
2016

Joint Subcommittee to Evaluate Tax Preferences

House of Delegates

The Honorable Benjamin L. Cline
The Honorable Timothy D. Hugo
The Honorable S. Chris Jones
The Honorable Mark L. Keam
The Honorable James P. (Jimmie) Massie III
The Honorable Robert D. Orrock Sr.
The Honorable R. Lee Ware, Chair
The Honorable Peter F. Farrell

Senate of Virginia

The Honorable Richard L. Saslaw
The Honorable Emmett W. Hanger Jr., Vice Chair
The Honorable Jill Holtzman Vogel
The Honorable Bryce E. Reeves
The Honorable Rosalyn R. Dance
The Honorable William R. DeSteph Jr.

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2016 Executive Summary

The Joint Subcommittee to Evaluate Tax Preferences (the Joint Subcommittee), created pursuant to Chapter 52 (§ 30-336 et seq.) of Title 30 of the Code of Virginia, met four times during the 2016 Interim. Delegate Lee Ware served as chairman, and Senator Emmett Hanger served as vice-chairman of the Joint Subcommittee.

During the course of its meetings, the Joint Subcommittee received an update regarding recent changes to the Land Preservation Tax Credit, codified at Article 20.1 (§ 58.1-510 et seq.) of Chapter 3 of Title 58.1. The Joint Subcommittee had previously reviewed this credit in 2014. The Joint Subcommittee also substantively reviewed and discussed the Historic Rehabilitation Tax Credit, codified at § 58.1-339.2, and the Neighborhood Assistance Tax Credit, codified at Article 13.2 (§ 58.1-439.18 et seq.) of Chapter 3 of Title 58.1. The Joint Subcommittee did not vote on any formal recommendations to continue, expand, modify or eliminate either of these preferences. It was generally agreed that additional review was needed during the 2018 interim to fully understand the economic impact of the Historic Rehabilitation Tax Credit.

Meeting materials referenced in this report are available on the Joint Subcommittee's website at <http://dls.virginia.gov/commissions/tax.htm>. Preference Reports developed for the Land Preservation Tax Credit and Update, the Historic Rehabilitation Tax Credit, and the Neighborhood Assistance Tax Credit are published in the appendix to this report.

Meeting Summaries

June 13, 2016

The Joint Subcommittee to Evaluate Tax Preferences (the Joint Subcommittee) held its first meeting of the 2016 Interim on June 13 in Richmond. Delegate Lee Ware called the meeting to order.

The first order of business was election of a chairman. Delegate Robert Orrock nominated Delegate Ware. The motion was seconded and unanimously approved. Senator Hanger asked the Joint Subcommittee to defer the election of a vice-chair until the next meeting, and the Joint Subcommittee agreed.

Joint Subcommittee staff provided a report on the Historic Rehabilitation Tax Credit. The Commonwealth provides the tax credit, codified at § 58.1-339.2 of the Code of Virginia, against income, insurance premiums, and bank franchise taxes for the rehabilitation of a historic structure certified by the Department of Historic Resources. The credit is equal to 25 percent of the rehabilitation expenses, and the expenses must equal at least 50 percent of the assessed value of the building prior to the rehabilitation (or at least 25 percent of this value if the building is owner-occupied). Unused credits may be carried over for a maximum of 10 years. Partnerships and S corporation shareholders may allocate the credits among themselves in any mutually agreed-upon proportion. In Fiscal Year 2015, the revenue impact to the Commonwealth was \$98 million.

Julie V. Langan, Director of the Department of Historic Resources, provided an overview of the historic rehabilitation program followed by the Department in certifying properties and administering the program in the Commonwealth. A copy of her presentation is available on the Joint Subcommittee's website.

The two presentations garnered many questions and generated substantial discussion by the members of the Joint Subcommittee. Questions to be followed up on at future meetings include why the credits are allowed against the insurance premiums and bank franchise taxes, what percentage of how many properties are still owned by the person or entity that received the credit, and what is the economic development impact generated by the use of the tax credits. Other issues of interest included the holding period required by the parallel federal credit, the ability of partnerships to distribute credits to partners disproportionate to the ownership interest of the partner, and whether the credit should be capped. Delegate Ware suggested that the Joint Subcommittee hold off on making any recommendations regarding the credit until there was an opportunity to gather more information regarding these questions and issues.

Staff next provided an update on the Land Preservation Tax Credit, codified at Article 20.1 (§ 58.1-510 et seq.) of Chapter 3 of Title 58.1. A preference report was completed by the Joint Subcommittee in 2014, at which time the Joint Subcommittee recommended continuing the credit in its current form but

suggested that further review may be warranted. Since that time, the General Assembly has adopted changes to the tax credit program. Chapters 235 and 680 of the 2015 Acts of Assembly lowered the aggregate cap from \$100 million to \$75 million, limited the amount of credits that could be claimed by a taxpayer in a single year from \$100,000 to \$20,000 in taxable years 2015 and 2016 and to \$50,000 beginning in taxable year 2017, extended the carryover period from 10 years to 13 years, required that an application for a tax credit be made no later than December 31 in the year following the conveyance, and prohibited the Department of Taxation from issuing unused credits attributable to a prior calendar year. While these changes are recent, and thus no concrete revenue data is yet available, there were 135 applications for a total of \$39.9 million in credits in taxable year 2015, and so far there have been 31 applications for a total of \$15.4 million in credits for taxable year 2016.

Members of the Joint Subcommittee indicated that they would like to continue to review the tax credit for potential modifications. The Joint Subcommittee requested information regarding the number of acres preserved in different areas across the Commonwealth. Future questions to consider will include the prioritization of the type of location of land to be preserved and review of how to best allocate resources.

Review of the Neighborhood Assistance Act Tax Credit Program was on the agenda for the June 13 meeting but, due to time limitations, will be considered at a future meeting. The meeting was adjourned.

August 29, 2016

The Joint Subcommittee to Evaluate Tax Preferences (the Joint Subcommittee) met on August 29, 2016, in Richmond. Chairman Lee Ware called the meeting to order.

The first order of business was election of a vice-chairman. Senator Emmett W. Hanger, Jr., was nominated, and the motion was seconded and unanimously approved.

The meeting focused on the Virginia historic rehabilitation tax credit. Kathleen Kilpatrick, Curator of the Virginia Capitol and Executive Director of the Virginia Capitol Square Preservation Council, made a presentation on economic opportunity and revitalization through historic rehabilitation. She pointed out that the benefits of leveraging historic rehabilitation by the private sector through the tax credit include job creation; increase in property tax revenue; creation of sites for businesses, service and cultural organizations, and homes; and the revitalization of communities. Ms. Kilpatrick said that the Department of Historic Resources maintains a close and rigorous oversight of projects to ensure the integrity of the program and prevent fraud. She noted that the tax credit program serves the entire state.

John Accordino, Professor and Director of the VCU Center for Urban and Regional Analysis, spoke about the findings from his study in 2014 of the economic impact of the rehabilitation tax credit in Virginia. Dr.

Accordino said that although his study concerned the economic impact of historic rehabilitation, historic preservation also has aesthetic, social, and environmental impacts. Dr. Accordino's 2014 study, which covered the period January 1997 through October 2013, found that the historic rehabilitation tax credit program involved 2,375 projects having expenditures of \$3.97 million, with tax credits totaling \$986 million. His data showed that the amount of state tax credits across the state ranged from a high of \$527 million in the Richmond area to a low of \$3.2 million in the Blacksburg-Christiansburg-Radford area. In a survey of investors of projects, 85 percent said that they would not have completed their projects without the state tax credit. Dr. Accordino pointed out that his 2014 study did not include the post-construction economic impact of the projects and surrounding areas such as the use of the historic buildings (e.g., retail, hotel, etc.) and the resulting generation of income tax, sales taxes, local license tax, and local property tax revenue. Delegate Jimmie Massie, requested that Dr. Accordino analyze these additional economic factors and calculate the rates of return for state and local investments.

Staff for the Joint Subcommittee presented information on historic rehabilitation tax credits in other states, focusing on other state laws concerning caps, credit amounts, transferability, and prioritization regarding their historic rehabilitation tax credits. Out of the 33 states that have the tax credit, 16 have an overall annual cap on the dollar amount of credits that may be awarded. These caps range from a low of \$1.5 million in Vermont to a high of \$140 million in Missouri. Nineteen states have a per project cap, and 14 states have both types of caps. The amount of the credit (rate) ranges from a low of five percent of qualified expenses in Wisconsin for commercial projects to a high of 50 percent in New Mexico. Most states have a credit amount of 20 or 25 percent. Seventeen states have multiple credit amounts for different types of projects. For example, seven states provide a higher credit rate for owner-occupied projects than commercial projects, and four states provide a higher credit rate for projects involving affordable housing. Regarding whether credits may be transferred either directly or indirectly (i.e., through disproportionate ownership in a pass-through entity), 17 states permit direct and indirect transfers, six permit only indirect transfers, and one state, Pennsylvania, permits only direct transfers. Regarding prioritization of projects, states use various criteria. For example, Ohio provides credits only for projects where a cost/benefit analysis shows a net revenue gain in state and local taxes.

The Department of Taxation provided additional revenue-impact information in response to questions that had been raised by subcommittee members at the June meeting. This information included the number and amount of credits claimed each year; the type of tax involved (i.e., income, bank franchise, or insurance premiums tax); and the federal income level of taxpayers claiming the credit.

Julie V. Langan, Director of the Department of Historic Resources, provided information in response to questions raised at the prior meeting. A copy of these questions and answers as well as the remainder of Ms. Langan's presentation is available on the Joint Subcommittee's website. Ms. Langan also presented additional information, including recent procedural and regulatory revisions to the program that ensure compliance with the program. She said that less than one percent of total buildings were involved in more than one project. Ms. Langan provided a chart on the distribution of projects according to the total amount of qualified expenses that showed that the largest percentage of projects, 45 percent, had total qualified expenses between \$250,000 and \$1 million. Further, she said that 31,000 jobs were spawned by

all the projects between 1997 and 2013, representing \$1.53 billion of labor income. Ms. Langan then spoke about certain projects in various parts of the state.

The Joint Subcommittee allocated 30 minutes for public comment and heard from architects, investors, localities, religious organizations, and other advocates of the historic rehabilitation tax credit. Everyone who spoke was in favor of continuing the tax credit. Due to the high volume of individuals wishing to provide comment, Delegate Ware asked those who did not have an opportunity to address the committee to please send written comments via email to taxpreferences@dls.virginia.gov. Members of the committee requested that commenters not only state their support the program in its current form but also comment on (i) whether the credit should remain at 25 percent of the investment, (ii) the impact of a potential cap (aggregate or individual) on the credits, and (iii) whether any prioritization should be included in the program.

The next meeting is scheduled for September 22 at 1:00 p.m. Delegate Ware indicated that he hoped that recommendations regarding the credit could be adopted at the next meeting. The meeting was adjourned.

September 22, 2016

The Joint Subcommittee to Evaluate Tax Preferences (the Joint Subcommittee) held its third meeting of the year on September 22, 2016, in Richmond. Chairman Lee Ware called the meeting to order.

Staff from the Department of Taxation (the Department) provided information related to the Virginia Historic Rehabilitation Tax Credit that was requested at the last meeting. Specifically, the Department looked at the number of returns claiming the credit and the amount of credit claimed, broken out according to federal adjusted gross income. The data indicated that higher-income individuals have claimed a substantial amount of the credits, but staff cautioned that those figures could include income and credits claimed by partnerships, which file taxes as individuals. A copy of the updated revenue data is available on the Joint Subcommittee website.

The Joint Subcommittee discussed whether to make a recommendation at this meeting regarding the Historic Rehabilitation Tax Credit. Senator Emmett Hanger indicated that he thought the Joint Subcommittee might need more time to study all of the information that had been provided and that aiming to make a recommendation in time for the 2017 Session of the General Assembly might not be realistic. Delegate Peter Farrell said that he agreed but that he wanted to make sure that the Joint Subcommittee did revisit the topic next year and take action regarding the credit.

The focus of the meeting shifted to the Neighborhood Assistance Tax Credit (the NAP Credit). Item 1(S) of Chapter 780 of the 2016 Virginia Acts of Assembly (the appropriation act) directed the Joint Subcommittee to review the NAP Credit and to make recommendations regarding the program structure, eligibility requirements, distribution of funding, or overall funding amounts to the General

Assembly. Staff provided a draft report outlining how the credit works and the revenue impact, along with a review of similar tax credit programs offered in other states. The NAP Credit is a complicated credit, with credits allocated to certain nonprofit organizations that provide services to low-income individuals to in turn provide such credits to individuals or businesses that donate money or services to the nonprofit. The Department of Education (DOE) administers the allocation of credits to nonprofits with educational programs, and the Department of Social Services (DSS) administers the allocation of credits to other eligible organizations. Through changes in the Code of Virginia over the years, as well as guidelines adopted by DOE and regulations adopted by DSS, the two parts of the program do not always operate in parallel. A copy of the draft report is available on the Joint Subcommittee website.

Questions were raised by the members of the Joint Subcommittee regarding why the program is split between DOE and DSS, how credits are allocated to organizations, and how many of the credits are used for donations of services, as opposed to monetary donations. Delegate Kathy Byron, who is not a member of the Joint Subcommittee, addressed the Joint Subcommittee briefly regarding a bill she carried during the 2016 Session of the General Assembly that would have addressed the method to allocate credits. She cautioned the Joint Subcommittee that it should review this process to ensure that it is equitable, as is required by law. Retired Senator Walter Stosch, a longtime advocate for the NAP Credit program, addressed the Joint Subcommittee to highlight the important work being done by nonprofits that the program helps to support.

Chairman Ware allowed for public comment. Various representatives of nonprofit organizations spoke in support of the NAP Credit generally but voiced different opinions as to how credits should be allocated or whether current processes should be reviewed or amended.

Chairman Ware suggested that the Joint Subcommittee meet again in November to further review issues related to the NAP Credit. The meeting was adjourned.

November 15, 2016

The Joint Subcommittee to Evaluate Tax Preferences (the Joint Subcommittee) held its fourth meeting of the 2016 interim on Tuesday, November 15, in Richmond. The meeting focused on continued discussions regarding the Neighborhood Assistance Act tax credit program.

At the request of the chairman, staff provided an overview of the key differences between tax credits awarded for education programs through the Department of Education (DOE) and tax credits awarded for other programs through the Department of Social Services (DSS). Differences between the programs have evolved over time through changes to the Code of Virginia, as well as through the adoption of guidelines by DOE and regulations by DSS. The key differences involve the overall monetary caps on the two programs, the requirements that qualified organizations must meet to receive an allocation of credits, how entities are grandfathered under the affiliate rule, and how credits are allocated to qualified organizations annually.

In response to questions from members, a representative from DSS explained that if a qualified organization meets the application requirements, it will receive an allocation of credits. Last year, approximately 300 organizations made requests for \$27 million in credits. Because the total amount of credits for DSS is capped at \$8 million, the requests were prorated based on the amount of credits received by an organization in the previous year. Additionally, the Code of Virginia requires that at least 10 percent of the credits available be allocated to organizations that did not receive an allocation of credits during the previous year. A representative from DOE indicated that it also awarded credits to any organization that met the application criteria but that the amount of credits received by an organization in a given year was not based on the previous year's allocation.

Members of the Joint Subcommittee questioned whether, instead of granting credits to any organization that meets the application criteria, there should be an examination of work being done by an application organization before credits are awarded in a future year. There was discussion that no metrics were in place to measure the success of organizations applying for credits. In awarding credits to education-based organizations, it was suggested, perhaps the input of local school divisions should be sought to see where services are most needed in the state, so that the allocation of credits could be prioritized based on need. Members also questioned whether the rule that 10 percent of the credits be set aside for new organizations was serving a valid purpose or if it was simply resulting in the watering down of the amount of credits available to organizations who have previously participated.

The Joint Subcommittee received public comment. Speakers were generally supportive of the program and suggested that it worked well but should be better funded.

No formal recommendations were made regarding the Neighborhood Assistance Act program, as there was no longer a quorum present at the end of the meeting. Delegate Peter Farrell suggested that the 10 percent requirement for new organizations should be eliminated. Delegate Bobby Orrock said that he would support amendments that would give DOE regulatory authority to build in accountability metrics, seek local input, and prioritize applications. Delegate Chris Jones suggested that the cap on the credits should be balanced so that both DOE and DSS had an aggregate cap of \$8.5 million. There was general agreement among the members present to these suggestions.

The meeting was adjourned.

Appendix - Preference Reports

| | |
|---|---------|
| 2016 Update to the Land Preservation Tax Credit | Page 10 |
| Historic Rehabilitation Tax Credit Report | Page 12 |
| Neighborhood Assistance Tax Credit Report | Page 19 |

PREFERENCE UPDATE

LAND PRESERVATION TAX CREDIT

(INCOME TAX)

JUNE, 2016

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

- PREFERENCE:

Article 20.1 (§ 58.1-510 et seq.) of Chapter 3 of Title 58.1 of the Code of Virginia

- UPDATE:

After the Joint Subcommittee to Evaluate Tax Preferences reviewed the Land Preservation Tax Credit, the 2015 Session of the General Assembly enacted identical bills HB 1828 (Ware)¹ and SB 1019 (Watkins)² that made substantial changes to the tax credit program that went into effect July 1, 2015. This document provides a brief overview of the substantive changes adopted pursuant to that legislation.

Aggregate Cap: Beginning in calendar year 2015, the bills lower the total aggregate dollar amount of credits that may be issued in a calendar year from \$100 million to \$75 million.

Amount of Credit Claimed by Taxpayer: Beginning in calendar 2015, the bills lower the maximum amount of the credit that may be claimed by a taxpayer on his income tax return. Previously, the maximum amount that could be claimed per year was \$100,000, and any unused portion could be carried forward for 10 consecutive years. For taxable years 2015 and 2016, the bills limits the amount that may be claimed to \$20,000 each year, and any unused portion may be carried forward for 13 consecutive years. Beginning with taxable year 2017, a taxpayer may claim up to \$50,000 per year, and may carry forward any unused amount for 13 consecutive years.

Time of Application: The bills specify that for a conveyance made on or after July 1, 2015, a tax credit will only be allowed if a completed application is filed with the Department of Taxation by December 31 of the calendar year following the conveyance.

Unused credits: The bills prohibit the Department of Taxation from issuing a credit from a pool of tax credits attributable to a calendar year prior to the year in which the completed application was filed.

¹ Chapter 235 of the Acts of Assembly of 2015.

² Chapter 680 of the Acts of Assembly of 2015.

- REVENUE IMPACT UPDATE:

Because the changes adopted by HB 1828 and SB 1019 have only been in place for one tax year, the revenue impact of the changes cannot yet be fully analyzed, as only incomplete data is available at this time. The chart below updates the chart included in the November, 2014 preference report and reflects the amount of credits applied for, to date.

| Tax Year | # of Credits | # of Acres | Credit Allocated |
|--------------------|---------------------|-------------------|-------------------------|
| 2000-06 | 1,557 | 295,070 | \$ 736,837,981 |
| 2007 | 254 | 59,327 | \$ 100,000,000 |
| 2008 | 224 | 60,198 | \$ 102,287,081 |
| 2009 | 228 | 63,409 | \$ 106,647,000 |
| 2010 | 146 | 38,551 | \$ 106,845,000 |
| 2011 | 367 | 75,025 | \$ 108,424,000 |
| 2012 | 228 | 45,329 | \$ 64,090,780 |
| 2013 | 235 | 65,093 | \$ 79,059,796 |
| 2014 | 136 | 31,428 | \$ 45,087,843 |
| 2015 | 135 | 34,910 | \$ 39,981,068 |
| 2016 | 31 | 6,301 | \$ 15,444,980 |
| Grand Total | 3,541 | 774,641 | \$ 1,504,705,529 |

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

EXECUTIVE SUMMARY:

HISTORIC REHABILITATION TAX CREDIT

(INCOME TAX, INSURANCE PREMIUMS TAX, AND BANK FRANCHISE TAX)

JUNE 2016

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

- PREFERENCE:

Section 58.1-339.2 of the Code of Virginia.

- SUMMARY:

The Virginia Historic Rehabilitation tax credit provides a tax credit against income tax, insurance premiums tax, and bank franchise tax for the rehabilitation of a certified historic structure certified by the Department of Historic Resources. The credit is equal to 25 percent of rehabilitation expenses. To qualify, the expenses must equal at least 50 percent of the assessed value of the building prior to the rehabilitation (25 percent if owner-occupied). Unused credits may be carried over for a maximum of 10 years.

- REVENUE IMPACT:

The following chart shows the revenue impact of the Virginia Historic Rehabilitation tax credit for fiscal years 2011 through 2015.

| Fiscal Year | Number of Individual and Corporate Returns | Amount (in millions) |
|-------------|--|----------------------|
| FY 2015* | 1,038 | \$43.8 |
| FY 2014 | 932 | \$27.1 |
| FY 2013 | 833 | \$23.5 |
| FY 2012 | 1,154 | \$59.2 |
| FY 2011 | 1,359 | \$46.8 |

Source: Virginia Department of Taxation, Table 3.1 of the annual report

* The amount of the revenue loss in the chart reflects only the amount of income tax revenue. If the loss of bank franchise tax revenue and insurance premiums revenue is included, then the total loss for 2015 is \$98 million.

- JOINT SUBCOMMITTEE RECOMMENDATION:

The Joint Subcommittee did not make any formal recommendation regarding the preference.

PREFERENCE REPORT:

HISTORIC REHABILITATION TAX CREDIT

(INCOME TAX, INSURANCE PREMIUMS TAX, AND BANK FRANCHISE TAX)

JUNE 2016

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

Preference Description

The Virginia Historic Rehabilitation tax credit, set out in § 58.1-339.2 of the Code of Virginia,³ grants owners of certified historic structures the ability to receive a tax credit against their income, insurance premium, or bank franchise tax. The amount of the credit is equal to 25 percent of eligible expenses incurred during a rehabilitation project certified by the Department of Historic Resources.

To qualify, the expenses must equal at least 50 percent of the assessed value of the building prior to the rehabilitation (25 percent if owner-occupied). Unused credits may be carried over for a maximum of 10 years. Owners are awarded the credit when the project is completed. The tax credit may be used by the taxpayer/owner who conducts the project or it may be allocated to investors through an appropriate ownership structure.

To qualify, the property must be listed in the Virginia Landmarks Register, either individually or as a contributing resource within a listed historic district. The rehabilitation must be consistent with the U.S. Secretary of the Interior's Standards for Rehabilitation and be completed within a consecutive 24-month period for a single-phase project, or within a 60-month period if the project is divided into phases. Tax credits are available for the tax year in which the project is completed.

The Department of Historic Resources determines eligibility of the property for participation, the existing condition of the property and proposed scope of work, and the rehabilitation expenses eligible for the tax credit. Following final certification, information on the credits granted is provided to the Department of Taxation.

Preference Purpose

Although there is no official written purpose, it is safe to assume that the historic rehabilitation tax credit's purpose is to encourage individuals and businesses to restore certified historic structures in Virginia, and perhaps to spur economic development.

³ Section 58.1-339.2 is set out in the Appendix.

A 2012 report of the Joint Legislative Audit and Review Commission (JLARC) concluded that the tax credit is effectively achieving its public policy goal of promoting this goal.⁴ This conclusion was based on, among other things, a 330 percent increase in the number of rehabilitation projects from the inception of the credit through 2009. In addition, JLARC cited the results of a 2007 survey of taxpayers who had received the credit, that showed 67 percent of respondents reporting that the credit was “very important” and 26 percent reporting that the credit was “somewhat important.” In addition, almost two-thirds of survey respondents said that they would not have undertaken the rehabilitation without the credit.

Legislative History & Background

The historic rehabilitation tax credit was originally enacted in 1996 and became effective for taxable years beginning on or after January 1, 1997.⁵ The current credit of 25% of eligible expenses was phased in over four years as follows: 10% for taxable year 1997, 15% for taxable year 1998, 20% for taxable year 1999, and 25% for taxable year 2000 and thereafter. As enacted, the credit was not transferrable and any credit earned by a partnership or an S corporation was required to be passed through to the partners or shareholders respectively.

The law has been amended several times as follows:

1998: The taxes against which the credit could be used was expanded from just income tax, to include the bank franchise tax, the license tax on insurance companies, and the license tax on certain regulated utility companies.⁶ Another amendment clarified the definition of "material rehabilitation."⁷

1999: Allowed partners and S corporation shareholders to allocate historic rehabilitation tax credits among themselves either in proportion to their ownership interest in their partnership or corporation, or as they mutually agree.⁸ Additionally, the legislative change authorized the Department of Historic Resources to provide taxpayers with the election of making a special one-time transfer of their credits on or before the final publication of the regulations promulgated by the Department of Historic Resources. Another amendment allowed Virginia taxpayers to qualify for the historic rehabilitation tax credit in Virginia for eligible expenses incurred in the rehabilitation of a certified historic structure in another state if the other state has a reciprocal program allowing those residents of the other state who rehabilitate historic structures in Virginia to receive tax credits.⁹

2000: Allowed projects on owner-occupied property to qualify for the tax credit with a lower threshold of costs, 25% of assessed value, rather than 50%.¹⁰ Another amendment increased the carry forward period for use of the credit from five years to 10 years.¹¹

⁴ See Senate Document No. 4 (2012), "Review of the Effectiveness of Virginia Tax Preferences," at p.55.

⁵ Chapters 520 of the Acts of Assembly of 1996.

⁶ Chapter 371 of the Acts of Assembly of 1998.

⁷ Chapter 372 of the Acts of Assembly of 1998.

⁸ Chapters 152 and 183 of the Acts of Assembly of 1999.

⁹ Chapter 213 of the Acts of Assembly of 1999.

¹⁰ Chapter 429 of the Acts of Assembly of 2000.

2012: Allowed any amount of gain or income recognized by a taxpayer in connection with the tax credit which is treated as taxable income for federal tax purposes to be subtracted from individual income, corporate income, and estate and trust taxes.¹² This action was taken in response to a Fourth Circuit Court of Appeals decision in the case of Virginia Historic Tax Credit Fund 2001 v. Commissioner.¹³ In that case a partnership allocated the tax credits among its investors in proportion to their contributions to the capital of the partnership, and the investors then claimed the credits on their Virginia income tax returns. The IRS audited the partnership and recharacterized the investors' contributions as purchases of the tax credit, due in part to the short duration of time between the entrance and exit of the investors in the partnership, which the court upheld. Consequently, when the investors used the credits on their Virginia tax returns the IRS treated it as a disposition of the purchased credits, causing the investors to recognize federal taxable income (the difference between the amount of the credit and the amount they invested). The deemed purchase and sale of the credits also affected the partnership's computation of its income. The credits, however, remained valid under Virginia law.

Revenue Impact

The following chart shows the revenue impact of the historic rehabilitation tax credit for fiscal years 2011 through 2015.

| Fiscal Year | Number of Individual and Corporate Returns | Amount (in millions) |
|-------------|--|----------------------|
| FY 2015* | 1,038 | \$43.8 |
| FY 2014 | 932 | \$27.1 |
| FY 2013 | 833 | \$23.5 |
| FY 2012 | 1,154 | \$59.2 |
| FY 2011 | 1,359 | \$46.8 |

Source: Virginia Department of Taxation, Table 3.1 of the annual report

* The amount of the revenue loss in the chart reflects only the amount of income tax revenue. If the loss of bank franchise tax revenue and insurance premiums revenue is included, then the total loss for 2015 is \$98 million.

Federal & Other State Tax Incentives

Federal Historic Preservation Tax Credit

Under federal law, an investment income tax credit is allowed to taxpayers for the rehabilitation of historic income-producing properties. The federal credit is equal to 20% of the cost of rehabilitating or

¹¹ Chapter 367 of the Acts of Assembly of 2000.

¹² Chapter 92 of the Acts of Assembly of 2012.

¹³ 639 F.3d 129 (4th Cir. 2011).

preserving commercial, agricultural, industrial, or rental residential buildings that are certified as historic.

The Historic Preservation tax credit is intended to encourage private investors to rehabilitate historic properties, such as abandoned or under-used schools, warehouses, factories, churches, retail stores, apartments, hotels, houses, and offices.

Other States

In addition to Virginia, 34 other states offer a tax incentive for historic rehabilitation.¹⁴ The amount of the credit ranges from 10% to 30% of eligible expenses, with most being 20% or 25% of eligible expenses.

Joint Subcommittee Recommendation

The Joint Subcommittee agreed that further review of the credit was necessary, and no formal recommendation was made.

Preference Report compiled by staff from the
Virginia Division of Legislative Services and the
Virginia Department of Taxation

¹⁴ Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Wisconsin, and West Virginia.

§ 58.1-339.2. Historic rehabilitation tax credit.

A. Effective for taxable years beginning on and after January 1, 1997, any individual, trust or estate, or corporation incurring eligible expenses in the rehabilitation of a certified historic structure shall be entitled to a credit against the tax 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; and Article 2 (§ 58.1-2620 et seq.) of Chapter 26, in accordance with the following schedule:

| Year | % of Eligible Expenses |
|---------------------|------------------------|
| 1997 | 10% |
| 1998 | 15% |
| 1999 | 20% |
| 2000 and thereafter | 25% |

If the amount of such credit exceeds the taxpayer's tax liability for such taxable year, the amount that exceeds the tax liability may be carried over for credit against the taxes of such taxpayer in the next ten taxable years or until the full credit is used, whichever occurs first. Credits granted to a partnership or electing small business corporation (S corporation) shall be passed through to the partners or shareholders, respectively. Credits granted to a partnership or electing small business corporation (S corporation) shall be allocated among all partners or shareholders, respectively, either in proportion to their ownership interest in such entity or as the partners or shareholders mutually agree as provided in an executed document, the form of which shall be prescribed by the Director of the Department of Historic Resources.

B. Effective for taxable years beginning on and after January 1, 2000, any individual, trust, estate, or corporation resident in Virginia that incurs eligible expenses in the rehabilitation of a certified historic structure in any other state that has in effect a reciprocal historic structure rehabilitation tax credit program and agreement for residents of that state who rehabilitate historic structures in Virginia shall be entitled to a credit to the same extent as provided in subsection A and other applicable provisions of law; however, no eligible party shall receive any credit authorized under this subsection prior to taxable years beginning on and after January 1, 2002.

C. To claim the credit authorized under this section, the taxpayer shall apply to the Virginia Department of Historic Resources, which shall determine the amount of eligible rehabilitation expenses and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed.

D. When used in this section:

"Certified historic structure" means a property listed individually on the Virginia Landmarks Register, or certified by the Director of the Virginia Department of Historic Resources as contributing to the historic significance of a historic district that is listed on the Virginia Landmarks Register or certified by the Director of the Virginia Department of Historic Resources as meeting the criteria for listing on the Virginia Landmarks Register.

"Eligible rehabilitation expenses" means expenses incurred in the material rehabilitation of a certified historic structure and added to the property's capital account.

"Material rehabilitation" means improvements or reconstruction consistent with "The Secretary of the Interior's Standards for Rehabilitation," the cost of which amounts to at least fifty percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses, unless the building is an owner-occupied building, in which case the cost shall amount to at least twenty-five percent of the assessed value of such building for local real estate tax purposes for the year prior to the initial expenditure of any rehabilitation expenses.

"Owner-occupied building" means any building that is used as a personal residence by the owner.

E. The Director of the Department of Historic Resources shall establish by regulation the requirements needed for this program, including the fees to defray necessary expenses thereof, and, except as otherwise prohibited by this section, the extent to which the availability of the credit provided by this section is coextensive with the availability of the federal tax credit for the rehabilitation of certified historic resources.

F. Any gain or income under federal law from the allocation or application of a tax credit under this section shall not be (i) taxable gain or income for purposes of the tax imposed pursuant to Article 2 (§ 58.1-320 et seq.), (ii) taxable gain or income for purposes of the tax imposed pursuant to Article 6 (§ 58.1-360 et seq.), or (iii) taxable gain or income for purposes of the tax imposed pursuant to Article 10 (§ 58.1-400 et seq.). However, nothing in this subsection shall be construed or interpreted as allowing a subtraction or deduction for such gain or income under federal law if the gain or income is otherwise excluded, deducted, or subtracted in computing the respective tax set forth under clauses (i) through (iii).

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

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

SEPTEMBER, 2016

JOINT SUBCOMMITTEE TO EVALUATE TAX PREFERENCES

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,¹⁵ 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)¹⁶ and guidelines issued by the Department of Education (DOE).¹⁷ 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

¹⁵ See Appendix for full text of Article 13.2.

¹⁶ See Chapter 41 (22 VAC 40-41-10 et seq.) of Title 22 of the Virginia Administrative Code.

¹⁷ 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").¹⁸
- 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 2013.¹⁹ 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.

¹⁸ 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.

¹⁹ 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.²⁰ 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 1981.²¹ 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

²⁰ See Chapter 426 of the Acts of Assembly of 2016.

²¹ 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.²² 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.

²² 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 ²³ | 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 |

²³ 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 prorated. 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 prorated. 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 Credit²⁴, adopted by the General Assembly in 2012,²⁵ 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

²⁴ See Article 13.1 (§ 58.1-429.25 et seq.) of Chapter 3 of Title 58.1.

²⁵ 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.