

## Virginia Department of Education

### ***Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education*** **Effective September 2, 2016**

Beginning in 2009, the Virginia General Assembly authorized the Board of Education to adopt guidelines for the administration of the Neighborhood Assistance Tax Credit Program for Education pursuant to §§ 58.1-439.18 through 58.1-439.22, and § 58.1-439.24 of the *Code of Virginia*. Under this tax credit program, individuals or business firms may receive state tax credits for eligible contributions made to neighborhood organizations providing neighborhood assistance in the form of education to low-income persons or eligible students with disabilities.

Consistent with the statutory authority cited above, these guidelines are issued by the Virginia Department of Education (the "Department") to provide guidance to neighborhood organizations, individuals, and business firms regarding the *Neighborhood Assistance Act Tax Credit Program for Education*. These guidelines supersede the Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education adopted on April 9, 2015. These guidelines will be published and posted on the Department's website at: [http://www.doe.virginia.gov/school\\_finance/neighborhood\\_assistance\\_act/index.shtml](http://www.doe.virginia.gov/school_finance/neighborhood_assistance_act/index.shtml).

These guidelines represent the Department's interpretation of the relevant laws. To the extent there is a question regarding the application of these guidelines, individuals are encouraged to write to the Department and seek a written response to their question.

#### **Definitions:**

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

"Affiliated entity" means an entity that, directly or indirectly, controls another entity, is controlled by the other entity, or is under common control with the other entity. For purposes of this definition, "control" (including controlled by and under common control with) means the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity whether through ownership or voting securities or by contract or otherwise.

"Approved project" means the education services described in a neighborhood organization's education proposal to be provided during a specified program year.

"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

## Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education

means any trust or fiduciary for a trust subject to tax imposed by Article 6 (§ 58.1-360 et seq.) of Chapter 3.

"Education proposal" means an application that is submitted to the Department by a neighborhood organization during the designated application period, as set forth in § 58.1-439.20 of the *Code of Virginia*, and contains information to support all eligibility criteria and a description of the organization's education services, in order to receive an allocation of tax credits from the Department for a specified program year.

"Education services" means any of the following to low-income persons or eligible students with a disability: (1) scholastic instruction; (2) counseling or supportive services to elementary school, middle school, secondary school, or postsecondary school students or their parents in developing a postsecondary academic or career training plan, including college financing options for such students or their parents; or (3) scholarships (excluding waiver of tuition or program fees).

"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.

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

"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.

"Program year" means the annual period from July 1 to June 30 during which the maximum amount of tax credits may be granted; the same calendar period as the state fiscal year.

**Eligibility requirements for participation in the *Neighborhood Assistance Act Tax Credit Program for Education***

Eligibility to participate in the *Neighborhood Assistance Act Tax Credit Program for Education* requires meeting the six criteria that follow. Four of the criteria apply not just to the Applicant, but also to affiliated entities. However, if the Applicant received an allocation of tax credits for fiscal year 2011-2012, then beginning with tax credit allocations for fiscal year 2014-2015 and ending with tax credit allocations for fiscal year 2019-2020, any of its affiliated entities are exempt from satisfying the four criteria. An entity is considered to be an affiliated entity if the Applicant, directly or indirectly, controls the entity, is controlled by the entity, or is under common control with the entity.

1. The Applicant must be a neighborhood organization, as defined in § 58.1-439.18 of the *Code of Virginia*, with at least 50 percent of the persons it serves being low-income persons or eligible students with disabilities and use 50 percent or more of its revenues to provide services to such persons in Virginia, as provided in §58.1-439.20.B, of the *Code of Virginia*.
2. The Applicant and each affiliated entity must be able to demonstrate that at least 50 percent of the total of the persons it served during the calendar year, program year, or most recent fiscal year ended are low-income persons or eligible students with a disability.

The Applicant and each affiliated entity must rely on the U.S. Census Bureau's definition of income, which is used for computing poverty statistics, in order to determine that a low-income person's family household income is not excess of 300 percent of the current federal poverty guidelines, or 400 percent if the student is an eligible student with a disability.

In the event that the Applicant or any affiliated entity provides education services to students in prekindergarten through grade 12 and is not able to obtain verification of family income for each child in the school served, then the neighborhood organization is permitted to use the free and reduced price lunch eligibility percentages for the associated school, as provided in the most recent National School Lunch Program Free and Reduced Price Eligibility Report maintained by the Department of Education, in determining the overall income level of the children in the school to be served by the neighborhood organization.

3. The Applicant and each affiliated entity must have financial statements for the most recent fiscal year audited, reviewed, or compiled by an independent certified public accountant.
  - a. If the total revenue the Applicant or affiliated entity will report in their financial statements for the most recent fiscal year ended is greater than \$100,000, then such financial statements must be either audited or reviewed.

## **Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education**

- b. If the total revenue the Applicant or affiliated entity will report in their financial statements for the most recent fiscal year ended is no greater than \$100,000, then such financial statements may be compiled, provided that the compilation is by a firm that is independent and the financial statements do not omit substantially all of the disclosures required by the financial reporting framework.

In the event that an applicant's audit, review or compilation for the most recent fiscal year ended will not be completed by application due date of May 1, the applicant is allowed an additional thirty days from the due date of the application to submit the completed audit, review or compilation to the Department. The applicant must include with its application a written statement notifying the Department that it requires the additional thirty days to submit a completed audit, review or compilation. The application and all other application materials are required to be submitted by the May 1 due date in order to be considered timely filed.

4. The Applicant and each affiliated entity must be able to demonstrate, on a schedule provided by the Department that at least 50 percent of its revenues were used, or will be used, to provide services to low-income persons or eligible students with disabilities.
5. The Applicant's and any of its affiliated entities' audit, review or compilation must not contain significant financial or operating risk, or areas of concern, that would prevent the Applicant from providing education services in Virginia during the applicable program year.
6. The Applicant must show that it has been in existence for at least one year by the start of the program year, which begins July 1.

### **Procedure for submitting proposals; termination of approval of a neighborhood organization; appeal procedure:**

- A. An applicant neighborhood organization wishing to obtain an allocation of tax credits under this program must submit an education proposal as set forth in § 58.1-439.20 of the *Code of Virginia*, in a manner prescribed by the Superintendent of Public Instruction. The proposal must provide information to support all eligibility criteria listed above, as well as:
  1. Materials that describe the applicant neighborhood organization's programs, a description of its eligibility as a neighborhood organization, the education services to be conducted, the estimated amount that will be donated and used to provide the education services, and plans for implementing the program.
  2. A copy of an audit or review for the applicant's most recent year ended performed by an independent certified public accountant, or, if the applicant neighborhood organization's total revenues (including the value of all donations) were \$100,000 or less for the most recent year ended, a

## Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education

compilation for such year performed by an independent certified public accountant.

3. A copy of the applicant neighborhood organization's current letter from the Virginia Department of Agriculture and Consumer Affairs (VDACS) certifying that the organization complies with § 57-48 et seq. of the *Code of Virginia*. If the applicant neighborhood organization's VDACS registration is current on the date of its application, but expires prior to July 1, the Department must receive proof of its current registration prior to the last business day in June. If proof of current registration is not received by the last business day in June, then the organization will not be allowed to accept tax credit-eligible donations and the applicant neighborhood organization's name will not be included in the list of approved neighborhood organizations included on the Department's website until proof of the renewed VDACS registration is received by the Department.

The Department may require that an applicant neighborhood organization submit a current federal Form 990 if additional financial and organizational information is needed.

Pursuant to § 58.1-439.20.B. of the *Code of Virginia*, in order for an education proposal to be approved by the Department, the applicant neighborhood organization and any of its affiliates must meet the requirements of the application and these guidelines.

- B. The program year for the implementation of awarded tax credits will be July 1 through June 30 of each year. The application period will start no later than March 15 prior to the beginning of each program year. All applications must be received by the Department of Education no later than the first business day of May prior to the beginning of each program year.
- C. Those applicants submitting proposals, including all required information, and meeting the eligibility criteria will be notified by the Superintendent of Public Instruction of the approval or disapproval of such proposals by July 1.
- D. The Department of Education will work cooperatively with the Department of Social Services for purposes of ensuring that neighborhood organization proposals are submitted to the proper agency.
- E. If during the program year an approved neighborhood organization's VDACS registration expires, the neighborhood organization will not be allowed to accept tax credit-eligible donations and the neighborhood organization's name will be removed from the approved list of neighborhood organizations until proof of the renewed VDACS registration is received by the Department.

## Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education

- F. The Superintendent of Public Instruction may terminate an approved neighborhood organization's eligibility to participate under the *Neighborhood Assistance Act Tax Credit Program for Education* if the Department becomes aware of 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.
- G. Any applicant neighborhood organization that disagrees with the disposition of its application, or its termination as an approved neighborhood 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.
- H. 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 to approved proposals:

- A. The available tax credits as set forth in § 58.1-439.20.D. of the *Code of Virginia* will be allocated equitably among the approved proposals submitted by neighborhood organizations pursuant to these guidelines as set forth in § 58.1-439.20.B. of the *Code of Virginia*. The methodology for allocating tax credits to approved proposals for each program year is as follows:
  - 1. As part of the application prescribed by the Department, each applicant neighborhood organization must provide the following information: a) the total amount of revenues used to provide education services to low-income persons or eligible students with disabilities ("education expenses"); and b) the total amount of qualified donations it reasonably expects to receive during the upcoming program year.

For each approved proposal, the initial allocation of tax credits will be determined by multiplying the lesser of the amounts in items a) and b) above by 65 percent.
  - 2. Consistent with the limitations set forth in § 58.1-439.20.C. of the *Code of Virginia*, no initial allocation of tax credits to an approved proposal shall exceed \$825,000.
  - 3. Pursuant to § 58.1-439.20.B. of the *Code of Virginia*, the Department will reserve at least 10 percent of the available tax credits for neighborhood organizations that did not receive an allocation of tax credits in the preceding program year. If the total amount of tax credits initially allocated to proposals

## Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education

submitted by new neighborhood organizations is less than 10 percent of the available tax credits, then the remaining amount of tax credits will be added to the available tax credits for returning neighborhood organizations.

4. If the total amount of initial allocations exceeds the available amount of tax credits for that program year, then the initial allocation for each approved proposal will be reduced in proportion to its percentage of the total amount of initial allocations the approved proposals were slated to receive. For example, if an initial allocation of an approved proposal is 10 percent of the total amount of initial allocations, then that proposal's initial allocation will be equal to 10 percent of the available amount of tax credits for that program year. However, if the total amount of tax credits allocated to neighborhood organizations that did not receive an allocation of tax credits in the preceding program year is 10 percent or less, then the initial allocation to these neighborhood organizations will not be reduced.
  5. If, the total amount of initial allocations is less than the amount of available tax credits, or there are tax credits available after the 30-day appeal period for denied proposals, then such tax credits will be allocated on a pro rata basis among the neighborhood organizations that have used at least 75 percent of their initial allocation by November 1 of the program year.
- 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 in the Neighborhood Assistance Act Tax Credit Program for Education.
- C. Neighborhood organizations may release all or a portion of their unused tax credit allocation to be reallocated in accordance with § 58.1-439.20.C. of the *Code of Virginia*.
- D. During the program year, neighborhood organizations that have used at least 75 percent of their initial allocation of tax credits will be eligible to receive a pro rata distribution of any additional tax credits that become available for reallocation. Upon notice from the Department, a neighborhood organization with an approved proposal may be eligible to receive an additional allocation of tax credits in accordance with § 58.1-439.20.C. of the *Code of Virginia* and as follows:
1. The Department, by e-mail, will notify qualified neighborhood organizations that additional tax credits are available for reallocation and the amount of such tax credits that each neighborhood organization is eligible to receive.

## **Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education**

Any requests for additional tax credits submitted prior to the Department's notice will not be considered.

2. If a neighborhood organization eligible for an additional allocation of tax credits requires more than the prorated amount of reallocated tax credits, the neighborhood organization may request a specific amount of reallocated tax credits based on donations it has received or expects to receive during the program year that will be used to provide education services. All such requests will be accommodated on a pro rata basis if any reallocated tax credits remain after the distributions set forth in subsection D.1. above are fulfilled.
3. Neighborhood organizations capable of using additional tax credits must so indicate to the Department within 20 calendar days from the date of the Department's notice in order to receive an additional allocation of tax credits.
4. A neighborhood organization that received an initial reallocation of additional tax credits and uses at least 75 percent of the reallocation amount will be eligible to receive an additional amount of tax credits upon notice from the Department that additional tax credits are available.

### **Value of donations:**

- A. The neighborhood organization with an approved education proposal is responsible for maintaining documentation as required by the Department of Education to verify the date and value of all donations.
- B. For individual donors, donations shall be eligible for tax credits in an amount up to 65 percent of the value of the money or marketable securities donated. For business firm donors, donations shall be eligible for tax credits in an amount up to 65 percent of the value of the money, marketable securities, property, or professional services donated.
- C. For individual and business firm donors, donations of marketable securities shall be valued at fair market value as of the date of the donation. The value of stock is the fair market value (the number of shares times the average of the high and low prices, or the mean price per share) on the trade date. The value of mutual funds is based on the net asset value per unit at the close of business on the trade date.
- D. For business firm donors only:
  1. The value of merchandise (other than motor vehicles) donated by business firms to be sold, auctioned, or raffled is the lesser of the actual cost of the item or the proceeds received by the neighborhood organization.



## **Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education**

2. The value of a motor vehicle donated by a business firm is such value as determined for federal income tax purposes. (See IRS Publication 561.)
3. For rent/lease of a facility, the value assigned to a donation to a neighborhood organization by a business firm cannot exceed the prevailing square footage rental charge for comparable property and must be agreed to by the donor and the neighborhood organization in advance. The neighborhood organization is responsible for obtaining documentation verifying reasonable costs for comparable property.
4. The value of professional services donated by business firms is as set forth in § 58.1-439.22 of the *Code of Virginia*. For sole proprietorships, partnerships or limited liability companies, the value of professional services rendered by the proprietor or a partner to an approved NAP nonprofit organization must be the lesser of the reasonable cost for similar services from other providers or \$125 per hour. For purposes of determining the amount of tax credit allowed for salaried employees, the value of the professional service is the salary that the employee was actually paid for the period of time professional services were provided (operating overhead and benefit costs are not to be included).
5. 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.
6. No tax credits shall be issued by the Department of Education for donations of contracting services.
7. The value of eligible donations, including real estate, not addressed above 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 donation amounts:**

- A. Neighborhood organizations shall grant tax credits to business firms consistent with the minimum amounts and other provisions set forth in § 58.1-439.21 of the *Code of Virginia*. Donations by a business firm must be at least \$616 in a taxable year in order to be eligible for tax credits.

Neighborhood organizations shall grant tax credits to individuals consistent with the minimum and maximum amounts and other provisions set forth in § 58.1-439.24 of the *Code of Virginia*. Donations by an individual must be at least \$500 in a taxable year in order to be eligible for tax credits. Effective for donations made on and after January 1, 2013, the maximum amount of donations by an individual that are eligible for tax credits in a taxable year is \$125,000. The minimum and maximum

## **Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education**

amount of donations is applied on an individual basis, and no longer pertains to married persons.

- B. The donor and neighborhood organization must complete a certification on a form prescribed by the Department of Education. The certification must identify the date of donation, type of donation, donor name, value of the donation eligible for tax credits, name of the neighborhood organization receiving the donation and the cumulative amount of tax credits that have been requested or issued to the donor in the taxable year.
- C. Tax credits shall only be awarded for donations that meet or exceed the statutorily required minimum values. The required minimum value for donations by individuals is \$500 and the required minimum value for donations by business firms is \$616. An individual or business firm donor making multiple donations each less than the required minimum donation amount but that in total meet or exceed the required minimum donation amount must report the cumulative donations on the same form prescribed by the Department. After a donor meets or exceeds the required minimum donation amount, the donor can receive additional tax credits for donations that are each less than the minimum donation amount, provided that the donations are all made within the same taxable year.

Tax credits issued for a donation to a neighborhood organization in support of an approved project must be deducted from the available balance of the allocation of tax credits for the program year in which the donation was made. If a donor makes multiple donations less than the required minimum amount in two different program years, but within the same taxable year, the total amount of tax credits will be deducted from the organization's tax credit allocation for the program year in which the date of the donation that meets or exceeds the required minimum donation amount occurs. If a donor makes the required minimum donation amount for tax credits in a program year, then any tax credits derived from subsequent donations within the same taxable year will be deducted from the organization's tax credit allocation for the program year in which the subsequent donation was made.

- D. For taxable years beginning on or after January 1, 2015, an individual or business firm donor may, by written agreement, accept a tax credit percentage less than 65 percent for an eligible donation made to an approved neighborhood organization. The donor and neighborhood organization must agree to the lower tax credit percentage in writing on a form prescribed by the Department, and submit it to the Department along with the certification form.
- E. Upon receipt and approval of the certification, the Superintendent of Public Instruction will issue a tax credit certificate to the donor eligible for the tax credit, and provide a copy to the appropriate neighborhood organization. The donor must maintain proper records of the tax credit certificate form and the form agreeing to the reduced tax credit percentage, if such an agreement was made with the neighborhood organization, for Virginia tax purposes.

## Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education

### Determining date of donation:

- A. If not specified in this section, the date of donation is the date used for federal income tax purposes according to IRS regulations.

Based on IRS regulations, the date of donation for a check is either the date the donation was hand delivered or the date it was mailed. However, if a post-dated check is hand delivered or mailed, the date of donation shall be considered the date of the check, not the date of delivery.

- B. The date of donation for most marketable securities is the trade date, NOT the settlement or sale date.
- C. For merchandise donated to be sold, auctioned, or raffled, the date the proceeds are received by the neighborhood organization is the date of the donation.
- D. The date of donation for professional services is the date such services are rendered. The neighborhood organization with an approved education proposal is responsible for maintaining documentation as required by the Department of Education to verify the date and value of all services donations.
- E. The date of donation for donated rent/lease is the first date of use by the neighborhood organization.

### Required Documentation supporting a tax credit-eligible donation:

- A. A neighborhood organization is required to obtain proper documentation supporting the tax-credit eligible donation, and submit such documentation with the appropriate form to the Department. The necessary documentation for each type of donation includes the following:
  - 1. **Cash:** A copy of the check(s), charge card transaction(s), or payroll deduction record(s). An online donation made to an approved neighborhood organization using a third-party payment processor is permitted provided that the neighborhood organization can provide supporting documentation (receipt, financial statement, etc.) with the following information: donor's name, the amount of the donation, the date of the donation, and the name of the neighborhood organization receiving the donation.
  - 2. **Marketable Securities:** A letter from the brokerage firm or a copy of a transaction report from the donor's stock portfolio to show the name of the organization that received the donation, number of units, and the high and low or mean price per share on the trade date for stocks, or the net asset value per unit at the close of business on the trade date for mutual funds.

## Guidelines for the Neighborhood Assistance Act Tax Credit Program for Education

3. **Merchandise (other than motor vehicles) donated to be sold, auctioned, or raffled:** Documentation of the cost of the item, the proceeds received by the neighborhood organization, and the date the proceeds were received.
4. **New or used merchandise donated to be used by the neighborhood organization:** Documentation required for federal income tax purposes to support the value and date of donation. (See IRS Publication 561 for additional information on determining value of donations.)
5. **Motor Vehicles:** A copy of the invoice listing dealer's actual cost, the Bill of Sale showing the donation was made to the organization, and a copy of the title showing transfer to the organization.
6. **Real Estate:** A copy of a current appraisal and recorded deed of transfer to support the value and date of donation.
7. **Rent/lease of facility:** Documentation verifying that the value assigned does not exceed the prevailing square footage rental charge for comparable property and was agreed to by the donor and the neighborhood organization in advance, and documentation supporting the first date of use by the neighborhood organization.
8. **Professional Services:** 1) Documentation that the sole proprietor, partnership, or the limited liability company making the donation is engaged in the business of providing professional services. 2) Documentation of the date the professional services were provided. 3) Documentation to support that the value assigned does not exceed the limits set forth in § 58.1-439.22 (A) and (B) of the *Code of Virginia*.