

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 1714

By: Ford of the Senate

and

Denney of the House

7
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9 COMMITTEE SUBSTITUTE

10 An Act relating to revenue and taxation; amending 68
11 O.S. 2011, Section 2357.206, which relates to the
12 Oklahoma Equal Opportunity Education Scholarship Act;
13 updating statutory language; clarifying statutory
14 language; allowing credit to be used against certain
15 tax liability; deleting certain limitation on credits
16 claimed; allowing certain business entities to
17 transfer the tax credit to certain persons for
18 certain years; allowing certain designation;
19 prohibiting entities from claiming the same credit
20 for the same contribution; prohibiting entity from
21 carrying forward or back or selling or assigning the
22 credit; limiting amount of claim; modifying how the
23 Oklahoma Tax Commission allocates the credit;
24 modifying how eligibility for contribution is
determined; modifying certain definition; changing
process for allocating the credits; requiring certain
notification; deleting certain contribution caps;
deleting certain publishing requirement; requiring
certain organizations to submit an application
requesting a tax credit; providing for approval on a
certain basis; and providing an effective date.

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.206, is
2 amended to read as follows:

3 Section 2357.206 A. This act shall be known and may be cited
4 as the "Oklahoma Equal Opportunity Education Scholarship Act".

5 B. 1. Except as provided in subsection E of this section,
6 after ~~the effective date of this act~~ August 26, 2011, there shall be
7 allowed a credit for any taxpayer who makes a contribution to an
8 eligible scholarship-granting organization. The credit shall be
9 equal to fifty percent (50%) of the total amount of contributions
10 made during a taxable year, not to exceed One Thousand Dollars
11 (\$1,000.00) for single individuals, Two Thousand Dollars (\$2,000.00)
12 for married individuals filing jointly, or One Hundred Thousand
13 Dollars (\$100,000.00) for any taxpayer which is a legal business
14 entity including limited and general partnerships, corporations, and
15 limited liability companies; ~~provided, if total credits claimed~~
16 ~~pursuant to this paragraph exceed the caps established pursuant to~~
17 ~~paragraph 2 of this subsection, the credit shall be equal to the~~
18 ~~taxpayer's proportionate share of the cap for the taxable year, as~~
19 ~~determined pursuant to subsection G of this section.~~

20 2. If a legal business entity is considered a pass-through
21 entity, to include limited and general partnerships, corporations,
22 Subchapter S corporations, and limited liability companies, and does
23 not intend to use all approved tax credits under this subsection, it

1 may elect in writing to transfer all or a portion of the tax credit
2 to shareholders, members or partners in proportion to the share of
3 the distributive income of the entity to which the shareholder,
4 member or partner is entitled for use in the taxable year in which
5 the contribution is made or in the two (2) taxable years following
6 the year in which the contribution is made. The election shall
7 designate the year in which the transferred tax credits are to be
8 used and shall be made according to procedures established by the
9 Tax Commission. A pass-through entity and a shareholder, member or
10 partner of a pass-through entity shall not claim the tax credit
11 under this subsection for the same contribution. The shareholder,
12 member or partner may not carry forward, carry back, obtain a refund
13 of or sell or assign the tax credit. The shareholder, member or
14 partner may claim the credit on an individual or joint return, but
15 the tax credit may not exceed the separate income of that
16 shareholder, member or partner or reduce the tax liability of the
17 taxpayer to less than zero (0).

18 3. a. The total credits authorized by paragraph 1 of this
19 subsection for all single individuals and married
20 individuals filing jointly shall not exceed One
21 Million Seven Hundred Fifty Thousand Dollars
22 (\$1,750,000.00) annually.

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1 b. The total credits authorized by paragraph 1 of this
2 subsection for all other taxpayers not subject to
3 subparagraph a of this paragraph shall not exceed One
4 Million Seven Hundred Fifty Thousand Dollars
5 (\$1,750,000.00) annually.

6 c. Each cap on total credits as provided for in this
7 paragraph shall be allocated by the Oklahoma Tax
8 Commission on a first-come, first-served basis as
9 provided in subsection G of this section.

10 C. 1. Except as provided in subsection E of this section,
11 ~~after the effective date of this act~~ August 26, 2011, there shall be
12 allowed a credit for any taxpayer who makes a contribution to an
13 eligible educational improvement grant organization. The credit
14 shall be equal to fifty percent (50%) of the total amount of
15 contributions made during a taxable year, not to exceed One Thousand
16 Dollars (\$1,000.00) for single individuals, Two Thousand Dollars
17 (\$2,000.00) for married individuals filing jointly, or One Hundred
18 Thousand Dollars (\$100,000.00) for any taxpayer which is a legal
19 business entity including limited and general partnerships,
20 corporations, and limited liability companies; ~~provided, if total~~
21 ~~credits claimed pursuant to this paragraph exceed the cap~~
22 ~~established pursuant to paragraph 3 of this subsection, the credit~~
23 ~~shall be equal to the taxpayer's proportionate share of the cap for~~

1 ~~the taxable year, as determined pursuant to subsection G of this~~
2 ~~section.~~

3 2. If a legal business entity is considered a pass-through
4 entity, to include limited and general partnerships, corporations,
5 Subchapter S corporations, and limited liability companies, and does
6 not intend to use all approved tax credits under this subsection, it
7 may elect in writing to transfer all or a portion of the tax credit
8 to shareholders, members or partners in proportion to the share of
9 the distributive income of the entity to which the shareholder,
10 member or partner is entitled for use in the taxable year in which
11 the contribution is made or in the two (2) taxable years following
12 the year in which the contribution is made. The election shall
13 designate the year in which the transferred tax credits are to be
14 used and shall be made according to procedures established by the
15 Tax Commission. A pass-through entity and a shareholder, member or
16 partner of a pass-through entity shall not claim the tax credit
17 under this subsection for the same contribution. The shareholder,
18 member or partner may not carry forward, carry back, obtain a refund
19 of or sell or assign the tax credit. The shareholder, member or
20 partner may claim the credit on an individual or joint return, but
21 the tax credit may not exceed the separate income of that
22 shareholder, member or partner or reduce the tax liability of the
23 taxpayer to less than zero (0).

1 3. For any taxpayer who makes a contribution to an eligible
2 educational improvement grant organization and makes a written
3 commitment to contribute the same amount for two (2) additional
4 consecutive years the credit shall be equal to seventy-five percent
5 (75%) of the total amount of the contribution established in
6 paragraph 1 of this subsection, not to exceed the amounts
7 established in paragraph 1 of this subsection for the taxable year
8 in which the credit provided in this subsection is claimed;
9 ~~provided, if total credits claimed pursuant to this paragraph exceed~~
10 ~~the cap established pursuant to paragraph 3 of this subsection, the~~
11 ~~credit shall be equal to the taxpayer's proportionate share of the~~
12 ~~cap for the taxable year, as determined pursuant to subsection C of~~
13 ~~this section.~~ The taxpayer shall provide evidence of the written
14 commitment to the Oklahoma Tax Commission at the time of filing the
15 refund claim.

16 ~~3.~~ 4. a. The total credits authorized by paragraph 1 of this
17 subsection for all single individuals, married
18 individuals filing jointly and for all other taxpayers
19 shall not exceed One Million Five Hundred Thousand
20 Dollars (\$1,500,000.00) annually.

21 b. The cap on total credits as provided for in this
22 paragraph shall be allocated by the ~~Oklahoma~~ Tax
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1 Commission on a first-come, first-served basis as
2 provided in subsection G of this section.

3 D. For credits claimed for eligible contributions made during
4 tax year 2014 and thereafter, a credit shall not be allowed by the
5 ~~Oklahoma~~ Tax Commission for contributions made to a scholarship-
6 granting organization or an educational improvement grant
7 organization if that organization's percentage of funds actually
8 awarded or obligated is less than ninety percent (90%). For
9 purposes of this section, the "percentage of funds actually awarded
10 or obligated" shall be determined by dividing the total amount of
11 funds actually awarded or obligated as educational scholarships or
12 educational improvement grants over the most recent twenty-four (24)
13 months by the total amount available to award as educational
14 scholarships or educational improvement grants over the most recent
15 twenty-four (24) months.

16 E. Any tax credits which are earned by a taxpayer pursuant to
17 this section during the time period beginning on ~~the effective date~~
18 ~~of this act~~ August 26, 2011, through December 31, 2012, may not be
19 claimed for any period prior to the taxable year beginning January
20 1, 2013. No credits which accrue during the time period beginning
21 on ~~the effective date of this act~~ August 26, 2011, through December
22 31, 2012, may be used to file an amended tax return for any taxable
23 year prior to the taxable year beginning January 1, 2013.

1 F. As used in this section:

2 1. "Eligible student" means a child of school age who is
3 lawfully present in the United States and who is a member of a
4 household in which the total annual income during the preceding tax
5 year does not exceed an amount equal to three hundred percent (300%)
6 of the income standard used to qualify for a free or reduced school
7 lunch or who, during the immediately preceding school year, attended
8 or, by virtue of the location of such student's place of residence,
9 was eligible to attend a public school in this state which has been
10 identified for school improvement as determined by the State Board
11 of Education pursuant to the requirements of the No Child Left
12 Behind Act of 2001, P.L. No. 107-110. Once a student has received
13 an educational scholarship, as defined in paragraph 3 of this
14 subsection, the student and any siblings who are members of the same
15 household shall remain eligible until they graduate from high school
16 or reach twenty-one (21) years of age, whichever occurs first;

17 2. "Eligible special needs student" means a child of school age
18 who has attended public school in our state with an individualized
19 education program pursuant to the Individuals With Disabilities
20 Education Act, 20 U.S.C.A., Section 1400 et seq.;

21 3. "Educational scholarships" means:

- 22 a. scholarships to an eligible student of up to Five
23 Thousand Dollars (\$5,000.00) or eighty percent (80%)

1 of the average per-pupil expenditure in the school
2 district where the recipient student resides,
3 whichever is greater, to cover all or part of the
4 tuition, fees and transportation costs of a qualified
5 school which is accredited by the State Board of
6 Education or an accrediting association approved by
7 the Board pursuant to Section 3-104 of Title 70 of the
8 Oklahoma Statutes, or

9 b. scholarships to an eligible special needs student of
10 up to Twenty-five Thousand Dollars (\$25,000.00) to
11 cover all or part of the tuition, fees and
12 transportation costs of a qualified school for
13 eligible special needs students which is accredited by
14 the State Board of Education or an accrediting
15 association approved by the Board pursuant to Section
16 3-104 of Title 70 of the Oklahoma Statutes;

17 4. "Low-income eligible student" means an eligible student or
18 eligible special needs student who qualifies for a free or reduced-
19 price lunch;

20 5. "Qualified school" means an elementary or secondary private
21 school in this state, including schools which provide
22 prekindergarten educational programs for four-year-olds, which:
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- 1 a. is accredited by the State Board of Education or an
2 accrediting association approved by the Board pursuant
3 to Section 3-104 of Title 70 of the Oklahoma Statutes,
4 b. is in compliance with all applicable health and safety
5 laws and codes,
6 c. has a stated policy against discrimination in
7 admissions on the basis of race, color, national
8 origin or disability, and
9 d. ensures academic accountability to parents and
10 guardians of students through regular progress
11 reports;

12 6. "Qualified school for eligible special needs students" means
13 an elementary or secondary private school in a county in this state;

14 7. "Scholarship-granting organization" means an organization
15 which:

- 16 a. is a nonprofit entity exempt from taxation pursuant to
17 the provisions of the Internal Revenue Code, 26
18 U.S.C., Section 501(c)(3),
19 b. distributes periodic scholarship payments as checks
20 made out to an eligible student's or eligible special
21 needs student's parent or guardian and mailed to the
22 qualified school where the student is enrolled,
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1 c. spends or obligates no more than ten percent (10%) of
2 its annual revenue on expenditures other than
3 educational scholarships as defined in paragraph 3 of
4 this subsection,

5 d. spends or obligates each year ~~a portion~~ not less than
6 sixty-five percent (65%) of its expenditures on
7 educational scholarships for low-income eligible
8 students, as defined in paragraph 4 of this
9 subsection, ~~in an amount equal to or greater than the~~
10 ~~percentage of low-income eligible students in the~~
11 ~~state,~~

12 e. ensures that scholarships are portable during the
13 school year and can be used at any qualified school
14 that accepts the eligible student or at any qualified
15 school for special needs students that accepts the
16 eligible special needs student,

17 f. registers with the ~~Oklahoma~~ Tax Commission as a
18 scholarship-granting organization, and

19 g. has policies in place to:

- 20 (1) carry out criminal background checks on all
21 employees and board members to ensure that no
22 individual is involved with the organization who
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1 might reasonably pose a risk to the appropriate
2 use of contributed funds, and

3 (2) maintain full and accurate records with respect
4 to the receipt of contributions and expenditures
5 of those contributions and supply such records
6 and any other documentation required by the Tax
7 Commission to demonstrate financial
8 accountability;

9 8. "Annual revenue" means the total amount or value of
10 contributions received by an organization from taxpayers awarded
11 credits during the organization's fiscal year and all amounts earned
12 from interest or investments;

13 9. "Public school" means public schools as defined in Section
14 1-106 of Title 70 of the Oklahoma Statutes;

15 10. "Eligible school" means any public school that is not
16 located within a ten-mile radius of a qualified school in this
17 state, or any public school that is located within a ten-mile radius
18 of a qualified school in this state but offers grade-level
19 instruction different from the qualified school or any public school
20 located within a public school district with fewer than four
21 thousand five hundred (4,500) students;

1 11. "Early childhood education program" means a program
2 provided to children who are at least four (4) years of age but not
3 more than five (5) years of age on or before September 1;

4 12. "Innovative educational program" means an advanced academic
5 or academic improvement program that is not part of the regular
6 coursework of a public school but that enhances the curriculum or
7 academic program of the school or provides early childhood education
8 programs to students;

9 13. "Educational improvement grant" means a grant to an
10 eligible public school to implement an innovative educational
11 program for students, including the ability for multiple public
12 schools to make an application and be awarded a grant to jointly
13 provide an innovative educational program; and

14 14. "Educational improvement grant organization" means an
15 organization which:

- 16 a. is a nonprofit entity exempt from taxation pursuant to
17 the provisions of the Internal Revenue Code, 26
18 U.S.C., Section 501(c)(3), and
19 b. contributes at least ninety percent (90%) of its
20 annual receipts as grants to eligible schools for
21 innovative educational programs. For purposes of this
22 subparagraph, an educational improvement grant
23 organization contributes its annual cash receipts when
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1 it expends or otherwise irrevocably encumbers those
2 funds for expenditure during the then current fiscal
3 year of the organization or during the next succeeding
4 fiscal year of the organization.

5 G. Total credits authorized by this section shall be allocated
6 by the Tax Commission as follows:

7 1. ~~By January 10 of the year immediately following each~~
8 ~~calendar year, a~~ A scholarship-granting organization or an
9 educational improvement grant organization which accepts
10 contributions pursuant to this section shall provide electronically
11 to the Tax Commission, within forty-eight (48) hours of acceptance,
12 information on each contribution accepted ~~during such taxable year.~~
13 The Tax Commission shall notify, within forty-eight (48) hours, all
14 scholarship-granting organizations and all educational improvement
15 grant organizations when the tax credit pool statewide cap for the
16 respective organization has been met. At least once each taxable
17 year, the scholarship-granting organization or the educational
18 improvement grant organization shall notify each contributor that
19 Oklahoma law provides for a total, statewide cap on the amount of
20 income tax credits allowed annually as provided in subsections B and
21 C of this section; and

22 2. a. ~~If the Tax Commission determines the total combined~~
23 ~~credits claimed for contributions made to scholarship-~~

1 ~~granting organizations during the most recently~~
2 ~~completed calendar year by all single individual~~
3 ~~taxpayers and married individuals filing jointly are~~
4 ~~in excess of One Million Seven Hundred Fifty Thousand~~
5 ~~Dollars (\$1,750,000.00), plus any additional amount~~
6 ~~allocated pursuant to subsection H of this section,~~
7 ~~the Tax Commission shall determine the percentage of~~
8 ~~the contribution which establishes the proportionate~~
9 ~~share of the credit which may be claimed by any~~
10 ~~taxpayer so that the maximum credits authorized by~~
11 ~~subparagraph a of paragraph 2 of subsection B of this~~
12 ~~section are not exceeded.~~

13 ~~b. If the Tax Commission determines the total combined~~
14 ~~credits claimed for contributions made to scholarship-~~
15 ~~granting organizations during the most recently~~
16 ~~completed calendar year by all taxpayers not subject~~
17 ~~to subparagraph a of this paragraph are in excess of~~
18 ~~One Million Seven Hundred Fifty Thousand Dollars~~
19 ~~(\$1,750,000.00), plus any additional amount allocated~~
20 ~~pursuant to subsection H of this section, the Tax~~
21 ~~Commission shall determine the percentage of the~~
22 ~~contribution which establishes the proportionate share~~
23 ~~of the credit which may be claimed by any taxpayer so~~

1 ~~that the maximum credits authorized by subparagraph b~~
2 ~~of paragraph 2 of subsection B of this section are not~~
3 ~~exceeded.~~

4 ~~e. If the Tax Commission determines the total combined~~
5 ~~credits claimed for contributions made to educational~~
6 ~~improvement grant organizations during the most~~
7 ~~recently completed calendar year by all single~~
8 ~~individual taxpayers, married individuals filing~~
9 ~~jointly and all other taxpayers are in excess of One~~
10 ~~Million Five Hundred Thousand Dollars (\$1,500,000.00),~~
11 ~~plus any additional amount allocated pursuant to~~
12 ~~subsection H of this section, the Tax Commission shall~~
13 ~~determine the percentage of the contribution which~~
14 ~~establishes the proportionate share of the credit~~
15 ~~which may be claimed by any taxpayer so that the~~
16 ~~maximum credits authorized by subparagraph a of~~
17 ~~paragraph 3 of subsection C of this section are not~~
18 ~~exceeded; and~~

19 ~~3. The Tax Commission shall publish the percentage of the~~
20 ~~contribution which may be claimed as a credit by contributors for~~
21 ~~the most recently completed calendar year on the Tax Commission~~
22 ~~website no later than February 15 of each calendar year for~~
23 ~~contributions made the previous year. Each scholarship-granting~~

1 ~~organization or educational improvement grant organization shall~~
2 ~~notify contributors of that amount annually~~ To claim a tax credit a
3 scholarship-granting organization or the educational improvement
4 grant organization shall submit to the Tax Commission on behalf of
5 the contributor, an application on a form prescribed by the
6 Commission, requesting a tax credit in the amount to be determined
7 by the contribution of the individual or business entity, as
8 provided in subsections B and C of this section. The Tax Commission
9 shall approve tax credits on a first-come, first-served basis from
10 the scholarship-granting organization tax credit pool and the
11 educational improvement grant organization tax credit pool until the
12 total amount of allowed credits are utilized.

13 H. The provisions of this subsection shall be applicable with
14 respect to any calendar year for which any one of the tax credit
15 pools is fully utilized and for which one or both of the remaining
16 tax credit pool amounts are not fully utilized.

17 1. If for any calendar year there is any amount of available
18 credit remaining pursuant to the provisions of paragraph 2 of
19 subsection G of this section, and only one of the other tax credit
20 pools has been fully utilized, the remaining amount from the tax
21 credit pool which was not fully utilized shall be allocated to and
22 added to the total tax credit pool amount for the other tax credit.

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1 2. If for any calendar year there is any amount of available
2 credit remaining pursuant to the provisions of paragraph 2 of
3 subsection G of this section, and the other two tax credit pools
4 have both been fully utilized, the remaining amount from the tax
5 credit pool which was not fully utilized shall be divided by the
6 whole number two (2) and the resulting amount shall be allocated to
7 and added to the amount of available tax credits for each of the
8 other tax credit pools.

9 I. The credit authorized by this section shall not be used to
10 reduce the tax liability of the taxpayer to less than zero (0).

11 J. Any credits allowed but not used in any tax year may be
12 carried over, in order, to each of the three (3) years following the
13 year of qualification.

14 K. 1. In order to qualify under this section, an educational
15 improvement grant organization shall submit an application with
16 information to the ~~Oklahoma~~ Tax Commission on a form prescribed by
17 the Tax Commission that:

18 a. enables the Tax Commission to confirm that the
19 organization is a nonprofit entity exempt from
20 taxation pursuant to the provisions of the Internal
21 Revenue Code, 26 U.S.C., Section 501(c)(3), and

22 b. describes the proposed innovative educational program
23 or programs supported by the organization.

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1 2. The Tax Commission shall review and approve or disapprove
2 the application, in consultation with the State Department of
3 Education.

4 3. In order to maintain eligibility under this section, an
5 educational improvement grant organization shall annually report the
6 following information to the Tax Commission by September 1 of each
7 year:

- 8 a. the name of the innovative educational program or
9 programs and the total amount of the grant or grants
10 made to those programs during the immediately preceding
11 school year,
- 12 b. a description of how each grant was utilized during the
13 immediately preceding school year and a description of
14 any demonstrated or expected innovative educational
15 improvements,
- 16 c. the names of the public school and school districts
17 where innovative educational programs that received
18 grants during the immediately preceding school year
19 were implemented,
- 20 d. where the organization collects information on a
21 county-by-county basis, and
- 22 e. the total number and total amount of grants made during
23 the immediately preceding school year for innovative

1 educational programs at public school by each county in
2 which the organization made grants.

3 4. The information required under paragraph 3 of this
4 subsection shall be submitted on a form provided by the Tax
5 Commission. No later than May 1 of each year, the Tax Commission
6 shall annually distribute sample forms together with the forms on
7 which the reports are required to be made to each approved
8 organization.

9 5. The Tax Commission shall not require any other information
10 be provided by an organization, except as expressly authorized in
11 this section.

12 L. In consultation with the State Department of Education, the
13 Tax Commission shall promulgate rules necessary to implement ~~this~~
14 ~~act~~ the Oklahoma Equal Opportunity Education Scholarship Act. The
15 rules shall include procedures for the registration of a
16 scholarship-granting organization or an educational improvement
17 grant organization for purposes of determining if the organization
18 meets the requirements of ~~this act~~ the Oklahoma Equal Opportunity
19 Education Scholarship Act, for the revocation of the
20 registration of an organization, if applicable, ~~and for notice as~~
21 ~~required in subsection G of this section.~~

1 SECTION 2. This act shall become effective November 1, 2012.

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3 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
4 04/12/2012 - DO PASS, As Amended.
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