

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1714

By: Ford

4  
5  
6 AS INTRODUCED

7 An Act relating to income tax; amending 68 O.S. 2011,  
8 Section 2357.206, which relates to the Oklahoma Equal  
9 Opportunity Education Scholarship Act; modifying  
10 allocation of credits for contributions made after  
11 specified date under certain cap amounts; requiring  
12 Oklahoma Tax Commission to publish certain  
13 information and to adopt specified rule; and  
14 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 credit shall be  
24 equal to fifty percent (50%) of the total amount of contributions  
made during a taxable year, not to exceed One Thousand Dollars  
(\$1,000.00) for single individuals, Two Thousand Dollars (\$2,000.00)

1 for married individuals filing jointly, or One Hundred Thousand  
2 Dollars (\$100,000.00) for any taxpayer which is a legal business  
3 entity including limited and general partnerships, corporations, and  
4 limited liability companies; provided, if total credits claimed  
5 pursuant to this paragraph exceed the caps established pursuant to  
6 paragraph 2 of this subsection, the credit shall be equal to the  
7 taxpayer's proportionate share of the cap for the taxable year, as  
8 determined pursuant to subsection G of this section.

9       2.    a.    The total credits authorized by paragraph 1 of this  
10                subsection for all single individuals and married  
11                individuals filing jointly shall not exceed One  
12                Million Seven Hundred Fifty Thousand Dollars  
13                (\$1,750,000.00) annually.

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

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

23        C.    1.    Except as provided in subsection E of this section,  
24    after ~~the effective date of this act~~ August 26, 2011, there shall be

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

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

1 credit shall be equal to the taxpayer's proportionate share of the  
2 cap for the taxable year, as determined pursuant to subsection G of  
3 this section. The taxpayer shall provide evidence of the written  
4 commitment to the Oklahoma Tax Commission at the time of filing the  
5 refund claim.

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

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

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

1 award as educational scholarships or educational improvement grants  
2 over the most recent twenty-four (24) months.

3 E. Any tax credits which are earned by a taxpayer pursuant to  
4 this section during the time period beginning on ~~the effective date~~  
5 ~~of this act~~ August 26, 2011, through December 31, 2012, may not be  
6 claimed for any period prior to the taxable year beginning January  
7 1, 2013. No credits which accrue during the time period beginning  
8 on ~~the effective date of this act~~ August 26, 2011, through December  
9 31, 2012, may be used to file an amended tax return for any taxable  
10 year prior to the taxable year beginning January 1, 2013.

11 F. As used in this section:

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

1 household shall remain eligible until they graduate from high school  
2 or reach twenty-one (21) years of age, whichever occurs first;

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

7 3. "Educational scholarships" means:

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

18 b. scholarships to an eligible special needs student of  
19 up to Twenty-five Thousand Dollars (\$25,000.00) to  
20 cover all or part of the tuition, fees and  
21 transportation costs of a qualified school for  
22 eligible special needs students which is accredited by  
23 the State Board of Education or an accrediting  
24

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

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

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

- 9 a. is accredited by the State Board of Education or an  
10 accrediting association approved by the Board pursuant  
11 to Section 3-104 of Title 70 of the Oklahoma Statutes,
- 12 b. is in compliance with all applicable health and safety  
13 laws and codes,
- 14 c. has a stated policy against discrimination in  
15 admissions on the basis of race, color, national  
16 origin or disability, and
- 17 d. ensures academic accountability to parents and  
18 guardians of students through regular progress  
19 reports;

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

22 7. "Scholarship-granting organization" means an organization  
23 which:  
24

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

1 g. has policies in place to:

- 2 (1) carry out criminal background checks on all  
3 employees and board members to ensure that no  
4 individual is involved with the organization who  
5 might reasonably pose a risk to the appropriate  
6 use of contributed funds, and  
7 (2) maintain full and accurate records with respect  
8 to the receipt of contributions and expenditures  
9 of those contributions and supply such records  
10 and any other documentation required by the Tax  
11 Commission to demonstrate financial  
12 accountability;

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

17 9. "Public school" means public schools as defined in Section  
18 1-106 of Title 70 of the Oklahoma Statutes;

19 10. "Eligible school" means any public school that is not  
20 located within a ten-mile radius of a qualified school in this  
21 state, or any public school that is located within a ten-mile radius  
22 of a qualified school in this state but offers grade-level  
23 instruction different from the qualified school or any public school  
24

1 located within a public school district with fewer than four  
2 thousand five hundred (4,500) students;

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

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

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

16 14. "Educational improvement grant organization" means an  
17 organization which:

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

21 b. contributes at least ninety percent (90%) of its  
22 annual receipts as grants to eligible schools for  
23 innovative educational programs. For purposes of this  
24 subparagraph, an educational improvement grant

1 organization contributes its annual cash receipts when  
2 it expends or otherwise irrevocably encumbers those  
3 funds for expenditure during the then current fiscal  
4 year of the organization or during the next succeeding  
5 fiscal year of the organization.

6 G. Total credits authorized by this section shall be allocated  
7 as follows:

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

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

1 the Tax Commission shall determine, for contributions  
2 made before January 1, 2013, 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 a  
6 of paragraph 2 of subsection B of this section are not  
7 exceeded. For contributions made on or after January  
8 1, 2013, the Tax Commission shall determine which  
9 taxpayers are eligible to claim the credit on a first-  
10 come, first-served basis so that the maximum credits  
11 authorized by subparagraph a of paragraph 2 of  
12 subsection B of this 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, for contributions made  
22 before January 1, 2013, the percentage of the  
23 contribution which establishes the proportionate share  
24 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. For contributions made on or after January  
4 1, 2013, the Tax Commission shall determine which  
5 taxpayers are eligible to claim the credit on a first-  
6 come, first-served basis so that the maximum credits  
7 authorized by subparagraph b of paragraph 2 of  
8 subsection B of this section are not exceeded.

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

1           1, 2013, the Tax Commission shall determine which  
2           taxpayers are eligible to claim the credit on a first-  
3           come, first-served basis so that the maximum credits  
4           authorized by subparagraph a of paragraph 3 of  
5           subsection C of this section are not exceeded; and

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

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

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

1 pools has been fully utilized, the remaining amount from the tax  
2 credit pool which was not fully utilized shall be allocated to and  
3 added to the total tax credit pool amount for the other tax credit.

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

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

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

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

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

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.

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

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