

1 ENGROSSED SENATE  
2 BILL NO. 2093

By: Branan, Coffee, Jolley,  
Mazzei, Bingman,  
Barrington, Brown, Crain,  
Ford, Lamb, Aldridge,  
Myers, Reynolds and  
Laughlin of the Senate

5 and

6 Miller of the House

7  
8  
9 [ revenue and taxation - modifying requirements  
10 relating to income tax credit - New Hope  
11 Scholarship Act - codification -  
12 effective dates ]

13  
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.41, as  
16 last amended by Section 15, Chapter 272, O.S.L. 2006 (68 O.S. Supp.  
17 2007, Section 2357.41), is amended to read as follows:

18 Section 2357.41 A. For tax years beginning after December 31,  
19 2000, there shall be allowed a credit against the tax imposed by  
20 Sections 2355 and 2370 of this title or that portion of the tax  
21 imposed by Section 624 or 628 of Title 36 of the Oklahoma Statutes  
22 that would otherwise have been apportioned to the General Revenue  
23 Fund for qualified rehabilitation expenditures incurred in  
24 connection with any certified historic hotel or historic newspaper

1 plant building located in an increment or incentive district created  
2 pursuant to the Local Development Act or for qualified  
3 rehabilitation expenditures incurred after January 1, 2006, in  
4 connection with any certified historic structure.

5 B. The amount of the credit shall be one hundred percent (100%)  
6 of the federal rehabilitation credit provided for in Section 47 of  
7 Title 26 of the United States Code. The credit authorized by this  
8 section may be claimed at any time after the relevant local  
9 governmental body responsible for doing so issues a certificate of  
10 occupancy or other document that is a precondition for the  
11 applicable use of the building or structure that is the basis upon  
12 which the credit authorized by this section is claimed.

13 C. All requirements with respect to qualification for the  
14 credit authorized by Section 47 of Title 26 of the United States  
15 Code shall be applicable to the credit authorized by this section.

16 D. If the credit allowed pursuant to this section exceeds the  
17 amount of income taxes due or if there are no state income taxes due  
18 on the income of the taxpayer, the amount of the credit allowed but  
19 not used in any taxable year may be carried forward as a credit  
20 against subsequent income tax liability for a period not exceeding  
21 ten (10) years following the qualified expenditures.

22 E. All rehabilitation work to which the credit may be applied  
23 shall be reviewed by the State Historic Preservation Office which  
24 will in turn forward the information to the National Park Service

1 for certification in accordance with 36 C.F.R., Part 67. A  
2 certified historic structure may be rehabilitated for any lawful use  
3 or uses, including without limitation mixed uses and still retain  
4 eligibility for the credit provided for in this section.

5 F. The amount of the credit allowed for any credit claimed for  
6 a certified historic hotel or historic newspaper plant building or  
7 any certified historic structure, but not used, shall be freely  
8 transferable, in whole or in part, to subsequent transferees at any  
9 time during the five (5) years following the year of qualification.  
10 Any person to whom or to which a tax credit is transferred shall  
11 have only such rights to claim and use the credit under the terms  
12 that would have applied to the entity by whom or by which the tax  
13 credit was transferred. The provisions of this subsection shall not  
14 limit the ability of a tax credit transferee to reduce the tax  
15 liability of the transferee regardless of the actual tax liability  
16 of the tax credit transferor for the relevant taxable period. The  
17 transferor ~~originally allowed~~ of the credit and the ~~subsequent~~  
18 transferee shall jointly file a copy of the written credit transfer  
19 agreement with the Oklahoma Tax Commission within thirty (30) days  
20 of the transfer. Such filing of the written credit transfer  
21 agreement with the Oklahoma Tax Commission shall perfect such  
22 transfer. The written agreement shall contain the name, address and  
23 taxpayer identification number of the parties to the transfer, the  
24 amount of credit being transferred, the year the credit was

1 originally allowed to the transferor ~~and~~, the tax year or years for  
2 which the credit may be claimed, and a representation by the  
3 transferor that the transferor has neither claimed for its own  
4 benefit nor conveyed such credits to any other transferee. The Tax  
5 Commission shall develop a standard form for use by subsequent  
6 transferees of the credit demonstrating eligibility for the  
7 transferee to reduce its applicable tax liabilities resulting from  
8 ownership of the credit. The Tax Commission shall develop a system  
9 to record and track the transfers of the credit and certify the  
10 ownership of the credit and may promulgate rules to permit  
11 verification of the validity and timeliness of a tax credit claimed  
12 upon a tax return pursuant to this subsection but shall not  
13 promulgate any rules which unduly restrict or hinder the transfers  
14 of such tax credit.

15 G. Notwithstanding any other provisions in this section, on or  
16 after January 1, 2009, if a credit allowed pursuant to this section  
17 which has been transferred is subsequently reduced as the result of  
18 an adjustment by the Internal Revenue Service, Tax Commission, or  
19 any other applicable government agency, only the transferor  
20 originally allowed the credit and not any subsequent transferee of  
21 the credit, shall be held liable to repay any amount of disallowed  
22 credit.

23 H. As used in this section:  
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1           1. "Certified historic hotel or historic newspaper plant  
2 building" means a hotel or newspaper plant building that is listed  
3 on the National Register of Historic Places within thirty (30)  
4 months of taking the credit pursuant to this section.

5           2. "Certified historic structure" means a building that is  
6 listed on the National Register of Historic Places within thirty  
7 (30) months of taking the credit pursuant to this section or a  
8 building located in Oklahoma which is certified by the State  
9 Historic Preservation Office as contributing to the historic  
10 significance of a certified historic district listed on the National  
11 Register of Historic Places, or a local district that has been  
12 certified by the State Historic Preservation Office as eligible for  
13 listing in the National Register of Historic Places; and

14           3. "Qualified rehabilitation expenditures" means capital  
15 expenditures that qualify for the federal rehabilitation credit  
16 provided in Section 47 of Title 26 of the United States Code and  
17 that were paid after December 31, 2000. Qualified rehabilitation  
18 expenditures do not include capital expenditures for nonhistoric  
19 additions except an addition that is required by state or federal  
20 regulations that relate to safety or accessibility. In addition,  
21 qualified rehabilitation expenditures do not include expenditures  
22 related to the cost of acquisition of the property.

1           SECTION 2.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 2357.206 of Title 68, unless  
3 there is created a duplication in numbering, reads as follows:

4           A. This act shall be known and may be cited as the "New Hope  
5 Scholarship Act".

6           B. For tax years beginning after December 31, 2008, there shall  
7 be allowed against the tax imposed by Section 2355 of Title 68 of  
8 the Oklahoma Statutes a credit for any taxpayer who makes a  
9 contribution to an eligible scholarship-granting organization. The  
10 credit authorized by this section shall be equal to fifty percent  
11 (50%) of the total amount of contributions made during a taxable  
12 year, not to exceed an amount which is equal to fifty percent (50%)  
13 of the taxpayer's total tax liability for the taxable year in which  
14 the credit provided in this section is claimed. The total of the  
15 credits authorized by this section shall not exceed Five Million  
16 Dollars (\$5,000,000.00) annually, to be allocated by the Oklahoma  
17 Tax Commission on a first-come, first-served basis.

18           C. As used in this section:

19           1. "Eligible student" means a student who:

20           a. is lawfully present in the United States and who is a  
21 member of a household whose total annual income during  
22 the preceding tax year does not exceed an amount equal  
23 to two and one-half (2 1/2) times the income standard  
24 used to qualify for a free or reduced school lunch.

1           Once a student meets the requirements of this  
2           subparagraph, such student remains eligible regardless  
3           of household income until such student graduates high  
4           school or reaches twenty-one (21) years of age,  
5           whichever occurs first,

6           b.   has not been enrolled in or attended an elementary or  
7           secondary private school in this state within eighteen  
8           (18) months preceding the award of an educational  
9           scholarship, and

10          c.   during the immediately preceding school year, attended  
11          or, by virtue of the location of such student's place  
12          of residence, was eligible to attend a public school  
13          in a county in this state with a population of more  
14          than four hundred fifty thousand (450,000) according  
15          to the latest Federal Decennial Census which had been  
16          identified for school improvement for three (3) or  
17          more years as determined by the State Board of  
18          Education pursuant to the requirements of the No Child  
19          Left Behind Act of 2001, P.L. No. 107-110;

20          2.   "Educational scholarships" means grants to eligible students  
21          to cover all or part of the tuition, fees and transportation costs  
22          of a qualified private school, located within the geographic  
23          boundaries of the school district of the student's residence, which  
24          is accredited by the State Board of Education or an approved

1 accrediting association approved by the Board pursuant to Section 3-  
2 104 of Title 70 of the Oklahoma Statutes;

3 3. "Low-income eligible student" means an eligible student who  
4 qualifies for a free or reduced price lunch;

5 4. "Qualified school" means an elementary or secondary private  
6 school in a county in this state with a population of more than four  
7 hundred fifty thousand (450,000) according to the latest Federal  
8 Decennial Census which is:

9 a. accredited by the State Board of Education or an  
10 approved accrediting association approved by the Board  
11 pursuant to Section 3-104 of Title 70 of the Oklahoma  
12 Statutes,

13 b. in compliance with all applicable health and safety  
14 laws and codes,

15 c. has a stated policy against discrimination in  
16 admissions on the basis of race, color, national  
17 origin or disability, and

18 d. ensures academic accountability to parents and  
19 guardians of students through regular progress  
20 reports; and

21 5. "Scholarship-granting organization" means an organization  
22 which:

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- 1 a. is a nonprofit entity exempt from taxation pursuant to  
2 the provisions of the Internal Revenue Code, 26  
3 U.S.C., Section 501(c)(3),
- 4 b. distributes periodic scholarship payments as checks  
5 made out to a student's parent or guardian and mailed  
6 to the qualified school where the student is enrolled,
- 7 c. expends at least ninety percent (90%) of its annual  
8 revenue on educational scholarships as defined in  
9 paragraph 2 of this subsection. For purposes of this  
10 paragraph, "annual revenue" means the total amount or  
11 value of contributions received by an organization  
12 from taxpayers awarded credits during the  
13 organization's fiscal year and all amounts earned from  
14 interest or investments,
- 15 d. makes annual expenditures for educational scholarships  
16 for low income eligible students, as defined in  
17 paragraph 3 of this subsection, in an amount equal to  
18 the percentage of low income eligible students in the  
19 county where the scholarship-granting organization  
20 provides the majority of its scholarships,
- 21 e. ensures that scholarships are portable during the  
22 school year and can be used at any qualified school  
23 that accepts the eligible student, and
- 24 f. has policies in place to:

- 1 (1) carry out criminal background checks on all  
2 employees and board members to ensure that no  
3 individual is involved with the organization who  
4 might reasonably pose a risk to the appropriate  
5 use of contributed funds,
- 6 (2) maintain full and accurate records with respect  
7 to the receipt of contributions and expenditures  
8 of those contributions and supply such records  
9 and any other documentation required by the Tax  
10 Commission to demonstrate financial  
11 accountability, and
- 12 (3) encourage the parents or guardians of students  
13 receiving scholarships to choose a qualified  
14 school in the area near the student's residence.

15 D. In no event shall the amount of the credit exceed the amount  
16 of any tax liability of the taxpayer.

17 E. Any credits allowed but not used in any tax year may be  
18 carried over, in order, to each of the three (3) years following the  
19 year of qualification.

20 F. The Tax Commission shall promulgate rules necessary to  
21 implement this act.

22 SECTION 3. Section 1 of this act shall become effective January  
23 1, 2009.

1 SECTION 4. Section 2 of this act shall become effective  
2 November 1, 2008.

3 Passed the Senate the 13th day of March, 2008.

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\_\_\_\_\_  
Presiding Officer of the Senate

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7 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
8 2008.

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Presiding Officer of the House  
of Representatives

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