

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 687

Short Title: Tax Credits for Children with Disabilities. (Public)

Sponsors: Representatives Stam, Wiley, Randleman (Primary Sponsors); Avila, Blackwood, Boles, Brown, Burr, Burris-Floyd, Cleveland, Current, Daughtry, Folwell, Frye, Gillespie, Gulley, Holloway, Langdon, Lewis, McCormick, McGee, Mills, Moore, Neumann, Rhyne, Sager, Steen, Stevens, and Tillis.

Referred to: Education, if favorable, Finance.

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO ALLOW AN INDIVIDUAL INCOME TAX CREDIT FOR PART OF THE EXPENSE OF AVOIDED PUBLIC EDUCATION FOR CHILDREN WITH DISABILITIES WHO REQUIRE SPECIAL EDUCATION AND RELATED SERVICES OUTSIDE THE REGULAR CLASSROOM AND WHO ARE ENROLLED IN AND ATTENDING NONPUBLIC SCHOOLS OR PUBLIC SCHOOLS AT WHICH TUITION IS CHARGED 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 and attending grades K 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 with a disability as defined by G.S. 115C-106.3(1) who has spent at least two semesters in a taxable year in a public school, who while enrolled in and attending a public school was determined to require an individualized education program as defined by G.S. 115C-106.3(8) that requires at least daily special education and related services received outside the regular classroom, and 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, the eligible dependent child shall have been enrolled in and attended at least two semesters in a public school in the immediately preceding taxable year.

(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



1 a school for a semester if the eligible dependent child is enrolled in and attending that school
2 for more than 80 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) Spent any time enrolled as a full-time student taking at least 12 hours of
7 academic credit in a postsecondary educational institution.

8 (2) Was 22 years or older during the entire semester.

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

13 (f) Information. – In order to claim the credit allowed by this section, the taxpayer must
14 provide the following to the Secretary:

15 (1) The name, address, and social security number of each eligible dependent
16 child for whom the credit is claimed and the name and address of the school
17 or schools in which the eligible dependent child was enrolled in and attended
18 for more than 80 days each semester.

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

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

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

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

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

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

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

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

44 **SECTION 2.** Chapter 115C of the General Statutes is amended by adding a new
45 Article to read:

46 "Article 32D.

47 "Fund for Special Education and Related Services.

48 "**§ 115C-472.15. Fund for Special Education and Related Services.**

49 (a) The Fund for Special Education and Related Services is established as a special
50 revenue fund under the control and direction of the State Board of Education. Interest and other

1 investment income earned by the Fund accrue to it, and revenue in the Fund does not revert.
2 The Fund consists of money credited to it under G.S. 105-151.33.

3 (b) The State Board of Education shall use the revenue in the Fund only for special
4 educational and related services for children with disabilities."

5 **SECTION 3.** The Department of Revenue shall report to the Revenue Laws Study
6 Committee and the Joint Legislative Education Oversight Committee on the administration of
7 G.S. 105-151.33, as enacted by Section 1 of this act. The report is due by January 1, 2010, and
8 shall include the following:

9 (1) The number and amount of credits taken under G.S. 105-151.33.

10 (2) Any concerns relating to the administration of G.S. 105-151.33 or taxpayer
11 compliance with the requirements of that section.

12 (3) Any other matter with respect to G.S. 105-151.33 the Department wishes to
13 address.

14 **SECTION 4.** This act is effective for taxable years beginning on or after January 1,
15 2009, and applies to semesters beginning on or after July 1, 2009, except that transfers under
16 G.S. 105-151.33(h) shall not be made before the 2010-2011 fiscal year. This act expires
17 December 31, 2013.