

FIRST REGULAR SESSION

# HOUSE BILL NO. 1104

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HUGHES (Sponsor), EL-AMIN, HOSKINS, DOUGHERTY,  
BROWN (50), PORTWOOD, BEARDEN AND MUSCHANY (Co-sponsors).

Read 1st time March 12, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2555L.01I

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### AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to an income tax credit for contributions to certain nonprofit organizations.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be  
2 known as section 135.340, to read as follows:

**135.340. 1. As used in this section, the following terms mean:**

2       **(1) "Contribution", a donation of cash, stock, bonds, or other marketable**  
3 **securities, or real property;**

4       **(2) "Commissioner", the director of the department of elementary and secondary**  
5 **education;**

6       **(3) "Nonprofit special needs education support organization", a tax-exempt**  
7 **organization located in this state:**

8           **(a) Established and operating primarily to provide financial assistance to families**  
9 **with special needs children who are of elementary or secondary school age and who are**  
10 **residents of this state; and**

11           **(b) Which do not provide such educational services; and**

12           **(c) Which provides financial support directly for the educational benefit of special**  
13 **needs children; and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 (d) Which provides special education services for children who do not attend public  
15 schools; and

16 (e) Which provides its services at no cost to its clients; and

17 (f) When providing financial support, such financial support must be for special  
18 education services provided in accordance with Missouri statute; and

19 (g) Which is exempt from income taxation under the Internal Revenue Code of  
20 1986, as amended;

21 (4) "State tax liability", in the case of a business taxpayer, any liability incurred by  
22 such taxpayer under the provisions of chapters 143, 147, 148, and 153, RSMo, excluding  
23 sections 143.191 to 143.265, RSMo, and related provisions, and in the case of an individual  
24 taxpayer, any liability incurred by such taxpayer under the provisions of chapter 143,  
25 RSMo, excluding sections 143.191 to 143.265, RSMo, and related provisions;

26 (5) "Taxpayer", a person, firm, a partner in a firm, corporation, or a shareholder  
27 in an S corporation doing business in this state and subject to the state income tax imposed  
28 by the provisions of chapter 143, RSMo, or a corporation subject to the annual corporation  
29 franchise tax imposed by the provisions of chapter 147, RSMo, or an insurance company  
30 paying an annual tax on its gross premium receipts in this state, or other financial  
31 institution paying taxes to the state of Missouri or any political subdivision of this state  
32 under the provisions of chapter 148, RSMo, or an express company which pays an annual  
33 tax on its gross receipts in this state under chapter 153, RSMo, or an individual subject to  
34 the state income tax imposed by the provisions of chapter 143, RSMo.

35 2. For all tax years beginning on or after January 1, 2008, a taxpayer shall be  
36 allowed to claim a tax credit against the taxpayer's state tax liability in an amount equal  
37 to fifty percent of the amount such taxpayer contributed to a nonprofit special needs  
38 education support organization.

39 3. The amount of the tax credit issued shall not exceed the amount of the taxpayer's  
40 state tax liability for the taxable year for which the credit is claimed, and such taxpayer  
41 shall not be issued a tax credit in excess of fifty thousand dollars per taxable year.  
42 However, any tax credit that cannot be claimed in the taxable year the contribution was  
43 made may be carried over to the next four succeeding taxable years until the full credit has  
44 been claimed.

45 4. Except for any excess credit which is carried over under subsection 3 of this  
46 section, a taxpayer shall not be allowed to claim a tax credit unless the total amount of such  
47 taxpayer's contribution or contributions to a nonprofit special needs education support  
48 organization in such taxpayer's taxable year has a value of at least one hundred dollars.

49           **5. The commissioner shall determine, at least annually, which organizations in this**  
50 **state may be classified as nonprofit special needs education support organizations. The**  
51 **commissioner may require of an organization seeking to be classified as a nonprofit special**  
52 **needs education support organization whatever information which is reasonably necessary**  
53 **to make such a determination. The commissioner shall classify an organization as a**  
54 **nonprofit special needs education support organization if such organization meets the**  
55 **definition set forth in subsection 1 of this section.**

56           **6. The commissioner shall establish a procedure by which a taxpayer can determine**  
57 **if an organization has been classified as a nonprofit special needs education support**  
58 **organization. Nonprofit special needs education support organizations shall be permitted**  
59 **to decline a contribution from a taxpayer. The cumulative amount of tax credits which**  
60 **may be claimed by all the taxpayers contributing to nonprofit special needs education**  
61 **support organizations in any one fiscal year shall not exceed two million dollars. Tax**  
62 **credits shall be issued in the order contributions are received.**

63           **7. The commissioner shall establish a procedure by which, from the beginning of**  
64 **the fiscal year until some point in time later in the fiscal year to be determined by the**  
65 **commissioner, the cumulative amount of tax credits are equally apportioned among all**  
66 **facilities classified as nonprofit special needs education support organizations. If a**  
67 **nonprofit special needs education support organization fails to use all, or some percentage**  
68 **to be determined by the commissioner, of its apportioned tax credits during this**  
69 **predetermined period of time, the commissioner may reapportion these unused tax credits**  
70 **to those nonprofit special needs education support organizations that have used all, or**  
71 **some percentage to be determined by the commissioner, of their apportioned tax credits**  
72 **during this predetermined period of time. The commissioner may establish more than one**  
73 **period of time and reapportion more than once during each fiscal year. To the maximum**  
74 **extent possible, the commissioner shall establish the procedure described in this subsection**  
75 **in such a manner as to ensure that taxpayers can claim all the tax credits possible up to the**  
76 **cumulative amount of tax credits available for the fiscal year.**

77           **8. Each nonprofit special needs education support organization shall provide**  
78 **information to the commissioner concerning the identity of each taxpayer making a**  
79 **contribution to the nonprofit special needs education support organization who is claiming**  
80 **a tax credit under this section and the amount of the contribution. The commissioner shall**  
81 **provide the information to the director of revenue. The commissioner shall be subject to**  
82 **the confidentiality and penalty provisions of section 32.057, RSMo, relating to the**  
83 **disclosure of tax information.**

84           **9. The department of revenue and the department of elementary and secondary**  
85 **education may promulgate rules to implement the provisions of this section. Any rule or**  
86 **portion of a rule, as that term is defined in section 536.010, RSMo, that is created under**  
87 **the authority delegated in this section shall become effective only if it complies with and**  
88 **is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**  
89 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers**  
90 **vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the**  
91 **effective date, or to disapprove and annul a rule are subsequently held unconstitutional,**  
92 **then the grant of rulemaking authority and any rule proposed or adopted after August 28,**  
93 **2007, shall be invalid and void.**

94           **10. Under section 23.253, RSMo, of the Missouri Sunset Act:**

95           **(1) The provisions of the new program authorized under this section shall**  
96 **automatically sunset on December thirty-first six years after the effective date of this**  
97 **section unless reauthorized by an act of the general assembly; and**

98           **(2) If such program is reauthorized, the program authorized under this section**  
99 **shall automatically sunset on December thirty-first twelve years after the effective date of**  
100 **the reauthorization of this section; and**

101           **(3) This section shall terminate on September first of the calendar year immediately**  
102 **following the calendar year in which the program authorized under this section is sunset.**

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