

1 **SENATE FLOOR VERSION**

2 February 21, 2012

3 As Amended

4 SENATE BILL NO. 1714

5 By: Ford of the Senate

6 and

7 Denney of the House

8 **[income tax - modifying allocation of credits -**
9 **effective date]**

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

16 B. 1. Except as provided in subsection E of this section,
17 after ~~the effective date of this act~~ August 26, 2011, there shall be
18 allowed a credit for any taxpayer who makes a contribution to an
19 eligible scholarship-granting organization. The credit shall be
20 equal to fifty percent (50%) of the total amount of contributions
21 made during a taxable year, not to exceed One Thousand Dollars
22 (\$1,000.00) for single individuals, Two Thousand Dollars (\$2,000.00)
23 for married individuals filing jointly, or One Hundred Thousand
24 Dollars (\$100,000.00) for any taxpayer which is a legal business

1 entity including limited and general partnerships, corporations, and
2 limited liability companies; provided, if total credits claimed
3 pursuant to this paragraph exceed the caps established pursuant to
4 paragraph 2 of this subsection, the credit shall be equal to the
5 taxpayer's proportionate share of the cap for the taxable year, as
6 determined pursuant to subsection G of this section.

7 2. a. The total credits authorized by paragraph 1 of this
8 subsection for all single individuals and married
9 individuals filing jointly shall not exceed One
10 Million Seven Hundred Fifty Thousand Dollars
11 (\$1,750,000.00) annually.

12 b. The total credits authorized by paragraph 1 of this
13 subsection for all other taxpayers not subject to
14 subparagraph a of this paragraph shall not exceed One
15 Million Seven Hundred Fifty Thousand Dollars
16 (\$1,750,000.00) annually.

17 c. Each cap on total credits as provided for in this
18 paragraph shall be allocated by the Oklahoma Tax
19 Commission as provided in subsection G of this
20 section.

21 C. 1. Except as provided in subsection E of this section,
22 after ~~the effective date of this act~~ August 26, 2011, there shall be
23 allowed a credit for any taxpayer who makes a contribution to an
24 eligible educational improvement grant organization. The credit

1 shall be equal to fifty percent (50%) of the total amount of
2 contributions made during a taxable year, not to exceed One Thousand
3 Dollars (\$1,000.00) for single individuals, Two Thousand Dollars
4 (\$2,000.00) for married individuals filing jointly, or One Hundred
5 Thousand Dollars (\$100,000.00) for any taxpayer which is a legal
6 business entity including limited and general partnerships,
7 corporations, and limited liability companies; provided, if total
8 credits claimed pursuant to this paragraph exceed the cap
9 established pursuant to paragraph 3 of this subsection, the credit
10 shall be equal to the taxpayer's proportionate share of the cap for
11 the taxable year, as determined pursuant to subsection G of this
12 section.

13 2. For any taxpayer who makes a contribution to an eligible
14 educational improvement grant organization and makes a written
15 commitment to contribute the same amount for two (2) additional
16 consecutive years the credit shall be equal to seventy-five percent
17 (75%) of the total amount of the contribution established in
18 paragraph 1 of this subsection, not to exceed the amounts
19 established in paragraph 1 of this subsection for the taxable year
20 in which the credit provided in this subsection is claimed;
21 provided, if total credits claimed pursuant to this paragraph exceed
22 the cap established pursuant to paragraph 3 of this subsection, the
23 credit shall be equal to the taxpayer's proportionate share of the
24 cap for the taxable year, as determined pursuant to subsection G of

1 this section. The taxpayer shall provide evidence of the written
2 commitment to the Oklahoma Tax Commission at the time of filing the
3 refund claim.

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

9 b. The cap on total credits as provided for in this
10 paragraph shall be allocated by the ~~Oklahoma~~ Tax
11 Commission as provided in subsection G of this
12 section.

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

1 E. Any tax credits which are earned by a taxpayer pursuant to
2 this section during the time period beginning on ~~the effective date~~
3 ~~of this act~~ August 26, 2011, through December 31, 2012, may not be
4 claimed for any period prior to the taxable year beginning January
5 1, 2013. No credits which accrue during the time period beginning
6 on ~~the effective date of this act~~ August 26, 2011, through December
7 31, 2012, may be used to file an amended tax return for any taxable
8 year prior to the taxable year beginning January 1, 2013.

9 F. As used in this section:

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

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

5 3. "Educational scholarships" means:

- 6 a. scholarships to an eligible student of up to Five
7 Thousand Dollars (\$5,000.00) or eighty percent (80%)
8 of the average per-pupil expenditure in the school
9 district where the recipient student resides,
10 whichever is greater, to cover all or part of the
11 tuition, fees and transportation costs of a qualified
12 school which is accredited by the State Board of
13 Education or an accrediting association approved by
14 the Board pursuant to Section 3-104 of Title 70 of the
15 Oklahoma Statutes, or
- 16 b. scholarships to an eligible special needs student of
17 up to Twenty-five Thousand Dollars (\$25,000.00) to
18 cover all or part of the tuition, fees and
19 transportation costs of a qualified school for
20 eligible special needs students which is accredited by
21 the State Board of Education or an accrediting
22 association approved by the Board pursuant to Section
23 3-104 of Title 70 of the Oklahoma Statutes;

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

4 5. "Qualified school" means an elementary or secondary private
5 school in this state, including schools which provide
6 prekindergarten educational programs for four-year-olds, which:

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

10 b. is in compliance with all applicable health and safety
11 laws and codes,

12 c. has a stated policy against discrimination in
13 admissions on the basis of race, color, national
14 origin or disability, and

15 d. ensures academic accountability to parents and
16 guardians of students through regular progress
17 reports;

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

20 7. "Scholarship-granting organization" means an organization
21 which:

22 a. is a nonprofit entity exempt from taxation pursuant to
23 the provisions of the Internal Revenue Code, 26
24 U.S.C., Section 501(c)(3),

- 1 b. distributes periodic scholarship payments as checks
2 made out to an eligible student's or eligible special
3 needs student's parent or guardian and mailed to the
4 qualified school where the student is enrolled,
- 5 c. spends no more than ten percent (10%) of its annual
6 revenue on expenditures other than educational
7 scholarships as defined in paragraph 3 of this
8 subsection,
- 9 d. spends each year a portion of its expenditures on
10 educational scholarships for low-income eligible
11 students, as defined in paragraph 4 of this
12 subsection, in an amount equal to or greater than the
13 percentage of low-income eligible students in the
14 state,
- 15 e. ensures that scholarships are portable during the
16 school year and can be used at any qualified school
17 that accepts the eligible student or at any qualified
18 school for special needs students that accepts the
19 eligible special needs student,
- 20 f. registers with the ~~Oklahoma~~ Tax Commission as a
21 scholarship-granting organization, and
- 22 g. has policies in place to:
- 23 (1) carry out criminal background checks on all
24 employees and board members to ensure that no

1 individual is involved with the organization who
2 might reasonably pose a risk to the appropriate
3 use of contributed funds, and

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

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

14 9. "Public school" means public schools as defined in Section
15 1-106 of Title 70 of the Oklahoma Statutes;

16 10. "Eligible school" means any public school that is not
17 located within a ten-mile radius of a qualified school in this
18 state, or any public school that is located within a ten-mile radius
19 of a qualified school in this state but offers grade-level
20 instruction different from the qualified school or any public school
21 located within a public school district with fewer than four
22 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
24 it expends or otherwise irrevocably encumbers those

1 funds for expenditure during the then current fiscal
2 year of the organization or during the next succeeding
3 fiscal year of the organization.

4 G. Total credits authorized by this section shall be allocated
5 as follows:

6 1. By January 10 of the year immediately following each
7 calendar year, a scholarship-granting organization or an educational
8 improvement grant organization which accepts contributions pursuant
9 to this section shall provide electronically to the Tax Commission
10 information on each contribution accepted during such taxable year.
11 At least once each taxable year, the scholarship-granting
12 organization or the educational improvement grant organization shall
13 notify each contributor that Oklahoma law provides for a total,
14 statewide cap on the amount of income tax credits allowed annually;

15 2. a. If the Tax Commission determines the total combined
16 credits claimed for contributions made to scholarship-
17 granting organizations during the most recently
18 completed calendar year by all single individual
19 taxpayers and married individuals filing jointly are
20 in excess of One Million Seven Hundred Fifty Thousand
21 Dollars (\$1,750,000.00), plus any additional amount
22 allocated pursuant to subsection H of this section,
23 the Tax Commission shall determine, for contributions
24 made before January 1, 2013, the percentage of the

1 contribution which establishes the proportionate share
2 of the credit which may be claimed by any taxpayer so
3 that the maximum credits authorized by subparagraph a
4 of paragraph 2 of subsection B of this section are not
5 exceeded. For contributions made on or after January
6 1, 2013, the Tax Commission shall determine which
7 taxpayers are eligible to claim the credit on a first-
8 come, first-served basis so that the maximum credits
9 authorized by subparagraph a of paragraph 2 of
10 subsection B of this section are not exceeded.

11 b. If the Tax Commission determines the total combined
12 credits claimed for contributions made to scholarship-
13 granting organizations during the most recently
14 completed calendar year by all taxpayers not subject
15 to subparagraph a of this paragraph are in excess of
16 One Million Seven Hundred Fifty Thousand Dollars
17 (\$1,750,000.00), plus any additional amount allocated
18 pursuant to subsection H of this section, the Tax
19 Commission shall determine, for contributions made
20 before January 1, 2013, the percentage of the
21 contribution which establishes the proportionate share
22 of the credit which may be claimed by any taxpayer so
23 that the maximum credits authorized by subparagraph b
24 of paragraph 2 of subsection B of this section are not

1 exceeded. For contributions made on or after January
2 1, 2013, the Tax Commission shall determine which
3 taxpayers are eligible to claim the credit on a first-
4 come, first-served basis so that the maximum credits
5 authorized by subparagraph b of paragraph 2 of
6 subsection B of this section are not exceeded.

7 c. If the Tax Commission determines the total combined
8 credits claimed for contributions made to educational
9 improvement grant organizations during the most
10 recently completed calendar year by all single
11 individual taxpayers, married individuals filing
12 jointly and all other taxpayers are in excess of One
13 Million Five Hundred Thousand Dollars (\$1,500,000.00),
14 plus any additional amount allocated pursuant to
15 subsection H of this section, the Tax Commission shall
16 determine, for contributions made before January 1,
17 2013, the percentage of the contribution which
18 establishes the proportionate share of the credit
19 which may be claimed by any taxpayer so that the
20 maximum credits authorized by subparagraph a of
21 paragraph 3 of subsection C of this section are not
22 exceeded. For contributions made on or after January
23 1, 2013, the Tax Commission shall determine which
24 taxpayers are eligible to claim the credit on a first-

1 come, first-served basis so that the maximum credits
2 authorized by subparagraph a of paragraph 3 of
3 subsection C of this section are not exceeded; and

4 3. The Tax Commission shall publish the percentage of the
5 contribution which may be claimed as a credit by contributors for
6 the ~~most recently completed calendar year~~ time period before January
7 1, 2013, on the Tax Commission website no later than ~~February 15 of~~
8 ~~each calendar year for contributions made the previous year~~ February
9 15, 2013. Each scholarship-granting organization or educational
10 improvement grant organization shall notify contributors of that
11 amount annually. The Tax Commission shall provide by rule,
12 procedures for determining the date a tax credit is considered
13 claimed by a taxpayer on a first-come, first-served basis for
14 purposes of the allocation of credits for contributions made on or
15 after January 1, 2013.

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

20 1. If for any calendar year there is any amount of available
21 credit remaining pursuant to the provisions of paragraph 2 of
22 subsection G of this section, and only one of the other tax credit
23 pools has been fully utilized, the remaining amount from the tax
24

1 credit pool which was not fully utilized shall be allocated to and
2 added to the total tax credit pool amount for the other tax credit.

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

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

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

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

20 a. enables the Tax Commission to confirm that the
21 organization is a nonprofit entity exempt from
22 taxation pursuant to the provisions of the Internal
23 Revenue Code, 26 U.S.C., Section 501(c)(3), and
24

1 b. describes the proposed innovative educational program
2 or programs supported by the organization.

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

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

10 a. the name of the innovative educational program or
11 programs and the total amount of the grant or grants
12 made to those programs during the immediately preceding
13 school year,

14 b. a description of how each grant was utilized during the
15 immediately preceding school year and a description of
16 any demonstrated or expected innovative educational
17 improvements,

18 c. the names of the public school and school districts
19 where innovative educational programs that received
20 grants during the immediately preceding school year
21 were implemented,

22 d. where the organization collects information on a
23 county-by-county basis, and
24

1 e. the total number and total amount of grants made during
2 the immediately preceding school year for innovative
3 educational programs at public school by each county in
4 which the organization made grants.

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

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

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

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

1 COMMITTEE REPORT BY: COMMITTEE ON FINANCE, dated 2-14-12 - DO PASS,
As Amended and Coauthored.

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