



AN EDUCATION TAX CREDIT PLAN FOR NEW YORK:

Creating New Education Options for Parents

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Accountability • Innovation • Choice

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for comprehensive information about education tax credit proposals in New York, including details about Governor Pataki's proposal and those of several state legislators, stated positions in favor of and in opposition to these proposals, comparisons to policies in other states, and more.

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AN EDUCATION TAX CREDIT PLAN FOR NEW YORK: *Creating New Education Options for Parents*

Achieving equity in education – high-quality academic options available to all students regardless of race, income, or geographic location – is an admirable goal that most policymakers and much of the public share. Unfortunately, public policies pitched as promoting educational equity often consist of little more than simply offering more public funding to local public school districts, established educational programs, and other traditional educational bureaucracies without regard to whether such funds actually result in increased academic achievement. For years, education “reform” discussions in New York, as elsewhere, centered on how much more money to spend on schools, rather than on enacting true reform policies that drive demand for high-quality educational options, are proven to increase student achievement, and empower parents to choose among such options.

Increasing frustration and disgust by parents over a lack of high-quality choices in education services has sparked the beginning of an overhaul in the approaches states take toward education. Public policies centered on empowering parents with choices – such as public charter schools, vouchers, scholarships created with tax incentives, open enrollment policies, and other such policies – are providing an unprecedented amount of involvement in and control over their children’s education.

As part of his 2006-07 Executive Budget, New York Governor George E. Pataki proposed a refundable education tax credit targeted to low- and middle-income families with children who live in districts with low-performing schools. The power and promise of this reform has not only ignited strong support, but also stimulated important discussions about how best to improve access to high-quality education options through the use of tax incentives.

THE NEW YORK SITUATION

New York State spends an average of \$12,880 per pupil in public K-12 schools, the second-highest spending level in the nation and 1.5 times the national average.¹ Despite this massive expenditure, millions of New York students are stuck in schools that are academically substandard. For example, on the 2005 standardized state assessments, only 56 percent of middle school students met the state's performance standards in math and only 48 percent met the standards in English language arts.² High schools statewide are struggling as well: less than 57 percent of students that graduated in 2004 earned a Regents diploma, the prescribed standard of competency.³ A recent *New York Times* article noted the astounding fact that only one in ten Black or Hispanic students and one in three White students in New York City are graduating high school in four years with a Regents diploma.⁴

The reality in New York is that the state's current public education system too often fails to adequately prepare students, particularly low-income and minority students, for college, the workforce, and success in life.

Frustrated by any significant and sustained improvement in the quality of education provided by New York's public school districts, parents increasingly are looking for new educational options. In 1997, the School Choice Scholarships Foundation's New York City program received more than 20,000 scholarship applications during the three months when it offered 1,300 private school scholarships valued at \$1,400 each.⁵ The state's first public charter school opened in 1999,

¹ New York State Division of the Budget, *2006-07 New York State Executive Budget, Appendix I* (January 2006) p. 5.

² State Education Department, *Elementary & Middle School English Language Arts Test Results for 2005, Commissioner's Press Conference Presentation* (May 18, 2005), p. 4, and *Elementary & Middle School Mathematics Test Results for 2005, Commissioner's Press Conference Presentation* (September 22, 2005), p. 4.

³ State Education Department, *2003-2004 School Report Card Press Conference Presentation* (March 9, 2005), p. 33.

⁴ Elissa Gootman, "Few Minorities Get Best High School Diplomas," *New York Times* (November 30, 2005), p. B5.

and a mere seven years later more than 22,000 students have left their local district schools to attend the 79 currently operating public charter schools, and another 11,000 are currently on the waiting lists for these schools.⁶ In January 2006, the state's chartering entities authorized the last of the 100 charter schools allowed under the 1998 law and, observing the relative success of these new public schools, parents and leaders such as New York City schools chancellor Joel Klein have already begun pressuring the state legislature to raise or eliminate entirely the cap on charter school. Earlier this year, a New York City mother filed a lawsuit in an attempt to get the state to cover tuition for her five children to attend higher-performing private schools in her neighborhood because her local district public school simply wasn't getting the job done.⁷

The examples of parents seeking high-quality school options for their children abound, providing justification for the need to create greater availability of and opportunity to such alternatives. Governor Pataki attempted to address part of this need with his proposal for an education tax credit for New York's families.

EDUCATION TAX CREDITS

Individual education tax credits exist in six states: Arizona, Florida, Illinois, Iowa, Minnesota, and Pennsylvania (see Attachment A). Four of these states adopted their tax credits within the last nine years, though education tax incentives have been in used for more than 50 years in Minnesota, a state widely recognized as a leader of progressive education politics. The tax-incentive model is

⁵ William G. Howell, Patrick J. Wolf, Paul E. Peterson, & David E. Campbell, "Vouchers in New York, Dayton, and D.C.," *Education Next* (Summer 2001), p. 49.

⁶ New York Charter Schools Association, "Governor's Budget Advances Charter School Opportunities for all New York's Children," [press release] (January 17, 2006).

⁷ Elissa Gootman, "Make City Pay Private Tuition, Queens Mother Asks Judge," *New York Times* (January 19, 2006), p. B7.

used at the federal level, too, with the Hope Scholarship tax credit program for higher education expenses.

Tax credits allow families to claim a portion of qualifying education expenditures – often included are such things as private school tuition, supplemental curricular materials and fees at public schools, and supplemental education services such as tutoring or test preparation classes – as a reduction of their state income tax obligation.

Designed properly, these tax credits help equalize access to various educational services and options, and have the potential to significantly increase the options available to some families.

CRITICAL DESIGN ELEMENTS

There are a number of elements to consider when crafting a successful education tax incentive program. The half-dozen individual education tax credit laws in other states approach the issue from a variety of angles and provide interesting comparisons.

Who should be able to claim education tax credits?

Education tax incentives can be directed at either individuals or corporations and can be narrow or broad in scope. Some programs are designed to reimburse families for qualified education expenses by providing a tax credit to lower their overall state income tax obligation, such as programs currently exist in Illinois, Iowa, and Minnesota. In other programs, such as that in Arizona, families receive tax credits for donating to qualified scholarship-granting organizations. Each of these programs is designed to directly benefit individual families.

Other education tax credit programs have been established to encourage businesses to contribute to scholarship-granting organizations in return for a reduction in their corporate tax liability. Students meeting eligibility guidelines are then awarded scholarships that can be applied towards the tuition, fees, and expenses at a public or private school of their choice. While families

benefit directly from the scholarships, it is the corporate donors to the scholarship programs that are the recipients of the tax credit. Such programs exist in Florida and Pennsylvania.

One of these approaches – targeting tax credits to individual families or to businesses – does not preclude the other. Designing a program that offered tax credits to both families and businesses would increase the number of students able to access high-quality education options more than either approach by itself.

Should the education tax credit be available to everyone?

The benefits offered by an education tax incentive could apply universally to all families, or an income-based means-test could be incorporated to target the tax benefits to only a specified segment of the population. Refundability provisions in some education tax credit programs ensure that even the lowest-income families can participate. Eligibility qualifications such as these serve to define the goals of the program, whether increased access to and affordability of a wider variety of educational resources include all families or only low- or low- and middle-income families.

The states with existing individual education tax credits take different approaches. Minnesota's program only allows families with an income below \$33,500 to claim the full credit and a smaller credit is available to families with incomes up to \$37,500. The programs in Arizona, Iowa, and Illinois do not have an income cap on eligibility, making the offer of an educational tax credit universal for all families. The federal Hope Scholarship tax credit, applicable only for higher education expenses, sets a qualifying family income limit of \$107,000.⁸

How much should an education tax credit be worth?

The value of an education tax credit is an indication of what range of educational options a state intends to make available. Larger credits will result in more families being able to afford tuition

⁸ Internal Revenue Service, *Tax Benefits for Education for Use in Preparing 2005 Returns*, Pub. 970 (Washington, D.C.) p. 9, 33.

for out-of-district public schools or local private schools. Smaller tax incentives likely will result in more families receiving a credit for the cost of purchasing supplemental curricular materials or tutoring services.

Of the family education tax credits that currently exist in other states, the value of available credits range from \$250 per child in Iowa to \$1,000 per child in Minnesota. The types of educational opportunities these laws afford vary based on a family's economic need. For example, for most low-income families in Iowa, \$250 may not make transferring to a private school a realistic option but likely will be enough to cover some after-school tutoring. Minnesota's \$1,000 credit may be all that is needed to allow low-income families to be able to afford to send their children to their neighborhood parochial or other private school in the community.

Education tax credit programs that provide benefits to individuals or corporations that donate to scholarship-granting organizations, such as those in Arizona and Florida, often create a much greater opportunity for low-income families to send their children to private school. For example, Florida's scholarship-granting organizations offer scholarships worth up to \$3,500 to low-income students, a sizable amount that makes private school options a reality for many families previously excluded from this type of education.

Should the credit be refundable? Should excess credit able to be carried forward?

Existing state education tax credit laws are crafted in three different ways to address instances when the amount of the available credit is more than the amount of taxes an individual owes: 1) the credit is made refundable, allowing taxpayers to get a rebate check from the state; 2) the excess amount of the credit is allowed to be carried over and applied to tax liability in future years; or, 3) no returnable benefits at all are allowed.

Minnesota's law, which provides a tax credit of up to \$1,000 per child, is fully refundable for families earning less than \$33,500. This means that a family with one student that owes \$250 in

taxes would receive a rebate check worth \$750, for example. In Arizona, if a tax credit is worth more than the amount owed in taxes, the excess credit may be carried forward for up to five years and applied to future tax obligations. Two states, Iowa and Illinois, do not provide for any refundability of the credit and do not allow excess credit values to be carried over into future years.

GOVERNOR PATAKI'S NEW YORK EDUCATION TAX CREDIT PROPOSAL

Legislation that would create education tax incentives have been proposed in New York State legislature for nearly ten years⁹ (see Appendix B for a summary of education tax break legislation introduced in the New York State Legislature). Over time, a diverse group of supporters – including inner-city minority leaders, school choice advocates, the business community, independent school operators, and the state's Catholic and Jewish communities – has developed and become vocal advocates for the adoption of an education tax credit in New York.

Recognizing this growing support and the potential that education tax credits offer to empower parents with greater choices for a better education for their children, Governor Pataki proposed an education tax credit initiative for New York as part of his proposed 2006-07 Executive Budget, the last budget of his three terms in office.¹⁰ While speaking at a public school in Troy, New York, Governor Pataki commented “I think this is one of the most important education initiatives I have proposed since I have been governor of this state.”¹¹

Governor Pataki's proposal has gained support from New York Attorney General Eliot Spitzer, Senate Majority Leader Joe Bruno, Assembly Minority Leader James Tedisco, and members

⁹ George Basler, “Pataki's \$500 School Credit Draws Both Cheers, Jeers,” *Press & Sun-Bulletin* (January 29, 2006), www.pressconnects.com/apps/pbcs.dll/article?AID=/20060129/NEWS01/601290319/1001.

¹⁰ Governor Pataki's educational tax credit legislation and a more detailed description of its provisions are available at www.nyfera.org.

¹¹ Jaime Kazio, “New Education Tax Credit Proposed,” *Capital News 9 TWEAN* (January 30, 2006), www.capitalnews9.com/content/politics/?SecID=285&ArID=166538.

of the State Senate and State Assembly from both sides of the political aisle. Assembly Majority Leader Sheldon Silver has stated only that he would consider the proposal.¹² The very fact that a serious discussion of tuition tax credits has started in New York is significant, and the opportunity now clearly exists for New York to join the ranks of the handful of states that expand school choice through educational tax credits.

Design of the Education Tax Credit Proposal

Governor Pataki's plan would allow individuals to claim a refundable dollar-for-dollar tax credit of up to \$500 per student for qualifying educational expenses. Eligible education expenses include: tuition for public, independent, and parochial schools in New York State; non-religious supplemental curricular and home school materials; and, fees for tutoring or instruction provided outside of the regular school day and year.

Families eligible under Governor Pataki's plan must have a federal adjusted gross income (filed jointly or separately) of less than \$90,000 and reside in a school district where at least one low-income public school is identified as "failing" by the State Education Department under accountability provisions of the federal *No Child Left Behind* Act.¹³ Based on the State Education Department's current list of failing schools, eligibility for the proposed education tax credit would include all residents of the "Big Five" school district – New York City, Buffalo, Rochester, Syracuse, and Yonkers – and 77 other school districts, affecting an estimated 1.8 million students statewide.¹⁴

¹² Jennifer Medina, "Governor's Tax-Credit Plan Finds Unexpected Support," *New York Times* (Jan. 21, 2006), p. B3, and Mary Ann Proust, "Education Tax Credits Are in Governor's State Budget Plan," *Catholic New York* (Jan. 19, 2006), p. 1.

¹³ Low-income public schools identified as "failing" are those receiving federal Title I funds and failing to make Adequate Yearly Progress (AYP) for two or more consecutive years. These schools are identified by the State Education Department as "In Need of Improvement" (Year 1 or Year 2), "Corrective Action", "Planning for Restructuring", and "Restructuring" (State Education Department, *Schools in Need of Improvement: Information About the Designations* [webpage], www.emsc.nysed.gov/irts/school-accountability/about.shtml).

¹⁴ See www.nyfera.org for the list of districts in which residents would be eligible for the proposed education tax credit. For the full list of failing schools, see: New York State Education Department, *Accountability Status Based on Performance in 2004-05 School Year* (November 3, 2005), www.emsc.nysed.gov/irts/school-accountability/2005/school-accountability-

The value of the tax credit is \$500 per eligible dependent for individuals with a federal adjusted gross income of less than \$75,000. The amount of the credit is phased down for families with incomes between \$75,000 and \$89,999, and families with incomes of \$90,000 or more are not eligible. Additionally, under the governor's proposal, the value of the credit would be phased in over four years, becoming fully effective in 2009 (see table below). If a family does not owe taxes or has a total tax obligation less than the amount of the credit, the difference is provided to the family as a rebate. If passed by the state legislature and signed into law this year, the first phase of the tax credit may be claimed by parents for the 2006 taxable year.

Phase-In Schedule of Refundable Education Tax Credits

Income Eligibility	2006 (25%)	2007 (50%)	2008 (75%)	2009 on (fully phased in)
Less than \$75,000	\$125.00	\$250.00	\$375.00	\$500.00
\$75,000–\$79,999	\$93.75	\$187.50	\$281.25	\$375.00
\$80,000–\$84,999	\$62.50	\$125.00	\$187.50	\$250.00
\$85,000–\$89,999	\$31.25	\$62.50	\$93.75	\$125.00

Financial Impact and Benefits of the Pataki Education Tax Credit

Governor Pataki's education tax credit proposal would have no impact on the state's education funding formula, and local school districts would be eligible to receive every cent of state aid as they would under current law. The proposed credit also is likely to stimulate more family spending on educational expenses at all levels, including at local public schools, creating a win-win situation for local school districts and parents whose children attend those schools.

The State Division of the Budget estimates that the proposed tax credit would provide up to \$400 million annually and that the windfall of the tax credits would be used for students attending public schools.¹⁵ Statewide, an estimated 87 percent, or \$348 million, of the program's benefits

masterlist11-03-05_alpha.pdf. And, Office of the Governor of New York, "Governor Pataki Visits Brooklyn to Highlight New Educational Tax Credit" [press release], (Jan. 25, 2006), www.ny.gov/governor/press/06/0125061.html.

¹⁵ Office of the Governor of New York, "Governor Pataki Visits Brooklyn to Highlight New Educational Tax Credit" [press release], (January 25, 2006), www.ny.gov/governor/press/06/0125061.html.

would go to families of students attending public schools in eligible districts, and 13 percent (\$52 million) would go to families of students in private schools. Parents in New York City, the focus of the much-publicized Campaign for Fiscal Equity lawsuit claiming that the city's public schools have continually been under-funded, would gain an estimated \$280 million annually from the governor's education tax credit plan.¹⁶

Additionally, the New York State School Boards Association projected that most parents likely wouldn't use the tax credit as an incentive to leave the traditional public school system in favor of private schools, but instead would opt to claim a credit against expenditures they made related to the education of their children in local public schools.¹⁷

Whether a parent chooses to offset expenses at a private school or a public school, an education tax credit program introduces elements of choice and opportunity in education where none before existed, and thus increases the ability to provide greater equity in access to high-quality education options.

Under Governor Pataki's proposal, parents of public school students could claim the credit for spending on an array of educational options, including tuition at a public school outside of the district of residence, after-school tutoring, academic summer camps, and the purchase of supplemental learning materials. The \$500 credit would cover a significant portion of tuition for test-prep courses, such as the popular courses offered by companies such as Kaplan. Assemblyman Karim Camara (D-Brooklyn) said about Governor Pataki's proposal: "It greatly benefits many of the parents in my district...Five hundred dollars for test prep can be the difference in whether or not you can get into a specialized high school."¹⁸

¹⁶ Office of the Governor of New York, "Governor Pataki Visits Brooklyn to Highlight New Educational Tax Credit" [press release], (January 25, 2006), www.ny.gov/governor/press/06/0125061.html.

¹⁷ Jennifer Medina, "Plan Offers Credit Tied to Schools," *New York Times* (January 18, 2006), p. B6.

¹⁸ David J. Hoff, "Pataki Tax-Credit Idea Gets Bipartisan Support," *Education Week* (February 1, 2006), p. 20.

Public school students most in need of supplemental educational materials, tutoring, summer school, additional educational programming, or the opportunity to attend a higher-quality school would certainly benefit from the additional assistance made available to them through Governor Pataki's proposed education tax credit.

While a \$500 tax credit would not cover full tuition at virtually any private school, Governor Pataki's proposal would bring a private school education within reach for many families. Nationally, private school tuition averages \$4,689 per year. In New York private school tuition varies greatly, with some elite boarding schools charging \$30,000 or more per year while many much less costly private schools abound, many located in inner-city neighborhoods. According to the Archdiocese of New York, for example, the average tuition for its 95 Catholic elementary schools within New York City is just \$1,800 and is \$3,000 for its 21 secondary schools.¹⁹ It is in communities like these that Governor Pataki's proposal would significantly expand the choice of schooling available to many parents, and where higher-performing private schools will become a viable option for many low-income families.

BUILDING ON NEW YORK'S EDUCATION TAX CREDIT PROPOSAL

Governor Pataki's proposal for an education tax credit program is a substantial development in the advancement of school choice policies in New York, and it lays a strong foundation upon which even stronger tax-based education reform policies can be constructed. The variety of education tax credit proposals introduced in the New York legislature and the tax credits existing in other states provide important comparisons and experiences that can serve to help develop a more effective credit, offering even more educational choices to more New York families.

¹⁹ Archdiocese of New York, *New York Catholic Schools: Some Facts* [webpage], www.nycatholicschools.org/page3a.htm and Barbara Gallager, "Cardinal Edward Egan Visits Sts. John & Paul," *Larchmont Gazette* (January 19, 2005), www.larchmontgazette.com/2006/articles/20060119stjpaulcardinal.html.

Credit Size and Eligibility

Governor Pataki's proposal caps the value of the education tax credit at \$500 per child and requires claimants to earn less than \$75,000 to be eligible for the full credit and less than \$90,000 – about twice the \$44,228 statewide median household income – to be eligible for any portion of the credit at all.²⁰ To take even more of the sting out of educational expenses for those families least available to afford such costs, the value of the credit could be increased for families with incomes below the state's median household income. Doubling the proposed credit to, say, \$1,000 per child for families under the state median income would bring this part of New York's tax credit in line with the eligibility of Minnesota, for example. Other legislation already introduced in New York proposes more generous credit levels of \$3,000 (A.8602) or \$3,500 (A.8203-a/S.1939-A) for taxpayers making \$40,000 or less per year.

Another improvement would be to allow contributors to receive a credit for educational expenses whether or not the child incurring such expenses was a dependent (a requirement of the governor's proposal). Similar to how the increasingly popular federal Section 529 college savings plans allow people other than a child's parents to receive a tax break for contributions to that child's college expenses, this enhancement would allow income-eligible relatives and friends to contribute to the cost of any student's education. Such a change would increase the amount of educational expenditures that could be made on behalf of any student, significantly expanding the choices of schools and services within financial reach.

Eligible Education Expenses

Defining eligible educational expenses that may be claimed for the credit as broadly as possible provides the greatest potential benefit to the greatest number of students. In fact, each

²⁰ U.S. Census Bureau, *Current Population Survey: Three-Year-Average Median Household Income by State, 2002-04*, www.census.gov/hhes/www/income/income04/statemhi.html.

category of eligible education expenses added beyond tuition likely provides significant opportunities particularly for parents of students attending public schools. While Governor Pataki's proposed education tax credit currently includes as eligible educational expenses tuition, tutoring, and supplemental curricular materials, other state laws and the alternative proposals that have been introduced in the New York State Legislature allow families to claim expenses such as computer software and hardware, equipment for school sports, band uniforms, science lab fees, Advanced Placement or International Baccalaureate course fees, and transportation costs. Whether allowing such expenses to help narrow the so-called "digital divide" between lower-income and upper-income families, or to cover the cost of accessing high-quality education services outside of walking distance from an inner-city family's home, expanding the types of expenses that can be claimed against a tax credit would increase access to educational services dramatically for New York's families.

Corporate Credits

The education tax credit proposal in Governor Pataki's budget targets parents of school aged children. It does not, however, allow businesses similar tax credits when they donate funds to cover children's education-related expenses. The potential windfall for parents, student, and public schools from such a provision is enormous.²¹ New York's education tax credit program could be designed to include provisions similar to those of Pennsylvania and Florida to provide businesses a tax credit for donations to scholarship-granting organizations that then in turn provide scholarships to students to attend better-performing schools. A bill currently introduced in the New York State

²¹ As an example, the New York City Department of Education's Fund for Public Schools has raised more than \$109 million from private sector business and foundations in support of the city's education programs. (Fund for Public Schools, *The Fund For Public Schools: An Innovative Model* [webpage], www.nycenet.edu/FundForPublicSchools/AboutUs/default.htm).

Legislature and sponsored by 25 Assembly Members and 19 Senators (A.6145-B/S.3101-B) proposes the establishment of this type of corporate educational tax credit.

LEGAL ISSUES

While many of New York's political leaders have reacted favorably to Governor Pataki's education tax credit proposal and it appears there is a good chance that New York could become the seventh state in the country to enact a personal education tax credit, the evolution of education tax credits in states shows how opponents of school choice have created obstacles to such proposals. Legal challenges have been brought against education tax incentives in at least four of the six states with education tax credits on the books. Each of the four programs has been upheld, and in two of these challenges the U.S. Supreme Court has been responsible for the outcome.

In 1983, the U.S. Supreme Court upheld Minnesota's tax deduction law in the case of *Mueller v. Allen*. In 1999, the U.S. Supreme Court declined to hear the case of *Kotterman v. Killian*, a challenge to Arizona's education tax credit law, allowing the Arizona Supreme Court's ruling in favor of the law to stand. The tax credit laws in Illinois and Iowa (enacted in 1999 and 1987 respectively) had lawsuits brought against them and in both cases, the state courts ruled that the programs were constitutional.

New York is what is known as a "Blaine" state, a reference to a provision existing in many state constitutions that has been used to restrict the flow of state education funds to religiously based schools. Citing this amendment, critics of the proposed education tax credit program in New York may declare that, because parents of students in parochial schools would be using the money returned to them through the tax credit as an offset of tuition, the program violates the state constitution.

Despite popular misconceptions, both state and federal funding already are legally provided to parochial schools in New York for expenses such as academic intervention services, special education services, health services, transportation, homebound instruction, textbooks, computer software, and library media materials.²² Further, a 2002 report from New York State Attorney General Eliot Spitzer outlined ways in which state resources can be used to supplement the education of students in non-public schools.²³

Following the unveiling of Governor Pataki's education tax credit plan in January, Attorney General Eliot Spitzer, whose office would be called on to defend the proposed plan in the courts if need be should it be adopted into law, issued a statement that includes the following:

Governor Pataki this week proposed education tax credits for lower- income families living in school districts with failing schools...I support the idea of education tax credits. Moreover, I have long advocated for finding constitutional ways to increase the assistance that the state provides to children in non-public schools. It appears to offer tax credits to aid parents who seek to expand their children's school choice or to supplement their children's education via tutoring or after-school programs. That is a promising approach.²⁴

In a 2003 article for a legal magazine, Avi Schick, the Deputy Counsel for Attorney General Spitzer, advocated for education tax credits and outlined the legal support such a policy would have. In the article, Spitzer's advisor fully endorsed an education tax credit plan even bolder than the one offered by Governor George Pataki. According to Schick:

Tax credits are on much safer legal ground than vouchers....The [U.S. Supreme Court] justices said that tax exemptions were 'qualitatively different' from direct subsidies. Though the argument would be slightly different for a refundable tax credit to a low-income family, the courts are likely to hesitate before striking down only the portion of a program that benefits poor people...The Blaine Amendments that bar funds for religious education won't cause trouble either, since they generally apply only to 'public funds' or the 'revenue of the state.'²⁵

²² Office of Nonpublic Education, State Education Department, *Handbook on Services to Pupils Attending Nonpublic Schools*, www.emsc.nysed.gov/nonpub.

²³ Eliot Spitzer, *Report on Non-Public Education*, Office of the New York State Attorney General (May 2002).

²⁴ Office of the New York State Attorney General, "Statement by Attorney General Eliot Spitzer Regarding Education Tax Credits" (January 19, 2006), www.oag.state.ny.us/press/2006/jan/jan19c_06.html.

Despite the possibility of legal challenges by school-choice opponents to an education tax credit law in New York, low- and middle-income families can rest assured that once the dust settles, the courts should find that they will be able to take advantage of the new educational opportunities such a law would provide.

CONCLUSION

Governor Pataki's proposed education tax credit, and the significant support it has received from political leaders from both sides of the aisle, has excited the debate about ways to increase equity and the opportunity to quality education through means other than simply pouring more money into entrenched and often failing education bureaucracies. Education tax credits empower families with new educational choices and greater access to a variety of educational programs and services. Opportunities to strengthen and broaden the governor's proposals surely exist, but whether it is the governor's bill or an enhanced version of the tax credit program that gets enacted, New York's families and school children will be the direct beneficiaries of this significant expansion of educational opportunity.

New York was the 36th state to allow the creation of public charter schools, the state's first significant foray into the arena of school choice. It is now poised to become the seventh state to institute family education tax credits, bringing New York ever closer to the cutting edge of education reform.

²⁵ Avi Schick, "For Credit," *Legal Affairs* (March-April 2003), www.legalaffairs.org/issues/March-April-2003/scene_marapr03_schick.msp.

APPENDIX A:

OVERVIEW OF TAX CREDIT PROGRAMS IN OTHER STATES

ARIZONA (1997)

Tax Credits for Student Tuitioning Organizations

Eligible K-12 students may receive scholarships from approved School Tuition Organizations (STO), which are funded by contribution made through a direct tax credit program. Individual taxpayers contributing to STOs can claim a dollar-for-dollar credit up to \$500, and married couples filing jointly can claim up to \$1,000. Up to \$200 in tax credit also can be claimed by parents for fees charged for public schools' extracurricular activities or character education programs.

FLORIDA (2001)

Corporate Income Tax Credit Scholarship Program

Businesses can receive a dollar-for-dollar tax credit off their corporate income tax for contributions to Scholarship Funding Organizations (SFO). SFOs provide scholarships worth up to \$3,500 for low-income students to attend private schools. SFOs also may provide funds up to \$500 per student to cover the cost of transportation to attend out-of-district public schools of the students' choice. Businesses may contribute up to 75 percent of the amount of their annual tax owed, and contributions are capped at \$5 million to any single SFO. In 2003, the annual cap on total corporate contributions was raised to \$88 million, and then was subsequently lowered for fiscal year 2004-05 to \$50 million.

ILLINOIS (1999)

Tuition Tax Credits

Families may receive a tax credit of 25 percent credit for expenditures above \$250, up to a maximum of \$500, on approved education expenses at any private or public school, including tuition, books, and lab fees. The credit is non-refundable.

IOWA (1987)

Tuition Tax Credits

Families are eligible to receive a maximum tax credit of \$250 – 25 percent of the first \$1,000 spent – to cover tuition and textbook costs, where such expenses apply subjects legally taught in Iowa's public elementary and secondary schools. Costs for extracurricular activities such as sporting events, musical or dramatic events, speech activities, driver's education, and other programs also qualify for the credit. The credit is non-refundable.

MINNESOTA (1955)*Tax Deductions and Credits*

Taxpayers are eligible to receive a tax credit and a tax deduction when they invest in approved education expenses, including books, tutors, academic after school programs, and, in the case of the tax deduction, tuition fees at private schools. The tax deduction allows all taxpayers to receive a 100 percent state tax deduction of up to \$1,625 per child in K-6 and \$2,500 for a child in 7-12.

Taxpayers earning less than \$33,500 can claim a maximum refundable credit of \$1,000 per child; families with incomes less than \$37,500 receive a partial credit. The credit can be claimed for 75% of allowable education expenses incurred. Expenses that exceed the limit of the credit may be claimed as a deduction in accordance with the limits noted above.

PENNSYLVANIA (2001)*Educational Improvement Tax Credits*

Companies can claim tax credits for contributions to organizations that grant scholarships to eligible children to attend public, private, or religious schools. Contributions to “educational improvement organizations” that partner with local public schools to support innovative programs also are eligible for the credit. Corporations may claim 75 percent of their total single-year contribution to a maximum of \$200,000, or 90 percent if the company commits to a consecutive two-year contribution. Total tax credits authorized in the state are limited to \$44 million annually, \$29.3 million for scholarships and \$14.7 million for educational improvements. To be eligible to receive a scholarship, families must earn no more than \$50,000 per year, with a additional \$10,000 allowance for each dependent in the family.

Sources: *The ABCs of School Choice: 2004-05 Edition*, Milton and Rose Friedman Foundation; education tax credit legislation from each state.

APPENDIX B:
SUMMARY OF EDUCATION TAX BREAK LEGISLATION
IN THE NEW YORK STATE LEGISLATURE

2005-06 Legislative Session
(as of February 3, 2006)

A.9560 same as S.6460

BUDGET BILL

Proposed as part of Governor Pataki's 2006-07 executive budget. Establishes an income tax credit of up to \$500 per dependent as reimbursement for qualified K-12 educational expenses, including: tuition for public or private schools; non-religious supplemental curricular materials; and, fees for tutoring and supplemental instruction. To be eligible, taxpayers must live in a school district where a public school has been identified as failing under certain accountability provisions of the federal *No Child Left Behind* Act. The full credit is available for taxpayers with a federal adjusted gross income (filed jointly or separately) of less than \$75,000, the credit is phased down for families with incomes between \$75,000 and \$89,999, and families with incomes of \$90,000 or more are not eligible. Additionally, the value of the credit would be phased in over four years, as follows: 25 percent in 2006; 50 percent in 2007; 75 percent in 2008; and, 100 percent in 2009. If a family owes less in taxes than the amount of the credit, the difference is provided as a refund.

A.8602

Assembly Sponsor: *Mirones*
Co-sponsor: *Ignizio, Walker, Kolb*
Multi-Sponsors: *Barclay, Miller*

Establishes an income tax credit of up to \$3,000 for public, private, or home school expenses, including tuition, non-religious books, enrichment materials, and computer hardware and software for students entering kindergarten in the 2005-06 school year and successive grades thereafter. The allowable credit diminishes for taxpayers with incomes of \$40,000 or more, and is phased-out for income of \$100,000 or more. If credits exceed the amount owed, individuals receive a refund equal to the excess.

A.8203-A same as S.1939-A

Assembly Sponsor:	<i>Lopez</i>	Senate Sponsor:	<i>Golden</i>
Co-sponsors:	<i>Lentol, Cusick, Aubertine, Schroeder, Colton, Cymbrowitz, Karben, Meng, Camara, Alessi Hikind, Boyland, Benjamin,</i>	Co-sponsors:	<i>DeFrancisco, Flanagan, Fuschillo, Hannon, Larkin, Leibell, Little, Maltese, Meier, Nozzolio, Rath, Seward, Skelos, Trunzo, Volker, Winne</i>
Multi-Sponsors:	<i>Barra, Weisenberg</i>		

Establishes an income tax credit of up to \$3,500 for public, private, or home school expenses, including tuition, non-religious textbooks and materials, and computer hardware and software for students entering kindergarten in the 2005-06 school year and successive grades thereafter. In 2006, The allowable credit diminishes for taxpayers with incomes of \$40,000 or more, and is phased-out for income of \$100,000 or more. The income eligibility increases through 2011 to \$149,999. If credits exceed the amount owed, a refund equal to the excess is provided.

A.6145-B Uni. S.3101-BAssembly Sponsor: *Hikind*Senate Sponsor: *Maltese*Co-sponsors: *Cusick, Cymbrowitz, Tokasz,
Gordon, Zebrowski, Lentol,
Pheffer, Ortiz, Aubertine*Co-sponsors: *Balboni, Defrancisco, Fuschillo, Golden,
Hannon, Larkin, Libous, Marcellino,
Marchi, Marchi, Meier, Padavan, Rath,
Robach, Seward, Skelos, Spano, Trunzo*Multi-Sponsors: *Alfano, Barra, Boyland, Colton,
R. Diaz, Gianaris, Jacobs, Karben,
Koon, Perry, J. Rivera, Seminero,
Towns, Weinstein, Weisenberg*

Provides an income tax credit of up to \$250 for contributions made from individuals to public and charter schools, districts, charitable scholarship funds, or for books and materials used for home-schooling. Tax credits would be worth 50 percent of the total contribution made. Businesses are also permitted to take a credit of up to \$25,000 for voluntary contributions. Charitable scholarship organizations must allocate at least 90 percent of their annual expenditures for scholarships for students to attend private schools and such assistance must be put towards students in more than one school. If the allowable tax credit exceeds the amount of the taxes owed, the unused amount of the credit may be carried forward and used for up to five years. Contributions for the direct benefit of a specific individual are not qualified for the credit.

A.5751 same as S.332Assembly Sponsor: *Hooker*Senate Sponsor: *Maltese*Co-sponsor: *Wirth*Co-sponsor: *Larkin*

Provides individuals, corporations, associations, and others, with a school property tax exemption equal to the cost of tuition, textbooks, or other instructional material for any student attending a private school, out-of-district public school, or home school. Textbooks for the teaching of religious tenets or doctrine are excluded. The exemption may not exceed 90 percent of taxpayers' school property tax assessments.