
By: **Delegates Boteler, Cluster, Boschert, DeBoy, Dwyer, Haddaway, Impallaria, and Shewell**

Introduced and read first time: February 11, 2005

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Family Education Tax Credit Program**

3 FOR the purpose of allowing an individual to claim a credit against the State income
4 tax for the costs of paying certain tuition, fees, and other educational expenses of
5 certain qualifying students; making the credit refundable under certain
6 circumstances; allowing the parent of certain qualifying students to assign the
7 tax credit to a qualifying school under certain circumstances; allowing an
8 individual or a corporation a credit against the State income tax for certain
9 contributions to certain scholarship granting organizations, subject to certain
10 limitations; providing for the carryover of certain unused credit under certain
11 circumstances; requiring certain scholarship granting organizations to take
12 certain actions to be eligible for certain donations for which a tax credit may be
13 claimed; requiring the Comptroller to administer the Family Education Tax
14 Credit Program; requiring the Comptroller to adopt certain regulations;
15 defining certain terms; providing for the application of this Act; and generally
16 relating to the Family Education Tax Credit Program.

17 BY adding to
18 Article - Tax - General
19 Section 10-725
20 Annotated Code of Maryland
21 (2004 Replacement Volume)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article - Tax - General**

25 10-725.

26 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

1 (2) "EDUCATIONAL SCHOLARSHIPS" MEANS GRANTS TO STUDENTS TO
2 COVER ALL OR PART OF THE TUITION AND FEES AT A QUALIFYING NONPUBLIC
3 SCHOOL OR A QUALIFYING PUBLIC SCHOOL, INCLUDING TRANSPORTATION TO A
4 PUBLIC SCHOOL OUTSIDE OF A STUDENT'S RESIDENT SCHOOL DISTRICT.

5 (3) "ELIGIBLE STUDENT" MEANS A STUDENT WHO WAS ELIGIBLE TO
6 ATTEND A PUBLIC SCHOOL IN THE STATE IN A PRECEDING SEMESTER OR IS
7 STARTING SCHOOL IN THE STATE FOR THE FIRST TIME AND WHO MEETS THE
8 REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION.

9 (4) "PARENT" INCLUDES A GUARDIAN, CUSTODIAN, OR OTHER PERSON
10 WITH AUTHORITY TO ACT ON BEHALF OF THE STUDENT.

11 (5) "PROGRAM" MEANS THE FAMILY EDUCATION TAX CREDIT PROGRAM
12 ESTABLISHED UNDER THIS SECTION.

13 (6) "QUALIFYING SCHOOL" MEANS:

14 (I) A PUBLIC ELEMENTARY OR SECONDARY SCHOOL OUTSIDE OF
15 THE DISTRICT IN WHICH A STUDENT RESIDES; OR

16 (II) A NONPUBLIC ELEMENTARY OR SECONDARY SCHOOL IN THE
17 STATE THAT COMPLIES WITH ALL OF THE REQUIREMENTS OF THE PROGRAM.

18 (7) "SCHOLARSHIP GRANTING ORGANIZATION" MEANS AN
19 ORGANIZATION THAT GIVES EDUCATIONAL SCHOLARSHIPS TO STUDENTS
20 ATTENDING QUALIFYING SCHOOLS AND COMPLIES WITH ALL OF THE
21 REQUIREMENTS OF THE PROGRAM.

22 (B) (1) (I) AN INDIVIDUAL MAY CLAIM A FAMILY EDUCATION TAX CREDIT
23 AGAINST THE STATE INCOME TAXES FOR THE COSTS OF PAYING ALL OR PART OF THE
24 TUITION, FEES, AND OTHER EDUCATIONAL EXPENSES OF A DEPENDENT WHO IS AN
25 ELIGIBLE STUDENT.

26 (II) AN INDIVIDUAL MAY CLAIM A SEPARATE FAMILY EDUCATION
27 TAX CREDIT FOR THE TUITION, FEES, AND OTHER EDUCATIONAL EXPENSES OF EACH
28 OF THE INDIVIDUAL'S CHILDREN WHO IS AN ELIGIBLE STUDENT.

29 (III) AN INDIVIDUAL MAY CLAIM A CREDIT FOR HOME SCHOOLING
30 EXPENSES OF AN ELIGIBLE STUDENT, SUBJECT TO THE PROVISIONS OF THIS
31 SECTION.

32 (IV) FOR AN INDIVIDUAL WHOSE INCOME DOES NOT EXCEED AN
33 AMOUNT EQUAL TO THE INCOME STANDARD USED TO QUALIFY FOR A REDUCED
34 PRICE LUNCH UNDER THE NATIONAL FREE OR REDUCED PRICE LUNCH PROGRAM
35 ESTABLISHED UNDER 42 U.S.C. SECTION 1751 ET SEQ., IF THE TAX CREDIT ALLOWED
36 UNDER THIS PARAGRAPH EXCEEDS THE INDIVIDUAL'S STATE INCOME TAX
37 LIABILITY, THE EXCESS MAY BE CLAIMED AS A REFUND.

1 (V) A PARENT OF AN ELIGIBLE STUDENT MAY ASSIGN THE FAMILY
2 EDUCATION TAX CREDIT TO THE STUDENT'S QUALIFYING SCHOOL.

3 (2) (I) AN INDIVIDUAL OR A CORPORATION MAY CLAIM A FAMILY
4 EDUCATION TAX CREDIT AGAINST THE STATE INCOME TAX FOR CONTRIBUTIONS TO
5 SCHOLARSHIP GRANTING ORGANIZATIONS.

6 (II) SCHOLARSHIP GRANTING ORGANIZATIONS MAY SOLICIT
7 CONTRIBUTIONS FROM INDIVIDUALS AND CORPORATIONS AND PROVIDE
8 EDUCATIONAL SCHOLARSHIPS TO ELIGIBLE STUDENTS WHO ATTEND QUALIFYING
9 SCHOOLS.

10 (3) (I) EXCEPT AS PROVIDED IN PARAGRAPH (1)(IV) OF THIS
11 SUBSECTION, THE TOTAL TAX CREDIT UNDER THIS SECTION FOR ANY TAXABLE YEAR
12 MAY NOT EXCEED 50% OF THE TAXPAYER'S STATE INCOME TAX LIABILITY,
13 DETERMINED BEFORE THE APPLICATION OF THE CREDITS UNDER THIS SECTION
14 AND §§ 10-701 AND 10-701.1 OF THIS SUBTITLE, BUT AFTER THE APPLICATION OF ANY
15 OTHER CREDITS UNDER THIS SUBTITLE.

16 (II) IF THE CREDIT ALLOWED UNDER THIS SECTION IN ANY
17 TAXABLE YEAR EXCEEDS THE STATE INCOME TAX FOR THAT TAXABLE YEAR, A
18 TAXPAYER MAY APPLY THE EXCESS AS A CREDIT AGAINST THE STATE INCOME TAX
19 FOR SUCCEEDING TAXABLE YEARS UNTIL THE EARLIER OF:

20 1. THE FULL AMOUNT OF THE EXCESS IS USED; OR

21 2. THE EXPIRATION OF THE THIRD TAXABLE YEAR AFTER
22 THE TAXABLE YEARS IN WHICH THE TAXPAYER PAID THE TUITION, FEES, OR OTHER
23 EDUCATIONAL EXPENSES OR MADE THE DONATION.

24 (C) (1) TO QUALIFY AS AN ELIGIBLE STUDENT FOR PURPOSES OF THE
25 FAMILY EDUCATION TAX CREDIT PROGRAM, A STUDENT SHALL MEET THE
26 REQUIREMENTS OF THIS SUBSECTION.

27 (2) THE STUDENT'S FAMILY MUST HAVE A TAXABLE INCOME FOR THE
28 PRECEDING TAX YEAR THAT DOES NOT EXCEED AN AMOUNT EQUAL TO 2.5 TIMES
29 THE INCOME STANDARD USED TO QUALIFY FOR A REDUCED PRICE LUNCH UNDER
30 THE NATIONAL FREE OR REDUCED PRICE LUNCH PROGRAM ESTABLISHED UNDER 42
31 U.S.C. SECTION 1751 ET SEQ.

32 (3) THE STUDENT MUST BE ENROLLED FULL TIME IN A QUALIFYING
33 SCHOOL OR IN A HOME SCHOOLING PROGRAM COMPLYING WITH STATE LAW.

34 (4) THE STUDENT MUST BE A RESIDENT OF THIS STATE WHO HAS NOT
35 GRADUATED FROM HIGH SCHOOL OR REACHED THE AGE OF 21.

36 (D) (1) THE CREDIT UNDER SUBSECTION (B)(1) OF THIS SECTION MAY BE
37 CLAIMED FOR TUITION AND ANY FEES NECESSARY TO ATTEND A SCHOOL,
38 INCLUDING FEES FOR ADMINISTRATIVE EXPENSES, TRANSPORTATION COSTS, AND
39 ACADEMIC PROGRAMS, BUT NOT INCLUDING ATHLETIC FEES OR EXPENSES.

1 (2) FOR STUDENTS TAUGHT IN A NONPUBLIC HOME-BASED PROGRAM,
2 THE CREDIT UNDER SUBSECTION (B)(1) OF THIS SECTION MAY BE CLAIMED FOR
3 EDUCATIONAL EXPENSES INCLUDING TUTORING, TEXTBOOKS, SCHOOL SUPPLIES,
4 ACADEMIC LESSONS, AND MEMBERSHIP FEES IN AN ASSOCIATION THAT SETS
5 ACADEMIC STANDARDS OR PROVIDES EDUCATIONAL CURRICULA FOR HOME
6 SCHOOLING STUDENTS, BUT NOT INCLUDING TUTORING OR ACADEMIC LESSONS IF
7 THE PARENT CONDUCTS THEM.

8 (3) TO CLAIM THE TAX CREDIT UNDER THIS SECTION FOR TUITION,
9 FEES, AND OTHER EDUCATIONAL EXPENSES, AN INDIVIDUAL SHALL PROVIDE THE
10 COMPTROLLER:

11 (I) A DETAILED LISTING OF THE EDUCATIONAL EXPENSES FOR
12 EACH CHILD FOR WHICH THE TAX CREDIT IS SOUGHT ON A FORM PRESCRIBED BY
13 THE COMPTROLLER; AND

14 (II) ALL RECEIPTS NECESSARY TO DOCUMENT THESE EXPENSES.

15 (4) AN INDIVIDUAL MAY ONLY CLAIM THE FAMILY EDUCATION TAX
16 CREDIT FOR EXPENSES THAT THEY ACTUALLY PAID AND WERE NOT REIMBURSED BY
17 SCHOLARSHIPS, GRANTS, OR OTHERWISE.

18 (E) (1) EACH SCHOLARSHIP GRANTING ORGANIZATION SHALL:

19 (I) NOTIFY THE COMPTROLLER OF ITS INTENT TO PROVIDE
20 EDUCATIONAL SCHOLARSHIPS TO STUDENTS ATTENDING QUALIFIED SCHOOLS;

21 (II) DEMONSTRATE TO THE COMPTROLLER THAT IT HAS BEEN
22 GRANTED EXEMPTION FROM THE FEDERAL INCOME TAX AS AN ORGANIZATION
23 DESCRIBED IN SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE;

24 (III) DISTRIBUTE PERIODIC SCHOLARSHIP PAYMENTS AS CHECKS
25 MADE OUT TO A STUDENT'S PARENT OR GUARDIAN, ENDORSED BY THE PARENT OR
26 GUARDIAN, AND MAILED TO THE QUALIFIED SCHOOL WHERE THE STUDENT IS
27 ENROLLED;

28 (IV) PROVIDE A COMPTROLLER-APPROVED RECEIPT TO TAXPAYERS
29 FOR CONTRIBUTIONS MADE TO THE ORGANIZATION;

30 (V) ENSURE THAT AT LEAST 90% OF ITS REVENUE FROM
31 DONATIONS IS SPENT ON EDUCATIONAL SCHOLARSHIPS, AND THAT ALL REVENUE
32 FROM INTEREST OR INVESTMENTS IS SPENT ON EDUCATIONAL SCHOLARSHIPS;

33 (VI) SPEND EACH YEAR A PORTION OF ITS EXPENDITURES ON
34 GRANTS FOR LOW-INCOME ELIGIBLE STUDENTS EQUAL TO THE PERCENTAGE OF
35 LOW-INCOME ELIGIBLE STUDENTS IN THE COUNTY WHERE THE SCHOLARSHIP
36 GRANTING ORGANIZATION EXPENDS THE MAJORITY OF ITS GRANTS;

37 (VII) VERIFY ANNUALLY THAT NO STUDENT RECEIVING A
38 SCHOLARSHIP RESIDES IN A HOUSEHOLD WHOSE INCOME IN THE PRECEDING TAX

1 YEAR EXCEEDS AN AMOUNT EQUAL TO 2.5 TIMES THE INCOME STANDARD USED TO
2 QUALIFY FOR A REDUCED PRICE LUNCH UNDER THE NATIONAL FREE OR REDUCED
3 PRICE LUNCH PROGRAM ESTABLISHED UNDER 42 U.S.C. SECTION 1751 ET SEQ.;

4 (VIII) ENSURE THAT AT LEAST 20% OF FIRST TIME RECIPIENTS OF
5 EDUCATIONAL SCHOLARSHIPS WERE NOT CONTINUOUSLY ENROLLED IN A
6 NONPUBLIC SCHOOL DURING THE PREVIOUS YEAR;

7 (IX) COOPERATE WITH THE COMPTROLLER TO CONDUCT CRIMINAL
8 BACKGROUND CHECKS ON ALL OF ITS EMPLOYEES AND BOARD MEMBERS AND
9 EXCLUDE FROM EMPLOYMENT OR GOVERNANCE ANY PEOPLE THAT MIGHT
10 REASONABLY POSE A RISK TO THE APPROPRIATE USE OF CONTRIBUTED FUNDS;

11 (X) ENSURE THAT SCHOLARSHIPS ARE PORTABLE DURING THE
12 SCHOOL YEAR AND CAN BE USED AT ANY QUALIFIED SCHOOL THAT ACCEPTS THE
13 ELIGIBLE STUDENT ACCORDING TO A PARENT'S WISHES, OR PRORATED IF A
14 STUDENT MOVES TO A NEW QUALIFIED SCHOOL DURING A SCHOOL YEAR;

15 (XI) DEMONSTRATE ITS FINANCIAL ACCOUNTABILITY BY:

16 1. SUBMITTING A FINANCIAL INFORMATION REPORT FOR
17 THE ORGANIZATION THAT COMPLIES WITH UNIFORM FINANCIAL ACCOUNTING
18 STANDARDS ESTABLISHED BY THE COMPTROLLER AND CONDUCTED BY A CERTIFIED
19 PUBLIC ACCOUNTANT; AND

20 2. HAVING THE AUDITOR CERTIFY THAT THE REPORT IS
21 FREE OF MATERIAL MISSTATEMENTS; AND

22 (XII) DEMONSTRATE ITS FINANCIAL VIABILITY, IF IT IS TO RECEIVE
23 DONATIONS OF \$50,000 OR MORE DURING THE SCHOOL YEAR, BY:

24 1. FILING WITH THE COMPTROLLER PRIOR TO THE START OF
25 THE SCHOOL YEAR A SURETY BOND PAYABLE TO THE STATE IN AN AMOUNT EQUAL
26 TO THE AGGREGATE AMOUNT OF CONTRIBUTIONS EXPECTED TO BE RECEIVED
27 DURING THE SCHOOL YEAR; OR

28 2. FILING WITH THE COMPTROLLER PRIOR TO THE START OF
29 THE SCHOOL YEAR FINANCIAL INFORMATION THAT DEMONSTRATES THE FINANCIAL
30 VIABILITY OF THE SCHOLARSHIP GRANTING ORGANIZATION.

31 (2) EACH SCHOLARSHIP GRANTING ORGANIZATION SHALL ENSURE
32 THAT PARTICIPATING SCHOOLS THAT ACCEPT ITS SCHOLARSHIP STUDENTS WILL:

33 (I) COMPLY WITH ALL HEALTH AND SAFETY LAWS OR CODES THAT
34 APPLY TO NONPUBLIC SCHOOLS;

35 (II) HOLD A VALID OCCUPANCY PERMIT IF REQUIRED BY THE
36 COUNTY OR MUNICIPAL CORPORATION WHERE THE SCHOOL IS LOCATED;

1 (III) CERTIFY THAT THEY WILL NOT DISCRIMINATE IN ADMISSIONS
2 ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION, OR DISABILITY; AND

3 (IV) PROVIDE ACADEMIC ACCOUNTABILITY TO PARENTS OF THE
4 STUDENTS IN THE PROGRAM BY REGULARLY REPORTING TO THE PARENT ON THE
5 STUDENT'S PROGRESS.

6 (3) SCHOLARSHIP GRANTING ORGANIZATIONS MAY GRANT
7 SCHOLARSHIPS TO ELIGIBLE STUDENTS TO COVER PART OR ALL OF THE COSTS
8 ASSOCIATED WITH ATTENDING A QUALIFYING SCHOOL OR THE ALLOWABLE
9 EXPENSES INCURRED BY A STUDENT IN A HOME SCHOOL.

10 (4) SCHOLARSHIP GRANTING ORGANIZATIONS MAY NOT AWARD AN
11 EDUCATIONAL SCHOLARSHIP TO A FAMILY MEMBER OF THE ORGANIZATION'S BOARD
12 OF DIRECTORS OR ITS PAID STAFF.

13 (F) (1) THE COMPTROLLER SHALL:

14 (I) DEVELOP A STANDARDIZED FORM FOR QUALIFYING SCHOOLS
15 TO DOCUMENT THE AMOUNT OF TUITION AND FEES PAID BY A PARENT;

16 (II) ENSURE THAT PARENTS ARE AWARE OF THE FAMILY
17 EDUCATION TAX CREDIT AND THAT ALL PROCEDURES FOR CLAIMING THE CREDIT
18 ARE EASY TO FOLLOW;

19 (III) ESTABLISH GUIDELINES FOR PARENTS TO EASILY ASSIGN
20 THEIR TAX CREDIT TO THEIR STUDENT'S QUALIFYING SCHOOL;

21 (IV) REQUIRE ALL SCHOLARSHIP GRANTING ORGANIZATIONS TO
22 REGISTER AND ANNUALLY REPORT THE INFORMATION THE COMPTROLLER NEEDS
23 TO CARRY OUT ITS RESPONSIBILITIES;

24 (V) ADOPT RULES AND PROCEDURES CONSISTENT WITH THIS
25 SECTION AS NECESSARY TO IMPLEMENT THE FAMILY EDUCATION TAX CREDIT
26 PROGRAM; AND

27 (VI) ANNUALLY REPORT TO THE GENERAL ASSEMBLY ON:

28 1. THE NUMBER OF PARENTS OF ELIGIBLE STUDENTS
29 CLAIMING THE TAX CREDIT;

30 2. THE DOLLAR AMOUNT OF THE CREDITS CLAIMED BY
31 PARENTS;

32 3. THE NUMBER OF SCHOOLS ACCEPTING ELIGIBLE
33 STUDENTS WHO RECEIVED A TAX CREDIT OR EDUCATIONAL SCHOLARSHIP;

34 4. THE NUMBER OF SCHOLARSHIP GRANTING
35 ORGANIZATIONS;

1 5. THE NUMBER AND DOLLAR AMOUNT OF CONTRIBUTIONS
2 TO A SCHOLARSHIP GRANTING ORGANIZATION; AND

3 6. THE NUMBER AND DOLLAR AMOUNT OF EDUCATIONAL
4 SCHOLARSHIPS GIVEN TO ELIGIBLE STUDENTS.

5 (2) THE COMPTROLLER MAY CONDUCT EITHER A FINANCIAL REVIEW OR
6 AUDIT OF A SCHOLARSHIP GRANTING ORGANIZATION IF POSSESSING EVIDENCE OF
7 FRAUD.

8 (3) (I) THE COMPTROLLER MAY BAR A SCHOLARSHIP GRANTING
9 ORGANIZATION FROM PARTICIPATING IN THE PROGRAM IF THE COMPTROLLER
10 ESTABLISHES THAT THE ORGANIZATION HAS INTENTIONALLY AND SUBSTANTIALLY
11 FAILED TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION (E) OF THIS
12 SECTION.

13 (II) IF THE COMPTROLLER BARS A SCHOLARSHIP GRANTING
14 ORGANIZATION FROM THE PROGRAM, THE COMPTROLLER SHALL PROMPTLY NOTIFY
15 AFFECTED SCHOLARSHIP STUDENTS AND THEIR PARENTS OF THIS DECISION.

16 (4) THE COMPTROLLER SHALL ADOPT REGULATIONS TO DEVELOP A
17 PROCESS TO ALLOW A TAXPAYER TO DIVERT A PRORATED AMOUNT OF STATE
18 INCOME TAX WITHHOLDINGS TO A SCHOLARSHIP GRANTING ORGANIZATION OF THE
19 TAXPAYER'S CHOICE UP TO THE MAXIMUM CREDIT ALLOWED BY LAW, INCLUDING
20 CARRY-OVER CREDITS.

21 (5) (I) A QUALIFYING SCHOOL IS AUTONOMOUS AND IS NOT AN AGENT
22 OF THE STATE OR FEDERAL GOVERNMENT.

23 (II) THE COMPTROLLER OR ANY OTHER STATE AGENCY MAY NOT
24 REGULATE THE EDUCATIONAL PROGRAM OF A QUALIFYING SCHOOL THAT ADMITS
25 ELIGIBLE STUDENTS UNDER THIS PROGRAM.

26 (III) THE CREATION OF THE FAMILY EDUCATION TAX CREDIT
27 PROGRAM DOES NOT EXPAND THE REGULATORY AUTHORITY OF THE STATE, ITS
28 OFFICERS, OR ANY LOCAL SCHOOL DISTRICT TO IMPOSE ANY ADDITIONAL
29 REGULATION OF NONPUBLIC SCHOOLS BEYOND THOSE REASONABLY NECESSARY
30 TO ENFORCE THE REQUIREMENTS OF THE PROGRAM.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
32 effect July 1, 2005, and shall be applicable to all taxable years beginning after
33 December 31, 2004.