~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 5, 2021

**H. 3899**

Introduced by Reps. Elliott, G.R. Smith, Erickson, Herbkersman, Daning, Taylor, Hixon, Bennett, Willis, Bannister, Morgan, Stringer, Haddon, Burns, B. Cox, Huggins, B. Newton, Fry and McGarry

S. Printed 5/5/21--S.

Read the first time April 8, 2021.

**THE COMMITTEE ON FINANCE**

To whom was referred a Bill (H. 3899) to amend Section 12‑6‑3790, Code of Laws of South Carolina, 1976, relating to the Exceptional Needs Child Tax Credit, so as to provide, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

Amend the bill, as and if amended, SECTION 1, page 2, by striking lines 31-34 and inserting:

/ (5) By January fifteenth of each year, the ~~department~~ public charity shall report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor: /

Renumber sections to conform.

Amend title to conform.

HUGH K. LEATHERMAN, SR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

The bill as amended removes DOR from administrative duties related to the public charity that oversees the ECENC. Currently, the department works with the directors of the public charity for administration and oversight of the public charity. The amendment eliminates these responsibilities for DOR. We anticipate that the agency will allocate any staff time and resources to other responsibilities. Therefore, the bill is not expected to impact expenditures for DOR.

**State Revenue**

In addition to changes to the oversight of the public charity related to the ECENC fund, the amended bill increases the amount of the fund that may be retained by the charity for administration and related costs from 2 percent to 5 percent. Further, the amended bill reduces the reporting requirements of independent schools. This bill allows the ECENC fund to carry forward up to five million dollars of donations into the next year to provide credits in the next year.  This carryforward amount does not increase the cumulative tax credit amount set forth in this bill for any one year.

Exceptional SC reports that the ECENC fund received $4,554,883 in donations in tax year 2019 and retained $91,097, or 2 percent, for administrative costs. Based upon this information and assuming similar donations in future tax years, increasing the amount that may be retained to 5 percent will allow the charity to retain an additional $137,000 in FY 2021-22, for a total of $228,000 for administrative costs. Exceptional SC indicates that all donations, less the allowed percentage for administrative costs, have been awarded in prior years and have not met the credit cap in recent years. As such, this increase in administrative expenses will decrease the amount available for tax credits by approximately $137,000 beginning in FY 2021-22, thereby increasing general fund individual income tax revenue by a corresponding amount.

The bill also increases the amount of credit a taxpayer may claim in a year from 60 percent of the taxpayer’s tax liability to 75 percent for the non-refundable tax credits authorized in Sections 12-6-3790(H)(1) or (I).  Further, any used credit from these sections may be carried forward for three tax years after the tax year in which the qualified contribution is first eligible to be claimed. Currently, there is no carryforward provision.

The bill does not change the aggregate credit amount allowed but does allow taxpayers to utilize more of the credit earned and to carry forward unused credits. The latest available data from DOR reports only tax credit claims against individual income tax and no claims against corporate income tax or bank tax. Based upon tax year 2019, 353 individual income taxpayers claimed $4,052,168 in non-refundable tax credits. Of those, 35 taxpayers earned $74,833 in tax credits that they were not able to claim under the tax liability limitation. By increasing the limitation, those taxpayers will be able to use approximately $20,000 in additional tax credits a year, leaving approximately $55,000 in tax credits to be carried forward. Assuming a similar tax liability in future years, the carryforward would increase credits claimed by approximately $20,000 for the succeeding three tax years, decreasing general fund individual income tax revenue by approximately $20,000 per year beginning in FY 2021-22.

In summary, the impact of increasing the allowable administrative costs and increasing the ability for taxpayers to claim the credit will result in a net increase in general fund individual income tax revenue of $117,000 beginning in FY 2021-22.

**Introduced on January 12, 2021**

**State Revenue**

This bill makes changes to the organizational structure of Exceptional SC, which is the public charity that manages the ECENC fund. The board of directors of the charity will no longer be appointed by the Chairman of the House Ways and Means Committee, Chairman of the Senate Finance Committee, and the Governor. The bill also increases the amount of the fund that may be retained by the charity for administration and related costs from 2 percent to 8 percent. Further, the bill reduces the reporting requirements of independent schools. This bill allows the ECENC fund to carry forward up to five million dollars of donations into the next year to provide credits in the next year.  This carryforward amount does not increase the cumulative tax credit amount set forth in this bill for any one year.

Exceptional SC reports that the ECENC fund received $4,554,883 in donations in tax year 2019 and retained $91,097, or 2 percent, for administrative costs. Based upon this information and assuming similar donations in future tax years, increasing the amount that may be retained to 8 percent will allow the charity to retain an additional $273,292 in FY 2021-22 for a total amount of $364,389 for administrative costs. Exceptional SC indicates that all donations, less the allowed percentage for administrative costs, have been awarded in prior years and have not met the credit cap in recent years. As such, this increase in administrative expenses will decrease the amount available for tax credits by approximately $273,000 beginning in FY 2021-22, thereby increasing general fund individual income tax revenue by a corresponding amount.

The bill also increases the amount of credit a taxpayer may claim in a year from 60 percent of the taxpayer’s tax liability to 75 percent for the non-refundable tax credits authorized in Sections 12-6-3790(H)(1) or (I).  Further, any used credit from these sections may be carried forward for three tax years after the tax year in which the qualified contribution is first eligible to be claimed. Currently, there is no carryforward provision.

The bill does not change the aggregate credit amount allowed but does allow taxpayers to utilize more of the credit earned and to carry forward unused credits. The latest available data from DOR reports only tax credit claims against individual income tax and no claims against corporate income tax or bank tax. Based upon tax year 2019, 353 individual income taxpayers claimed $4,052,168 in non-refundable tax credits. Of those, 35 taxpayers earned $74,833 in tax credits that they were not able to claim under the tax liability limitation. By increasing the limitation, those taxpayers will be able to use approximately $20,000 in additional tax credits a year, leaving approximately $55,000 in tax credits to be carried forward. Assuming a similar tax liability in future years, the carryforward would increase credits claimed by approximately $20,000 for the succeeding three tax years, decreasing general fund individual income tax revenue by approximately $20,000 per year beginning in FY 2021-22.

In summary, the impact of increasing the allowable administrative costs and increasing the ability for taxpayers to claim the credit will result in a net increase in general fund individual income tax revenue of $253,292 beginning in FY 2021-22.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 12‑6‑3790, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE EXCEPTIONAL NEEDS CHILD TAX CREDIT, SO AS TO PROVIDE HOW THE PROCEEDS OF THE FUND MUST BE ADMINISTERED, TO INCREASE THE AMOUNT THE PUBLIC CHARITY MAY EXPEND FOR ADMINISTRATION COSTS TO EIGHT PERCENT; TO APPROPRIATE TWELVE MILLION DOLLARS TO THE DEPARTMENT OF EDUCATION SO THE DEPARTMENT MAY MAKE A DONATION OF TWELVE MILLION DOLLARS TO EXCEPTIONAL SC; AND TO REMOVE A PROVISION THAT REQUIRES A SCHOOL TO PROVIDE CERTAIN INDIVIDUAL STUDENT TEST SCORES IN ITS APPLICATION.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 12‑6‑3790(B) of the 1976 Code, as added by Act 247 of 2018, is amended to read:

“(B)(1) There is created the ‘Educational Credit for Exceptional Needs Children’s Fund’ that is separate and distinct from the state general fund. The fund must be organized as a public charity as defined by the Internal Revenue Code under Section 509(a)(1) through (4) and consist only of contributions made to the fund. The fund may not receive an appropriation of public funds. The fund must receive and hold all contributions intended for it as well as all earnings until disbursed as provided in this section. Monies received in the fund must be used to provide scholarships to exceptional needs children attending eligible schools.

(2) The amounts on deposit in the fund do not constitute public funds and are not the property of the State. Amounts on deposit in the fund may not be commingled with public funds, and the State does not have a claim to or interest in the amounts on deposit. Agreements or contracts entered into by or on behalf of the fund do not constitute a debt or obligation of the State.

(3) The public charity disbursing contributions made to the fund is governed by five directors, two appointed by the Chairman of the House Ways and Means Committee, two appointed by the Chairman of the Senate Finance Committee, and one appointed by the Governor. The directors of the public charity~~, along with the director of the department,~~ shall designate an executive director of the public charity.

(4) ~~In concert with~~ The public charity directors~~, the department~~ shall administer the public charity including, but not limited to, the keeping of records, the management of accounts, and disbursement of the grants awarded pursuant to this section. The public charity may expend up to ~~two~~ five percent of the fund for administration and related costs. The ~~department and the~~ public charity may not expend public funds to administer the program. Information contained in or produced from a tax return, document, or magnetically or electronically stored data utilized by the Department of Revenue or the public charity in the exercise of its duties as provided in this section must remain confidential and is exempt from disclosure pursuant to the Freedom of Information Act. Personally identifiable information, as described in the Family Educational Rights and Privacy Act and individual health records, or the medical or wellness needs of children applying for or receiving grants must remain confidential and is not subject to disclosure pursuant to the Freedom of Information Act.

(5) By January fifteenth of each year, the department shall report to the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor:

(a) the number and total amount of grants issued to eligible schools in each year;

(b) the identity of the school and the amount of the grant for each grant issued to an eligible school in each year;

(c) an itemized and detailed explanation of fees or other revenues obtained from or on behalf of an eligible school;

(d) a copy of a compilation, review, or audit of the fund’s financial statements, conducted by a certified public accounting firm; and

(e) the criteria and eligibility requirements for scholarship awards.”

SECTION 2. A. Section 12‑6‑3790(D)(1)(a) of the 1976 Code is amended to read:

“(a) Tax credits authorized by subsection (H)(1) and subsection (I) annually may not exceed cumulatively a total of twelve million dollars for contributions to the Educational Credit for Exceptional Needs Children’s Fund, unless an increased limit is authorized in the annual general appropriations act. However, the fund may carry forward up to five million dollars of donations into the next year to provide credits in the next year. This carryforward amount does not in any way increase the cumulative tax credit amount set forth in this item for any one year.”

B. Section 12‑6‑3790(D)(2)(b) of the 1976 Code is amended to read:

“(b) A taxpayer may not claim more than ~~sixty~~ seventy‑five percent of his total tax liability for the year in contribution toward the tax credit authorized by subsection (H)(1) or subsection (I). This credit is nonrefundable. Any unused credit may be carried forward three tax years after the tax year in which the qualified contribution is first eligible to be claimed.”

SECTION 3. Section 12‑6‑3790(E)(1)(b) of the 1976 Code, as added by Act 247 of 2018, is amended to read:

“(b) student test scores, by category, on national achievement or state standardized tests, or both, for all grades tested and administered by the school receiving or entitled to receive scholarship grants pursuant to this section in the previous school year~~. The school also shall provide individual student test scores on national achievement or state standardized tests, or both, for any student in grades one through twelve who received a grant from the program during the prior school year. The information must be used to provide program level reports to determine whether students participating in the program have experienced measurable improvement. Students with disabilities for whom standardized testing is not appropriate are exempt from this requirement~~;”

SECTION 4. This act takes effect upon approval by the Governor.

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