

By: Senator(s) Robertson

To: Appropriations

SENATE BILL NO. 3092

1 AN ACT TO PROVIDE AN INCOME OR FRANCHISE TAX CREDIT TO ANY
 2 PERSON WHO MAKES CONTRIBUTIONS TO A NONPROFIT EDUCATIONAL
 3 ASSISTANCE ORGANIZATION THAT PROVIDES SCHOLARSHIPS FOR LOW-INCOME
 4 STUDENTS TO ATTEND QUALIFIED SCHOOLS IN AN AMOUNT EQUAL TO 70% OF
 5 THE AMOUNT THE TAXPAYER CONTRIBUTED DURING THE TAXABLE YEAR FOR
 6 WHICH THE CREDIT IS BEING CLAIMED; TO PROVIDE THAT THE AMOUNT OF
 7 THE TAX CREDIT MAY NOT EXCEED THE TAXPAYER'S STATE TAX LIABILITY
 8 FOR THE TAXABLE YEAR IN WHICH THE CREDIT IS CLAIMED; TO PROVIDE
 9 THAT ANY UNUSED CREDIT MAY BE CARRIED FORWARD TO ANY OF THE FOUR
 10 SUBSEQUENT TAXABLE YEARS; TO PROVIDE THE MINIMUM AMOUNT THAT MAY
 11 BE CONTRIBUTED IN ORDER TO RECEIVE THE CREDIT; TO PROVIDE THAT THE
 12 CUMULATIVE AMOUNT OF THE TAX CREDIT THAT MAY BE ALLOCATED TO ALL
 13 TAXPAYERS IN ANY ONE FISCAL YEAR MAY NOT EXCEED \$10,000,000.00; TO
 14 REQUIRE THE CHAIRMAN OF THE STATE TAX COMMISSION TO DETERMINE
 15 ANNUALLY WHICH ORGANIZATIONS MAY BE CLASSIFIED AS NONPROFIT
 16 EDUCATIONAL ASSISTANCE ORGANIZATIONS; TO PROVIDE THE CRITERIA FOR
 17 QUALIFICATION AS A NONPROFIT EDUCATIONAL ASSISTANCE ORGANIZATION;
 18 TO PROVIDE WHAT SCHOLARSHIP MONEY GRANTED BY NONPROFIT EDUCATIONAL
 19 ASSISTANCE ORGANIZATIONS MAY BE UTILIZED TO COVER; TO LIMIT THE
 20 AMOUNT OF SUCH SCHOLARSHIPS; TO AUTHORIZE A CERTAIN AMOUNT OF THE
 21 QUALIFYING CONTRIBUTIONS TO BE UTILIZED TO ASSIST LOW INCOME
 22 STUDENTS WHO ATTEND PUBLIC SCHOOLS TO DEFRAY CERTAIN COSTS; TO
 23 AUTHORIZE THE CHAIRMAN OF THE STATE TAX COMMISSION TO ENTER INTO
 24 CONTRACTS WITH DESIGNATED NONPROFIT ORGANIZATIONS FOR THE PURPOSE
 25 OF ADMINISTERING THE CREDIT; AND FOR RELATED PURPOSES.

26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

27 **SECTION 1.** (1) As used in this section:

28 (a) "Administrator" means the administrator of the
 29 designated nonprofit oversight organization;

30 (b) "Designated nonprofit oversight organization" means
 31 a charitable organization in this state that is exempt from
 32 federal taxation pursuant to the Internal Revenue Code, as
 33 amended, designated to certify nonprofit educational assistance
 34 organizations, approve applications for the tax credit allowed by
 35 this section, and coordinate with the Chairman of the State Tax
 36 Commission in administering the tax credit allowed by this
 37 section;

38 (c) "Chairman" means the Chairman of the State Tax
39 Commission;

40 (d) "Income eligible student" means elementary or
41 secondary school student whose parents' or guardians' income is no
42 more than one hundred seventy-five percent (175%) of the level
43 that would make the student eligible for a free or reduced price
44 school lunch pursuant to the National School Lunch Act;

45 (e) "Nonprofit educational assistance organization"
46 means a charitable organization in this state that is exempt from
47 federal taxation pursuant to the Internal Revenue Code, as
48 amended, is certified by the chairman, and that allocates at least
49 ninety percent (90%) of its annual revenue derived from
50 contributions for which credit is claimed pursuant to this section
51 for educational assistance. The term "nonprofit educational
52 assistance organization" does not include an organization that
53 only provides scholarships to students of a particular school;

54 (f) "Qualified school" means any accredited elementary
55 or secondary school situated in this state which a child may
56 attend to satisfy the requirements;

57 (g) "Qualified student" means an income eligible
58 student who in the previous school year was enrolled in a public
59 school or who had received a scholarship as a qualified student
60 and is not enrolled in a public school in the year in which the
61 nonprofit educational assistance organization is providing a
62 scholarship to that student. The term shall include all income
63 eligible kindergarten students;

64 (h) "Qualifying contribution" means a donation of cash,
65 stock, bonds or other marketable securities for purposes of
66 claiming a tax credit pursuant to this section;

67 (i) "State tax liability" means any liability incurred
68 by a taxpayer pursuant to Chapters 7 and 13, Title 27, Mississippi
69 Code of 1972;

70 (j) "Taxpayer" shall have the meaning ascribed to such
71 term in Section 27-7-3 or a corporation, association or joint
72 stock company subject to the franchise tax imposed by Chapter 13,
73 Title 27, Mississippi Code of 1972;

74 (2) For all tax years beginning on or after January 1, 2004,
75 any taxpayer who makes contributions to a nonprofit educational
76 assistance organization may claim a credit against the tax imposed
77 pursuant to Chapters 7 and 13, Title 27, Mississippi Code of 1972,
78 in an amount equal to seventy percent (70%) of the amount the
79 taxpayer contributed during the taxable year for which the credit
80 is claimed; however, no taxpayer shall claim a credit pursuant to
81 this section for any contribution made by the taxpayer, or agent
82 of the taxpayer, on behalf of the taxpayer's dependent, or in the
83 case of a business taxpayer, on behalf of a dependent of an agent
84 of the business. Any amount of contribution subtracted from
85 federal adjusted gross income or federal taxable income shall be
86 added back in the determination of Mississippi taxable income
87 before the credit can be claimed.

88 (3) The amount of the tax credit claimed shall not exceed
89 the amount of the taxpayer's state tax liability for the taxable
90 year for which the credit is claimed. Any unused amount of the
91 credit may be carried forward to any of the four (4) subsequent
92 taxable years. No taxpayer shall claim a credit pursuant to this
93 section unless the amount contributed to a nonprofit educational
94 assistance organization is Two Hundred Dollars (\$200.00) or more.

95 (4) The cumulative amount of tax credits which may be
96 allocated to all taxpayers contributing to a nonprofit educational
97 assistance organization in any one (1) fiscal year shall not
98 exceed Ten Million Dollars (\$10,000,000.00). The chairman, with
99 the assistance of the administrator, shall establish a procedure
100 by which, from the beginning of the fiscal year until some point
101 in time later in the fiscal year to be determined by the chairman,
102 the cumulative amount of tax credits are apportioned among all

103 nonprofit educational assistance organizations. To the maximum
104 extent possible, the chairman shall establish the procedure
105 described in this subsection in such a manner so as to ensure that
106 taxpayers can claim all the tax credits possible up to the
107 cumulative amount of tax credits available for the fiscal year.
108 The chairman shall certify to the organizations the amount of
109 eligible tax credits that can be taken by the organizations.

110 (5) The chairman shall determine, at least annually, which
111 organizations in this state may be classified as nonprofit
112 educational assistance organizations. The chairman may require a
113 charity seeking classification as a nonprofit educational
114 assistance organization to provide any information reasonably
115 necessary to make such a determination. The chairman shall
116 classify an organization as a nonprofit educational assistance
117 organization if the organization qualifies as a nonprofit
118 educational assistance organization as provided in this section.

119 To qualify as a nonprofit educational assistance
120 organization, the organization shall meet the following
121 conditions:

122 (a) (i) At least seventy percent (70%) of all
123 qualifying contributions it receives during any given state fiscal
124 year are allocated for the purpose of providing scholarships to
125 any qualified student who attends a qualified school, and the
126 organization gives priority in awarding scholarships to those
127 students who demonstrate the greatest need for such scholarships,
128 as defined by:

129 (1) Children of inmates;

130 (2) Children attending a school or residing
131 in a school district that fails to meet a Level III, IV or V
132 accreditation level (priority schools); or

133 (3) Children residing within the boundaries
134 of schools targeted for improvement under the No Child Left Behind
135 Act of 2001 pursuant to public law 107-110. Scholarship money may

136 be used to cover applicable tuition, transportation, textbooks,
137 supplies and other related educational or extracurricular
138 expenses.

139 (ii) Any qualifying contributions not required to be
140 allocated in accordance with this paragraph may be used to provide
141 scholarships for income eligible students who attend qualified
142 schools or may be used for the purposes set forth in paragraph (c)
143 of this subsection;

144 (b) It does not provide any scholarship to any
145 qualified student for a single school year that exceeds Three
146 Thousand Eight Hundred Dollars (\$3,800.00), which amount shall
147 annually be increased for inflation based on increases in the
148 Consumer Price Index rounded to the nearest Fifty Dollar (\$50.00)
149 increment, except that the nonprofit educational assistance
150 organization may award scholarships to children with disabilities
151 who are age three (3) or older in any amount that is substantially
152 comparable to the amount the state would have paid for such child,
153 and except that scholarships may be awarded in amounts in excess
154 of the limitation if the increased amount of the scholarships is
155 offset by a reduction in the monetary amount of the scholarships
156 provided by the nonprofit educational assistance organization to
157 nonqualifying students. To qualify for a scholarship, children
158 with disabilities are not required to meet the income eligible
159 student definition if the disabled child's parents or guardians
160 have unreimbursed medical expenses in excess of seven and one-half
161 percent (7 1/2%) of federal adjusted gross income;

162 (c) The organization may allocate up to thirty percent
163 (30%) of any qualifying contributions it receives during any state
164 fiscal year that are not required to be allocated pursuant to
165 paragraphs (a) and (b) of this subsection to directly assist any
166 income eligible student who attends a public school in defraying
167 the costs of private instructional assistance, including any
168 related private educational supplies; for transportation to any

169 public school to the extent that such transportation is not paid
170 for by a school district or the state; for offsetting fees for
171 out-of-school programs; for apprenticeship programs; for
172 scholarship assistance for dropouts to pursue a GED or its
173 equivalent; for grants for public school academic or
174 extracurricular programs; or for income eligible or qualified
175 students to attend a qualified school;

176 (d) All interest accruing from contributions shall be
177 used for educational assistance; and

178 (e) All marketing and administrative expenses for the
179 nonprofit educational assistance organization shall be not more
180 than eight percent (8%) of the qualifying contributions it raises.

181 (6) A nonprofit educational assistance organization shall
182 report annually to the chairman the name of the participating
183 qualified schools.

184 (7) The chairman, with the assistance of the administrator,
185 shall establish a procedure by which a taxpayer can determine if
186 an organization has been classified as a nonprofit educational
187 assistance organization, and by which taxpayers can claim the tax
188 credit pursuant to this section.

189 (8) The chairman may certify and enter into a contract with
190 a designated nonprofit organization for the purpose of
191 administering this section. A designated nonprofit organization
192 shall be subject to an audit by the State Tax Commission. To
193 qualify for designation, a nonprofit organization shall:

194 (a) Have the administrative capability to promote the
195 success of the tax credit allowed by this section by recruiting
196 and coordinating activities with all interested nonprofit
197 educational assistance organizations in this state and certifying
198 those nonprofit educational assistance organizations that meet the
199 criteria set forth in subsection (5) of this section;

200 (b) Demonstrate the ability to handle large volumes of
201 and amounts of financial transactions and be able to resolve
202 Internal Revenue Service compliance issues;

203 (c) Review the staff qualifications, evaluate
204 fundraising capabilities and confirm exempt status of the
205 nonprofit educational assistance organizations;

206 (d) Create a standardized application for use by
207 nonprofit educational assistance organizations;

208 (e) Produce an annual report for the Legislature;

209 (f) Complete other duties as required by the chairman;

210 and

211 (g) The designated nonprofit oversight organization
212 shall receive no more than two percent (2%) of the qualifying
213 contributions for marketing and administrative expenses, or if a
214 designated nonprofit oversight organization is not selected, up to
215 two percent (2%) of the qualifying contributions shall be required
216 by the State Tax Commission for costs it incurs in administering
217 the program.

218 (9) The State Tax Commission may promulgate rules and
219 regulations for the administration of this section.

220 **SECTION 2.** This act shall take effect and be in force from
221 and after January 1, 2004.