public school or public school district shall not be approved if either (i) such public school or public school district fails to deposit and hold qualified contributions and any income derived from qualified contributions in an account that is separate from the school or school district's operating or other funds until such qualified contributions or income are withdrawn for use, or (ii) the board of regents has revoked such approval for such public school or public school district pursuant to section twelve hundred fourteen of this article.

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

§ 1212. Applications for approval to issue certificates of receipt. Each school improvement organization, educational scholarship organization and local education fund shall submit an application to the board of regents for approval to issue certificates of receipt in the form and manner prescribed by the board of regents, provided that such application shall include: (1) submission of documentation that such school improvement organization, local education fund or educational scholarship organization has been granted exemption from taxation under paragraph three of subsection (c) of section five hundred one of the internal revenue code; (2) the most recent annual financial audit, which shall be completed by an independent certified public accountant, and a list of names and addresses of all members of the governing board of the school improvement organization, local education fund or educational scholarship organization; and (3) an educational scholarship organization shall provide criteria for the awarding of scholarships to eligible students. The board of regents, commissioner or department shall not require any other information for such application except as authorized in this article or by section forty-two of the tax law.

§ 1213. Application approval. In general. The board of regents shall review each application to issue certificates of receipt pursuant to this article. Approval or denial of an application shall be made at the next scheduled meeting of the board of regents that follows receipt of such application, but not later than the next meeting thereafter.

§ 1214. Revocation of approval to issue certificates of receipt. The board of regents, in consultation with the commissioner of taxation and finance, may revoke the approval of a school improvement organization, educational scholarship organization, local education fund, public school or public school district to issue certificates of receipt upon a finding that such organization, fund, school or school district has violated this article or section forty-two of the tax law. These violations shall include, but not be limited to, any of the following: (1) failure to meet the requirements of this article or section forty-two of the tax law, (2) the failure to maintain full and adequate records with respect to the receipt of qualified contributions, (3) the failure to supply such records to the commissioner, department of taxation and finance, the department or the board of regents when requested by the department or board of regents, or (4) the failure to provide
notice to the department of taxation and finance of the issuance or
non-issue of certificates of receipt pursuant to section forty-two of
the tax law; provided, however, that the board of regents shall not
revoke approval pursuant to this section based upon a violation of tax
law unless the commissioner of taxation and finance agrees that revoca-
tion is warranted; and provided further that the board of regents shall
not revoke approval pursuant to this section when the failure to comply
is due to clerical error and not negligence or intentional disregard for
the law. Within five days of the determination revoking approval, the
commissioner shall provide notice of such revocation to the educational
scholarship organization, school improvement organization, local educa-
tion fund, public school, or public school district and to the depart-
ment of taxation and finance.

§ 1215. Reporting and recordkeeping. 1. Reporting. Each educational
scholarship organization, school improvement organization, local educa-
tion fund, public school and public school district that receives quali-
fied contributions shall report to the commissioner and the board of
regents by the last day of February of each calendar year. Such report
shall be in the form and manner prescribed by the commissioner in
consultation with the board of regents, which shall include an annual
financial audit from an independent certified public accountant and
shall not exceed the requirements necessary to produce the information
pursuant to section twelve hundred sixteen of this article.

2. Recordkeeping. Each educational scholarship organization, school
improvement organization, local education fund, public school and public
school district that issued at least one certificate of receipt shall
maintain records including (a) notifications received from the depart-
ment of taxation and finance, (b) notifications made to the department
of taxation and finance, (c) copies of qualified contributions received,
(d) copies of the deposit of such qualified contributions, (e) copies of
issued certificates of receipt, (f) annual financial statements, (g) in
the case of school improvement organizations, educational scholarship
organizations and local education funds, the application submitted
pursuant to section twelve hundred twelve of this article and the
approval issued by the board of regents, and (h) any other information
as prescribed by regulation promulgated by the commissioner or rule
promulgated by the board of regents.

§ 1216. Joint annual report. On or before the last day of June for
each calendar year, the commissioner of taxation and finance and the
commissioner, jointly, shall submit a written report as provided in
paragraph two of subdivision (j) of section forty-two of the tax law.

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

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

§ 1503-a. Power to accept and solicit gifts and donations. 1. All
school districts organized by special laws or pursuant to the provisions
of a general law are hereby authorized and empowered to accept gifts,
donations, and contributions to the district and to solicit the same.

2. Notwithstanding any other provision of this chapter or of any other
general or special law to the contrary, the receipt of such gifts,
donations, contributions and other funds, and any income derived there-
§ 12. Severability. If any provision of this section or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

§ 13. This act shall take effect immediately and shall apply to taxable years beginning after December 31, 2015.