

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 344
PROPOSED COMMITTEE SUBSTITUTE H344-PCS30365-RQ-17

Short Title: Tax Credits for Children with Disabilities.

(Public)

Sponsors:

Referred to:

March 15, 2011

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INDIVIDUAL INCOME TAX CREDIT FOR CHILDREN WITH
DISABILITIES WHO REQUIRE SPECIAL EDUCATION AND TO CREATE A FUND
FOR SPECIAL EDUCATION AND RELATED SERVICES.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 4 of Chapter 105 of the General Statutes is amended
by adding a new section to read:

"§ 105-151.33. Education expenses credit.

(a) Credit. – A taxpayer is allowed a credit against the tax imposed by this Part for each of the taxpayer's eligible dependent children who is a resident of this State and who for one or two semesters during the taxable year is enrolled in grades kindergarten through 12 in a nonpublic school or in a public school at which tuition is charged in accordance with G.S. 115C-366.1. As used in this section, the term 'eligible dependent child' means a child who meets all of the following criteria:

(1) Is a child with a disability as defined by G.S. 115C-106.3(1).

(2) Was determined to require an individualized education program as defined by G.S. 115C-106.3(8).

(3) Receives special education or related services on a daily basis.

(4) Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

For the initial eligibility for the tax credit, for at least the preceding two semesters, the eligible dependent child shall have been either (i) enrolled in a public school or (ii) receiving special education or related services through the public schools as a preschool child with a disability as defined by G.S. 115C-106.3(17). An eligible dependent child shall be reevaluated every three years by the local educational agency in order to verify that the child continues to be a child with a disability as defined by G.S. 115C-106.3(1).

(b) Amount. – The credit is equal to the amount the taxpayer paid for tuition and special education and related services expenses, not to exceed three thousand dollars (\$3,000) per semester. For home schools, as defined in G.S. 115C-563(a), the credit is equal to the amount the taxpayer paid for special education and related services expenses, not to exceed three thousand dollars (\$3,000) per semester.

(c) Semesters. – For the purposes of this section, there are two semesters during each taxable year. The spring semester is the first six months of the taxable year, and the fall semester is the second six months of the taxable year. An eligible dependent child is enrolled in



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1 a school for a semester if the eligible dependent child is enrolled in that school for more than 70
2 days during that semester.

3 (d) Disqualification. – A taxpayer may not qualify for a credit for any semester during
4 which the taxpayer's eligible dependent child for whom the credit would otherwise be claimed
5 met any of the following conditions:

6 (1) Was placed in a nonpublic school or facility by a public agency at public
7 expense.

8 (2) Spent any time enrolled as a full-time student taking at least 12 hours of
9 academic credit in a postsecondary educational institution.

10 (3) Was 19 years or older during the entire semester.

11 (4) Graduated from high school prior to the end of the semester.

12 (e) Reduction of Credit. – The amount of the credit is reduced for any semester in
13 which the eligible dependent child spent any time enrolled in a public school. The amount of
14 the reduction is a percentage equal to the percentage of the semester that the eligible dependent
15 child spent enrolled in a public school.

16 (f) Information. – In order to claim the credit allowed by this section, the taxpayer shall
17 provide, when requested, the following to the Secretary:

18 (1) The name, address, and social security number of each eligible dependent
19 child for whom the credit is claimed and the name and address of the school
20 or schools in which the eligible dependent child was enrolled for more than
21 70 days each semester.

22 (2) The taxpayer's certification that the eligible dependent child did not meet
23 any of the disqualifying conditions set out in this section.

24 (3) The name of the local school administrative unit in which the eligible
25 dependent child resides.

26 (4) The amount of tuition paid to a public school at which tuition is charged in
27 accordance with G.S. 115C-366.1 for each semester the eligible dependent
28 child for whom the credit is claimed was enrolled in the school.

29 (5) The eligibility determination that the eligible dependent child is a child with
30 a disability who requires special education and related services.

31 (6) A listing of the tuition and special education and related services expenses
32 on which the amount of the credit is based.

33 (7) For home schools as defined in G.S. 115C-563(a), a listing of the special
34 education and related services expenses on which the amount of the credit is
35 based.

36 (g) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax
37 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the
38 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the
39 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this
40 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable
41 credits are subtracted before refundable credits.

42 (h) Transfer. – At the end of each fiscal year, the Secretary shall transfer to the Fund for
43 Special Education and Related Services established under G.S. 115C-472.15 from the net
44 individual income tax collections under G.S. 105-134.2 an amount equal to two thousand
45 dollars (\$2,000) multiplied by the number of credits taken under this section during the fiscal
46 year.

47 (i) Definitions. – The following definitions apply in this section:

48 (1) "Special education" means specially designed instruction to meet the unique
49 needs of a child with a disability. The term includes instruction in physical
50 education and instruction conducted in a classroom, the home, a hospital, or
51 institution, and other settings.

(2) "Related services" is as defined in The Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400, et seq., (2004), as amended and federal regulations adopted under this act."

SECTION 2. G.S. 105-151.33(a), as enacted by Section 1 of this act, reads as rewritten:

"(a) Credit. – A taxpayer is allowed a credit against the tax imposed by this Part for each of the taxpayer's eligible dependent children who is a resident of this State and who for one or two semesters during the taxable year, is enrolled in grades kindergarten through 12 in a nonpublic school or in a public school at which tuition is charged in accordance with G.S. 115C-366.1. As used in this section, the term 'eligible dependent child' means a child who meets all of the following criteria:

- (1) Is a child with a disability as defined by G.S. 115C-106.3(1).
- (2) Was determined to require an individualized education program as defined by G.S. 115C-106.3(8).
- (3) Receives special education or related services on a daily basis.
- (4) Is a child for whom the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the taxable year.

For the initial eligibility for the tax credit, for at least the preceding ~~two semesters, semester,~~ the eligible dependent child shall have been either: (i) enrolled in a public school, or (ii) receiving special education or related services through the public schools as a preschool child with a disability as defined by G.S. 115C-106.3(17). An eligible dependent child shall be reevaluated every three years by the local educational agency in order to verify that the child continues to be a child with a disability as defined by G.S. 115C-106.3(1)."

SECTION 3. Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 32D.

"Fund for Special Education and Related Services.

"§ 115C-472.15. Fund for Special Education and Related Services.

(a) The Fund for Special Education and Related Services is established as a special revenue fund under the control and direction of the State Board of Education. Interest and other investment income earned by the Fund accrue to it, and revenue in the Fund does not revert. The Fund consists of money credited to it under G.S. 105-151.33.

(b) The State Board of Education shall use the revenue in the Fund only for special educational and related services for children with disabilities. In addition, the State Board of Education shall use revenues in the Fund to reimburse local educational agencies for conducting reevaluations for continued eligibility and developing revised individualized education programs pursuant to G.S. 105-151.33(a)(1)."

SECTION 4. The Department of Revenue shall report to the Revenue Laws Study Committee and the Joint Legislative Education Oversight Committee on the administration of G.S. 105-151.33, as enacted by Section 1 of this act. The report is due by October 1, 2013, and shall include the following:

- (1) The number and amount of credits taken under G.S. 105-151.33.
- (2) Any concerns relating to the administration of G.S. 105-151.33 or taxpayer compliance with the requirements of that section.
- (3) Any other matter with respect to G.S. 105-151.33 the Department wishes to address.

SECTION 5. Sections 1, 3, and 4 of this act are effective for taxable years beginning on or after January 1, 2011, and apply to semesters for which the credit is claimed beginning on or after July 1, 2011, except that transfers under G.S. 105-151.33(h) shall not be made before the 2012-2013 fiscal year. Section 2 of this act is effective for taxable years

- 1 beginning on or after January 1, 2016, and applies to semesters for which the credit is claimed
- 2 beginning on or after July 1, 2016. The remainder of this act is effective when it becomes law.