

**REPORT OF THE JOINT SUBCOMMITTEE
TO EVALUATE TAX PREFERENCES**

**Neighborhood Assistance Act
Tax Credit – September, 2016**

TO THE GENERAL ASSEMBLY OF VIRGINIA



HOUSE DOCUMENT NO. 12

**COMMONWEALTH OF VIRGINIA
RICHMOND
2017**

EXECUTIVE SUMMARY:

NEIGHBORHOOD ASSISTANCE ACT TAX CREDIT

(INCOME TAX, BANK FRANCHISE TAX, INSURANCE LICENSE TAX, PUBLIC SERVICE CORPORATION LICENSE TAX)

SEPTEMBER, 2016

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

- PREFERENCE:

The Neighborhood Assistance Act Tax Credit is found in Article 13.2 (§ 58.1-439.18 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia.

- SUMMARY:

The Neighborhood Assistance Program Tax Credit provides a tax credit for businesses and individuals that make a donation to a neighborhood organization that administers an approved program related to community services, education, housing assistance, or job training. The amount of the tax credit is equal to 65 percent of the value of the donation of money, marketable securities, property, or professional services. The credits are administered by the Department of Education and the Department of Social Services.

- REVENUE IMPACT:

The total amount of credits that may be approved in a year is capped at \$17 million; \$9 million for educational programs, and \$ 8 million for all other programs. The annual request for allocations of credits typically far exceeds the cap. For fiscal year 2016, \$46.1 million in credits were requested for all programs.

- JOINT SUBCOMMITTEE RECOMMENDATION:

The Joint Subcommittee did not make any formal recommendations.

PREFERENCE REPORT:

NEIGHBORHOOD ASSISTANCE ACT TAX CREDITS

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Preference Description

General Overview

The Neighborhood Assistance Act Tax Credit, found at Article 13.2 (§ 58.1-439.18) of Chapter 3 of Title 58.1 of the Code of Virginia,¹ provides a tax credit for businesses and individuals that make a donation to a neighborhood organization with an approved program. The credit can be used against personal income tax, corporate income tax, bank franchise tax, insurance license tax, or public service corporation tax liabilities. In addition to the statutes that authorize the credit, administrative guidance is also found in regulations issued by the Department of Social Services (DSS)² and guidelines issued by the Department of Education (DOE).³ The neighborhood assistance tax credit program expires on July 1, 2028.

A neighborhood organization is a 501(c)(3) or 501(c)(4) organization, a community action agency as defined by the Economic Opportunity Act of 1964 (42 USC §2701 et seq.), or a housing authority as defined in § 36-3 of the Code of Virginia, that provides community services, education, housing assistance or job training. The programs administered by an approved neighborhood organization must benefit low-income persons, defined individuals whose family's annual household income is not in excess of 300 percent of current poverty guidelines, or eligible students with disabilities, defined as students for whom an individualized educational program has been written and finalized and whose family's annual household income is not in excess of 400 percent of the current poverty guidelines.

The Neighborhood Assistance Act tax credit is administered differently than other tax credits. A neighborhood organization submits a proposal to the approving agency -- the Superintendent of Public Instruction for education proposals and the Commissioner of the Department of Social Services for all other proposals -- to receive an allocation of tax credits. The approval process will be explained in more

¹ See Appendix for full text of Article 13.2.

² See Chapter 41 (22 VAC 40-41-10 et seq.) of Title 22 of the Virginia Administrative Code.

³ Available at the Department of Education website at

http://www.doe.virginia.gov/school_finance/neighborhood_assistance_act/guidelines_neighborhood_assistance_act.pdf.

detail below. If approved, the organization receives an allocation of tax credits which are then made available to individuals and businesses making qualified donations to the organization. The organization certifies to the Department of Taxation that the taxpayer made a qualified donation for which tax credits were issued.

Donation by a Business Firm

A business firm may receive a credit for a donation of money, property, professional services, or contracting services equal to 65 percent of the value of the donation. The value of donated professional services is determined as the lesser of the reasonable cost for similar services or \$125 per hour. Professional services are defined as the provision of personal services that requires as a condition precedent to the rendering of services the obtaining of a license or other legal authorization, such as services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys, and veterinarians. The value of donated contracting services is determined as the lesser of the reasonable cost of similar services or \$50 per hour. Contracting services are defined as services of a licensed contractor to aid in the development, construction, renovation, or repair of homes of low-income persons or buildings used by neighborhood organizations.

A minimum donation of \$616 during the taxable year is required for a business firm to be eligible for a credit. There is no maximum donation limit, other than the business firm is eligible for a credit only to the extent that sufficient tax credits allocated to the neighborhood organization to which the donation is made are available. The business firm may, pursuant to a written agreement, agree to accept a credit at a value less than 65 percent of the donation. If the business firm cannot utilize the full amount of the tax credit for the taxable year in which the donation was made, the credit may be carried forward for up to five consecutive tax years.

Donation by an Individual

An individual may receive a tax credit for a donation of money or marketable securities equal to 65 percent of the value of the donation. In order to receive a credit, the individual must make a donation of at least \$500 in value in the taxable year, and credits will only be issued for the first \$125,000 in value of donations made in the taxable year. Like a business firm making a donation, the taxpayer may agree in writing to accept a credit at a value less than 65 percent of the donation. If the taxpayer cannot fully utilize the credit for the taxable year in which the donation was made, the credit may be carried forward for up to five consecutive tax years.

The Approval and Allocation Process

In order to be able to offer tax credits to persons making donations, neighborhood organizations must apply to DOE or DSS for approval of their programs and an allocation of credits to be made available to their donors. The processes for approval of education programs and allocation of credits through DOE and other programs through DSS are similar, but there are some key differences due to both different statutory requirements as well as differences that have evolved through the respective regulations and

guidelines developed by the two state agencies. These discrepancies contribute to the somewhat confusing administrative nature of the tax credit.

In submitting a proposal to either DOE or DSS, a neighborhood organization must describe the program conducted by the organization and the low-income persons or eligible students with disabilities to be assisted, the estimated amount to be donated to the program, and the plans for implementing the program. In addition, the following criteria must be met:

- The neighborhood organization must have been in existence for at least one year;
- Organizations with total revenues in excess of \$100,000 for the most recent year ended shall provide an audit performed by an independent certified public accountant. Organizations with total revenues \$100,000 or less for the most recent year ended shall provide a compilation performed by an independent certified public accountant;
- At least 50 percent of the persons served by the organization must be low-income persons or eligible students with disabilities, **and** at least 50 percent of the organization's revenues must be used to provide services to low-income individuals and eligible students with disabilities (hereinafter the "50/50 rule").⁴
- With some exceptions, discussed in more detail below, both the applicant neighborhood organization and any of its affiliates must meet the application requirements. An affiliate is any other organization directly or indirectly controlling, controlled by, or under common control with such organization.

Through its guidelines and regulations, DOE and DSS require that applicant organizations also include a current letter from the Department of Agriculture and Consumer Affairs certifying that the organization complies with Chapter 5 (§ 57-48 et seq.) of Title 57 related to the registration of charitable organizations for the solicitation of contributions.

The requirement that all affiliates meet the application criteria set forth above was added to the tax credit program in 2013.⁵ This made some education-related organizations that had previously received allocations of credits ineligible, and in 2015, a "grandfather clause" was added for organizations receiving an allocation of credits from DOE. Beginning with fiscal year 2014-2015, and ending in fiscal year 2019-2020, the requirement that affiliates meet the 50/50 rule will not apply to a neighborhood organization that received an allocation of credits from DOE in fiscal year 2011-2012 and meets the 50/50 rule, so long as none of its affiliates receive an allocation of tax credits during the five-year period.

⁴ Subsection B of § 58.1-439.19 provides that the guidelines developed by DOE shall require that at least 50 percent of the persons served by the organization are low-income or eligible students with disabilities and that at least 50 percent of the organization's revenues are used to provide services to low-income persons or eligible students with disabilities. The same section only requires that regulations adopted by DSS provide that at least 50 percent of the persons served by the applicant organization are low-income or eligible students with disabilities, and does not speak to a revenue requirement. However, regulations adopted by DSS at subdivision C 2 of 22VAC40-41-20 also require that at least 50 percent of the applicant organization's revenues be used to provide services to low-income individuals or eligible students with disabilities.

⁵ See Chapter 802 of the Acts of Assembly of 2013.

During the 2016 Session of the General Assembly, legislation was adopted that, effective July 1, 2016, will create a grandfather clause for neighborhood organizations applying for an allocation of credits from DSS.⁶ Several key differences exist between the DOE and the DSS grandfather provisions. Beginning with fiscal year 2016-2017, the requirement that affiliates must meet the 50/50 rule would not apply to a neighborhood organizations applying to DSS that received an allocation of credits in fiscal year 2013-2014 and meet the 50/50 rule, so long as none of its affiliates submit an application for or receive an allocation of credits for the same program year. The DSS grandfather clause is permanent. Additionally, the affiliates of the qualifying neighborhood organization would not be required to submit audits or financial compilations.

Once the completed applications are received, § 58.1-429.20 and the accompanying regulations and guidelines set forth policies and procedures for the allocation of credits among the qualifying applications. Subsection B provides that available credits shall be allocated equitably. At least 10 percent of the available credits must be allocated to qualified programs that did not receive an allocation in the previous year. If the amount of credits requested by such programs is less than 10 percent of the available credits, then the credits may be allocated to other programs. The regulations adopted by DSS provide that beyond such 10 percent of credits, allocations to organizations shall be based on the average amount of credits actually used by the organization in prior years. The guidelines adopted by DOE simply provide that credits will be allocated equitably among the approved proposals.

Preference Purpose

Section 58.1-439.19 states that "[i]t is hereby declared to be public policy of the Commonwealth to encourage business firms to make donations to neighborhood organizations for the benefit of low-income purposes." The credit encourages public-private cooperation by incentivizing individuals and businesses to make donations of money, property, marketable security, or professional services to nonprofit entities that provide services and support to low-income persons and communities.

Legislative History & Background

The Neighborhood Assistance Tax Credit was originally enacted in 1981.⁷ The original credit was aimed at providing a credit for expenses related to services designed to minimize the effects of poverty. While educational services were one component of services allowable under the program, there was no bifurcation of the administration education programs versus other programs. The credit was directly

⁶ See Chapter 426 of the Acts of Assembly of 2016.

⁷ See Chapter 629 of the Acts of Assembly of 1981.

available to businesses that provided such services, and a business was allowed a credit equal to 50 percent of the value of such services provided, with a maximum credit of \$175,000 per business. Alternatively, with the approval of the Secretary of Human Resources, a business could receive a credit for donations made to other organizations that provided such services. The aggregate amount of credits available was capped at \$1.75 million per year. There was no credit available to individuals.

The tax credit program has been amended numerous times since its adoption in 1981. This section seeks to highlight the major changes that have been adopted over time:

- Chapter 640 of the Acts of Assembly of 1997 lowered the credit amount from 50 percent of the value of the donation to 45 percent of the value of the donation.
- Chapter 946 of the Acts of Assembly of 2000 expanded the tax credit to allow individuals to receive credits for monetary donations to neighborhood organizations. As originally enacted, an individual was limited to a credit for a donation not less than \$50, and not greater than \$200. At that time, the entire program was capped at \$8 million.
- Chapter 585 of the Acts of Assembly of 2008 further lowered the amount of the credit from 45 percent of the value of the donation to 40 percent of the value of the donation.
- Chapter 851 of the Acts of Assembly of 2009 made substantial changes to the administration of the program. While to date the tax credit program had been administered solely by DSS, the 2009 legislation bifurcated the program into an education component, administered by DOE, and "other" programs to still be administered by DSS. Additionally, separate aggregate caps were established for the two components -- \$4.9 million for education programs, and \$7 million for all other programs, for a total cap of \$11.9 million. Additionally, Chapter 851 amended the definitions of low-income persons (defined as "impoverished people" at the time). Previous law had allowed DSS to approve the definition of what constituted an impoverished person, based upon generally recognized criteria used by state and federal agencies. This legislation changed the definition to persons with a household income not in excess of 180 percent of current poverty guidelines for education proposals, and persons with a household income not in excess of 150 percent of current poverty guidelines for all other programs.
- Chapters 731 and 842 of the Acts of Assembly of 2012, the legislation that created the Education Improvement Scholarship Tax Credit Program, made substantial changes to the Neighborhood Assistance Tax Credit program in an effort to keep the two programs compatible. The changes include:
 - Raising the value of the credit from 40 percent to 65 percent of the value of the donation;
 - Eliminating the \$175,000 cap on the maximum amount of credits that may be allowed by a business firm in a taxable year;
 - Raising the aggregate cap of the entire program from \$11.9 million to \$15 million -- \$8 million for education programs, and \$7 million for all other proposals;

- Raised the criteria for low-income persons from individuals with household income not in excess of 200 percent of current poverty guidelines to not in excess of 300 percent of current poverty guidelines;
- Added a definition of "eligible student with a disability" as persons eligible to receive services under neighborhood assistance programs.

Revenue Impact

The total amount of credits that may be allocated in a fiscal year is capped. The cap has been raised over the past several years, as can be seen in the chart below. Currently, the entire program is capped at \$17 million, with \$9 million for education proposals (administered by DOE) and \$8 million for all other proposals (administered by DSS).

Annual Credit Cap			
	FY 2014	FY 2015	FY 2016 (and after)
Education Proposals	\$8 million	\$8.5 million	\$9 million
Other Proposals	\$7 million	\$7.5 million	\$8 million
TOTAL	\$15 million	\$16 million	\$17 million

The amount of credits requested annually for allocation greatly exceeds the cap, as seen in the chart below.

Credits Requested by Neighborhood Organizations (FY 2014-2016)				
	Education Proposals		Other Proposals	
Fiscal Year	Credits Requested	Annual Cap	Credits Requested	Annual Cap
2014	\$11.1 million	\$8.0 million	\$18.5 million	\$7.0 million
2015	\$17.8 million	\$8.5 million	\$22.2 million	\$7.5 million
2016	\$19.4 million	\$9 million	\$26.7 million	\$8 million

Because of how the neighborhood assistance tax credit program is administered, along with the ability of a taxpayer to carry forward unused credits for five years, the actual revenue impact to the state and the amount of credits claimed on tax returns is not necessarily aligned with the cap or the amount of credits allocated in a given fiscal year.

Credits Claimed on Tax Returns Processed During FY 2011-2015		
Fiscal Year	Number of Returns	Amount Claimed
FY 2011	3,489	\$5,510,165
FY 2012	3,830	\$6,152,078
FY 2013	4,320	\$8,395,774
FY 2014	4,178	\$12,004,519
FY 2015	4,393	\$14,512,830

While the scope and details of programs vary widely, fifteen other states have programs aimed at supporting programs that minimize the effects of poverty through the use of tax credits.⁸⁸ Some programs are very similar to the Virginia tax credit, while others are focused on singular issues -- such as revitalization -- or are structured to support permanent endowments or efforts of private businesses to directly implement neighborhood assistance programs. This section will compare revenue-related aspects of the various programs, and then provide a very high level overview of the structure of each program.

⁸⁸ See Ariz. Rev. Stat. § 43-1088; Conn. Gen. Stat. § 12-630aa et seq.; Del. Code Ann. title 30, § 2001 et seq.; Fla. Stat. ch. 220.183; Ind. Code § 6-3.1-9-1 et seq.; Iowa Code §15E.301 et seq.; Kan. Stat. Ann. § 79-32,194 et seq.; Ky. Rev. Stat. Ann. § 141.438; La. Rev. Stat. Ann. § 47:3J; Md. Code Ann. [Housing and Community Development] § 6-401 et seq.; Md. Code Ann. [Tax] §10-736; Mo. Rev. Stat. § 32.100 et seq.; Neb. Rev. Stat. § 13-201 et seq.; N.J. Stat. Ann. §52:27D-490 et seq.; 72 Pa. Cons. Stat. § 8901-A et seq.; W. Va. Code § 11-13J.

Revenue Features of Neighborhood Assistance and Similar Programs				
	Eligibility	% of Donation	Taxpayer Cap	Aggregate Cap
Arizona	Individuals	100%	\$900 (\$500 for foster care+ \$400 for other)	No cap
Connecticut	Business	60% (100% for certain energy conservation projects)	\$150,000	\$5 million
Delaware	Business & Individuals	50%	\$50,000 (no more than \$100,000 over 3 years)	\$500,000
Florida	Business ⁹	50%	\$200,000	\$21.9 million
Indiana	Business & Individuals	50%	\$25,000	\$2.5 million
Iowa	Business & Individuals	25%	5% of aggregate pool	\$6 million (based on annual formula that accounts for gambling income)
Kansas	Business & Individuals	70% (donations supporting rural areas), 50% (non-rural)	No cap	\$4.1 million
Kentucky	Business & Individuals	20%	\$10,000	\$500,000
Louisiana	Business	50%	\$180,000	Not to exceed 1% of prior year's corporate income tax collection
Maryland (NAP)	Business & Individuals	50%	\$250,000	\$1.75 million
Maryland (Endow)	Business & Individuals	25%	\$50,000	\$250,000
Missouri	Business	70% (donations supporting rural areas), 50% (other)	\$300,000 (rural), \$250,000 (other)	\$16 million
Nebraska	Business & Individuals	40%	No cap	\$300,000
New Jersey	Business	100%	\$1 million	\$10 million
Pennsylvania	Business	25%-80% (depending on project)	\$500,000 (\$1.25 million for contribution to 4 or more projects)	\$18 million
Virginia	Business & Individuals	65%	\$125,000 (indiv.), no cap (business)	\$17 million
West Virginia	Business & Individuals	50%	\$100,000	\$3 million

⁹ Florida does not impose income tax on individuals.

Arizona Credit for Donations Made to Qualifying Charitable Organizations: Arizona provides an individual income tax credit for donations to qualified charitable organizations that provide services that meet basic needs to low-income households, or children who are chronically ill or disabled. The organization must spend 50% of its budget on qualified services to Arizona residents. While the credit is worth 100% of the donation and there is no aggregate cap, an individual is limited to a \$400 credit for donations generally, and a \$500 credit for donations to a qualified foster care organization. The credit may be carried forward for five years.

Connecticut Neighborhood Assistance Tax Credit: A business may receive a credit for a donation to a qualified program administered by a nonprofit organization or a municipality. Qualified programs include job training, neighborhood assistance, housing assistance, alcohol prevention and treatment, open space acquisition, or any other program that services a group where the income of 75% of the recipients is less than 150% of the poverty level. Approved programs may only receive up to \$150,000 in credit-supported donations each year. A 50% credit is generally provided for donations, but donations for certain energy conservation projects in low-income housing are eligible for a 100% credit. If the amount of credits requested for qualified programs exceeds a \$5 million aggregate cap, the credit is pro-rated. A unique feature of the Connecticut credit is that any amount of credit not used by the taxpayer in the year that it is earned may not be carried forward; instead, the taxpayer may apply it to tax liability in the two immediately preceding income years.

Delaware Neighborhood Assistance Tax Credit: An individual or business may receive a credit equal to 50% of a donation to a nonprofit organization that assists low- and moderate-income families or persons living in impoverished areas through programs related to community services, crime prevention, economic development, education, or affordable housing. Credits are awarded on a first-come, first-serve basis until the \$500,000 aggregate cap is met. Unused credits may be carried forward for five years.

Florida Community Contribution Tax Credit: Businesses in Florida may receive a 50% credit against income tax or sales tax for donations to qualified organizations that sponsor projects related to rehabilitating housing or promoting job development for low-income persons in a Florida Enterprise Zone or in a Front Porch Community, or increasing broadband service in a rural Florida Enterprise Zone. If applications for credits for qualified projects exceeds the \$21.9 million aggregate cap (\$18.4 million for programs related to housing and \$3.5 million for all other programs), the credits are pro-rated. Unused credits may be carried forward for five years.

Indiana Neighborhood Assistance Tax Credit: Individuals and businesses may receive a 50% credit for donations to a qualified nonprofit organization that provides community services related to crime prevention, education, job training, and neighborhood assistance in economically disadvantaged areas, for economically disadvantaged households, or for ex-offenders on probation or parole. Like in Virginia, the nonprofit organization applies to the state for an allocation of credits to be distributed to donors. The Indiana Code provides a formula for the allocation of credits that is prorated based upon the amount requested in applications. If the nonprofit has participated in the tax credit program in any of the preceding three years, it may receive up to \$40,000 in credits; otherwise it is limited to a maximum

of \$15,000 worth of credits. An organization must apply for at least \$1,000 in credits. Indiana does not allow a taxpayer to carry forward unused credits.

Endow Iowa: Iowa provides a 25% credit for individuals and business donations to a permanently endowed fund administered by a qualified foundation that uses the earnings of the fund to address community needs. The aggregate cap on the program is adjusted each year based on a formula that takes into account a percentage of state gambling revenues, and credits are awarded on a first-come, first-served basis. Taxpayers may carry forward unused credits for five years.

Endow Kentucky: Kentucky provides a 20% credit for individuals and businesses that donate to a permanently endowed fund administered by a qualified foundation that use the earnings to make grants to nonprofit organizations in Kentucky. The credits are awarded on a first-come, first-served basis, and are capped at \$500,000 total. Taxpayers may carry forwarded unused credits for five years.

Kansas Community Service Contribution Credit: Businesses and individuals in Kentucky may receive a credit for donations made to nonprofit organizations for approved projects related to health care, crime prevention, family and child services, youth apprenticeships, and technical training. Organizations apply for an allocation of credits for approved projects, up to \$250,000 per organization per year. A taxpayer may receive a 70% credit for donations to projects serving rural communities (less than 15,000 persons), and 50% credit for donations to other projects. Kansas is one of the few states that, like Virginia, allows a credit for the value of services provided by a taxpayer to an approved project. Kansas is also one of the few states that makes the credit refundable, and taxpayers subject to taxes other than income tax may sell or transfer the credits.

Louisiana Neighborhood Assistance Credit: Louisiana's approach is different from other states in that it provides the credit to businesses that engage directly in certain community service projects related to crime prevention, education, job training, or neighborhood assistance. Any proposal for a project must be preapproved in order for credits to be issues. While the Louisiana Code provides for a 70% credit, up to \$250,000 per tax payer per year, Act 125 (2015) temporary lowered the credit to 50% and a maximum of \$180,000 per tax payer per year, through July 1, 2018. A taxpayer may carry forward any unused credits for five years.

Maryland Neighborhood and Community Assistance Program; Qualified Permanent Endowment Fund Donations Tax Credit: Maryland offers two tax credits to individuals and businesses related to community assistance. The first credit is a "traditional" tax credit, in that it allows the taxpayer to receive a 50% credit for donations a nonprofit organization that provides a program or activity related to housing, education, the arts, economic development, or job training. This tax credit is capped at \$1.75 million, and taxpayers can carry forward unused tax credits for five years.

Maryland has also more recently adopted an endowment tax credit program, similar to Iowa and Kentucky. Under this program, a taxpayer may receive a 25% credit for a donation to a permanently endowed fund, the proceeds of which are used to made grants to other Maryland nonprofit groups. This credit is capped at \$250,000, is awarded on a first-come, first-served basis, and may be carried forward for five years.

Missouri Neighborhood Assistance Tax Credit: Missouri allows businesses to receive a credit for a qualified program administered by a business or nonprofit organization related to community service, education, crime prevention, or revitalization. A 70% credit is allowed for projects in qualified rural areas; a 50% credit is available in other areas. Donation of services are eligible for credits. Taxpayers may carry forward unused credits for five years.

Nebraska Community Development Assistance Act Credit: A community betterment organization may apply for an allocation of credits to provide to taxpayers for donations to approved projects related to employment training, human and medical services, neighborhood development services, recreational and educational activities, and crime prevention in economically distressed areas. No project may receive an allocation of more than \$50,000 per year. Businesses and individuals are eligible for the 40% credit, and unused credits may be carried forward for five years.

New Jersey Neighborhood Revitalization Credit: Businesses are eligible for a 100% credit for donations to nonprofit organizations carrying out comprehensive revitalization plans in communities eligible to receive aid under the "Special Municipal Aid Act" or "Abbott Districts." Sixty percent of the credit-eligible donations must be used for housing and economic development; the remaining 40% may be used for supportive services that promote neighborhood revitalization. To be eligible, a business must make at least a \$25,000 donation, and the maximum credit available is \$1 million. The program has an aggregate cap of \$10 million per year. The state maintains a "pool" of approved projects. A business interested in donating provides his contribution to the state, and ranks the project(s) to which it would like to support through the donation. Credits are awarded on a first-come, first-served basis.

Pennsylvania Neighborhood Assistance Program: Pennsylvania's Neighborhood Assistance Program supports programs and projects in five areas, with differing credit amounts available to businesses depending on the type of program. Donations to a program related to affordable housing, community services, crime prevention, education, job training, neighborhood assistance, or food banks may receive a 55% credit. Donations over a five- or six-year period to a collaborative programs for community development may receive a 75% or 80% credit, respectively. Donations to projects addressing "target problems" identified by the state (such as disaster recovery, blight removal, or veteran programs) are eligible for a 75% credit. A taxpayer may receive a credit of up to \$500,000 per year, or \$1.25 million if the taxpayer donates to four or more eligible projects. A taxpayer may receive a 25% credit, up to \$500,000, for investing in the rehabilitation of a building in a distressed community in a designated enterprise zone. The entire program is capped at \$18 million per year. Unused credits may be carried forward for five years, or transferred.

West Virginia Neighborhood Investment Credit: West Virginia allows a 50% credit to businesses and individuals for a donation to a qualified nonprofit organization that primarily serves low-income individuals or highly-distressed communities with a variety of services related to health, scholarships, food, housing, revitalization, counseling, etc. A donation of services is eligible for credits. \$3 million of credit are allocated annually on a first-come, first-served basis to nonprofit organizations to provide to donors. Taxpayers may carry forward unused credits for five years.

Other Information

A discussion and review of the Education Improvement Scholarships Tax Credit¹⁰, adopted by the General Assembly in 2012,¹¹ is relevant to any analysis of the neighborhood assistance tax credits allocated by the Department of Education, as the two credits seek to support the same beneficiaries of services. Both tax credits adopt the same definition of low-income households and eligible students with disabilities. The scholarship tax credits have a more narrow focus than the neighborhood improvement tax credits, as credits are only issued for scholarships for education expenses of certain students. Neighborhood organizations qualified to allocate neighborhood assistance tax credits might have programs to award scholarships for such expenses, but their programs may also encompass broader educational initiatives, such as tutoring or guidance counselor programs for low-income students or eligible students with disabilities unrelated to attendance at a particular school. The Education Improvement Scholarship Tax Credit program was carefully tailored to not dilute either credit -- both provide a 65 percent credit, with the same minimum donation requirements, five year carry forward provisions, etc.

Joint Subcommittee Recommendation

The Joint Subcommittee did not make any formal recommendations.

Preference Report Compiled by Staff from the
Virginia Division of Legislative Services and the
Virginia Department of Taxation

¹⁰ See Article 13.1 (§ 58.1-429.25 et seq.) of Chapter 3 of Title 58.1.

¹¹ See Chapters 731 and 842 of the Acts of Assembly of 2012.

Article 13.2. Neighborhood Assistance Act Tax Credit.

§ 58.1-439.18. Definitions.

As used in this article:

"Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person whether through ownership or voting securities or by contract or otherwise.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ [58.1-320](#) et seq.) and 10 (§ [58.1-400](#) et seq.) of Chapter 3, Chapter 12 (§ [58.1-1200](#) et seq.), Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25, or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26. "Business firm" also means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ [58.1-360](#) et seq.) of Chapter 3.

"Commissioner of the State Department of Social Services" means the Commissioner of the State Department of Social Services or his designee.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to low-income persons.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ [54.1-1100](#) et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of low-income persons or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholastic assistance to a low-income person or an eligible student with a disability.

"Eligible student with a disability" means a student (i) for whom an individualized educational program has been written and finalized in accordance with the federal Individuals with Disabilities Education Act (IDEA), regulations promulgated pursuant to IDEA, and regulations of the Board of Education and (ii) whose family's annual household income is not in excess of 400 percent of the current poverty guidelines.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of low-income persons.

"Job training" means any type of instruction to an individual who is a low-income person that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Low-income person" means an individual whose family's annual household income is not in excess of 300 percent of the current poverty guidelines.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501(c)(3) and 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § [36-3](#).

"Poverty guidelines" means the poverty guidelines for the 48 contiguous states and the District of Columbia updated annually in the Federal Register by the U.S. Department of Health and Human Services under the authority of § 673(2) of the Omnibus Budget Reconciliation Act of 1981.

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants, attorneys-at-law, and veterinarians.

"Scholastic assistance" means (i) counseling or supportive services to elementary school, middle school, secondary school, or postsecondary school students or their parents in developing a postsecondary academic or vocational education plan, including college financing options for such students or their parents, or (ii) scholarships.

§ 58.1-439.19. Public policy; business firms; donations.

It is hereby declared to be public policy of the Commonwealth to encourage business firms to make donations to neighborhood organizations for the benefit of low-income persons.

§ 58.1-439.20. Proposals; regulations; tax credits authorized; amount for programs.

A. Any neighborhood organization may submit a proposal, other than education proposals, to the Commissioner of the State Department of Social Services requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. Neighborhood organizations may

submit education proposals to the Superintendent of Public Instruction requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization.

The proposal shall set forth the program to be conducted by the neighborhood organization, the low-income persons or eligible students with disabilities to be assisted, the estimated amount to be donated to the program, and the plans for implementing the program.

B. The State Board of Social Services and the Department of Education are hereby authorized to adopt regulations (or, alternatively, guidelines in the case of the Department of Education) for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations. Such regulations or guidelines shall contain a requirement that a neighborhood organization shall have been in existence for at least one year. Also, such regulations or guidelines shall contain a requirement that as a prerequisite for approval, neighborhood organizations with total revenues (including the value of all donations) (i) in excess of \$100,000 for the organization's most recent year ended provide to the State Board of Social Services or the Department of Education, as applicable, an audit or review for such year performed by an independent certified public accountant or (ii) of \$100,000 or less for the organization's most recent year ended, provide to the State Board of Social Services or the Department of Education, as applicable, a compilation for such year performed by an independent certified public accountant. No proposal for an allocation of tax credits shall be untimely filed solely because such audit, review, or compilation was not submitted by the neighborhood organization by the proposal filing deadline, provided that the audit, review, or compilation is submitted to the State Board of Social Services or the Department of Education, as applicable, within the 30-day period immediately following such deadline.

Such regulations or guidelines by the Department of Education shall provide that at least 50 percent of the persons served by the neighborhood organization are low-income persons or eligible students with disabilities, and that at least 50 percent of the neighborhood organization's revenues are used to provide services to low-income persons or to eligible students with disabilities. Such regulations by the State Board of Social Services shall provide that at least 50 percent of the persons served by the neighborhood organization are low-income persons as defined in § [58.1-439.18](#). In order for a proposal to be approved, the applicant neighborhood organization and any of its affiliates shall meet the requirements of the application regulations or guidelines. The requirements for proposals submitted to the Superintendent of Public Instruction that (a) at least 50 percent of the persons served by the neighborhood organization and each of its affiliates are low-income persons or eligible students with disabilities and (b) at least 50 percent of the revenues of the neighborhood organization and each of its affiliates are used to provide services to such persons shall not apply to any neighborhood organization for tax credit allocations beginning for fiscal year 2014-2015 and ending with tax credit allocations for fiscal year 2019-2020, provided that (1) the neighborhood organization received an allocation of tax credits for fiscal year 2011-2012 allocations, (2) at least 50 percent of the persons served by the neighborhood organization are low-income persons or eligible students with disabilities, (3) at least 50 percent of the neighborhood organization's revenues are used to provide services to such persons, and (4) none of the affiliates of the neighborhood organization receives an allocation of tax credits for any program year of such five-year period.

Such regulations or guidelines shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations or guidelines shall also provide that at least 10 percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than 10 percent of the available amount of tax credits, the unallocated portion of such 10 percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

C. If the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction approves a proposal submitted by a neighborhood organization, the organization shall make the allocated tax credit amounts available to business firms making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction, as applicable.

Notwithstanding any other provision of law, (i) no more than an aggregate of \$0.825 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all education proposals, and (ii) no more than an aggregate of \$0.5 million in tax credits shall be approved in a fiscal year to a neighborhood organization or to a grouping of neighborhood organization affiliates for all other proposals combined. However, if the State Department of Social Services or the Department of Education after the initial allocation of tax credits to approved proposals has a balance of tax credits remaining for the fiscal year that can be used or allocated by a neighborhood organization for a proposal that had been approved for tax credits during the initial allocation by the State Department of Social Services or the Department of Education, then (a) the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction, as applicable, shall reallocate the remaining balance of tax credits to such previously approved proposals to the extent that a neighborhood organization can use or allocate additional tax credits for the previously approved proposal and (b) the \$0.825 and \$0.5 million annual limitations for tax credits approved to a grouping of neighborhood organization affiliates shall be inapplicable to the extent of any balance of tax credits reallocated under clause (a). The balance of tax credits remaining for reallocation shall include the amount of any tax credits that have been granted for a proposal approved during the initial allocation but for which the Commissioner of the State Department of Social Services or the Superintendent of Public Instruction has been provided notice by the neighborhood organization that it will not be able to use or allocate such amount for the approved proposal.

D. The total amount of tax credits granted for programs approved under this article for each fiscal year shall not exceed the following: for education proposals for approval by the Superintendent of Public Instruction, \$8 million for fiscal year 2013-2014, \$8.5 million for fiscal year 2014-2015, and \$9 million for fiscal year 2015-2016 and each fiscal year thereafter; and for all other proposals for approval by the Commissioner of the State Department of Social Services, \$7 million for fiscal year 2013-2014, \$7.5 million for fiscal year 2014-2015, and \$8 million for fiscal year 2015-2016 and each fiscal year thereafter.

The Superintendent and the Commissioner of the State Department of Social Services shall work cooperatively for purposes of ensuring that neighborhood organization proposals are submitted to the proper state agency. The Superintendent and the Commissioner of the State Department of Social Services may request the assistance of the Department of Taxation for purposes of determining whether or not anticipated donations for which tax credits are requested by a neighborhood organization likely qualify as a charitable donation under federal tax laws and regulations.

E. Actions of (i) the State Department of Social Services, or the Commissioner of the same, or (ii) the Superintendent or the Department of Education relating to the review of neighborhood organization proposals and the allocation of tax credits to proposals shall be exempt from the provisions of the Administrative Process Act (§ [2.2-4000](#) et seq.). Decisions of (a) the State Department of Social Services, or the Commissioner of the same, or (b) the Superintendent or the Department of Education shall be final and not subject to review or appeal.

F. Notwithstanding the provisions of § [30-19.1:11](#), the issuance of tax credits under this article shall expire on July 1, 2028.

§ 58.1-439.21. Tax credit; amount; limitation; carry over.

A. The Superintendent of Public Instruction and the Commissioner of the State Department of Social Services shall certify to the Department of Taxation, or in the case of business firms subject to a tax under Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25 or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26, to the State Corporation Commission, the applicability of the tax credit provided herein for a business firm.

B. A business firm shall be eligible for a credit against the taxes imposed by Articles 2 (§ [58.1-320](#) et seq.), 6 (§ [58.1-360](#) et seq.), and 10 (§ [58.1-400](#) et seq.) of Chapter 3, Chapter 12 (§ [58.1-1200](#) et seq.), Article 1 (§ [58.1-2500](#) et seq.) of Chapter 25, or Article 2 (§ [58.1-2620](#) et seq.) of Chapter 26, in an amount equal to 65 percent of the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to neighborhood organizations for programs approved pursuant to § [58.1-439.20](#). Notwithstanding any other law and for purposes of this article, the value of a motor vehicle donated by a business firm shall, in all cases, be such value as determined for federal income tax purposes using the laws and regulations of the United States relating to federal income taxes. No tax credit shall be granted for any donation made in the taxable year with a value of less than \$616.

A business firm shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization for an approved project are available.

Notwithstanding that this section establishes a tax credit of 65 percent of the value of the qualified donation, a business firm may by written agreement accept a lesser tax credit percentage from a neighborhood organization for any otherwise qualified donation it has made. No tax credit shall be granted to any business firm for donations to a neighborhood organization providing job training or education for individuals employed by the business firm. Any tax credit not usable for the taxable year the donation was made may be carried over to the extent usable for the next five succeeding taxable years or until the full credit has been utilized, whichever is sooner. Credits granted to a partnership,

electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

C. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services to a business firm upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to [§ 58.1-439.20](#). The certification shall identify the type and value of the donation received, the business firm making the donation, and the tax credit percentage to be used in determining the amount of the tax credit. The certification shall also include any written agreement under which a business firm accepts a tax credit of less than 65 percent for a donation.

§ 58.1-439.22. Donations of professional services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing professional services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders professional services to a program that has received an allocation of tax credits from the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services. The value of the professional services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried employee who renders professional services to an approved program. The value of the professional services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering professional services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional services to the approved program.

C. Notwithstanding any provision of this article limiting eligibility for tax credits to business firms, physicians, chiropractors, dentists, nurses, nurse practitioners, physician assistants, optometrists, dental hygienists, professional counselors, clinical social workers, clinical psychologists, marriage and family therapists, physical therapists, and pharmacists licensed pursuant to Title 54.1 who provide health care services within the scope of their licensure, without charge, to patients of a clinic operated by an organization that has received an allocation of tax credits from the Commissioner of the State Department of Social Services and such clinic is organized in whole or in part for the delivery of health care services without charge, or to a clinic operated not for profit providing health care services for charges not exceeding those set forth in a scale prescribed by the State Board of Health pursuant to [§ 32.1-11](#) for charges to be paid by persons based upon ability to pay, shall be eligible for a tax credit pursuant to [§ 58.1-439.21](#) based on the time spent in providing health care services to patients of such clinic, regardless of where the services are delivered.

Notwithstanding any provision of this article limiting eligibility for tax credits, a pharmacist who donates pharmaceutical services to patients of a free clinic, which clinic is an organization exempt from taxation under the provisions of § 501(c)(3) of the Internal Revenue Code, with such pharmaceutical services performed at the direction of an approved neighborhood organization that has received an allocation of tax credits from the Commissioner of the State Department of Social Services, shall be eligible for tax credits under this article based on the time spent in providing such pharmaceutical services, regardless of where the services are delivered.

Notwithstanding any provision of this article limiting eligibility for tax credits, mediators certified pursuant to guidelines promulgated by the Judicial Council of Virginia who provide services within the scope of such certification, without charge, at the direction of an approved neighborhood organization that provides court-referred mediation services and that has received an allocation of tax credits from the Commissioner of the State Department of Social Services shall be eligible for tax credits under this article based on the time spent in providing such mediation services, regardless of where the services are delivered.

The value of such services, for purposes of determining the amount of the tax credit allowable, rendered by the physician, chiropractor, dentist, nurse, nurse practitioner, physician assistant, optometrist, dental hygienist, professional counselor, clinical social worker, clinical psychologist, marriage and family therapist, physical therapist, pharmacist, or mediator shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$125 per hour.

D. Notwithstanding any provision of this article limiting eligibility for tax credits and for tax credit allocations beginning with fiscal year 2015-2016, a physician specialist who donates specialty medical services to patients referred from an approved neighborhood organization (i) that has received an allocation of tax credits from the Commissioner of Social Services, (ii) whose sole purpose is to provide specialty medical referral services to patients of participating clinics or federally qualified health centers, and (iii) that is exempt from taxation under the provisions of § 501(c)(3) of the Internal Revenue Code shall be eligible for tax credits under this article issued to such organization regardless of where the specialty medical services are delivered.

The value of such services, for purposes of determining the amount of tax credit allowable, rendered by the physician specialist shall not exceed the lesser of (a) the reasonable cost for similar services from other providers or (b) \$125 per hour.

§ 58.1-439.23. Donations of contracting services.

A. A sole proprietor, partnership or limited liability company engaged in the business of providing contracting services shall be eligible for a tax credit under this article based on the time spent by the proprietor or a partner or member, respectively, who renders contracting services to a program that has received an allocation of tax credits from the Commissioner of the State Department of Social Services. The value of the contracting services, for purposes of determining the amount of the tax credit allowable, rendered by the proprietor or a partner or member to an approved program shall not exceed the lesser of (i) the reasonable cost for similar services from other providers or (ii) \$50 per hour.

B. A business firm shall be eligible for a tax credit under this article for the time spent by a salaried employee who renders contracting services to an approved program. The value of the contracting services, for purposes of determining the amount of tax credit allowed to a business firm for time spent by its salaried employee in rendering contracting services to an approved project, shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered contracting services to the approved program.

§ 58.1-439.24. Donations by individuals.

For purposes of this section, the term "individual" means the same as that term is defined in § [58.1-302](#), but excluding any individual included in the definition of a "business firm" as such term is defined in § [58.1-439.18](#).

A. Notwithstanding any provision of this article limiting eligibility for tax credits, an individual making a monetary donation or a donation of marketable securities to a neighborhood organization approved under this article shall be eligible for a credit against taxes imposed by § [58.1-320](#) as provided in this section.

B. Notwithstanding any provision of this article specifying the amount of a tax credit, a tax credit issued to an individual making a monetary donation or a donation of marketable securities to an approved project shall be equal to 65 percent of the value of such donation; however, tax credits (i) shall not be issued for any donation made in the taxable year with a value of less than \$500 and (ii) shall be issued only for the first \$125,000 in value of donations made by the individual during the taxable year. The maximum aggregate donations of \$125,000 for the taxable year for which tax credits may be issued and the minimum required donation of \$500 shall apply on an individual basis.

C. An individual shall be eligible for a tax credit under this section only to the extent that sufficient tax credits allocated to the neighborhood organization approved under this article are available. Notwithstanding that this section establishes a tax credit of 65 percent of the value of the qualified donation, an individual may by written agreement accept a lesser tax credit percentage from a neighborhood organization for any otherwise qualified donation he has made.

D. The amount of credit allowed pursuant to this section, if such credit has been issued by the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services, shall not exceed the tax imposed pursuant to § [58.1-320](#) for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the individual's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the tax credit has been issued to such individual. If an individual that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such individual shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

E. A tax credit shall be issued by the Superintendent of Public Instruction or the Commissioner of the State Department of Social Services to an individual only upon receipt of a certification made by a neighborhood organization to whom tax credits were allocated for an approved program pursuant to [§ 58.1-439.20](#).

The certification shall identify the type and value of the donation received, the individual making the donation, and the tax credit percentage to be used in determining the amount of the tax credit. The certification shall also include any written agreement under which an individual accepts a tax credit of less than 65 percent for a donation.

