

**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**RAYMOND GADDY, BARRY HUBBARD,
LYNN WALKER HUNTLEY, and DANIEL
REINES,**

Plaintiffs,

v.

**GEORGIA DEPARTMENT OF REVENUE,
and DOUGLAS J. MACGINNITIE, in his
official capacity as STATE REVENUE
COMMISSIONER OF THE GEORGIA
DEPARTMENT OF REVENUE,**

Defendants,

and

**RUTH GARCIA, ROBIN LAMP,
TERESA QUINONES, and ANTHONY
SENEKER,**

Intervenor-Defendants.

Civil Action No. 2014-CV-244538

**PLAINTIFFS' RESPONSE IN OPPOSITION TO INTERVENOR-DEFENDANTS'
CROSS-MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AS TO COUNTS
I-III AND VI**

INTRODUCTION

Plaintiffs bring this lawsuit challenging the constitutionality of House Bill 1133 ("HB 1133"), codified in O.C.G.A. § 20-2A-1 *et seq.* (hereinafter the "Tax Credit Scholarship Statute" or "Tax Credit Program"). The Tax Credit Program uses State tax dollars in the form of tax credits to fund, in large part, private religious schools that condition enrollment on adhering to certain religious beliefs. The Tax Credit Program is administered by private, non-profit, organizations called Student Scholarship Organizations ("SSOs").

The Tax Credit Scholarship Statute, on its face, violates several provisions of the Georgia Constitution. Plaintiffs' Verified Complaint for Writ of Mandamus and Injunctive Relief (hereinafter "Complaint") demonstrates that the Tax Credit Program violates Georgia's Establishment Clause, GA. CONST. ART. I, § II, ¶ VII, and Georgia's Educational Assistance Provisions, found in GA. CONST. ART. VIII, § VII, ¶¶ 1 & 3. If the Educational Assistance Provisions do not apply to the Tax Credit Program, as asserted by Intervenor, the Program violates the Gratuities Clause, GA. CONST. ART. III, § VI, ¶ VI(a)(1).

Intervenor has filed a Cross-Motion for Partial Judgment on the Pleadings as to Counts I-III and VI, arguing Plaintiffs' claims fail under the Educational Assistance Provisions of the Georgia Constitution, the Gratuities Clause, and the Establishment Clause. Intervenor's Memorandum of Law in Support ("Intervenor's Memorandum") is fraught with overstatements, inconsistencies, and distractions. Throughout Intervenor's Memorandum, Intervenor advances arguments to support one aspect of their claims which contradict Intervenor's later assertions. For example, Intervenor cites to the Educational Assistance Provisions as providing sweeping authority to create scholarship programs such as the Tax Credit Program to assist parents in choosing educational options for their children, but Intervenor later, to escape violating specific requirements of the Educational Assistance Provisions, claim the Provisions do not actually apply to the Tax Credit Program. Moreover, Intervenor's Memorandum is rife with slippery slope arguments attempting to scare the Court away from deciding the issues that are actually involved *in this case*. Finally, Intervenor's Memorandum makes much to do about nothing, and mischaracterizes Plaintiffs' arguments in an attempt to make Intervenor's contentions sound more persuasive. For example, Intervenor explains at length why the Gratuities Clause is not violated by the Tax Credit Program if Plaintiffs are correct that authorization for the scholarships

is provided by the Educational Assistance Provisions. This point, however, is obvious, as Plaintiffs' claims under the Educational Assistance Provisions and the Gratuities Clause are made *in the alternative*. Intervenor's Motion should be denied.

FACTUAL BACKGROUND

Under the Tax Credit Program, individuals and corporations receive dollar-for-dollar tax credits for Qualified Education Expenses of donations and contributions made to private Student Scholarship Organizations ("SSOs"). Plaintiffs' Compl. ¶ 34. Qualified Education Expenses are defined by O.C.G.A. § 48-7-29.16(a)(2) as a donation by a taxpayer during the tax year to an SSO operating under the Tax Credit Program, which is used for tuition and fees at a qualifying private school, and for which a credit under the statute is claimed and allowed. *Id.* SSOs are self-appointed private charitable organizations which are exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. *Id.* ¶ 16. The SSOs are tasked with facilitating the transfer of the donations from individuals and corporations to eligible students attending private schools, many of which condition enrollment on specific religions. SSOs are not required to allocate all of the revenues they receive for scholarships and can use up to 10% of the revenues received for the SSOs' own unregulated purposes. *Id.* ¶ 19. The scholarship amounts are not *de minimus*, as the private school can receive up to \$8,983.00 towards the full amount of a student's tuition – representing the average state and local expenditures per public school student. *Id.* ¶¶ 25-26; Compl. Ex. 4.

Through the tax credits, individuals and corporations in Georgia are given a dollar-for-dollar reduction in their total tax liability otherwise imposed by Georgia's income tax statute. Compl. ¶ 35. The tax credits – provided by the Georgia Legislature to incentivize individuals and corporations to donate money to SSOs – are the sole source for making the scholarship funds

available to students. *Id.* ¶ 39. The tax credits for Qualified Education Expenses provide a substantially greater benefit to the individuals and corporations receiving the credits than would a mere tax deduction. *Id.* ¶ 40. Whereas a tax deduction is an amount subtracted from gross income when calculating adjusted gross income, or from adjusted gross income when calculating taxable income, a tax credit is subtracted directly from total tax liability, resulting in a dollar-for-dollar reduction in tax liability. *Id.* ¶ 41. For example, for a taxpayer in Georgia, a \$1,000 tax deduction lowers the taxpayer's tax bill by at most \$60, but a \$1,000 tax credit lowers the taxpayer's tax bill by the full \$1,000, regardless of which tax bracket the taxpayer is in. *Id.* ¶ 42.

Tax expenditures, like the tax credits given to individuals and corporations in Georgia for Qualified Education Expenses, represent an allocation of government resources in the form of taxes that could have been collected and appropriated if not for the preferential tax treatment given to the expenditure by the Georgia Legislature. *Id.* ¶ 43. The State specifically refers to tax credits as tax expenditures and also includes Qualified Education Expenses in the yearly Georgia Tax Expenditure Report. *Id.* ¶ 44; Comp. Ex. 5. Tax credits are referred to as tax expenditures by the State because they represent tax revenues that would have otherwise been generated if not for their special treatment in the Georgia Tax Code. Compl. ¶ 45. The amount of tax credits available for Georgia taxpayers set by the Georgia Legislature is currently \$58 million. *Id.* ¶ 51. The 2014 amount of \$58 million in tax credits already has been claimed. *Id.* ¶ 53.

The Department of Revenue and Defendant MacGinnitie pre-approve the contribution amounts of individuals and taxpayers in Georgia, on a first-come first-served basis, and then ensure that the proper documentation is supplied to support the taxpayers' claims to Qualified Education Expense credits when taxpayers file their tax returns. *Id.* ¶ 38. In all other respects,

the Tax Credit Scholarship Statute empowers private, self-appointed SSOs and private schools to administer the program.

SSOs openly acknowledge that they are accepting and redirecting Georgia tax dollars to be used for scholarships for students to attend private and mostly religious schools. *Id.* ¶ 55. Many of these SSOs attempt to incentivize taxpayers in Georgia to donate to the SSOs by pointing out that the donations are Georgia tax dollars, which can be paid to the SSOs instead of the Department of Revenue under the Tax Credit Program. *Id.* ¶ 56; *see also id.* ¶¶ 57-61 (noting examples of religious and non-religious SSOs openly acknowledging the use of Georgia tax funds to provide scholarships). Like the SSOs, numerous private schools enthusiastically ask parents and other Georgia taxpayers to redirect their Georgia tax dollars for the benefit of the schools and their religious missions, along with the students receiving scholarships. *Id.* ¶ 62; *see also id.* ¶¶ 63-67 (providing examples of religious and non-religious private schools openly acknowledging donors can redirect their tax dollars for the benefit of the schools).

Religious private schools participating in the Tax Credit Program also recognize the tremendous benefits received by schools under the Tax Credit Program. For example, Grace Christian Academy's website explains:

How does this strengthen our ministry? Your contribution helps strengthen and grow GRACE by helping to **increase enrollment.** The school will be able to help more families in need of financial assistance by accessing funds that are in the new scholarship program without taxing the funds that we raise annually out of our own budget to help families in need. As our school grows, our students will be directly impacted, as **we are able to add more services, more programs, more staff, more technology, more facilities, and more educational and ministry opportunities.**

This is a great tool we have been given to help grow our ministry to Christian families and we encourage you to consider becoming involved in the program.

Id. ¶ 66; Compl. Ex. 12.

Defendant Georgia Department of Revenue is vested with authority and responsibility for implementing relevant provisions of the Tax Credit Program and Georgia Tax Code in compliance with the Georgia Constitution. Compl. ¶ 11. Defendant MacGinnitie has ultimate authority and responsibility for implementing the provisions of the Tax Credit Program and for overseeing the Department of Revenue's compliance with its statutory provisions, the Georgia Tax Code, and the Georgia Constitution. *Id.* ¶ 13.

LEGAL ARGUMENT

I. THE TAX CREDIT PROGRAM IS NOT A VALID EXERCISE OF THE GENERAL ASSEMBLY'S TAXING AUTHORITY

Intervenors contend that the General Assembly's taxing power authorizes the Tax Credit Program. In taking this erroneous position, Intervenors do, however, recognize that the "General Assembly shall have the power to make all laws *not inconsistent* with this Constitution," and the General Assembly taxing authority can be for "any purpose *authorized by law*." (Intervenors' Memorandum, pp. 6-8). Inherent in these constitutional provisions, but conveniently overlooked by Intervenors, is the notion that for the General Assembly to have authority to make laws or exercise its powers of taxation, the law enacted cannot be inconsistent with the Georgia Constitution and must be for a purpose authorized by law. As set forth in Plaintiffs' Complaint, the Tax Credit Program is not a valid exercise of the General Assembly's authority, as it violates the Georgia Constitution in multiple ways.

Although Intervenors expressly contend that the Educational Assistance Provisions do not apply to the Tax Credit Program (Intervenors' Memorandum, pp. 9-13), Intervenors

repeatedly use the Educational Assistance Provision as support for their argument that the scholarships under the Tax Credit Program are authorized by law. For example, Intervenor assert that “[p]roviding educational options and encouraging financial assistance to families to defray the cost of private education is plainly permitted by the Georgia Constitution,” and Intervenor then directly cite to the Educational Assistance Provisions, GA. CONST. ART. VIII, § VII, ¶ I(a)(1), as support for this contention. (Intervenor’s Memorandum in Support, p. 2). Similarly, Intervenor claim “[t]he Georgia Constitution thus explicitly encourages the creation of scholarship programs to assist parents in choosing private schools,” and again directly cite to the Educational Assistance Provisions for this conclusion. (Intervenor’s Memorandum, p. 8).

Intervenor cannot have it both ways. On the one hand, Intervenor use the Educational Assistance Provisions to support their argument that the Georgia Constitution provides broad authority to grant scholarships, including the scholarships for attendance at private schools at issue here. The only logical conclusion from Intervenor’s repeated citation and reliance on the Educational Assistance Provisions as demonstrating the private school scholarships are for a purpose authorized by law is that they implicitly acknowledge the Educational Assistance Provisions apply and, if so, necessarily impose the restrictions found in the Provisions. Otherwise, Intervenor’s constant references to the Educational Assistance Provisions are meaningless. On the other hand, Intervenor, when responding to Plaintiffs’ claims of violation of the Educational Assistance Provisions, argue that the Provisions actually do not govern the Tax Credit Program. (Intervenor’s Memorandum, pp. 9-13). Intervenor’s inconsistent positions reveal their transparent attempt to benefit from the concepts of the Educational Assistance Provisions while hiding from the actual requirements imposed by those provisions, which the Tax Credit Program violates. Regardless, applicable or not, there is no support for the

conclusion that the Educational Assistance Provisions provide the General Assembly with authority to create programs which violate other provisions of the Georgia Constitution, such as the Establishment Clause.

II. THE TAX CREDIT PROGRAM VIOLATES THE GEORGIA CONSTITUTION ON ITS FACE

A. The Tax Credit Program Falls Under the Educational Assistance Provisions of the Georgia Constitution And Must Comply with Its Strictures.

1. Contrary to Intervenor's Contentions, Whether the Aspects of the Tax Credit Program Challenged by Plaintiffs are Constitutional Does Not Turn on Any Specific Definition of "Public Funds."

Article VIII, Section VII of the 1983 Constitution governs all kinds and types of "educational assistance," including the scholarships under the Tax Credit Program. The issue here is whether the Tax Credit Program complies with the mandates and strictures of the Constitution – however the money is defined, whatever form of educational assistance the Tax Credit Program represents.

Intervenor's position that the Tax Credit Program is not covered by the Educational Assistance Provisions stems from their flawed assertion that to be covered by these provisions the scholarship aid must have been first collected as taxes to constitute public funds. This argument is misguided on at least two levels. First, Georgia lawmakers acknowledge that money need not come directly from the State Treasury to be governed by the Educational Assistance Provisions. Second, although immaterial, the Tax Credit Program, in fact, does involve money taken directly from the State Treasury.

- a. Georgia Lawmakers Acknowledge That Money Need Not Come Directly from the State Treasury to Involve an Expenditure of Public Funds And Be Governed by the Educational Assistance Provisions.

Instead of being concerned with whether money comes directly from the treasury to be governed by the Educational Assistance Provisions, Georgia lawmakers aim their concern at whether money, however taken, is “taking up slack from the public treasury.” In this regard, Intervenor overlooks the specific inclusion in the Educational Assistance Provisions of waivers of tuition, which necessarily do not involve money actually deposited in the State Treasury. *See* GA. CONST. ART. VIII, § VII, ¶ IV (providing that the Board of Regents of the University System of Georgia is authorized to establish programs allowing attendance at state universities without payment of tuition or fees). Importantly, the subcommittee responsible for the Educational Assistance Provisions acknowledged that waivers of tuition “[i]n a way would be an expenditure of public funds if you waived the tuition (sic) fees . . . insomuch as they – it’s – the waiver of the fees is taking up slack from the public treasury that would otherwise be paid.” Select Committee on Constitutional Revision, Subcommittee on Retirement and Scholarships at 20, Sept. 28, 1977. (Attached hereto as Attach. 1). The subcommittee acknowledged a waiver of tuition “wouldn’t be a direct expenditure of public funds, but the effect would be the same.” *Id.* at 21. Thus, contrary to the reasoning found in the cases cited by Intervenor from other jurisdictions, the Georgia subcommittee drafting the language for the Educational Assistance Provisions concluded that “taking up slack from the public treasury that would otherwise be paid” into the treasury sufficiently constituted an expenditure of public funds that must be specifically provided for by law to not run afoul of the Gratuities Clause of the Constitution. As a result, waivers of tuition specifically were included under the Educational Assistance Provisions. And, like waivers of tuition which do not involve money deposited into the State Treasury, the Tax Credit

Program “takes up slack from the public treasury” that would otherwise be paid to the State and, therefore, is governed by the Educational Assistance Provisions.

The common sense interpretation that tax credits, like waivers of tuition, take up slack from the treasury is acknowledged by the State in its yearly Georgia Tax Expenditure Report, which must be prepared for inclusion in the Governor’s Budget Report as required by O.C.G.A. § 45-12-75. The Georgia Tax Expenditure Report expressly notes that “[a]lthough not direct government expenditures, tax expenditures represent an allocation of government resources in the form of taxes that could have been collected (and appropriated) if not for their preferential tax treatment.” *Id.* Qualified Education Expense tax credits are included as tax expenditures in the Georgia Tax Expenditure Report. Compl. Ex. 5, Georgia Tax Expenditure Report for FY 2013 at 19, 25, 60.

b. The Tax Credit Program Necessarily Involves Public Funds.

Although it is Plaintiffs’ position that Intervenors’ definition of public funds is overly formalistic and immaterial to the Court’s analysis, if the Court were to follow Intervenors’ logic that money must literally pass through the public treasury to involve the use of public funds, the result is the same. The Tax Credit Program necessarily involves money deposited into the State Treasury in at least two ways. First, many taxpayers are reimbursed for their tax credit donation through a refund *directly* from the State Treasury of money they deposited into the State Treasury. For example, many taxpayers have taxes taken out of their paychecks each pay period by their employers and their taxes then are sent to the State Treasury. If the taxpayer makes a donation to claim the tax credit available under the Tax Credit Program, it is a distinct probability that the taxpayer will receive a tax refund at the end of the year drawn directly from the public treasury as reimbursement for that tax credit. One SSO’s explanation of the tax implication is as follows:

“Donor” taxpayer has GA taxes withheld from his paycheck each month. When “Donor” is filing his taxes, he learns that although his total tax liability is \$5,000, he paid into the system \$4,500. “Donor” would typically get back \$500 as a refund for overpayment of his tax liability. “Donor” made a \$2,500 contribution to the GATAP as well, effectively reducing his GA tax liability from \$5,000 to \$2,500. Since “Donor” had already paid \$4,500 into the system, he will now receive approximately \$3,000 as a refund.

See Georgia T.A.P. Tax Implications (Attached hereto as Attach. 2). In other words, for those who pay their taxes in full through employer withdrawals and then also make a donation entitling them to a Qualified Education Expense tax credit, they will have overpaid their taxes by the amount of the tax credit. And how is this remedied? They receive a reimbursement directly from the State Treasury of the money they previously deposited into the State Treasury.

Second, the Tax Credit Program requires Defendants to expend their resources and personnel to review, approve and execute the tax credits. Defendants pre-approve the Qualified Education Expense donations that are used to provide the scholarships or tuition grants, and Defendants ensure proper documentation is provided by the donating taxpayers to receive tax credits. *See Compl.* ¶ 38; *see also* O.C.G.A. § 48-7-29.16(f)(3) (2013) (noting a taxpayer must notify the Department of Revenue of the total amount of the contribution that the taxpayer intends to make to an SSO, and “the commissioner shall preapprove or deny the requested amount within 30 days after receiving the request from the taxpayer and shall provide notice to the taxpayer and the student scholarship organization of such preapproval or denial”).

Defendants must collect and publish information from SSOs regarding their activities under the Tax Credit Program and are required to make sure SSOs comply with various provisions of the law. *See* O.C.G.A. § 20-2A-3 (Supp. 2013) (noting SSO reporting requirements); O.C.G.A. § 48-7-29.16(d)(2) (2013) (requiring Defendants to revoke the status of SSOs that represent that in exchange for contributing to the SSO, taxpayers will receive scholarships for the direct benefit

of particular individuals). All those responsible for carrying out these statutorily required functions for the Tax Credit Program are State employees paid from the State Treasury. Thus, the very functioning of the Tax Credit Program is directly dependent on and involves money deposited into the State Treasury.

2. The Educational Assistance Provisions Require Public Authorities or Public Corporations to Administer the Tax Credit Program.

GA. CONST. ART. VIII, § VII, ¶ III sets forth that “[p]ublic authorities or public corporations heretofore or hereafter created for such purposes shall be authorized to administer educational assistance programs, and in connection therewith, may exercise such powers as may now or hereafter be provided by law.” Plaintiffs contend that this language requires that public corporations or public authorities administer educational assistance programs, and that the administration of the Tax Credit Program by non-profit SSOs violates this Provision.

Falling back on another slippery slope argument, Intervenor claim that if public corporations or public authorities have to administer scholarship programs under the Educational Assistance Provisions, scholarship programs administered by the State Board of Education or State Department of Education would be unconstitutional. Specifically, Intervenor argue the language in GA. CONST. ART. VIII, § VII, ¶ III is merely permissive, allowing those entities to administer programs but leaving open the option for the General Assembly to allow other entities to administer programs as well. The language of the Georgia Constitution cannot be interpreted in such an unprincipled fashion. Where the Georgia Constitution spells out the manner in which educational assistance programs are to be administered, the Constitution must be interpreted as meaning what it says. *See Arby’s Rest. Grp., Inc. v. McRae*, 292 Ga. 243, 245 (2012) (“[W]hen considering the meaning of a statute courts must afford the words of the statute their ordinary signification, [and] we must presume that the General Assembly meant what it said and said

what it meant. Further, when interpreting a statute courts must give meaning and intent to all words, bearing in mind that [w]here the language of a statute is plain and unambiguous, judicial construction is not only unnecessary but forbidden.”) (alterations in original) (internal quotations and citations omitted). Thus, because the Educational Assistance Provisions specify that public authorities or public corporations “shall be authorized to administer educational assistance programs,” allowing private non-profit SSOs violates this provision.

Intervenors claim that the Georgia Department of Revenue or the Georgia Department of Education do not qualify as “public authorities or public corporations,” based on an online (as opposed to the customary BLACK’S LAW) dictionary definition of the terms defining them as instruments of government but not official agencies, so that requiring public authorities or public corporations to administer educational assistance programs would threaten programs like the Georgia Special Needs Program—administered by the State Board of Education and State Department of Education. (Intervenors’ Memorandum in Support, p. 28). The plain meaning of a public authority, however, is not so restrictive. A public authority is defined as “a governmental agency or corporation that administers a public enterprise.” BLACK’S LAW DICTIONARY 152 (9th Ed. 2009). The State Board of Education and State Department of Education fall squarely under this definition of public authority, so that Plaintiffs’ claims, in fact, do not jeopardize the constitutionality of programs administered by the State Board of Education or State Department of Education.

3. The Educational Assistance Provisions Provide the Specific Type of Tax Benefit Allowed for Scholarship Donations, And The Benefit Chosen by the General Assembly Is a Tax Deduction, Not a Tax Credit.

The Educational Assistance Provisions of the Georgia Constitution directly address in GA. CONST. ART. VIII, § VII, ¶ I(b) how contributions from taxpayers can be made in support of programs of educational assistance that the State establishes. Those contributions are

governed by subsection (b) of the first paragraph of the “Educational Assistance” section, which states: “Contributions made in support of any educational assistance program now or hereafter established under provisions of this section may be deductible for state income tax purposes as now or hereafter provided by law.” This paragraph stands co-equal with paragraph (a), referring to expending public funds, and entitles the General Assembly to make private contributions “deductible for state income tax purposes.” Intervenors contend that this language, which plainly authorizes only tax deductions for donations in support of scholarships, is merely permissive because it provides that contributions under the Provisions “may” be tax deductible and therefore does not prohibit the General Assembly from allowing tax credits for the same contributions. There is no support for Intervenors’ interpretation, as tax deductions and tax credits function very differently: a tax credit provides a dollar-for-dollar reduction in tax liability, and a deduction provides only a reduction in gross income or adjusted gross income. It necessarily follows then that tax credits provide greater benefits to taxpayers than tax deductions. For example, for a taxpayer in Georgia, a \$1,000 tax deduction lowers the taxpayer’s bill by at most \$60, but a \$1,000 tax credit lowers the taxpayer’s tax bill by the full \$1,000, regardless of which tax bracket the taxpayer is in. Compl. ¶ 42. The difference is a loss of \$1.00 of state revenue with tax credits and a loss of no more than six cents with tax deductions for every \$1.00 diverted under the Tax Credit Program.

More importantly, as Georgia law recognizes that the General Assembly’s choice of one type of tax benefit demonstrates an intent to exclude others. In providing for a tax deduction, as opposed to a tax credit, it must be “presume[d] that the [drafters of the Georgia Constitution] meant what [they] said and said what [they] meant,” and that the drafters knew how to “distinguish among deductions, credits and refunds.” *Citibank, N.A. v. Graham*, 315 Ga. App.

120, 122 (2012) (determining that the plaintiff was not entitled to a tax refund where the statute at issue provided for a tax deduction, noting the “legislature knew how to provide a refund when it chose to do so and how to distinguish among deductions, credits and refunds”). Accordingly, there is a presumption that allowing one type of tax benefit instead of another is “a matter of considered choice.” *Id.* Further, tax benefits must be “strictly construed” because “[d]eductions, tax credits and refunds are allowed as a matter of legislative grace and are authorized only where there is a clear statutory provision for them.” *Id.*

Because the Educational Assistance Provisions allow only tax deductions, the tax credits provided under the Tax Credit Program violate the Georgia Constitution. Any argument about how tax credits are not public funds is immaterial and irrelevant on this question of constitutionality.

B. If the Tax Credit Program Is Not Authorized Under the Education Assistance Provisions, It Violates the Gratuities Clause.

Plaintiffs claim that if the tax credit scholarships are not authorized by the Educational Assistance Provisions, the scholarships are unlawful gratuities because they are provided freely by the Georgia Legislature without constitutional authorization. Intervenors counter that if the State provides a benefit to a private individual, that benefit does not constitute an unconstitutional gratuity if the State receives something in return. And, that the State receives a benefit under the Tax Credit Program, *as a matter of law*, by providing scholarships to students to attend private schools. Intervenors’ position is misplaced on several levels.

First, evaluation of the “benefits” rendered by the Tax Credit Program necessarily cannot be decided as a matter of law. As noted by Intervenors, “[a]rguably, the mere fact that the Program relieves the State of the obligation to educate participating students in its public schools renders non-gratuitous whatever benefits the Program provides to individual taxpayers, SSOs,

and scholarship recipients.” (Intervenors’ Memorandum, p. 15). Using the word “arguably,” Intervenors concede that the issue of whether Georgia receives a benefit from the scholarships is a factual dispute regarding how the Tax Credit Program actually works in practice. Thus, at a minimum, judgment on the pleadings on this Count is inappropriate. *See Consolidated Pipe & Supply Co. v. Genoa Construction Servs., Inc.*, 279 Ga. App. 894, 895 (2006) (noting that the fundamental question for the Court is whether, based on the *undisputed facts* appearing in the pleadings, the movant is entitled to judgment as a matter of law).

Second, Intervenors’ argument completely ignores that the Educational Assistance Provisions of the Georgia Constitution were enacted to ensure that the Gratuities Clause did not prevent the Georgia Legislature from creating scholarship programs for students in the State.¹ If, as Intervenors contend, scholarships to students provided a benefit to the State, *as a matter of law*, there would be no need for the Educational Assistance Provisions to be included in the Georgia Constitution at all. To this point, Georgia authority expressly identifies scholarships as constituting unlawful gratuities under the Gratuities Clause absent specific authorization (*i.e.*, the Educational Assistance Provisions), as the Office of the Attorney General has “consistently opined that the use of state monies to fund scholarship grants contravenes the constitutional provision against gratuities.” 1976 Op. Att’y Gen. 76-115; *see also* 1946 Op. Att’y Gen. 417-18 (finding that the Gratuities Clause prohibited scholarships to provide a college education for children of soldiers, sailors and marines who were killed or died in service); 1959 Op. Att’y Gen 395-96 (concluding that scholarships to attend the University of Georgia granted to Governor

¹ The Educational Assistance Provisions were first included in the 1983 revision to the Georgia Constitution. The prior version of the Constitution required a constitutional amendment every time a new educational assistance program was desired, and the intent of the 1983 revision was to “leav[e] matters to the legislature to decide from year to year in the future as to how these programs should be established and operated and avoiding the necessity of having to go back and amend the Constitution as it has been done many, many times since 1948.” Select Committee on Constitutional Revision, Subcommittee on Retirement and Scholarships at 9-10, Sept. 28, 1977 (Attached hereto as Attach. 1).

Milledge's family constituted unlawful gratuities). Supporting this conclusion is the history of the Educational Assistance Provisions² and "the great number of constitutional amendments to the gratuity proscription authorizing named state agencies to fund or participate in the funding of scholarship grants." 1976 Op. Att'y Gen. 76-115. Therefore, if the Tax Credit Program does not fall within the scope of the Educational Assistance Provisions, then it violates the Gratuities Clause because it provides scholarships and tuition grants to Georgia students without constitutional authorization.

Finally, Intervenors' argument that the State receives a benefit from the scholarships, and therefore does not provide an unlawful gratuity, contradicts Intervenors other contentions as it acknowledges that the State is using its own funds to provide the scholarships. *I.e.*, if the scholarships do not constitute unlawful gratuities because Georgia receives a benefit for the scholarships, as Intervenors claim, the necessary predicate for that premise is that the State is giving something to obtain that benefit. *See AAA Bail Bonding Co. v. State*, 259 Ga. 411, 412 (1989) (cited by Intervenors and holding there is no gratuity where the State receives something in return for what the State has given). The State's use of its own funds is in direct contradiction with Intervenors' defenses under the Educational Assistance Provisions and Establishment Clause that the Tax Credit Program does not involve State funds.

C. The Tax Credit Program Violates Georgia's Establishment Clause.

The Tax Credit Program gives individuals and corporations in Georgia dollar-for-dollar tax credit reductions of their Georgia income taxes for money donated as Qualified Education Expenses that otherwise would be paid to the State, but which instead funds sectarian SSOs that provide scholarships to sectarian private schools. Accordingly, the Tax Credit Program violates the Georgia Establishment Clause which provides that "No money shall ever be taken from the

² *See id.*

public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution.” GA. CONST. ART. I, § II, ¶ VII.

Intervenors’ arguments against an Establishment Clause violation suffer from two glaring flaws. First, Intervenors ignore that tax exemptions for sectarian institutions have been expressly preserved by the Georgia Constitution, and thus, any decision by the Court finding the tax credits unconstitutional under the Establishment Clause would not threaten these tax exemptions. Second, although Intervenors try to argue that scholarship recipients and their parents are the beneficiaries under the Tax Credit Program – instead of religious private schools and SSOs – Georgia authority and express representations by the private religious schools and SSOs themselves blatantly contradict Intervenors’ argument.

1. Tax Credits Under the Tax Credit Program Represent Money Taken “Directly or Indirectly” from the Public Treasury in Violation of the Georgia Establishment Clause.
 - a. Georgia Has Expressly Preserved Tax Exemptions in the Constitution.

Intervenors try to distract the Court with the argument that if the Tax Credit Program is found unconstitutional under the Establishment Clause, then tax exemptions for religious institutions must also fail. Unlike tax credits, tax exemptions are accorded special status in the Georgia Constitution, expressly preserving them, including those for religious institutions. GA. CONST. ART. VII, § II, ¶ IV. Accordingly, contrary to Intervenors claims, *there is* a principled reason why tax credits should be evaluated under the Establishment Clause, while tax exemptions are preserved in the Constitution. Since property tax exemptions for religious institutions have been specifically provided for, this demonstrates the need for an express allowance in the Georgia Constitution for a specific type of tax benefit to religious institutions.

Tax credits for scholarships to fund religious education have *not* been similarly preserved by the Georgia Constitution.

2. SSOs and Participating Schools Receive Substantial Benefit Under the Tax Credit Program.

Intervenors claim that the Tax Credit Program does not violate the Establishment Clause because it aids parents and students, not religious institutions. Intervenors' position defies logic. The Tax Credit Program necessarily provides considerable aid to religious SSOs and the private religious schools receiving the scholarships. The sectarian SSOs³ and schools are fully aware that they benefit substantially from funds taken "directly or indirectly" from the State Treasury as they actively and expressly solicit tax dollars to further their religious efforts. For example, The Georgia-Cumberland Conference of Seventh-Day Adventists SSO states on its website that "[t]his state approved program has the potential to be a watershed opportunity to fund Adventist Christian Education in Georgia utilizing your tax dollars. **If you are currently paying taxes to the state of Georgia, join with me in converting those dollars to scholarships for Adventist Christian education.**" Compl. ¶ 60; Compl. Ex. 8.

Private religious schools take part in the same messaging. For example, Grace Christian Academy's website explains:

How does this strengthen our ministry? Your contribution helps strengthen and grow GRACE by helping **to increase enrollment.** The school will be able to help more families in need of financial assistance by accessing funds that are in the new scholarship program without taxing the funds that we raise annually out of our own budget to help families in need. As our school grows, our students will be directly impacted, as **we are able to add more services, more programs, more staff, more technology, more facilities, and more educational and ministry opportunities.**

³ Not all the redirected tax dollars go to scholarships, as SSOs are allowed to keep up to 10% of the contributions made. Compl. ¶ 19.

This is a great tool we have been given to help grow our ministry to Christian families and we encourage you to consider becoming involved in the program.

Id. ¶ 66; Compl. Ex. 12.

These are just a few of many examples, all having the same basic recognition: The Tax Credit Program aids sectarian institutions with money coming “directly or indirectly” from the public treasury in the form of redirected tax dollars.

Intervenors essentially argue that SSOs and religious schools are confused and do not themselves understand what “aid” to their institution means. Specifically, Intervenors contend that any money received by religious schools is not “aid,” and instead constitutes mere payment in exchange for services rendered. This flawed logic has been expressly rejected by the Georgia Supreme Court. In *Bennett v. City of LaGrange*, 153 Ga. 428 (1922), the Georgia Supreme Court found that “when the City of LaGrange made the contract with the Salvation Army, by which the latter, a sectarian institution, assumed the care of the poor of that city although at actual cost, this was giving a great advantage and the most substantial aid to the Salvation Army in the prosecution of its benevolent and religious purposes.” *Id.* at 437. This is because “[t]he giving of loaves and fishes is a powerful instrumentality in the successful prosecution of the work of a sectarian institution.” *Id.* The Court also explained that “the State could undertake to educate all its children in such sectarian institutions, and pay them for the education of its children in such institutions rather than in public schools or public institutions of learning. Any such course would be giving the most valuable aid to such sectarian schools and institutions.”

*Id.*⁴

⁴ Intervenors argue *Bennett* is not contrary to their claim that the Tax Credit Program does not provide aid to private schools, (Intervenors’ Memorandum, p. 19 n.8), but Intervenors’ attempt to distinguish *Bennett* is based on inapplicable federal Establishment Clause language, claiming the program at issue in *Bennett* “did not purport to restrict private action taken under a religiously neutral state aid program.”

Intervenors also claim that the scholarship program is entirely religion-neutral and that any money that ultimately reaches religious private schools only does so because of the choice of private taxpayers and parents. Relying on the reasoning of U.S. Supreme Court cases employing such neutrality analysis, however, is of no help to this Court. Georgia has long recognized that its Establishment Clause is broader than the Federal Establishment Clause and that of many other states.

It is to be noted that the State provision is far more explicit than the Federal, as the State Constitution deals specifically with State-Aid to churches, while the Federal does so only inferentially. Moreover, the State provision refers to money being granted “directly or indirectly,” which indicates on its face **the broadest type of proscription**.

1960-61 Attorney General Opinion at 351 (Apr. 20, 1960) (emphasis added). The Georgia Office of the Attorney General has further recognized the significant differences between the provisions, noting that the Federal Establishment Clause “differ[s] from the religion clause of the Georgia Constitution not only in language but in effect as well.” 1988 Op. Att’y Gen.

88-15. Unlike the Georgia Constitution, which states simply and clearly the prohibition that “no money shall ever be taken from the public treasury, directly or indirectly” the Supreme Court has refused to adopt a strict “no aid rule” in Federal Establishment Clause cases. *Id.* As noted by the Attorney General, “[t]he absence of a simple ban on aid has led to a complexity of issues and results” under the Federal Establishment Clause. *Id.* The Georgia Constitution contains a concise prohibition, which makes the complex analysis employed by the Supreme Court in Federal Establishment Clause cases – and asserted by Intervenors here – unnecessary and irrelevant. So, not surprisingly, Georgia has never relied on and there is no precedent for the use of a neutrality analysis to determine a violation. Thus, it has no application here.

In any event, Intervenor's cite to one Supreme Court case, *Mueller v. Allen*, 463 U.S. 388, 397 (1983), to argue the Tax Credit Program is religion-neutral, and that "neutral" programs do not violate Georgia's Establishment Clause. The Supreme Court's decision in *Mueller* is distinguishable (and inapplicable). In *Mueller*, the Supreme Court upheld a Minnesota law allowing for a tax deduction for educational expenses, but one of the driving forces behind *Mueller's* conclusion that the law was neutral was because the deduction was "available for educational expenses incurred by all parents including those whose children attend public schools." Here, there is nothing neutral about the Tax Credit Program, as it is only available for donations made for private school scholarships, and beneficiaries of the Program include mostly sectarian private schools.

D. Duty to Fund an Adequate Public Education

Plaintiffs clarify that they do not assert any claim based on GA. CONST. ART. VIII, § I, ¶ I. Reference to this section in Count VI, ¶ 3 of Plaintiffs' Complaint was inadvertent, and intended to reference Plaintiffs' claims under the Gratuities Clause, GA. CONST. ART. III, § VI, ¶ VI(a). In Count VI, Plaintiffs do seek injunctive relief to stop Defendants' implementation of the Tax Credit Program which violates the Gratuities Clause, as explained above.

CONCLUSION

Intervenor's Memorandum relies on inconsistent positions, slippery slope arguments, and mischaracterizations of Plaintiffs' claims. As demonstrated above, Intervenor's contentions lack merit, and Intervenor's Cross-Motion for Partial Judgment on the Pleadings As to Counts I-III and VI should be denied.

Dated: August 8, 2014

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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**

**RAYMOND GADDY, BARRY HUBBARD,
LYNN WALKER HUNTLEY, and DANIEL
REINES,**

Plaintiffs,

v.

**GEORGIA DEPARTMENT OF REVENUE,
and DOUGLAS J. MACGINNITIE, in his
official capacity as STATE REVENUE
COMMISSIONER OF THE GEORGIA
DEPARTMENT OF REVENUE,**

Defendants,

and

**RUTH GARCIA, ROBIN LAMP,
TERESA QUINONES, and ANTHONY
SENEKER,**

Intervenor-Defendants.

Civil Action No. 2014-CV-244538

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing
*Plaintiffs' Response in Opposition to Intervenor-Defendants' Cross-Motion for Partial
Judgment on the Pleadings as to Counts I-III and VI* upon the following counsel of record via
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Dated: August 8, 2014

By: 
Andrea J. Pearson

ATTACHMENT

1

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Full Committee Meeting Held on Sept. 7, 1977

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STATE OF GEORGIA

SELECT COMMITTEE ON CONSTITUTIONAL REVISION
SUBCOMMITTEE ON RETIREMENT AND SCHOLARSHIPS

Room 416B State Capitol
Atlanta, Georgia
September 28, 1977
1:00 o'clock, p.m.

PRESIDING OFFICER: Thomas Buck

BRANDENBURG & HASTY

SCIENTIFIC REPORTING

3715 COLONIAL TRAIL, DOUGLASVILLE, GEORGIA 30135

942-0482

DEPOSITIONS - ARBITRATIONS - CONVENTIONS - CONFERENCES

P R O C E E D I N G S

MR. BUCK:

Good afternoon, everybody. I'd like to call this meeting to order. Our Chairman is out of the country and called and asked if I would preside at this meeting. So if you'll bear with me, I'll try to measure up to his standards.

First of all, we do have a quorum so we can transact business if we want to. Secondly, you received in your mailout dated September 17, 1977, a--certain proposals including the minutes of the last Committee meeting which was held on September 9th. At this time, I would ask this Committee to--if there's any changes to the minutes that have been submitted to you or any discussion about them?

MR. JOHNSON:

Move their adoption, Mr. Chairman.

MR. HUDDLESTON:

Second the motion.

MR. BUCK:

Any discussion? All those in favor of the motion will signify by saying aye. [A chorus of ayes.] Opposed, like sign. [No response.] Then that stands approved as submitted.

I'd like to give you a report in response to some of the mailings that I believe you got copies of letters that



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1 were sent to various organizations relative to certain pro-
2 posed language dealing with the Retirement Section and we
3 had--we asked those certain organizations to respond to
4 this Committee by October 8th. So we still have several--
5 approximately two weeks before the deadline falls. And to
6 date we have received several letters on the Retirement,
7 namely, one from Bob Smalley down in Griffin, Bob Edge and
8 also Pope McIntire. And most of these are, from what I
9 understand from what Harvey tells me, they're real--in--
10 much in support of what we're doing.

11 We received also on local constitutional amendments
12 a letter from the Bibb County Attorney and the Marietta
13 City Attorney. And what we thought we would do is after
14 the deadline on October 8th, that each member will receive
15 a copy of all correspondence that we've gotten.

16 Relative to Scholarships we received a letter from
17 Penn Worden of the Georgia Chamber of Commerce and Charlie
18 Storm with the State Merit System and we're going to give
19 you copies of those letters today. Now, Chairman Holloway
20 told me that the main purpose of this meeting would be for
21 us to consider the proposed revision of Section II, which
22 relates to the educational scholarships, loans and grants.
23 And in conjunction with this, you received in your mailout
24 of September 19th the proposed revision. Now, I trust
25 everybody's got one of those. If not, we've got copies



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1 we can give to you right now.

2 This is strictly a proposal and, in conjunction with
3 that, we have two people with us today that have notified
4 us that they would to make certain comments. And at this
5 time I would like to recognize Grady Huddleston who is one
6 of our members of this Committee who wants to be heard on
7 the proposal that he has--proposed revision. Grady?

8 MR. HUDDLESTON:

9 Thank you, Mr. Chairman. Mr. Chairman and members of
10 the Committee, I have talked to Harvey at some length on
11 this and the only question that we might have is in sub-
12 paragraph 3 of Paragraph I and that is the language that
13 is written in the proposal. I have some prepared remarks.
14 I might just deviate from them a little bit and not read
15 it.

16 For several years my position as Director of Training
17 and Staff Development for the State Merit System, which
18 we're involved in training program for all State employees
19 --for many years we have talked about the possibility and
20 have wanted to arrange some method of an agency letting
21 their employees take a tuition-free course or, that is, the
22 agency pay for a course when it was job-related and would
23 better the individual to do a better job.

24 This has been unconstitutional according to any number
25 of consti--opinions coming from the Attorney General of



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1 which a copy is attached to ^{my remarks} Mr. Remarks in which he just
2 reiterated his former stand. Now, in February of last
3 year, Governor Busbee appointed the Merit System Adminis-
4 tration Review Committee made up of several department
5 heads who I won't name because they're listed in my Re-
6 marks, and these people have made many recommendations as
7 to an overall betterment to the personnel program in State
8 government.

9 One of the recommendations that they have made is that
10 a tuition-reimbursable fee program be established in State
11 government. I talked with Charlie at some length about
12 this and we had hoped that this language would solve this
13 problem. But there are many ways that this might be done.
14 First of all, it might be done through an appropriate ^{law.} to
15 the agencies and let each agency handle it. It might be
16 handled from a central location. But this is something
17 that I think should be handled in the statutory regulations.

18 But in Paragraph (3) "To provide programs of tuition
19 grants and for programs allowing attendance at units of
20 the University System of Georgia or other State educational
21 institutions without the payment of tuition or other fees."
22 Now, I am not sure that the language--and we did this very
23 hurriedly--that we offered as a substitute for this would
24 actually do the job and this is what I want to ask the
25 Committee to talk about and help us perfect some language.



1 Now, on the back page of my Remarks, we suggested
2 subparagraph (3) "To provide programs of tuition grants
3 and for programs allowing matriculation fee reimbursement
4 attendance at units of the University System of Georgia
5 and other qualified educational institutions." Now, I
6 don't know that that word "qualified" is the proper word,
7 but rather than saying "accredited institutions"--and,
8 Mr. Chairman, as a specific example, I might say this--at
9 one time when we had our Veterans Training Program and the
10 veterans' program for G. I. Bill of Rights was in effect
11 and veterans' claims, the State Department of Veterans
12 Service required in their job descriptions that their
13 claims people have a degree in law. And these people were
14 able to go to some of the night law schools, which is not
15 recognized as accredited schools as such, and get this
16 degree which fulfilled the requirements to help handle
17 these claims before Boards and so forth. And I'm sure that
18 there are several other instances that this could come
19 about in State government.

20 So following up on the recommendations of this Commit-
21 tee that the Governor has approved and asked to be put into
22 effect as soon as possible, I would like to just throw the
23 floor open to any questions or any further suggestions as
24 to something we might do to get this included in the Con-
25 stitution. Any questions anybody has about this?

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CHAIRMAN



1 MR. MCCOY:

2 Mr. Chairman, as Treasurer of the Board of Regents,
3 I would prefer the second language to this language. Be-
4 cause this would cause us all kinds of trouble the way
5 it's worded here in paragraph (3).

6 Mr. Chairman, I might say that I have no particular
7 objections to that. It's just isolated cases that we
8 might not be able to do this under. But if it's the
9 feeling of the Committee, I have no objection to this being
10 changed to "accredited."

11 MR. BUCK:

12 I might interject at this point, we're going to hear
13 from Dan Payton in just a few minutes and Don and Harvey
14 have worked together possibly on a proposed revision of
15 the printout that you received in the mail. So--and part
16 of it, I think, might cure this problem, Grady, that you're
17 talking about. So I think maybe before we get into any
18 really serious discussion about your concern, maybe we
19 ought to hear from Don and then we can take it all up at
20 one time if that's agreeable with the Committee.

21 MR. HUDDLESTON:

22 That's fine, sir. Mr. Chairman, the only other thing
23 I'd like to say is in the middle of page two of my Remarks
24 is the specific wording from the Governor's Committee recom-
25 mendation that is as--without reading it to the Committee



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1 again.

2 MR. BUCK:

3 Do the members of the Committee have any questions
4 of Grady? If not, Thank you, Grady.

5 Don, we'd like to hear from you now. This is Donald
6 Payton, who's Executive Director of the State Scholarship
7 Commission.

8 MR. PAYTON:

9 Thank you, Mr. Chairman.

10 MR. BUCK:

11 Do you want to pass out copies of your Remarks at
12 this time?

13 MR. PAYTON:

14 Remarks, no. But I wondered if Harvey had passed out
15 a copy--

16 MR. FINDLEY:

17 It would be helpful if we passed out that material
18 that I brought in.

19 MR. BUCK:

20 Don, if you would explain what we're handing out. I
21 think what we're talking about is the superimposed sheet.

22 MR. PAYTON:

23 Yes. I believe she's handing out a copy of a letter
24 from me to Harvey and a copy, that is, of superimposed
25 language over the initial draft and then a clean copy of



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1 the suggested language. So I believe we'll pass out three
2 things.

3 I might go ahead, with your permission, and make this
4 statement: Senator Al Holloway and Harvey and I have been
5 in touch with each other repeatedly, or shall I say, often,
6 since the early part of August. I was on vacation a good
7 part of July. We would have a lot of telephone discussions
8 and I gained from those discussions a lot of the ideas that
9 Senator Holloway had and that Harvey had and I raised
10 questions and we discussed them--a lot of these--back and
11 forth on the telephone at some length. We, of course, have
12 just come through our rush season--very, very busy. I was
13 never able to get down here and work with Harvey. Harvey
14 prepared a rough draft and that's what you got in the mail
15 earlier. And I think the first thing I should do is com-
16 mend Harvey for the work he did in preparing that rough
17 draft. Because it's one page and it basically does at
18 least what Senator Holloway expressed that he, as Committee
19 Chairman and as a Senator thought should be done. And
20 that is simply to repeal all of the fifteen-odd pages of
21 the Constitution that have to do with student aid and come
22 up with authori--constitutional authorization for student
23 aid programs in as few words as possible, leaving matters
24 to the legislature to decide from year to year in the
25 future as to how these programs should be established and



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1 operated and avoiding the necessity of having to go back
2 and amend the Constitution as it has been done many, many
3 times since 1948, I believe--somewhere back in there.

4 I received Harvey's draft and, as I stated, I think
5 he made a--did a commendable job in getting rid of all
6 that--I'd have to say garbage--repetitious--and reducing it
7 down to one page. However, in our discussions I had
8 various questions that I raised and we discussed. Some of
9 those I dealt with by redrafting the rough draft or pro-
10 posed draft. And other questions that I raised I mentioned
11 in the letter. And I think it would be well so that this
12 is the first meeting of this Committee dealing with this
13 subject and I'm sure you don't plan to conclude anything
14 today. This will go on until everything is hammered down.

15 I think, with your permission, I'd like to go over
16 the comments in my letter to Harvey first. Because I made
17 these points to reflect our conversation and it's a good
18 way of getting the point before you in a meaningful
19 fashion. Because I think that before you conclude your
20 action, you need to have considered each of these. And I'm
21 sure there are others that we haven't thought of, probably.

22 In the letter--number one, general comments, "Since
23 student assistance and retirement systems appear to be un-
24 related, I would suggest that they perhaps be split into
25 two Articles if this is legally possible under the frame-



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1 work within which the Committee is acting."

2 Second point--all the previous provisions in the
3 Constitution on student aid, or most of them, had this
4 language "notwithstanding any other provisions of this
5 Constitution," blah, blah, blah. And the reason for that
6 was to overcome the gratuities section that appeared back
7 in another Article of the Constitution. I understand, in
8 talking with Harvey, that the "notwithstanding other pro-
9 visions of this Constitution" language heretofore used in
10 connection with student aid programs will not have to be
11 used in this new draft in connection with this Article be-
12 cause the Committee will go back and amend the gratuities
13 section in such a manner as to provide this exception in
14 the gratuities section. So I mention it as a point that,
15 somewhere along the line, we want to make sure it's
16 worked out and not overlooked.

17 Third, looking to the draft, I notice that the draft
18 simply says public funds may be expended and I sort of
19 interpret that to mean, and I think Harvey does too, that
20 the reference to public funds without further limitation
21 could conceivably allow for the use of public funds in
22 other political subdivisions of the State such as counties
23 and cities. That is not to say that a county or city
24 would set up a student aid program or the legislature
25 would get into it, but I think the draft is broad enough



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1 that it theoretically would allow that.

2 Number four--I noted that nowhere in the draft is
3 there any reference to "postsecondary education", in other
4 words, higher education as opposed to elementary-secondary
5 education. And I understand that that omission--that the
6 omission of any reference to postsecondary education is
7 most likely intentional and that the new Article broadly
8 construed will in fact allow both State and other political
9 subdivisions to provide financial assistance to students
10 at the elementary and secondary school levels as
11 well as for the postsecondary level should they desire to
12 do so under this language if it's left as is. So there
13 is no reference to postsecondary education in here. That
14 may be desirable. Bearing in mind always that whatever is
15 done in this field will be done by the legislature--the
16 General Assembly--and I think the main intent of Senator
17 Holloway was to have a broad section in the Constitution
18 so that the General Assembly would have full freedom of
19 action in doing or undoing whatever it wanted to do.

20 Number five--I noted that there was not reference in
21 the proposed draft to "citizens" nor to "legal resident of
22 this State," and in discussing this with Harvey I agree
23 that it is not necessary to refer to citizens nor the legal
24 residents of the State in the Constitution itself. That
25 matter can be appropriately dealt with in your statutory



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1 legislation had it certainly must be dealt with. Grants
2 and so forth must be limited to residents or citizens of
3 the States. But I want to point out and go on record that
4 should the Committee express the desire to include refer-
5 ence to citizens or legal residents, then in that event,
6 I would like to caution you at this time that such a re-
7 striction should not, in my opinion, be imposed on the
8 guaranteed student loan program in light of provisions in
9 current Federal law which was enacted in October of last
10 year in which I'll go into detail with you if you so desire.
11 But to make a long story short, the Federal law passed
12 last October encourages each State-guaranty agency like
13 ours to guarantee a loan made by a local lender like the
14 First National Bank if they make a loan to a student
15 attending a school in this State without regard to whether
16 or not he's a legal resident of the State. In other words,
17 in effect they look to the residency of the lender, not
18 the student in that particular program. And that's to
19 prevent some student from being caught in a bind and being
20 ineligible under all fifty states and yet be an American
21 citizen.

22 In addition to the foregoing, there also in the draft
23 is no reference even to "students". That being the case,
24 it appears to me, and I think we are in agreement on this,
25 that the revision as proposed could legally be construed to



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1 allow for grants and loans for capital outlay purposes
2 since those are educational purposes. And other similar
3 purposes could be educational purposes. Since it is agreed,
4 however, that the primary and intended thrust of this
5 Article has to do with student assistance, I have included
6 references in my draft to students in the changes that I
7 have suggested, and taken the further step of suggesting
8 that the section itself be entitled "Student Assistance"
9 rather than "Educational Scholarships, Loans and Grants."
10 These are all suggestions, of course.

11 Number seven--I also suggest addition of the refer-
12 ence to "other assistance" for we cannot absolutely be
positive today that the specific forms of assistance refer-
14 red to in the draft---and by that I mean scholarship, grant
15 or loan--will be the only forms of assistance that might
16 be needed or desirable in some future year.

17 Number eight--and this really stems off of my dis-
18 cussions with Harvey, Grady, in terms of some of the con-
19 cerns that you had, though I'm not sure it fits it
20 directly. I don't believe that the first portion of para-
21 graph I(a)(3) is needed at all. That's where it says to
22 provide tuition grants. Because in sub-paragraph (1) it
23 had already said to provide for grants. And if you can
24 provide for grants you don't need to repeat that in sub-
25 paragraph (3) to provide for tuition grants. A grant is a



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1 grant and by statute it can be so limited or defined in
2 such manner as the legislature may want to do. So item
3 eight--I don't believe the first portion of that paragraph
4 is needed at all and perhaps the remainder of that para-
5 graph could adequately be covered by my suggested refer-
6 ence up in Paragraph (1) to waiver of tuition or fees. Now,
7 I think this would be appropriate at this point to make a
8 point. Might I--on the age 62 bit?

9 MR. FINDLEY:

10 I wish you would.

11 MR. PAYTON:

12 In my discussions with Harvey, I--you know, I under-
13 stand that a constitutional amendment was enacted last year
14 or so that mandated waiver of tuition and fees, I believe
15 --please correct me if I'm wrong--that mandated waiver of
16 tuition and fees for persons age 62 and over within the
17 University System or attending the University System and
18 maybe other schools. And I understand that it's within
19 the scope of this Committee in revising the Article to make
20 revisions in other Articles of the Constitution as neces-
21 sary concu--that should go concurrently with this. So
22 what is contemplated here in including waiver of tuition
23 or fees is that concurrent with this action that you would
24 recommend repeal of the provision that was just passed and
25 ratified last year--repeal of the mandatory provision, that



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1 is. And then by putting it in here as permissive author-
2 ity, it would be a matter that the legislature could then
3 deal with as it might see fit. And, as you might see fit,
4 you could stipulate such terms to go along with it.

5 Item nine--I understand that this revision does not
6 and is not intended in any manner to override in any re-
7 spect the meaning of paragraph X of Section II, Article I
8 which is that section that relates to the expenditure of
9 public funds in support of churches, sects and so forth.
10 I just wanted to sort of divorce that and make sure that
11 there would be no impairment of that section.

12 And comment number ten--the section dealing with
13 contributions that people might make in support of such a
14 program had reference to the loan program. I think contri-
15 butions that might be made in support of any student aid
16 program, whether it's grants or loans, should be subject
17 to being tax deductible at the discretion of the General
18 Assembly.

19 Item eleven--I have suggested a change in the langu-
20 age relating to the guaranteed student loan program. I
21 think it is necessary to refer to that program in such a
22 way that it does not imply a State guarantee of education-
23 al loans, i.e., I mean any form of a pledge on the full
24 faith and credit of the State for the repayment of those
25 loans. Also to specifically allow for payment of interest



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1 subsidies and fees, which we are now doing under a legal
2 ruling of the Attorney General, which I of course will
3 discuss with you as you may see fit. And, thirdly, it is
4 imperative that we maintain in this Constitution the tax
5 exemption language which currently appears in the present
6 Constitution.

7 And last, item twelve, as regards Paragraph II, my
8 suggested language is perhaps a bit repetitious. I think
9 it is a very important, however, that we utilize this
10 paragraph which will be in the Constitution alongside all
11 other provisions to clarify the language that already
12 exists in Paragraph I, Section II of Article VII and has
13 to do with the issuance of guaranteed-revenue bonds for
14 student loan purposes.

15 And, in closing, again I point out that Harvey's
16 excellent job of reducing it made my job so much more easy.
17 If we could look to the overlay provision for a moment,
18 that is, the draft with the overlay typing on it. Going
19 down that, I'll do it hurriedly.

20 MR. BUCK:

21 Don, let me interrupt. I would suggest we take them
22 just like you're prepared to do and if anybody on the Com-
23 mittee has any question as we go down, let's try to discuss
24 them as we go.

25 MR. PRICKETT:



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1 Mr. Chairman, you're speaking of the corrected one;
2 is that right?

3 MR. BUCK:

4 Well, the one with the overlay that shows the changes
5 --the original proposal--original draft and then the
6 changes--suggested changes that Don has prepared.

7 MR. PAYTON:

8 In looking through the Constitution, Mr. Chairman, I
9 note that all Articles and titles of Sections are very
10 short, usually one word or two words, like Judiciary,
11 Legislative Franchise and so forth. So rather than head
12 this up in a specific term like "Educational Scholarships,
Loans and Grants," which is more specific, I would suggest
14 the general heading "Student Assistance," And that carries
15 over in Paragraph I.

16 It reads as follows: "Pursuant to laws now or here-
17 after enacted"--and this is Harvey's draft so I'm talking
18 about his draft and really perhaps he should be talking
19 about it and he will, I'm sure. "Pursuant to laws now or
20 hereafter enacted by the General Assembly, public funds
21 may be expended for any of the following purposes:" There
22 were four and I've revised that to three.

23 "(1) To provide grants, scholarships, loans, waiver of
24 tuition or fees, or other assistance to students for edu-
25 cational purposes." Yes, sir?



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1 MR. MCDONALD:

2 When you say waiver of tuition or fees, now, is that
3 --fees is an inclusive--is that inclusive or are we talk-
4 ing about certain fees?

5 MR. PAYTON:

6 I--Harvey, please help me pick up the ball here. I
7 would assume it would be as defined in any statutory lang-
8 uage. It would be up to the General Assembly to define it.
9 So it could be very broad or quite narrow.

10 MR. MCDONALD:

11 Well, we have some fees that are really--they're more
12 social than academic and we have another problem at an in-
13 stitution like Georgia State where we have a parking fee
14 that we farm out this or we contract this out to a private
15 enterprise and we don't have the authority to waive a fee
16 for parking at an institution. So it complicates this.
17 All I'm saying is if this is inclusive or we need a modi-
18 fier in front of it to say "certain fees"?

19 MR. PAYTON:

20 I don't know. I--

21 MR. NEAL:

22 I think it would address itself to the General Assem-
23 bly, Don.

24 MR. FINDLEY:

25 Presumably, the General Assembly would be aware of



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1 those problems. I'm sure y'all pointed them out to them
2 if they weren't. They would not pass something that would
3 create legal hassles for them.

4 MR. PAYTON:

5 Any other questions on subparagraph (1)?

6 MR. BATHO:

7 Mr. Chairman, this is very technical and relates, I
8 guess, to the use of words. But do you expend public
9 funds to waive fees?

10 MR. BUCK:

11 Harvey, would you respond to that?

12 MR. FINDLEY:

13 That was troublesome to me, too. We're trying to
14 make it as general and as broad as possible without getting
15 into a lot of detail. In a way it would be an expenditure
16 of public funds if you waived the tuition fees, I think, in-
17 asmuch as they--it's--the waiver of the fees is taking up
18 slack from the public Treasury that would otherwise be
19 paid. It doesn't fit exactly and we could revamp it and
20 the Committee may want to do that. I think that would be
21 a consideration perhaps in some degree in some of the
22 others here. If we did, I think we'd have to break it out
23 and have it in a separate paragraph and I was trying to--
24 the approach was to try to use broad, lead-in language.
25 And I think it certainly wouldn't be a direct expenditure



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1 of public funds, but the effect would be the same.

2 MR. PAYTON:

3 It would be foregoing--

4 MR. FINDLEY:

5 Yes, sir. It would be foregoing the expenditure of
6 public funds.

7 MR. BATHO:

8 Foregoing the income.

9 MR. HUDDLESTON:

10 Harvey, let me ask you a question. Would this word
11 "waiver" take care of what I'm trying to do now? What
12 I'm trying to do is let the departments pay the student
back--reimburse him for tuition.

14 MR. FINDLEY:

15 No, sir. The word "waiver" is really--and Don--Dr.
16 Payton explained this a minute ago--but we have a provi-
17 sion over in Article VIII right under the Regents. Provi-
18 sion of the Constitution that mandated Regents to let folks
19 sixty-two years or older go to college with waiver of
20 tuition fees or without the payment of tuition and other
21 fees. That's mandated in the Constitution. As a part of
22 this revision, as we have done in Retirement where we have
23 to go over into other Articles, that paragraph or the
24 recommendation would be made that that paragraph be deleted.
25 So this is really designed for that program if the General



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1 Assembly elects to implement it by statute. Yours would
2 be covered under the word "grants," I think. Now, if
3 you have some misgivings about that, we can talk about it
4 and I know how important that is to you. I think it would
5 be covered under grants. If you reimburse somebody--a
6 State employee under a program to be designed under this,
7 it seems to me if you reimburse him for matriculation fees
8 he pays, that's a grant. If you put it in, then you raise
9 the question as to whether or not the grant would cover
10 that. And if not, by specifically mentioning it, then it
11 has the effect of narrowing the word--perhaps--the word
12 "grant" so that if you want to keep it as broad as poss-
13 ible, then the specific--anytime you get specific I think
14 would raise some questions about whether or not maybe you
15 might need to enumerate some more. I don't know.

16 MR. PAYTON:

17 Could I add to that comment because it relates to
18 loans also--Grady, I--we're all thinking about this and
19 I'm sure we'll get the Attorney General's advice on the
20 question before you all finish with your work. But in my
21 personal opinion it would seem to me--and this is similar
22 to grants and to loans--that what you're seeking to accom-
23 plish can be accomplished under number one by statutory
24 language if the legislature provides for any department to
25 provide for grants to an employee to pay for their tuition



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1 in taking a course, it could do so. If it provided for
2 the University System to waive their tuition and fees, it
3 could do so. If you come to the idea of reimbursement,
4 then what you're really talking about is a conditional
5 grant--a grant with conditions--that you can give the
6 grant at the outset with conditions that they finish it,
7 which is much like our cancelable loans. Or you can have
8 them attend and reimburse them, it would seem to me, under
9 statutory language which comprises a grant or conditional
10 grant. Now, right now the Medical Education Board and
11 we are making, oh, two million dollars a year in loans to
12 students in various categories which may not have to be
13 repaid in cash. Because under the present Constitution
14 and statutes, the student can finish their course of study
15 and practice in certain communities, this, that and the
16 other, and their obligation to repay that loan is cancelled.
17 Generally, each year's practice cancels one year's loan.
18 Well, those are cancellable loans. At the outset, the
19 money is loaned to the student. The student signs a pro-
20 missory note. The note calls for the payment of interest
21 but under the agreement--the law and so forth--repayment
22 of that loan can be done through services or, in other
23 words, cancelled through services. So it would seem to
24 me that cancellation or reimbursement, however you want to
25 approach it, whether it be a grant or loan, if you have a



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1 loan and then cancel it, well, then, you back up and say,
2 well, it wound up as a grant. So I think it's statutory
3 really. I believe under this language it would be permis-
4 sible and I hope that the Attorney General would--

5 MR. HUDDLESTON:

6 Well, Don, I just didn't want to rely on this word
7 "waiver" and get into--

8 MR. NEAL:

9 Mr. Chairman, when Don first went through this, it
10 sounded so good, I thought it was fine. But on reflection
11 I'm a little bit concerned about the words "waiver of
12 tuition or fees." It ^{has} ~~is~~ very broad implications so far
13 as the Board of Regents is concerned. A number of things
14 come to mind, initially is the present constitutional
15 authority of the Board to set tuition and fees--and ad-
16 mittedly, Don, the recent constitutional amendment about
17 the 62-year old waiver of tuition, I see what you were
18 driving at. Quite often there are a number of groups in
19 the State who bring pressure on members of the General
20 Assembly in my experience for a waiver of tuition or a
21 waiver of certain fees charged by the Regents for a given
22 group of people. For example, if the Vietnam veterans or
23 if the World War II veterans right after World War II, of
24 which I was one, got up a pretty strong lobby and said we
25 want to waive all of the tuition for World War II veterans



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1 or we want to waive all tuition for Vietnam veterans or
2 we want to waive all the tuition for faculty members or
3 we want to waive all tuition for schoolteachers or for
4 the handicapped and so on. And I trust the General Assem-
5 bly and I think they're an august body. But I know that
6 the members of the General Assembly, having worked with
7 them for a long time, feel these pressures. And sometimes
8 the pressures get almost overbearing and overwhelming.
9 And I, for one, would like to see that left up to the--to
10 the Board of Regents to set tuition and fees and leave the
11 present exemption--62-year old tuition fee exemption--as
12 it is. That's a pretty good example in and of itself. And
13 I'm not a long ways from sixty-two. So I can speak to it
14 and say that I'm not so sure that that was not a pressure.
15 Who can be against the old folks. Everybody's got kin-
16 folks that are old. And there was a big head of steam--
17 and is throughout the country right now. We get letters
18 everyday about people wanting to know about the sixty-two
19 year old exemption. The retirement groups have picked up
20 on it. And that has caused us some problems in some of
21 our institutions that we never anticipated at the time.
22 So I'm very greatly concerned, Don, that these words
23 "waiver of tuition or fees" could best be left out of this
24 number one and leave the waiver of tuition up to the Board
25 of Regents except of course for the sixty-two year old



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1 amendment which passed overwhelmingly by the people.

2 MR. HUCK:

3 Well, Henry, your remarks are very well taken and I
4 can relate it directly to what the General Assembly goes
5 through now on retirement legislation as well as E. G.
6 Summers over here. You are subjected to a lot of pressure
7 from different groups. So we'll note those remarks and
8 hopefully we can come up with something that's going to
9 satisfy the Board and also keep this thing in as broad of
10 a perspective as we want to.

11 MR. PAYTON:

12 Mr. Chairman--

13 MS. HOLMES:

14 Excuse me. I just had a question. Well, I have a
15 remark actually. When you start talking about pressure on
16 the legislators--and there is pressure on the legislators--
17 I can see without the inclusion of this language pressure
18 being brought to pass an amendment to the Constitution and
19 we go back to right what we're trying to avoid. I think
20 what we're talking about here is broad coverage where
21 language is concerned and, frankly, I'd like to see it
22 stay in because I'm so tired of constitutional amendments.

23 MR. PRICKETT:

24 And again it's permissive language. It's a "may" and
25 not "shall" in there.



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1 MR. BUCK:

2 I don't think the Committee wants to take any formal
3 action on any of this today. I would be very reluctant
4 to in the absence of our Chairman, but--

5 MS. HOLMES:

6 May I ask one more question of Dr. Payton or maybe
7 of Harvey. Along with this, of course, would go some sug-
8 gestions for statutory--accompanying statutory provisions
9 so that the sixty-two year olds would be--I mean whatever
10 that amendment was that related to that--would be incor-
11 porated into some statutory provision?

12 MR. FINDLEY:

13 Yes, ma'am. I think that the Chairman plans to re-
14 commend to the Committee, as he has mentioned frequently,
15 that some of these programs are self-executing in the Con-
16 stitution--the sixty-two and over is an example of it. The
17 Regents had no alternative but to put that program in place
18 by the Fall term of 1977. So since that is an ongoing
19 program, the Committee would recommend legislation to im-
20 plement that program which is currently ongoing. Now, I
21 would think probably--to draft that legislation, they would
22 probably adopt--use Regents' rules and regulation as a
23 point of departure to prepare that legislation so that the
24 Committee--the Chairman at least will not recommend that
25 these programs be changed, either broadened, narrowed or



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1 otherwise. And his recommendation to the General Assembly
2 as a part of this package would be to keep the programs as
3 they presently exist from the Committee. Now, if the
4 General Assembly wanted to fool with them, that's all right.
5 That would be out of the Committee's hands. But he would
6 recommend from the Committee level to the General Assembly
7 to keep the programs as they were. In that case, I would
8 think the Regents present rules and regulations would be--
9 form the basis for the statutes for this program. You
10 would also have to implement--do a statute for the medical
11 program, for example. And I think the Regents has got some
12 self-executing authority in here under another scholarship
program, which I understand is on going too.

14 MR. BUCK:

15 Henry, would you do me a favor and draw up a--you or
16 Shealey--let something come from you in writing relative
17 to your concern about that particular problem so we'll
18 have it--Harvey will have it. Thank you.

19 MR. NEAL:

20 [Indicating affirmative response.]

21 MR. HUDDLESTON:

22 Mr. Chairman, could I say one thing and then I'll
23 hush. I want Henry and Shealey to know that I'm not asking
24 for a waiver of tuition. There is a constitutional amend-
25 ment that allows State agencies now that get Federal



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1 funds, the General Assembly is appropriating money to
2 match these funds that these people can get training. But
3 the other agencies in State government are covered under
4 the gratuities section and it's unconstitutional. And the
5 thing I'm asking for is for the other agencies to be able
6 to pay the tuition for an employee they think should be
7 able to go to school.

8 MR. NEAL:

9 We Don't have a bit of quarrel with you.

10 MR. MCCOY:

11 I don't have any quarrel about that at all. The only
12 problem is the waiver of tuition. That waiver does give
a problem.

14 MR. PAYTON:

15 The waiver doesn't really go with your problem.

16 MR. NEAL:

17 I think, Mr. Chairman, Don said he inserted waiver of
18 tuition, as I recall, principally because of the sixty-two
19 year old amendment which is on our minds. But I've been
20 around long enough to know that this could really open up
21 a Pandora's Box and create all sorts of problems for the
22 State government.

23 MR. PAYTON:

24 I'd like to comment. This is here on my draft as a
25 result of a discussion with Harvey and Senator Holloway and



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1 their feelings that--along those lines. But I'd like to
2 come back and make this point. I have no personal interest
3 in this. This is a Regents matter and it was discussed
4 between us because it appeared on the original draft and
5 why is it there; what it sought to accomplish and so forth.
6 I said, "Well, I think the whole thing could be accom-
7 plished in four words rather than a paragraph if that's
8 what you want to do." I wholeheartedly agree with Henry
9 that the Regents are on the horns of a dilemma. They've
10 got a provision now that they find a little difficult to
11 live with and yet go to another one that might be even more
12 difficult to live with. And would simply just like to
13 say this, Mr. Buck. What Henry has expressed is along the
14 same lines as what I stated to you right before lunch.
15 It's a tough job to do, but one of the toughest jobs the
16 legislature has to do in order to fulfill its responsibil-
17 ities is to ~~kill~~ bad legislation. It's more important to
18 kill bad legislation than to pass good legislation perhaps.
19 And as I indicated, as a lawyer, any lawyer with a client
20 with fifteen dollars or whatever it costs now can go into
21 court and file a suit, whether it's a good suit or bad
22 suit. And any representative can introduce a piece of
23 legislation because of a sincere interest or pressure to
24 aid--provide this student aid for this groups of students
25 or that groups of students. So I have the same feeling,

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1 Henry, as you have as it relates to other pro-grams, as it
2 relates to a legislator in good faith introducing a bill:
3 "Well, now, I have a duty to this category of students;
4 they really need help--to appropriate some money just to
5 help so-and-so." So what I'm saying is that it is in our
6 desire and I think we've come a long ways but we can go
7 further--that as time goes by, we can cut back on cate-
8 gorical programs of that type which sprinkle on a few here,
9 sprinkle on a few there and leave out all those in between.
10 And adhere to a comprehensive student-aid program of loans
11 and grants based on need and tuition equalization and keep
12 it at that. And monitor it and control it rather than
13 continuing to sprinkle money in categorical programs. So
14 Henry is concerned about someone coming and saying, "Let's
15 waive tuition for this group of students." I'm just as
16 concerned about someone coming up and throwing in a bill
17 to say, "Well, let's provide an extra loan or grant to this
18 group of students."

19 MR. NEAL:

20 The psychology of it's a little bit different, though.
21 Don. One place you're paying out money and in another
22 place, "Aw, it doesn't cost anything."

23 MR. MCCOY:

24 If there's one thing wrong with that sixty-two year
25 old legislation constitutional amendment, it says we don't



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1 get a dime for those students. So it doesn't cost any-
2 thing.

3 MR. JONES:

4 I wonder if I might ask what the experience has been
5 under that. Or is it--

6 MR. McDONALD:

7 It's too early to tell. This is our first--we'll
8 know more about it after this term. Some of the possibil-
9 ities are just frightening and we hope none of this will
10 occur. For the people who envisioned the thing, it was
11 noble and they were not concerned about those people who
12 pushed it and lobbied for it. But there's another group
13 of people who see this as a source of income. And it's
14 created all kinds of problems that are not certain yet.
15 We don't have shuffleboard for student activities. We
16 don't have health care facilities. We don't--everyone of
17 these people could qualify for financial aid, that the law
18 now requires no discrimination--if he comes to a bank, a
19 man 84 years old, you've got to lend him money although his
20 life expectancy is down the drain.

21 MR. PAYTON:

22 You see, this is frightening to us on the student-aid
23 side because right now we have not age limits in the law.
24 I don't know if we can legally put them there. It's some-
25 thing we really ought to face because theoretically such a



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1 person sixty-three years old can go to school tuition-free
2 and probably have low-income anyway so they'd qualify for
3 a Federal grant and they'd qualify for one of our State
4 grants and if some lender would make them a loan, they'd
5 make them a loan that they'd probably never live long enough
6 to pay it back and I'd still have to guarantee it. So we
7 have problems with it.

8 MR. MCDONALD:

9 Same thing with housing. They can move into student
10 housing; it would be an old folks home.

11 MR. PAYTON:

12 In other words, after you get over sixty-two, with
the combination of this you would retire into college.

14 MR. MCDONALD:

15 I want to add that all these things haven't material-
16 ized but these are things that people didn't think about
17 and there are people--we've got a guy around town wanting
18 to paddle lists to our schools. There are between eight
19 thousand people within rock-throwing distance of this
20 Capitol if you've got a good arm that could just ruin us.
21 And there are people who are looking toward financial aid
22 as a source of income just like abuse that you've heard
23 about in the financial aid--we've got the same abuse in
24 this area of financial aid in Federal programs and also in
25 State programs. And all we're saying is we need to make



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1 sure that this doesn't get abused. We want the old folks
2 to come and we've always had them and we think they're
3 going to make a contribution. We don't expect them to
4 come in these large numbers but we do--we've already got
5 evidence of people having seminars "Hot to Get on Food
6 Stamps"; "How to Get on Welfare"; "How to Get Free Tuition
7 and Financial Aid." And it is a problem.

8 MR. BUCK:

9 Do you want to proceed?

10 MR. PAYTON:

11 Sub-paragraph (2) deals with the guaranteed loan program
12 and it's in a separate paragraph as it should be. The
13 original language says that public funds may be expended
14 "To guarantee the payment of educational loans..." Now,
15 ladies and gentlemen, the program as it's established is
16 established under a State authority. The corporation is
17 the guaranty agency. We guaranteed \$112 million in educa-
18 tional loans. We have a good loan pro-gram. But the State
19 of Georgia itself is not liable for one dollar of that
20 guarantee. There is in no way--liable for it. Now, the
21 proposed language wouldn't say that the State would be but
22 it says that public funds could be expended to guarantee
23 the payment of and it might infer it a little bit. So as
24 redrafted it says "To provide for a program of guaranteed
25 loans to students for educational purposes..." That's just



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1 the way it is in the present Constitution; "to pay interest,
2 interest subsidies and fees to lenders on such loans..."
3 Let me explain that. The present Constitution passed in
4 1965 before there was any Federal supportive program
5 actually mandated, Mr. Chairman, that the State pay inter-
6 est on loans. And we have been in violation of the Consti-
7 tution a number of times. Our Constitution says that the
8 State shall pay the interest on loans. Well, Federal law
9 came along and the Federal government paid that interest
10 for about 97 percent of the students and we're paying it
11 for the other three or four percent, you see. What do I
12 mean by interest subsidies and fees? The interest rate on
13 those loans was originally fixed by law at six percent and
14 later raised to seven. It is still seven today and that's
15 mandated in the Federal law; we can't change it. In 68-69
16 and from 73-76, this program was almost killed because
17 there was no way it could compete--no way a lender could
18 lend money at that kind of an interest rate when the cost
19 of money was higher. At that time we got an opinion from
20 the Attorney General that the language which said "The
21 State shall pay interest," could be construed that--to mean
22 that the State could pay an interest subsidy. So with
23 that and with some funds that you allowed us to have, we've
24 now begun to pay a subsidy to the lenders--a one and a half
25 discount just this year. And our volume this year is running



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1 right now twenty percent above last year which--it's having
2 its impact so--but we need to say interest subsidies and
3 fees to make that clear.

4 MR. BUCK:

5 Well, you've got to have this in there so you can stay
6 in business, really, because what banking institution's
7 experienced in those years you mentioned, they're just not
8 going to lend you the money.

9 MR. PAYTON:

10 Not only that but those that had loaned the money and
11 were stuck with those portfolios lost the money during
12 those years. So we have the whole job to do over again in
13 rebuilding the program. The third phrase, "and the General
14 Assembly is authorized to provide such tax exemptions to
15 lenders as shall be deemed advisable in connection with
16 such program." That's coming right out of the present Con-
17 stitution except I've added the words "to lenders" to make
18 sure that it's clear that the tax exemption is to lenders.
19 Now, the legislature again last year passed a statute to
20 implement and make student lenders partially tax exempt.
21 That too, has contributed to our twenty percent growth
22 this year. So anyway that's very, very short. It's con-
23 cise. I think it's as concise as it can possibly be got-
24 ten and cover the essential points.

25 MR. BUCK:



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Any questions about that of Don?

MR. PAYTON:

If not, then subparagraph (3) is just a matching provision: "To match funds now or hereafter available for student assistance purposes under any Federal law."

Subparagraph (b) has to do with personal contributions -- people that make -- anybody that wants to make a contribution "in support of any student assistance program now or hereafter established under provisions of this Article may" -- that's permissive as drafted -- "be deductible for State income tax purposes as now or hereafter provided by law."

That is already in the law but it related only to one program there. It should relate to all. The decision is the legislature's of course. Any questions on that point?

MR. GRUBBS:

Would that contemplate a direct contribution to an individual, would be a deductible?

MR. PAYTON:

"Contributions made in support of any...program now or hereafter established under...this Article..." This would be a program established by the General Assembly. We have had contributions of about \$100,000, but it came in a different way from the Georgia golfer, Doug Sanders. That was not his personal contribution, but money raised.

MR. BUCK:



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1 The General Assembly would have to give the exemption

2 --

3 MR. GRUBBS:

4 --give its blessings or whatever appropriate?

5 MR. BUCK:

6 Yes, sir.

7 MR. PAYTON:

8 Paragraph II relates to Guaranteed Revenue Debt. Ar-
 9 ticle VII--if you'll remember, I think it was Senate Bill
 10 42, Senator Riley I believe was one of the primary sponsors
 11 of back in 1972 where he rewrote almost all of Article VII
 12 in its entirety or at least Section III of it relating to
 13 State debt. And in that time after really about three
 14 years negotiations with Ernie Davis, Senator Riley and
 15 others, it was agreed and language was put into the Guarant-
 16 teed Revenue Debt Section, and it reads as follows, and it
 17 relates to Guaranteed Revenue Debt--that it may be issued.
 18 And it says this: "To make or purchase or lend or deposit
 19 against the security of loans to citizens of the State for
 20 educational purposes." That's very brief. Later, it puts
 21 a limit on it and whatnot. This is an important section to
 22 members of the Committee and one I think we will really
 23 need and want to implement within two years--two to three--
 24 and one that we can implement with no need for an appropri-
 25 ation and one that will not cost the State one penny but



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1 will yet double the lender participation in the loan pro-
2 gram. That sounds like magic; it is magic. But with this
3 provision a couple of years from now, at no cost, we can
4 really produce loan funds needed by many students. How-
5 ever, it is so brief, a couple--there have been a few
6 questions as to when we reach that point of bond valida-
7 tion if we ever do, is it quite as clear as it should be.

8 Paragraph II here sounds a little repetitious but it
9 would be in the Constitution and read--the entire material
10 with this and it would clarify and make it clear what would
11 be intended. "Guaranteed Revenue Debt may be incurred to
12 provide funds to make"--this covers the word 'make'--"make
13 loans to students for educational purposes, to purchase
14 loans made to students for educational purposes"--now, that
15 refers to refinancing of a commercial lender in the pur-
16 chasing aspect. Perhaps purchased while in school; resell
17 or matured. In other words, secondary financing--"or to
18 lend or make deposits of such funds with lenders which shall
19 be secured by loans made to students for educational pur-
20 poses." Remembering now, that those loans themselves are
21 one hundred percent guaranteed and the pledge of those
22 loans for the deposit of these funds of--the while thing
23 would roll over and over. We don't even need an appropria-
24 tion of the State to finance this. We've got money our-
25 selves that would underwrite the underwriting. We could



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1 operate it and make a profit and actually not only
2 wouldn't it cost the State any money, but financially I
3 could make a profit in doing it. In the meantime I could
4 go to some banks in Columbus and Savannah and Atlanta and
5 say, "All right. Now, you will help students in your area
6 and you'll get ten percent on the loans. I can deposit
7 funds with you at four and three-quarters or five percent
8 on a long-term time deposit basis. And you pledge your
9 portfolio as security against that deposit." It would
10 give the maturity of those deposits to the maturity of the
11 revenue bonds and it would roll itself over. It would be
12 moneymaking and we could double the loan program in a couple
of years time.

14 MR. BUCK:

15 Don, didn't you state earlier to me that you found you
16 were having problems in your metropolitan areas such as
17 you mentioned--Savannah, Augusta, Macon, Columbus--about
18 institutions participating in that program; is that not
19 true?

20 MR. PAYTON:

21 That's the main areas. The backbone of the program
22 has always been the small town and the medium-size city and
23 the medium-size bankers. Our major problems have been with
24 the large banks. I'm not being critical; don't get me
25 wrong. Because there are reasons for it. But C&S, First



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1 National-Columbus, CB&T, Savannah Trust--they're big banks.
2 They deal with a lot of money. They can make \$100,000
3 loans with businessmen a lot quicker than they can make
4 a \$1000 loan to a student. It has to be sold on a public
5 relations point of view first but the yield's got to be
6 adequate. Now, the yield killed us; we've gotten it back
7 to par, let's say. But with this added refinancing, they
8 wouldn't have any excuse left.

9 "Any such debt shall be incurred in accordance with
10 the procedures of Article VII"--and that outlines it--
11 covers it fully there.

12 Public Authorities relates to the ongoing nature of
13 the thing, as Harvey has mentioned earlier. "Public author-
14 ities or public corporations heretofore or hereafter
15 created for such purposes shall be authorized to administer
16 student assistance programs, and, in connection therewith,
17 may exercise such powers as may now or hereafter be pro-
18 vided by law."

19 If this is--if an amendment along these lines is rati-
20 fied, I know of no legislation that we would need at this
21 session because all of our programs exist under current
22 law and this recognizes laws now or hereafter existing.
23 They would need legislation, I think, for the Medical
24 Board and Regents area. I would contemplate however--and
25 Senator Holloway and I have talked about it--since our



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1 laws are so scattered and program by program and there are
2 inconsistencies between them, that if this is proposed and
3 during the period of next year, that with the help of the
4 lawyers, that we recodify our laws and programs, chapter
5 by chapter, including a bond chapter and have it ready for
6 the next session of the legislature for enactment.

7 I'd be happy to answer any further questions you might
8 have.

9 MR. NEAL:

10 Don, I think you've already answered this question
11 but I believe you said that, in your opinion, Paragraph (1)
12 of--Paragraph I(a)(1) was broad enough to include this
scholarship granted by the State Medical Education Board?

14 MR. PAYTON:

15 Oh, yes. But you need a statute to do it.

16 MR. NEAL:

17 You would need a statute after this were adopted to
18 do it right.

19 MR. PAYTON:

20 Yes, but if this were adopted next November, what
21 would it do to you between November and the time you could
22 get a statute?

23 MR. NEAL:

24 Well, if this were adopted next November, we've al-
25 ready got--our program's already written into the Georgia



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1 Constitution.

2 MR. PAYTON:

3 If this were adopted, it would die.

4 MR. NEAL:

5 Yes, if this were adopted, that would repeal that so
6 we would need a--

7 MR. PAYTON:

8 Basically take your Constitution and just write as a
9 statute.

10 MR. NEAL:

11 All we'd have to do is take the Constitution--we're
12 the only one in the whole United States that's written in
the State Constitution.

14 MR. PAYTON:

15 Thank you, Mr. Chairman.

16 MR. BUCK:

17 Thank you, Don. We appreciate the time and effort
18 that you've expended on this proposal. Harvey, have you
19 got anything that you would like to address--

20 MR. FINDLEY:

21 No, sir. If there's any questions that we haven't
22 already dealt with, I--Don, I think, has handled most of
23 them and you can see what the problems are. The Regents
24 still have some problems and there may be some others. I
25 think, Mr. Chairman, if there's any policy matters that



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1 would give us direction in preparing a new draft of it--

2 MR. PAYTON:

3 There's one inherent thing not mentioned, which I
4 might add. If such an amendment was proposed, it would
5 abolish the constitutional status of the Scholarship
6 Commission, of the Medical Education Board and any other
7 board that is now in the Constitution. They would all be-
8 come statutory. And there are programs in the Constitution
9 now that have never been implemented. There are programs
10 that are in there that were later phased out. So this
11 would clean out all of that.

12 MR. BUCK:

13 Any members of the Committee have any questions that
14 they might want or expressions?

15 MR. JONES:

16 I'd like to be clear. Harvey, are you--this is accep-
17 table to you?

18 MR. FINDLEY:

19 Yes, sir. For whatever it's worth, I like the basic
20 approach. Now, I understand the Regents problem but I think
21 maybe it might be worthwhile considering that while the
22 General Assembly can be pressured--and there's no question
23 about that; we're not saying anything here that's not
24 known--in the adopted program, that that also works on con-
25 stitutional amendments too. It's too easy in my opinion to



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1 amend the Constitution of Georgia. And in a way you
2 shift responsibility when you go the constitutional amend-
3 ment route. Because what can be wring with lettting the
4 people vote on it? So frequently I think it's easier to
5 get a constitutional amendment through than it is a statute.
6 Because the buck stops there is passing that statute. But
7 in the constitutional amendment it goes--it passes the
8 buck on out to the people so I think that's a consideration
9 that--in considering whetheror not you want this broad
10 program. Now, the Committee, I think, could very well con-
11 sider and rethink its position on the--since it relates
12 directly, I don't think there's any question about the
13 Committee's authority to repeal the sixty-two and over
14 program and just not speak to it at all in here--just
15 eliminate the program. Leave out tuition grants complete-
16 ly if that was the policy position that the Committee
17 wanted to recommend. I personally believe that it would
18 be better statutory than it would be in the Constitution,
19 is my own feeling.

20 MR. JOHNSON:

21 Harvey, what would happen if we recommended or put
22 into this language the prohibition of waiver of fees which
23 I think, can grant authority as well as deny it, or we can
24 deny as well as grant it.

25 MR. FINDLEY:



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1 Yes, sir. I think that's--those are policy matters
2 that I think are alternatives and there'll be others.

3 MR. JOHNSON:

4 Would that automatically repeal this sixty-two--age
5 sixty-two amendment?

6 MR. FINDLEY:

7 Mr. Neal suggests--I think if I understand it--that
8 what they would like to see is see the--and maybe they're
9 talking about what would be possible here; I don't know--
10 but to leave the sixty-two and over provision in the Con-
11 stitution as it presently exists--self-executing provision
12 in the Constitution that mandates that program that they're
13 now trying to crank up and then leave out any mention of
14 waiver of fees here. I think that you could prohibit
15 waiver of fees, either as to the University System--of
16 course there wouldn't be any waiver of fees insofar as any
17 private educational institutions are concerned that would
18 be involved so there'd be--there's all sorts of policy
19 considerations that could do that.

20 MR. JOHNSON:

21 Well, aside from this one little controversy, the rest
22 of the language is satisfactory to you?

23 MR. FINDLEY:

24 Yes, sir. I'm--I'm--needless to say, it's tentative
25 and we'll all want to rethink it and look at it again and

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1 let everybody make suggestions. Dr. Payton and I--unfortu-
2 nately we were just unable to physically get together except
3 by telephone until today to go over--we talked about it on
4 the telephone considerably. With the reservation that
5 we'll all want to look at it again--I will too and I'm sure
6 Dr. Payton will want to look at it again--my feeling is that
7 I like it and it seems like a pretty sound approach to it.

8 MR. JOHNSON:

9 In other words, you'd be willing to substitute as a
10 take-off document for the one you put in?

11 MR. FINDLEY:

12 Yes, sir. If we had been able to get together--the
13 Chairman wanted to get out a proposal as a point of depart-
14 ture for the Committee to consider. Being unable to get
15 together and do the thing jointly, like we had intended to
16 do and like the Chairman intended to do, I went ahead and
17 prepared simply a point of departure. So this really repre-
18 sents what we would have done had we gotten together to
19 begin with.

20 MR. PAYTON:

21 We were going to get together Friday and Monday and
22 Friday I couldn't make it and Monday you had to leave town.

23 MR. FINDLEY:

24 I had to go to another committee somewhere.

25 MR. PAYTON:



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1 Mr. Chairman, could I connect an error?

2 MR. BUCK:

3 Sure.

4 MR. PAYTON:

5 The first error I made was in failing to introduce
6 two members of my Board of Directors. Dr. Van Sant, for-
7 merly President of Tift College from Forsyth, Georgia, and
8 formerly Chairman of the State Scholarship Commission has
9 been on the Board since its inception twelve years. And
10 Dr. Turpin from Clarksville, retired pharmacist, and is
11 now Chairman of the Board and has likewise been on the
12 Commission since its inception. So they're the two oldest
13 members on the Board, both retired from everything except
14 the State Scholarship Commission.

15 MR. BUCK:

16 We're happy to have you gentlemen with us today.

17 Thank you very much.

18 MR. TURPIN:

19 I'd like to add that this has been very beneficial to
20 both of us who have retired and I'm having to do a little
21 work on the side to live and Dr. Van Sant is having to
22 preach a little on the side to live. And this gave us a
23 new idea about being professional students. I believe
24 that would be a little better, don't you, Dr. Van Sant?

25 DR. VAN SANT:



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1 No, I don't think I want to do that.

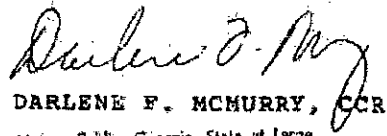
2 MR. BUCK:

3 Okay. Thank you very much. Chairman Holloway has
4 suggested that we get back together on October 12th and I
5 presume and hope that that date will be acceptable to
6 everybody and let's go ahead and assume that that's when
7 we will be getting back together and you'll be getting a
8 notice of that meeting from this Committee's office and
9 also enclosures relative to copies of letters we've re-
10 ceived on retirement and local constitutional amendments
11 and possibly on scholarship. If there's no further busi-
12 ness, the Chair will declare this meeting adjourned. And
thank you all for being here.

14 [Whereupon, the above-entitled matter was concluded at
15 2:15 o'clock p.m.]

16 C E R T I F I C A T E

17 I hereby certify, as the court reporter, that the
18 statements that appear in the proceedings were taken steno-
19 graphically by me, and thereafter reduced to typewriting by me,
20 and that this transcript is a true and accurate record to the
21 best of my ability.

22 
23 DARLENE F. MCMURRY, CCR
24 Notary Public, Georgia, State of Large
25 My Commission Expires Aug. 3, 1983



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ATTACHMENT

2



TAX CREDIT BILL

DONORS

DONATE

FORMS & LINKS

FAQs

CONTACT US

Tax Implications

1. Already receiving a refund before the contribution

A. "Donor" tax payer has GA taxes withheld from his paycheck each month. When "Donor" is filing his taxes, he learns that although his total tax liability is \$5,000, he paid into the system \$4,500. "Donor" would typically get back \$500 as a refund for overpayment of his tax liability. "Donor" made a \$2,500 contribution to the GATAP as well, effectively reducing his GA tax liability from \$5,000 to \$2,500. Since "Donor" had already paid \$4,500 into the system, he will now receive approximately \$3,000 as a refund.

2. Tax bill owed before the contribution

A. "Donor" tax payer has GA taxes withheld from his paycheck each month, but because his withholdings were high, he ended up owing GA taxes when doing his return. "Donor" has a total GA tax liability of \$4,000, but he only paid into the system \$2,600, leaving "Donor" with a \$1,400 tax bill due when filing his GA return. After making a \$2,500 contribution to the GATAP, "Donor" reduced his total tax liability from \$4,000 to \$1,500. Since "Donor" has already paid in \$2,600 in taxes, "Donor" would receive an approximate refund of \$1,100 from the state of GA.

3. Liability less than donation amount

A. "Donor" tax payer has GA taxes withheld from his paycheck each month. At the end of the year, "Donor" learns that he paid into the system \$3,000. He also learns that his total tax liability is only \$2,000. "Donor" should receive a \$1,000 refund. "Donor" made a contribution to the GATAP for \$2,500. Since "Donor's" tax liability was less than the amount he contributed, "Donor" will have to carry forward the balance to next year's tax return. The "Donor" can carry this donation forward for up to 5 years. By making the contribution, "Donor" reduced his tax liability from \$2,000 to \$0 for this year and since "Donor" had paid into the system \$3,000, he would receive an approximate refund of \$3,000. When "Donor" files his tax return the next year, he will use the left over \$500 from the previous year's contribution as a credit on his GA tax liability.

Tax Scenarios

Standard Tax Scenario (assume \$2,500 donation)

1. State tax liability is reduced by \$2,500 on state return
2. Donor takes \$2,500 charitable contribution on the federal return
3. Donor adds back \$2,500 to Georgia AGI as income (get hit for max of 6% on the \$2,500)
4. For standard scenarios, state tax liability is deductible on federal return. By taking this credit, the donor reduces the amount of available state tax liability to deduct on the federal return.

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