

Since the Board's first review of the proposed guidelines, VDOE received constituent recommendations and review from the Virginia Department of Taxation. The proposed guidelines have been amended based upon comments received.

Superintendent's Recommendation:

The Superintendent of Public Instruction recommends that the Board of Education approve the proposed guidelines and authorize staff to distribute the guidelines as presented.

Impact on Resources:

No additional funds will be needed.

Timetable for Further Review/Action:

The Department of Education will post the guidelines on its Web site and implement the guidelines effective August 1, 2009.

Virginia Board of Education

Guidelines for Neighborhood Assistance Act Tax Credit Program for Education

Chapter 851, Virginia Acts of Assembly (2009), established a program, known as the *Neighborhood Assistance Act tax credit program*, whereby individuals or businesses may receive tax credits for eligible contributions made to Neighborhood Organizations whose primary function is providing neighborhood education assistance for impoverished people. The Act language specified that the Department of Education is to issue guidelines for the approval or disapproval of proposals and administration of this program which is effective July 1, 2009.

The Neighborhood Assistance Act tax credit program for education is established in §§ 58.1-439.18, 58.1-439.20, 58.1-439.21, 58.1-439.22, 58.1-439.23, and 58.1-439.24 of the Code of Virginia.

Definitions:

Under this Program, definitions are set forth in § 58.1-439.18 and further include the following:

"Contracting services" means the same as the definition set forth in § 58.1-439.18 except that clause (i) of such definition shall not apply for purposes of these guidelines, and for purposes of clause (ii) of such definition "buildings" means buildings used by neighborhood organizations for the purpose of providing scholastic instruction or scholastic assistance to impoverished people.

"Job training" means the same as the definition set forth in § 58.1-439.18. The term shall include scholastic instruction or scholastic assistance.

"Neighborhood education assistance" means providing education.

"Primary function" means at least 50% of total persons served are impoverished people, and at least 50% of total expenditures are for the purpose of providing scholastic instruction or scholastic assistance to impoverished people.

Purpose; procedure for submitting proposals; eligibility criteria; termination of approval of program of a neighborhood organization; appeal procedure:

- A. The purpose of the Neighborhood Assistance Act tax credit program for education is to encourage businesses and individuals to contribute directly to neighborhood organizations whose primary function is providing neighborhood education assistance for impoverished people.
- B. Neighborhood organizations wishing to obtain an allocation of tax credits under this program must submit a proposal as set forth under § 58.1-439.20, of the Code of Virginia and provide the following information to the Superintendent of Public Instruction:

1. A description of their eligibility as a neighborhood organization, the education program to be conducted, the impoverished people to be assisted, the estimated amount that will be donated to the program, and plans for implementing the program.
2. Proof of the neighborhood organization's current exemption from income taxation under the provisions of § 501 (c) (3) or § 501 (c) (4) of the Internal Revenue Code, or the organization's eligibility as a community action agency as defined in the Economic Opportunity Act of 1964 (42 USC § 2701 et seq.) or housing authority as defined in § 36-3 of the Code of Virginia.
3. A copy of the neighborhood organization's current audit, review, or compilation as required by OMB Circular No. A-133 as may be applicable to nonprofit organizations, or a current audit, review or compilation prepared in accordance with generally accepted accounting principles for nonprofit organizations; a copy of the organization's current federal form 990; ~~a current brochure describing~~ materials that describe the organization's programs; and a copy of the annual report filed with the Department of Agriculture and Consumer Services' Division of Consumer Protection.
4. A statement of objective and measurable outcomes that are expected to occur and the method the organization will use to evaluate the education program's effectiveness and, for established programs, a statement about the measureable outcomes that have occurred, and the method used to evaluate the program's effectiveness.

C. To be eligible for participation in the Neighborhood Assistance Act Tax credit Program for Education, the applicant must meet the following criteria:

1. Applicants must have been in operation as a viable entity, providing neighborhood assistance for impoverished people for at least 12 months prior to the time an application is submitted to the Superintendent of Public Instruction.
2. Applicants must be able to demonstrate that at least 50% of the total persons served are impoverished people, and at least 50% of total expenditures are for the purpose of providing scholastic instruction or scholastic assistance to "impoverished people."
3. Applicant's audit must not contain any significant findings or areas of concern for the ongoing operation of the neighborhood organization.

- D. 1. For the time period July 1, 2009 to June 30, 2010, the Department shall allocate all available tax credits by July 1, 2009, or as soon thereafter as practicable.
2. Beginning in calendar year 2010 and thereafter, the application period will start no later than March 15 of each year. All applications must be received by the Virginia Department of Education no later than the first business day of May. The program year will run from July 1 through June 30 of the following year.

- E. Those applicants submitting proposals, including all required information and reports and meeting the eligibility criteria described in this section will be notified by the Superintendent of Public Instruction of the approval or disapproval of such proposals.
- F. The Superintendent of Public Instruction 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.
- G. The Superintendent of Public Instruction may terminate a neighborhood organization's eligibility to participate under the Neighborhood Assistance Act tax credit program for education based on a finding of program abuse including, but not limited to illegal activities, fraudulent valuation or reporting of contributions, material deviations from the approved proposal or other actions that are inconsistent with the purpose of the Neighborhood Assistance Act tax credit program. ~~involving illegal activities or fraudulent reporting of contributions.~~
- H. Any neighborhood organization that disagrees with the disposition of its application, or its termination as an approved organization, may appeal to the Superintendent of Public Instruction in writing for reconsideration. Such requests must be made within 30 days of the denial or termination. The Superintendent of Public Instruction will act on the request and render a final decision within 30 days of the request for reconsideration.
- I. Actions of the Superintendent of Public Instruction 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 the Superintendent of Public Instruction shall be final and not subject to review or appeal.

Allocation of tax credits:

- A. The available tax credits will be allocated equitably among the approved proposals submitted by neighborhood organizations as set forth in § 58.1-439.20 of the Code of Virginia.
- B. If 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 and individuals 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 Superintendent of Public Instruction. Such action will be deemed program abuse and will be cause for termination of a neighborhood organization's eligibility to participate under the Neighborhood Assistance Act tax credit program for education.
- C. During the program year, neighborhood organizations that have used at least 75% of their allocation of tax credits for education programs may request additional allocation of tax credits for education purposes within the limits described in the Act. Requests will be evaluated on a basis of reasonableness and tax credits will be reallocated on a first-come basis as they are available.

- D. Tax credits to be allocated are limited to the amounts as set forth in § 58.1-439.20. If the amount of tax credits requested by neighborhood organizations and approved by the Superintendent for education proposals is less than the total amount allocated by law for education proposals, then the balance of such amount shall be allocated to programs for approval by the Commissioner of the Department of Social Services.
- E. Organizations may release all or a portion of their unused tax credit allocation to be reallocated in accordance with subsection C of this section.

Value of donations:

- A. The neighborhood organization with an approved education proposal is responsible for maintaining documentation as required by the Virginia Department of Education to verify the date and value of all donations.
- B. The value of money, property, motor vehicles, professional services and contracting services donated by a business firm during its taxable year shall be valued in accordance with § 58.1-439.21.
- C. The value of donated rent/lease of the neighborhood organization's facility must be reasonable and cannot exceed the prevailing square footage rental charge for comparable property.
- D. Donations from individuals eligible for tax credits are limited to monetary donations and donations of marketable securities, which shall be valued at fair market value as of the date of the donation.
- E. Except as otherwise provided by law, the value of a donation from an organization or individual shall be such value as determined for federal income tax purposes using the laws and regulations of the United States related to federal income taxes.

Minimum and maximum amounts:

- A. ~~Tax credits granted~~ Organizations shall grant tax credits to business firms ~~are subject to consistent with~~ the minimum and maximum amounts and other provisions set forth in § 58.1-439.21 of the Code of Virginia.
- B. ~~Tax credits granted~~ Organizations shall grant tax credits to individuals ~~are subject to consistent with~~ the minimum and maximum amounts and other provisions set forth in § 58.1-439.24 of the Code of Virginia.
- C. ~~Any tax credit not useable for the taxable year the donation is made may be carried over to the extent useable for the next five succeeding taxable years or until the credit has been utilized, whichever is sooner.~~
- D. The neighborhood organization shall complete a certification on a form prescribed by the Department of Education. The certification shall identify the date, type, donor and value of the donation eligible for tax credits.

- E. Upon receipt and approval of the certification, the Superintendent of Public Instruction shall issue a tax credit certificate to the donor eligible for the tax credit.

Determining date of donation:

- A. The date of donation for cash, marketable, securities and property to be used by the neighborhood organization is the date used for federal income tax purposes according to IRS regulations.
- B. The date of donation for professional services or contracting services is the dates such services are rendered. The neighborhood organization with an approved education proposal is responsible for maintaining documentation as required by the Virginia Department of Education to verify the date and value of all services donations.
- C. The date of donation for donated rent/lease is the effective date of the lease.