

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2643

6 By: Denney

7 COMMITTEE SUBSTITUTE

8 An Act relating to revenue and taxation; amending 68
9 O.S. 2011, Section 2357.206, which relates to the
10 Oklahoma Equal Opportunity Education Scholarship Act;
11 modifying provisions related to reduction of tax
12 credit amounts; modifying provisions related to
13 allocation of tax credits; providing for increase in
14 certain tax credits related to scholarship-granting
15 organizations; providing for allocation of tax
16 credits based upon entities treated as partnerships
17 for purposes of federal income taxation; providing
18 for maximum credits available; prescribing method for
19 allocation of tax credits; modifying provisions
20 related to computation of per-pupil expenditures; and
21 providing an effective date.

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

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

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

B. 1. Except as provided in subsection E of this section,
after the effective date of this act, there shall be allowed a
credit for any taxpayer who makes a contribution to an eligible

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

14 2. a. ~~The total credits authorized by paragraph 1 of this~~
15 ~~subsection for all single individuals and married~~
16 ~~individuals filing jointly shall not exceed One~~
17 ~~Million Seven Hundred Fifty Thousand Dollars~~
18 ~~(\$1,750,000.00) annually.~~

19 b. ~~The total credits authorized by paragraph 1 of this~~
20 ~~subsection for all other taxpayers not subject to~~
21 ~~subparagraph a of this paragraph shall not exceed One~~
22 ~~Million Seven Hundred Fifty Thousand Dollars~~
23 ~~(\$1,750,000.00) annually.~~

24

1 e. ~~Each cap on total credits as provided for in this~~
2 ~~paragraph shall be allocated by the Oklahoma Tax~~
3 ~~Commission as provided in subsection G of this section~~

4 For any taxpayer who makes a contribution to an eligible
5 scholarship-granting organization and makes a written commitment to
6 contribute the same amount for two (2) additional consecutive years
7 the credit shall be equal to seventy-five percent (75%) of the total
8 amount of the contribution established in paragraph 1 of this
9 subsection, not to exceed the amounts established in paragraph 1 of
10 this subsection for the taxable year in which the credit provided in
11 this subsection is claimed. The taxpayer shall provide evidence of
12 the written commitment to the Oklahoma Tax Commission at the time of
13 filing the refund claim.

14 3. The credits authorized pursuant to the provisions of this
15 subsection shall be allocable to the partners, shareholders, members
16 or other equity owners of a taxpayer that is authorized to be
17 treated as a partnership for purposes of federal income tax
18 reporting for the taxable year for which the tax credits authorized
19 by this subsection are claimed on the applicable return, together
20 with required schedules, forms or reports of the partners,
21 shareholders, members or other equity owners of the taxpayer. Tax
22 credits which are allocated to such equity owners shall only be
23 limited in amount for the income tax return of a natural person or
24 persons based upon the limitation of the total credit amount to the

1 entity from which the tax credits have been allocated and shall not
2 be limited to One Thousand Dollars (\$1,000.00) for single
3 individuals or limited to Two Thousand Dollars (\$2,000.00) for
4 married persons filing a joint return.

5 C. 1. Except as provided in subsection ~~E~~ F of this section,
6 after the effective date of this act, there shall be allowed a
7 credit for any taxpayer who makes a contribution to an eligible
8 educational improvement grant 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,
15 Subchapter S corporations and limited liability companies; ~~provided,~~
16 ~~if total credits claimed pursuant to this paragraph exceed the cap~~
17 ~~established pursuant to paragraph 3 of this subsection, the credit~~
18 ~~shall be equal to the taxpayer's proportionate share of the cap for~~
19 ~~the taxable year, as determined pursuant to subsection G of this~~
20 ~~section.~~

21 2. For any taxpayer who makes a contribution to an eligible
22 educational improvement grant organization and makes a written
23 commitment to contribute the same amount for two (2) additional
24 consecutive years the credit shall be equal to seventy-five percent

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

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

17 b. ~~The 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 The credits authorized pursuant to the provisions of this subsection
22 shall be allocable to the partners, shareholders, members or other
23 equity owners of a taxpayer that is authorized to be treated as a
24 partnership for purposes of federal income tax reporting for the

1 taxable year for which the tax credits authorized by this subsection
2 are claimed on the applicable return, together with required
3 schedules, forms or reports of the partners, shareholders, members
4 or other equity owners of the taxpayer. Tax credits which are
5 allocated to such equity owners shall only be limited in amount for
6 the income tax return of a natural person or persons based upon the
7 limitation of the total credit amount to the entity from which the
8 tax credits have been allocated and shall not be limited to One
9 Thousand Dollars (\$1,000.00) for single individuals or limited to
10 Two Thousand Dollars (\$2,000.00) for married persons filing a joint
11 return.

12 D. 1. The total credits authorized pursuant to subsection B of
13 this section for all taxpayers shall not exceed Three Million Five
14 Hundred Thousand Dollars (\$3,500,000.00) annually. The cap on total
15 credits as provided for in this paragraph shall be allocated by the
16 Oklahoma Tax Commission on a first-come first-served basis using the
17 date upon which a tax return claiming a credit pursuant to
18 subsection B of this section is filed and using such order of
19 receipt as the Tax Commission may prescribe if two or more returns
20 are received on the same date.

21 2. The total credits authorized pursuant to subsection C of
22 this section for all taxpayers shall not exceed One Million Five
23 Hundred Thousand Dollars (\$1,500,000.00) annually. The cap on total
24 credits as provided for in this paragraph shall be allocated by the

1 Oklahoma Tax Commission on a first-come first-served basis using the
2 date upon which a tax return claiming a credit pursuant to
3 subsection C of this section is filed and using such order of
4 receipt as the Tax Commission may prescribe if two or more returns
5 are received on the same date.

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

18 ~~E.~~ F. Any tax credits which are earned by a taxpayer pursuant
19 to this section during the time period beginning on the effective
20 date of this act through December 31, 2012, may not be claimed for
21 any period prior to the taxable year beginning January 1, 2013. No
22 credits which accrue during the time period beginning on the
23 effective date of this act through December 31, 2012, may be used to
24

1 file an amended tax return for any taxable year prior to the taxable
2 year beginning January 1, 2013.

3 ~~F.~~ G. As used in this section:

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

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

23 3. "Educational scholarships" means:
24

1 a. scholarships to an eligible student of up to Five
2 Thousand Dollars (\$5,000.00) or eighty percent (80%)
3 of the statewide annual average per-pupil expenditure
4 ~~in the school district where the recipient student~~
5 ~~resides~~ as determined by the National Center for
6 Education Statistics, U.S. Department of Education,
7 whichever is greater, to cover all or part of the
8 tuition, fees and transportation costs of a qualified
9 school which is accredited by the State Board of
10 Education or an accrediting association approved by
11 the Board pursuant to Section 3-104 of Title 70 of the
12 Oklahoma Statutes, or

13 b. scholarships to an eligible special needs student of
14 up to Twenty-five Thousand Dollars (\$25,000.00) to
15 cover all or part of the tuition, fees and
16 transportation costs of a qualified school for
17 eligible special needs students which is accredited by
18 the State Board of Education or an accrediting
19 association approved by the Board pursuant to Section
20 3-104 of Title 70 of the Oklahoma Statutes;

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

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

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

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

17 7. "Scholarship-granting organization" means an organization
18 which:

- 19 a. is a nonprofit entity exempt from taxation pursuant to
20 the provisions of the Internal Revenue Code, 26
21 U.S.C., Section 501(c)(3),
- 22 b. distributes periodic scholarship payments as checks
23 made out to an eligible student's or eligible special
24

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

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;

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

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

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

11 14. "Educational improvement grant organization" means an
12 organization which:

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

1 ~~G. Total credits authorized by this section shall be allocated~~
2 ~~as follows:~~

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

12 ~~2. a. If the Tax Commission determines the total combined~~
13 ~~credits claimed for contributions made to scholarship-~~
14 ~~granting organizations during the most recently~~
15 ~~completed calendar year by all single individual~~
16 ~~taxpayers and married individuals filing jointly are~~
17 ~~in excess of One Million Seven Hundred Fifty Thousand~~
18 ~~Dollars (\$1,750,000.00), plus any additional amount~~
19 ~~allocated pursuant to subsection H of this section,~~
20 ~~the Tax Commission shall determine the percentage of~~
21 ~~the contribution which establishes the proportionate~~
22 ~~share of the credit which may be claimed by any~~
23 ~~taxpayer so that the maximum credits authorized by~~
24

1 ~~subparagraph a of paragraph 2 of subsection B of this~~
2 ~~section are not exceeded.~~

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

17 ~~e. If the Tax Commission determines the total combined~~
18 ~~credits claimed for contributions made to educational~~
19 ~~improvement grant organizations during the most~~
20 ~~recently completed calendar year by all single~~
21 ~~individual taxpayers, married individuals filing~~
22 ~~jointly and all other taxpayers are in excess of One~~
23 ~~Million Five Hundred Thousand Dollars (\$1,500,000.00),~~
24 ~~plus any additional amount allocated pursuant to~~

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

8 ~~3. The Tax Commission shall publish the percentage of the~~
9 ~~contribution which may be claimed as a credit by contributors for~~
10 ~~the most recently completed calendar year on the Tax Commission~~
11 ~~website no later than February 15 of each calendar year for~~
12 ~~contributions made the previous year. Each scholarship-granting~~
13 ~~organization or educational improvement grant organization shall~~
14 ~~notify contributors of that amount annually.~~

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

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

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

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
24

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

20 SECTION 2. This act shall become effective January 1, 2015.

21
22 54-2-10473 JM 02/27/14
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