New York's Versions of Education Tax Credits More Extreme Than Other States

Our analysis shows that versions of the Education Investment Tax Credit (EITC) proposed for New York have provisions that are radically more favorable to affluent and well-heeled contributors and recipients of EITC scholarships than the comparable systems in other states.

Scholarships Not Restricted to Low Income Families

Numerous states have adopted measures that appear to further the goal of providing assistance to students from low income families, but New York's proposals seem to tend toward measures for wealthier families.

Means Tests: 12 of the 16 states with EITC Programs impose a means-test for scholarship recipients in the form of a family income cap. New York's versions have the highest family income caps: as high as $500,000 (Senate's version) or $250,000 (Assembly & Governor's). The Governor and Assembly's bills, though the Senate's doesn't, require that more than half of the scholarships go to low income families. However, these bills contain a highly unusual provision that would allow a scholarship-granting organization with 100% of scholarships provided to families with income above the cap to jointly file with a larger qualifying organization, therefore still providing its contributors with the tax credit.

Enrollment Requirements: Some states have adopted measures designed to provide assistance to students enrolled in public schools who desire an educational alternative but cannot afford one. Four states (Alabama, Kansas, Louisiana and Pennsylvania) restrict or prioritize scholarships to students from public schools rated as "failing," which New York's bills do not do. An additional four states restrict or prioritize scholarships for those switching out of public schools; they must be enrolled in public school when they first apply. The New York bills do not require this either.

Amount of Scholarship: Nine states place limits on the size of the scholarships which may be offered under the program, setting either a set dollar limit or indexing the maximum scholarship size to state public school funding. The balance of states' programs allows scholarships to cover 100% of the cost of private school tuition, which New York's 3 bills do.

Eligibility for Tax Credit Favors Sophisticated Donors

Many states have requirements which appear designed to control the fiscal impact of the credit on the state's finances by capping the total aggregate amount of the credit available, as well as capping the amount of credit which the individual contributor may take. New York's bills, while providing fairly high caps, also have unusual procedural requirements which appear designed to favor sophisticated contributors.

Total tax credit cap: Most states control the fiscal impact of the program by limiting the total amount of tax credits available, although two states have programs which do not. The New York Senate bill provides for a cap of $150 million annually, rising to $300 million in 2018 – 2nd highest in the nation. The Assembly and Governor's bills cap the available credits at $70 million annually.

Very High Donation Caps & Credits: Although ALEC's Great Schools Tax Credit Program Act (Scholarship Tax Credits) model bill provides that the donor may take a tax credit equal to 50% of the amount of the donation, 9 states allow donors to take a credit equal to 100%. The Assembly and Governor's bills allow for a credit equal to 75% of the donated amount, while the Senate bill provides for a 90% credit, higher than any other New York tax credit program. All three of New York's bills provide for a maximum allowable credit to the taxpayer-donor of $1 million, which is the largest allowable credit of any state which sets such limits.

Unusual procedural requirements which advantage sophisticated donors: All of New York's bills have unusually short windows in which to get the pre-approval necessary for the credit, significantly advantaging corporate and wealthy individuals with financial advisers. Buried in the bills is the ability of the wealthy to maximize this benefit, under a single application, through gifting via a family partnership or a small, Subchapter S corporation where multiple partners or shareholders can aggregate their gifts for credit purposes. This is a tool that is usually beyond the reach of ordinary taxpayers. The bills also permit for a five-year carryover of any unused portion of the credit.

Procedural hurdle for instructional materials and supplies credit: The Governor's bill, unlike the other 2, requires that teachers seeking to take advantage of its $200 instructional tax credit must apply for approval to take the credit during the tax year and submit documentation with the application, which may well limit teachers' ability to access this credit. This contrasts unfavorably with the general practice of allowing for one consolidated tax filing following the conclusion of the tax year.

Accountability and Transparency Lacking

Good government principles demand that complex tax programs have provisions to build in accountability and transparency. Vigorous oversight and strong enforcement should be prerequisites for any program with large fiscal implications. Unfortunately, the New York versions of the EITC Program are lacking in measures designed to insure accountability and transparency when compared to programs in other states.

Accountability and fiscal soundness: The New York bills contain very little in the way of standards for approving the credits given to donors or allowing organizations to receive donations covered by the program. Neither the scholarship-granting entities nor the schools which receive scholarship moneys are held to a particular standard of performance or accountability. New York's proposed lax standards contrast unfavorably with the safeguards other states have adopted and even ALEC recommends, like requiring annual audits.

Lax Enforcement: Generally, following the lead of the ALEC model bill, EITC Programs lack strong enforcement mechanisms. As suggested by ALEC, the penalties for violating the requirements of the programs in other states, as well as those proposed in New York's bills, are to decertify an organization from participating in the program in the future.

Limited transparency: Unlike the reporting requirements for schools receiving scholarship funds and organizations receiving contributions under ALEC's model bill, New York's bills do not require the reporting of information, such as the amount of funds provided to low- and middle-income families, to determine which schools and student populations, the wealthy or the needy, most benefit from the program. Again, this contrasts unfavorably with the requirements of other states, which require reporting of data on the income of students assisted by the program and their comparative academic performance.