



## **DIRECTIVE**

**Subject:** Tax Credit for Children with Disabilities Who Require Special Education

**Tax:** Individual Income Tax

**Law:** G. S. 105-151.33

**Issued By:** Income Tax Division, Personal Taxes Section

**Date:** January 23, 2012

**Number:** PD-12-1

This directive addresses the new tax credit allowed under G.S. 105-151.33 for children with disabilities who require special education. The law allows a tax credit for taxpayers who pay tuition and special education and related services expenses for an eligible dependent child. This credit is effective for tax years beginning on or after January 1, 2011, and applies to semesters beginning on or after July 1, 2011.

### **Special Education and Related Services**

For purposes of this credit, "special education" means specifically designed instruction to meet the unique needs of a child with a disability, including instruction in physical education and instruction conducted in a classroom, home, hospital or institution, and other settings. "Related services" has the same definition for purposes of this credit as defined in The Individuals with Disabilities Education Improvement Act (IDEA), 20, U.S.C. §1400, et seq., (2004), as amended, and federal regulations adopted under the act. In general, the IDEA defines "related services" as transportation, and such developmental, corrective, and other supportive services that may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions of children. "Related services" does not include a medical device that is surgically implanted, or the placement of such a device.

### **Eligible Dependent Child**

To qualify as an eligible dependent child, the child must be a resident of North Carolina and enrolled in grades kindergarten through 12 in a nonpublic or a public school where

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tuition is charged by the local board of education. In addition, the child must also meet all of the following criteria:

1. Is a child with a disability who requires special education and related services because of that disability.
2. Was determined to require an individualized education program. An individualized education program is a written statement for the child with a disability that is developed, reviewed, implemented, and revised consistent with IDEA and State law.
3. Receives special education and related services on a daily basis.
4. Is a child which the taxpayer is entitled to deduct a personal exemption under section 151(c) of the Code for the tax year.

Every three years, an eligible dependent child must be reevaluated by the local educational agency to verify that the child continues to be a child with a disability who requires special education and related services because of that disability.

### **Initial Eligibility**

For the initial eligibility of the tax credit, the child must have met one of the following two criteria for at least the preceding two (2) semesters:

1. Was enrolled in a public school, or
2. Received special education or related services through the public schools as a preschool child with one or more disabilities and that meets all of the following criteria:
  - a. Has reached his or her third birthday and whose parents have requested services from the public schools.
  - b. Is not eligible to enroll in public kindergarten.
  - c. Because of the disability, needs special education and related services in order to prepare the child to benefit from the educational programs provided by the public schools, beginning with kindergarten.

Effective for tax years beginning on or after January 1, 2016, the child must have met one of the two criteria explained above for the preceding one (1) semester. The change is effective for semesters beginning on or after July 1, 2016.

### **Credit Amount**

The credit is the lesser of \$3,000 per semester for each eligible dependent child or the amount the taxpayer paid during the tax year for tuition and special education and related services expenses for each semester for that child.

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For qualifying home schools, the credit is the lesser of \$3,000 per semester for each eligible dependent child or the amount the taxpayer paid during the tax year for special education and related services expenses. A qualifying home school, pursuant to G.S. 115C-563(a), is a nonpublic school in which one or more children of not more than two families or households receive academic instruction from parents or legal guardians, or a member of either household.

For purposes of this credit, there are two (2) semesters during each tax year. January 1 through June 30 is the spring semester and July 1 through December 31 is the fall semester. The child is considered enrolled in a school for a semester as long as the child is enrolled in that school for at least 70 days during the semester.

For tax year 2011, the maximum credit per eligible dependent child is \$3,000 because the credit is effective for semesters beginning on or after July 1, 2011. However, for tax years after 2011, the maximum credit allowed per eligible dependent child is \$6,000 (\$3,000 for each semester).

The credit is limited to the amount of North Carolina income tax for the year reduced by the sum of any other credits. However, any unused portion of the credit may be carried forward for three (3) succeeding years.

### **Reduction of Credit**

If the eligible dependent child spent any time enrolled in a public school during the semester, the amount of the credit is reduced. The percentage of the credit reduction is equal to the percentage of the semester that the eligible dependent child spent enrolled in a public school.

### **Automatic Disqualifiers**

A taxpayer does not qualify for the credit if, during the semester, the otherwise eligible dependent child meets any of the following conditions:

1. Was placed in a nonpublic school or facility by a public agency at public expense.
2. Spent any time enrolled as a full-time student taking at least 12 hours of academic credit in a postsecondary educational institution.
3. Was age 22 or older during the entire semester.
4. Graduated from high school prior to the end of the semester.

### **Documentation**

A taxpayer claiming the credit must provide to the Secretary of Revenue, upon request, the following documentation:

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1. The name, address, and social security number of each eligible dependent child for whom the credit is claimed and the name and address of the school or schools in which the eligible dependent child was enrolled for more than 70 days each semester.
2. The taxpayer's certification that the eligible dependent child did not meet any of the automatic disqualifiers.
3. The name of the local school administrative unit in which the eligible dependent child resides.
4. The amount of tuition paid to a public school at which tuition is charged by the local board of education in accordance with G.S. 115C-366.1, for each semester the eligible dependent child for whom the credit is claimed was enrolled in the school.
5. The eligibility determination that the eligible dependent child is a child with a disability who requires special education and related services.
6. A listing of the tuition and special education and related services expenses on which the amount of the credit is based.
7. For home schools, as defined in G.S. 115C-563(a) and described under Credit Amount on page three, a listing of the special education and related services expenses on which the amount of the credit is based.
8. Any other documentation the Secretary requires to show the taxpayer is entitled to the claimed tax credit.

### **Frequently Asked Questions**

**Q. What is the maximum amount of the tax credit for children with disabilities who require special education?**

*A. For tax year 2011, the maximum credit is \$3,000 per qualifying disabled child (up to \$3,000 for the 2011 fall semester). Excluding carryovers, for tax years beginning on or after 2012, the maximum credit is increased to \$6,000 per qualifying disabled child (up to \$3,000 for both the spring and fall semesters). The tax credit is effective for tax years beginning on or after January 1, 2011 and applies to semesters beginning on or after July 1, 2011. Please note there is no credit available for expenses incurred and paid during the 2011 spring semester.*

**Q. If a taxpayer has, for one disabled child, \$4,000 of qualifying expenses incurred and paid during the spring semester of 2012 and \$2,000 of qualifying expenses incurred and paid during the fall semester of 2012, what is the tax credit for 2012?**

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A. *The taxpayer's 2012 tax credit is \$5,000 (\$3,000 for the spring semester and \$2,000 for the fall semester).*

**Q. All other initial eligibility qualifications for the tax credit are met and the child with the disability attended North Carolina public school during the fall semester of 2010 (July 1 – December 31, 2010) and the spring semester of 2011 (January 1, 2011 – June 30, 2011), and was placed in a private school for the fall semester of 2011 (July 1 – December 31, 2011). Parents file a joint return and the child qualifies as their dependent for whom they are entitled to claim a personal exemption under federal law. Are taxpayers entitled to this tax credit on their 2011 State income tax return?**

A. *Yes.*

**Q. All other initial eligibility qualifications for the tax credit are met and the child with the disability attended North Carolina public schools the fall semester of 2007 and the spring semester of 2008 and was placed in private school the fall semester of 2008. This child has remained in that private school to date. Parents file a joint 2011 income tax return and the child qualifies as their dependent for whom they are entitled to claim a personal exemption under federal law. Are taxpayers entitled to this tax credit for the tax year 2011?**

A. *No. Because this child did not attend North Carolina public school or receive special education or related services through the public schools as a preschool child with a disability during the two semesters preceding the fall semester of 2011, they are not entitled to claim this credit.*

**Q. Taxpayers moved from South Carolina to North Carolina on December 31, 2010. The child with the qualifying disability attended South Carolina public school the spring semester of 2010 (July 1, 2010 – December 31, 2010) and North Carolina public school (January 1, 2011 - June 30, 2011), prior to transferring to a North Carolina private school for the fall semester of 2011 (July 1, 2011 – December 31, 2011). Are taxpayers entitled to this tax credit for the tax year 2011?**

A. *No. Because this child did not attend North Carolina public school or receive special education or related services through the public schools as a preschool child with a disability during the two semesters preceding the fall semester of 2011, they are not entitled to claim this credit.*

**Q. Parents of a child with a qualifying disability are divorced. The child attended North Carolina public schools the fall semester of 2010 (July 1 – December 31,**

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2010) and the spring semester of 2011 (January 1, 2011 – June 30, 2011), and was placed in a private school the fall semester of 2011 (July 1 – December 31, 2011). The child lives with the mother and qualifies as her dependent. However, the father paid the private school for his child's education expenses. Is either parent entitled to this tax credit?

A. *No. The mother is not entitled to claim the credit because she did not pay the expenses upon which the credit is based. Although the father paid the expenses, he is not eligible to claim the tax credit because he does not meet the test to claim a personal exemption for the child since the child does not qualify as his dependent.*

**Q. One of the requirements is that the child with a qualifying disability receives special education and related services on a daily basis. What is daily basis?**

A. *It is not necessary that special education and related services are received seven days a week. If the child with a qualifying disability receives special education and related services Monday through Friday, this test is met.*

**Q. If the regular school calendar for the week contains a holiday which reduces the number of school calendar days to four rather than five, is the daily basis test met if the special education and related services are not received on the holiday?**

A. *Yes.*

**Q. If the regular school calendar for the week contains a teacher workday which reduces the number of school calendar days to four rather than five, is the daily basis test met if the special education and related services are not received on the teacher workday?**

A. *Yes.*

**Q. All other initial eligibility qualifications for the tax credit are met and the child with the disability attended North Carolina public school during the fall semester of 2010 (July 1 – December 31, 2010) and the spring semester of 2011 (January 1, 2011 – June 30, 2011), and was placed in a private school for the fall semester of 2011 (July 1 – December 31, 2011). The private school expenses for the fall semester of 2011 total \$5,000. However, the parents pay the private school \$2,500 on December 15, 2011 and pay the remaining balance of \$2,500 on January 31, 2012. Parents file a joint calendar year return and the child qualifies as their dependent for whom they are entitled to claim a personal exemption under federal law. What is the taxpayers' tax credit on their 2011 State income tax return?**

A. *\$2,500 based on the qualifying expenses incurred and paid during 2011.*

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**Q. May the parents claim a tax credit for the remaining \$2,500 qualifying 2011 expenses paid in 2012 on their 2012 income tax return although they incur and pay additional qualifying expenses for the child with the qualifying disability for both semesters during 2012?**

*A. Yes, as long as the maximum 2012 tax credit does not exceed \$3,000 per semester per qualifying child. However, this expense is treated as a part of the 2012 credit rather than as a carryover.*

**Q. A taxpayer is entitled to claim a tax credit of \$3,000 in tax year 2011, but has tax of \$1,600. The taxpayer is eligible to claim a tax credit of \$6,000 in tax year 2012 for expenses incurred and paid in 2012. What is this taxpayer's total 2012 tax credit?**

*A. The law allows any unused tax credit to be carried forward for the succeeding three years. The total tax credit which is available for 2012 is \$7,400 (\$1,400 carryover from 2011 plus \$6,000 incurred and paid in 2012).*

**Q. What steps must be taken with the public school to qualify as a child with a disability?**

*A. A child must first be identified as a child with a disability who requires an Individualized Education Program (IEP). The first step a parent should take is to contact their child's public school and request an evaluation of the child. Parents may also contact the Exceptional Children Division at the North Carolina Department of Public Instruction for further information by calling (919) 807-3300.*

**Q. If my son is enrolled in a public school with an active Individual Education Program (IEP), but needs to attend a private school for only two subjects, would we be eligible for the tax credit to cover part-time private instruction?**

*A. No. This tax credit is only applicable for tuition expenses to a nonpublic school (or public school that charges tuition) that meet the compulsory school attendance requirements for a child as defined in G.S. 115C-378. Since the student is fulfilling his attendance requirements through the public schools, a tax credit is not available for the private school expenses.*

If you have a question that has not been addressed in this directive, you may request a private letter ruling. Instructions for a private letter ruling are posted to the Department's website at [http://www.dornrc.com/practitioner/plr\\_policy.pdf](http://www.dornrc.com/practitioner/plr_policy.pdf).