**Senator Simcha Felder**

**MEMO**

**BILL NUMBER:** S1976

**SPONSOR:** FELDER / GOLDEN

**TITLE OF BILL**:  An act to amend the tax law and the education law, in relation to enacting the "education investment incentives act"

**PURPOSE**:  This bill would provide incentives in the form of tax credit for donations to public education entities, school improvement organizations, local education funds, and educational scholarship organizations, as well as tax credits for certain expenses incurred by parents who educate their children at home and qualified educators who purchase materials and supplies for classroom use.

**SUMMARY OF PROVISIONS**:

Section one of the bill provides the short title, which is the "education investment incentives act."

Section two of the bill adds new section 42 to the Tax Law, which is the education investment tax credit. New section 42 includes cross-references to the definitions of terms such as "authorized contribution," "public education entity," "local education fund," and "educational scholarship organization." These terms are defined in new Article 25 of the Education Law, which is section 9 of this bill.

The education investment tax credit is available to individuals and Article 9-A taxpayers that make qualified contributions to public education entities, school improvement organizations, local education funds, nd/or educational scholarship organizations. To be eligible to claim he tax credit provided by new section 42, a taxpayer must, prior to asking a contribution for which the taxpayer will seek a credit, apply o the Department of Taxation and Finance ("DTF") for a contribution

authorization certificate. If there is credit available, DTF will issue a contribution authorization certificate to the taxpayer and provide notice of the issuance of the certificate to the entity, public school, or public school district named in the certificate. The contribution authorization certificate will list the amount of the authorized contribution and the entity, public school or public school district for which the contribution is authorized.  Taxpayers have until the date listed on their contribution authorization certificate, which cannot be

later than December 31 of the calendar year, to make the contribution to the named entity, public school, or public school district. Upon receipt of a timely authorized contribution, the recipient will issue a certificate of receipt to the taxpayer. If a contribution is not timely received, the recipient named in the contribution authorization certificate will notify DTF. The amount of such authorized contribution will be added to the maximum amount of credit available (credit cap) in the immediately following calendar year.

The maximum amount of credit that a taxpayer may claim for any year is

90% of the taxpayer's qualified contributions, capped at $1 million plus

any amount carried over from a prior year. Any amount of qualified contributions made in excess of these limits may be carried forward for 5 years.

Taxpayers may not use a qualified contribution as both a charitable contribution deduction to decrease their New York State income tax liability and a credit against their New York State income tax.  Corporations must add the contribution amount claimed as a charitable contribution at the Federal level back to entire net income.  Individuals who itemize their deductions on their Federal return must add the contribution amount claimed as a charitable contribution at the Federal

level back to income on the New York State return.

The credit is capped at $150 million for calendar year 2016 and $225 million in 2017 plus any amounts required to be added to the cap due to authorized contributions that were not timely made in the immediately preceding calendar year. Beginning in calendar year 2018, the credit is capped at $300 million plus any amounts required to be added to the cap due to authorized contributions that were not timely made in the immediately preceding calendar year. One half of the annual cap will be available for qualified contributions made to public education entities,

school improvement organizations, and local education funds and one half of the annual cap will be available to educational scholarship organizations to provide scholarships to public or non-public schools.

Section two also requires a joint report from the Commissioner and the Commissioner of the Department of Education. The joint report shall include, among other things, statistics regarding the number of qualified contributions made to each type of recipient and the distribution

of the recipients by county.

Section three of the bill amends Tax Law section 208(9)(b) by adding a new subparagraph (22) to provide that if a taxpayer claims a charitable contribution deduction at the Federal level for any amount that the taxpayer claimed as a credit pursuant to Tax Law section 210-B(49), such amount must be added back to the taxpayer's entire net income computation.

Section four of the bill amends Tax Law section 210-B to add a new subdivision (49) to provide the mechanism for Article 9-A taxpayers to claim the education investment tax credit. Any unused credit can be carried forward for 5 years.

Section five of the bill amends Tax Law section 606(i)(1)(B) to add a new clause (xli) to provide the mechanism for S Corporations to claim the education investment tax credit.

Section six of the bill amends section 606 of the Tax Law to add two new subsections (w) and (w-1). New subdivision (w) provides a refundable credit for home- based instructional materials purchased by the taxpayer. The amount of the credit is the lesser of $200 or 100% of the amount used to purchase instructional materials for home-based educational programs. New subsection (w-1) provides a credit for teachers and instructors who (1) work in a public, charter or non-public school for at least 900 hours during a taxable year, and (2) purchase classroom

instructional materials and supplies that are used in classroom instruction at the public, charter or non-public school for which the taxpayer is employed. The amount of the credit is the lesser of $200 or 100% of the amount used to purchase instructional materials and supplies.

Section seven of the bill amends Tax Law section 606 by adding a new subsection (ccc) to provide the mechanism for Article 22 taxpayers to claim the education investment incentives credit. Any unused credit can be carried forward for 5 years.

Section eight of the bill amends Tax Law section 615(c) by adding a new paragraph (9) to provide that if a taxpayer claims a charitable contribution deduction at the Federal level for any amount claimed as a credit pursuant to section 606 (ccc), such amount must be added back to the New York taxable income.

Section nine of the bill amends the Education Law to add a new Article 25, entitled the "Education Investment Tax Credit Program." This new article provides the framework for public education entities, school improvement organizations, local education funds, and educational scholarship organizations to apply for authorization to issue certificates of receipt. This new Article also provides that any authorization granted may be revoked in a subsequent year.  Additionally, this new Article contains the same definitions and same joint report requirement that are provided in new Tax Law section 42.

Section ten of this bill adds a new section 1503-a to the Education Law. This new section provides that school districts may accept and solicit donations and gifts. This new section further provides that any amounts received as donations or gifts shall be disregarded for purposes of "apportionments, computations and determinations of state aid."

Section eleven of this bill contains the severability clause. Section twelve of this bill provides that this act shall take effect immediately and shall apply to taxable years beginning after December 31, 2015.

**EXISTING LAW**: New law

**JUSTIFICATION**:  At a time when the state is considering ways of reducing the tax burden for New York State residents and educators are seeking an expansion of financial resources, charitable giving for educational purposes should be stimulated. Permitting public education entities such as school districts and individual public schools, including charter schools, and non-profits that promote the arts, civics, and pre-k instruction, to accept and receive voluntary cash contributions will lessen the need for additional tax revenue, encouraging voluntary support for education without prejudice for or against any state-sponsored educational enterprise. The bill promotes the state's interest in providing the highest quality education to all children in the state. The tax credit does not constitute public aid to non-public sectarian institutions. Additionally, permitting school personnel to claim a credit for the purchase of classroom instructional materials and supplies will ensure a wider availability of such materials and supplies for all students.

**LEGISLATIVE HISTORY**:  2014: S.6808 - Referred to Investigations and Government Operations Similar to:  2013-4: S.4099-A - Referred to Investigations and Government Operations 2011-2: S.3072 - Passed the Senate both years.

**FISCAL IMPLICATIONS**:  $150 million for calendar year 2016, $225 million in calendar year 2017, and $300 million for each calendar year thereafter beginning in 2018.

**EFFECTIVE DATE**:  This act shall take effect immediately and shall

apply to taxable years beginning after December 31, 2015.