

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1121

By: Wilson

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5
6 AS INTRODUCED

7 An Act relating to the Oklahoma Equal Opportunity
8 Education Scholarship Act; amending 68 O.S. 2011,
9 Section 2357.206, which relates to income tax credits
10 for specified donations; updating references;
11 modifying percentage of donation eligible for credit
12 after certain date; eliminating ability to claim
13 credit under specified circumstances; modifying
14 definitions; and providing an effective date.

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

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

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

20 B. 1. Except as provided in subsection E of this section,
21 after ~~the effective date of this act~~ August 26, 2011, there shall be
22 allowed a credit for any taxpayer who makes a contribution to an
23 eligible scholarship-granting organization. ~~The~~ For contributions
24 made before January 1, 2013, the credit shall be equal to fifty
percent (50%) of the total amount of contributions made during a
taxable year and for contributions made on or after January 1, 2013,

1 the credit shall be equal to ten percent (10%) of the total amount
2 of contributions made during a taxable year, not to exceed One
3 Thousand Dollars (\$1,000.00) for single individuals, Two Thousand
4 Dollars (\$2,000.00) for married individuals filing jointly, or One
5 Hundred Thousand Dollars (\$100,000.00) for any taxpayer which is a
6 legal 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 caps
9 established pursuant to paragraph 2 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. a. The total credits authorized by paragraph 1 of this
14 subsection for all single individuals and married
15 individuals filing jointly shall not exceed One
16 Million Seven Hundred Fifty Thousand Dollars
17 (\$1,750,000.00) annually.

18 b. The total credits authorized by paragraph 1 of this
19 subsection for all other taxpayers not subject to
20 subparagraph a of this paragraph shall not exceed One
21 Million Seven Hundred Fifty Thousand Dollars
22 (\$1,750,000.00) annually.

23 c. Each cap on total credits as provided for in this
24 paragraph shall be allocated by the Oklahoma Tax

1 Commission as provided in subsection G of this
2 section.

3 C. 1. Except as provided in subsection E of this section,
4 ~~after the effective date of this act~~ August 26, 2011, there shall be
5 allowed a credit for any taxpayer who makes a contribution to an
6 eligible educational improvement grant organization. ~~The~~ For
7 contributions made before January 1, 2013, the credit shall be equal
8 to fifty percent (50%) of the total amount of contributions made
9 during a taxable year and for contributions made on or after January
10 1, 2013, the credit shall be equal to ten percent (10%) of the total
11 amount of contributions made during a taxable year, not to exceed
12 One Thousand Dollars (\$1,000.00) for single individuals, Two
13 Thousand Dollars (\$2,000.00) for married individuals filing jointly,
14 or One Hundred Thousand Dollars (\$100,000.00) for any taxpayer which
15 is a legal business entity including limited and general
16 partnerships, corporations, and limited liability companies;
17 provided, if total credits claimed pursuant to this paragraph exceed
18 the cap established pursuant to paragraph 3 of this subsection, the
19 credit shall be equal to the taxpayer's proportionate share of the
20 cap for the taxable year, as determined pursuant to subsection G of
21 this section.

22 2. For any taxpayer who makes a contribution to an eligible
23 educational improvement grant organization prior to January 1, 2013,
24 and makes a written commitment to contribute the same amount for two

1 (2) additional consecutive years, the credit shall be equal to
2 seventy-five percent (75%) of the total amount of the contribution
3 established in paragraph 1 of this subsection, not to exceed the
4 amounts established in paragraph 1 of this subsection for the
5 taxable year in which the credit provided in this subsection is
6 claimed; provided, if total credits claimed pursuant to this
7 paragraph exceed the cap established pursuant to paragraph 3 of this
8 subsection, the credit shall be equal to the taxpayer's
9 proportionate share of the cap for the taxable year, as determined
10 pursuant to subsection G of this section. The taxpayer shall
11 provide evidence of the written commitment to the ~~Oklahoma~~ Tax
12 Commission at the time of filing the refund claim.

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

18 b. The cap on total credits as provided for in this
19 paragraph shall be allocated by the ~~Oklahoma~~ Tax
20 Commission as provided in subsection G of this
21 section.

22 D. For credits claimed for eligible contributions made during
23 tax year 2014 and thereafter, a credit shall not be allowed by the
24 ~~Oklahoma~~ Tax Commission for contributions made to a scholarship-

1 granting organization or an educational improvement grant
2 organization if that organization's percentage of funds actually
3 awarded is less than ninety percent (90%). For purposes of this
4 section, the "percentage of funds actually awarded" shall be
5 determined by dividing the total amount of funds actually awarded as
6 educational scholarships or educational improvement grants over the
7 most recent twenty-four (24) months by the total amount available to
8 award as educational scholarships or educational improvement grants
9 over the most recent twenty-four (24) months.

10 E. Any tax credits which are earned by a taxpayer pursuant to
11 this section during the time period beginning on ~~the effective date~~
12 ~~of this act~~ August 26, 2011 through December 31, 2012, may not be
13 claimed for any period prior to the taxable year beginning January
14 1, 2013. No credits which accrue during the time period beginning
15 on ~~the effective date of this act~~ August 26, 2011 through December
16 31, 2012, may be used to file an amended tax return for any taxable
17 year prior to the taxable year beginning January 1, 2013.

18 F. As used in this section:

19 1. "Eligible student" means a child of school age who is
20 lawfully present in the United States and who is a member of a
21 household in which the total annual income during the preceding tax
22 year does not exceed an amount equal to ~~three hundred percent (300%)~~
23 ~~of~~ the income standard used to qualify for a free or reduced school
24 lunch or who, during the immediately preceding school year, attended

1 or, by virtue of the location of such student's place of residence,
2 was eligible to attend a public school in this state which has been
3 identified for school improvement as determined by the State Board
4 of Education pursuant to the requirements of the No Child Left
5 Behind Act of 2001, P.L. No. 107-110. Once a student has received
6 an educational scholarship, as defined in paragraph 3 of this
7 subsection, the student and any siblings who are members of the same
8 household shall remain eligible until they graduate from high school
9 or reach twenty-one (21) years of age, whichever occurs first;

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

14 3. "Educational scholarships" means:

15 a. scholarships to an eligible student of up to Five
16 Thousand Dollars (\$5,000.00) or eighty percent (80%)
17 of the average per-pupil expenditure in the school
18 district where the recipient student resides,
19 whichever is greater, to cover all or part of the
20 tuition, fees and transportation costs of a qualified
21 school which is accredited by the State Board of
22 Education or an accrediting association approved by
23 the Board pursuant to Section 3-104 of Title 70 of the
24 Oklahoma Statutes, or

1 b. scholarships to an eligible special needs student of
2 up to Twenty-five Thousand Dollars (\$25,000.00) to
3 cover all or part of the tuition, fees and
4 transportation costs of a qualified school for
5 eligible special needs students which is accredited by
6 the State Board of Education or an accrediting
7 association approved by the Board pursuant to Section
8 3-104 of Title 70 of the Oklahoma Statutes;

9 4. ~~"Low income eligible student" means an eligible student or~~
10 ~~eligible special needs student who qualifies for a free or reduced-~~
11 ~~price lunch;~~

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

- 15 a. is accredited by the State Board of Education or an
16 accrediting association approved by the Board pursuant
17 to Section 3-104 of Title 70 of the Oklahoma Statutes,
18 b. is in compliance with all applicable health and safety
19 laws and codes,
20 c. has a stated policy against discrimination in
21 admissions on the basis of race, color, national
22 origin or disability, and

1 d. ensures academic accountability to parents and
2 guardians of students through regular progress
3 reports;

4 ~~6.~~ 5. "Qualified school for eligible special needs students"
5 means an elementary or secondary private school in a county in this
6 state;

7 ~~7.~~ 6. "Scholarship-granting organization" means an organization
8 which:

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

12 b. distributes periodic scholarship payments as checks
13 made out to an eligible student's or eligible special
14 needs student's parent or guardian and mailed to the
15 qualified school where the student is enrolled,

16 c. spends no more than ten percent (10%) of its annual
17 revenue on expenditures other than educational
18 scholarships as defined in paragraph 3 of this
19 subsection,

20 ~~d. spends each year a portion of its expenditures on~~
21 ~~educational scholarships for low income eligible~~
22 ~~students, as defined in paragraph 4 of this~~
23 ~~subsection, in an amount equal to or greater than the~~

1 ~~percentage of low income eligible students in the~~
2 ~~state,~~

3 ~~e.~~ ensures that scholarships are portable during the
4 school year and can be used at any qualified school
5 that accepts the eligible student or at any qualified
6 school for special needs students that accepts the
7 eligible special needs student,

8 ~~f.~~

9 e. registers with the ~~Oklahoma~~ Tax Commission as a
10 scholarship-granting organization, and

11 ~~g.~~

12 f. has policies in place to:

13 (1) carry out criminal background checks on all
14 employees and board members to ensure that no
15 individual is involved with the organization who
16 might reasonably pose a risk to the appropriate
17 use of contributed funds, and

18 (2) maintain full and accurate records with respect
19 to the receipt of contributions and expenditures
20 of those contributions and supply such records
21 and any other documentation required by the Tax
22 Commission to demonstrate financial
23 accountability;

24

1 ~~8.~~ 7. "Annual revenue" means the total amount or value of
2 contributions received by an organization from taxpayers awarded
3 credits during the organization's fiscal year and all amounts earned
4 from interest or investments;

5 ~~9.~~ 8. "Public school" means public schools as defined in
6 Section 1-106 of Title 70 of the Oklahoma Statutes;

7 ~~10.~~ 9. "Eligible school" means any public school that is not
8 located within a ten-mile radius of a qualified school in this
9 state, or any public school that is located within a ten-mile radius
10 of a qualified school in this state but offers grade-level
11 instruction different from the qualified school or any public school
12 located within a public school district with fewer than four
13 thousand five hundred (4,500) students;

14 ~~11.~~ 10. "Early childhood education program" means a program
15 provided to children who are at least four (4) years of age but not
16 more than five (5) years of age on or before September 1;

17 ~~12.~~ 11. "Innovative educational program" means an advanced
18 academic or academic improvement program that is not part of the
19 regular coursework of a public school but that enhances the
20 curriculum or academic program of the school or provides early
21 childhood education programs to students;

22 ~~13.~~ 12. "Educational improvement grant" means a grant to an
23 eligible public school to implement an innovative educational
24 program for students, including the ability for multiple public

1 schools to make an application and be awarded a grant to jointly
2 provide an innovative educational program; and

3 ~~14.~~ 13. "Educational improvement grant organization" means an
4 organization which:

- 5 a. is a nonprofit entity exempt from taxation pursuant to
6 the provisions of the Internal Revenue Code, 26
7 U.S.C., Section 501(c)(3), and
- 8 b. contributes at least ninety percent (90%) of its
9 annual receipts as grants to eligible schools for
10 innovative educational programs. For purposes of this
11 subparagraph, an educational improvement grant
12 organization contributes its annual cash receipts when
13 it expends or otherwise irrevocably encumbers those
14 funds for expenditure during the then current fiscal
15 year of the organization or during the next succeeding
16 fiscal year of the organization.

17 G. Total credits authorized by this section shall be allocated
18 as follows:

- 19 1. By January 10 of the year immediately following each
20 calendar year, a scholarship-granting organization or an educational
21 improvement grant organization which accepts contributions pursuant
22 to this section shall provide electronically to the Tax Commission
23 information on each contribution accepted during such taxable year.
24 At least once each taxable year, the scholarship-granting

1 organization or the educational improvement grant organization shall
2 notify each contributor that Oklahoma law provides for a total,
3 statewide cap on the amount of income tax credits allowed annually;

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

18 b. If the Tax Commission determines the total combined
19 credits claimed for contributions made to scholarship-
20 granting organizations during the most recently
21 completed calendar year by all taxpayers not subject
22 to subparagraph a of this paragraph are in excess of
23 One Million Seven Hundred Fifty Thousand Dollars
24 (\$1,750,000.00), plus any additional amount allocated

1 pursuant to subsection H of this section, the Tax
2 Commission shall determine the percentage of the
3 contribution which establishes the proportionate share
4 of the credit which may be claimed by any taxpayer so
5 that the maximum credits authorized by subparagraph b
6 of paragraph 2 of subsection B of this section are not
7 exceeded.

8 c. If the Tax Commission determines the total combined
9 credits claimed for contributions made to educational
10 improvement grant organizations during the most
11 recently completed calendar year by all single
12 individual taxpayers, married individuals filing
13 jointly and all other taxpayers are in excess of One
14 Million Five Hundred Thousand Dollars (\$1,500,000.00),
15 plus any additional amount allocated pursuant to
16 subsection H of this section, the Tax Commission shall
17 determine 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; and

23 3. The Tax Commission shall publish the percentage of the
24 contribution which may be claimed as a credit by contributors for

1 the most recently completed calendar year on the Tax Commission
2 website no later than February 15 of each calendar year for
3 contributions made the previous year. Each scholarship-granting
4 organization or educational improvement grant organization shall
5 notify contributors of that amount annually.

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

10 1. If for any calendar year there is any amount of available
11 credit remaining pursuant to the provisions of paragraph 2 of
12 subsection G of this section, and only one of the other tax credit
13 pools has been fully utilized, the remaining amount from the tax
14 credit pool which was not fully utilized shall be allocated to and
15 added to the total tax credit pool amount for the other tax credit.

16 2. If for any calendar year there is any amount of available
17 credit remaining pursuant to the provisions of paragraph 2 of
18 subsection G of this section, and the other two tax credit pools
19 have both been fully utilized, the remaining amount from the tax
20 credit pool which was not fully utilized shall be divided by the
21 whole number two (2) and the resulting amount shall be allocated to
22 and added to the amount of available tax credits for each of the
23 other tax credit pools.

24

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

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

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

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

14 b. describes the proposed innovative educational program
15 or programs supported by the organization.

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

19 3. In order to maintain eligibility under this section, an
20 educational improvement grant organization shall annually report the
21 following information to the Tax Commission by September 1 of each
22 year:

23 a. the name of the innovative educational program or
24 programs and the total amount of the grant or grants

1 made to those programs during the immediately preceding
2 school year,

3 b. a description of how each grant was utilized during the
4 immediately preceding school year and a description of
5 any demonstrated or expected innovative educational
6 improvements,

7 c. the names of the public school and school districts
8 where innovative educational programs that received
9 grants during the immediately preceding school year
10 were implemented,

11 d. where the organization collects information on a
12 county-by-county basis, and

13 e. the total number and total amount of grants made during
14 the immediately preceding school year for innovative
15 educational programs at public school by each county in
16 which the organization made grants.

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

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

4 L. In consultation with the State Department of Education, the
5 Tax Commission shall promulgate rules necessary to implement this
6 act. The rules shall include procedures for the registration of a
7 scholarship-granting organization or an educational improvement
8 grant organization for purposes of determining if the organization
9 meets the requirements of ~~this act~~ the Oklahoma Equal Opportunity
10 Education Scholarship Act, for the revocation of the
11 registration of an organization, if applicable, and for notice as
12 required in subsection G of this section.

13 SECTION 2. This act shall become effective January 1, 2013.

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