

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL 2643

By: Denney of the House

and

Halligan of the Senate

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7
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9 COMMITTEE SUBSTITUTE

10 An Act relating to revenue and taxation; amending 68
11 O.S. 2011, Section 2357.206, which relates to the
12 Oklahoma Equal Opportunity Education Scholarship Act;
13 modifying provisions related to reduction of tax
14 credit amounts; modifying provisions related to
15 allocation of tax credits; providing for increase in
16 certain tax credits related to scholarship-granting
17 organizations; providing for allocation of tax
18 credits based upon entities treated as partnerships
19 for purposes of federal income taxation; providing
20 for maximum credits available; prescribing method for
21 allocation of tax credits; modifying provisions
22 related to computation of per-pupil expenditures; and
23 providing an effective date.
24

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.206, is
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".

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

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

22 b. ~~The total credits authorized by paragraph 1 of this~~
23 ~~subsection for all other taxpayers not subject to~~
24 ~~subparagraph a of this paragraph shall not exceed One~~

1 ~~Million Seven Hundred Fifty Thousand Dollars~~
2 ~~(\$1,750,000.00) annually.~~

3 e. ~~Each cap on total credits as provided for in this~~
4 ~~paragraph shall be allocated by the Oklahoma Tax~~
5 ~~Commission as provided in subsection C of this~~
6 ~~section.~~

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

17 3. The credits authorized pursuant to the provisions of this
18 subsection shall be allocable to the partners, shareholders, members
19 or other equity owners of a taxpayer that is authorized to be
20 treated as a partnership for purposes of federal income tax
21 reporting for the taxable year for which the tax credits authorized
22 by this subsection are claimed on the applicable return, together
23 with required schedules, forms or reports of the partners,
24 shareholders, members or other equity owners of the taxpayer. Tax

1 credits which are allocated to such equity owners shall only be
2 limited in amount for the income tax return of a natural person or
3 persons based upon the limitation of the total credit amount to the
4 entity from which the tax credits have been allocated and shall not
5 be limited to One Thousand Dollars (\$1,000.00) for single
6 individuals or limited to Two Thousand Dollars (\$2,000.00) for
7 married persons filing a joint return.

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

24

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

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

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

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

16 D. 1. The total credits authorized pursuant to subsection B of
17 this section for all taxpayers shall not exceed Three Million Five
18 Hundred Thousand Dollars (\$3,500,000.00) annually.

19 2. The total credits authorized pursuant to subsection C of
20 this section for all taxpayers shall not exceed One Million Five
21 Hundred Thousand Dollars (\$1,500,000.00) annually.

22 3. The cap on total credits provided for in this subsection
23 shall be allocated by the Tax Commission as provided in subsection G
24 of this section.

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

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

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

22 1. "Eligible student" means a child of school age who is
23 lawfully present in the United States and who is a member of a
24 household in which the total annual income during the preceding tax

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

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

17 3. "Educational scholarships" means:

18 a. scholarships to an eligible student of up to Five
19 Thousand Dollars (\$5,000.00) or eighty percent (80%)
20 of the statewide annual average per-pupil expenditure
21 ~~in the school district where the recipient student~~
22 ~~resides~~ as determined by the National Center for
23 Education Statistics, U.S. Department of Education,
24 whichever is greater, to cover all or part of the

1 tuition, fees and transportation costs of a qualified
2 school which is accredited by the State Board of
3 Education or an accrediting association approved by
4 the Board pursuant to Section 3-104 of Title 70 of the
5 Oklahoma Statutes, or

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

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

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

20 a. is accredited by the State Board of Education or an
21 accrediting association approved by the Board pursuant
22 to Section 3-104 of Title 70 of the Oklahoma Statutes,
23 b. is in compliance with all applicable health and safety
24 laws and codes,

- c. has a stated policy against discrimination in admissions on the basis of race, color, national origin or disability, and
- d. ensures academic accountability to parents and guardians of students through regular progress reports;

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

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

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

1 subsection, in an amount equal to or greater than the
2 percentage of low-income eligible students in the
3 state,

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

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

11 g. has policies in place to:

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

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

23 8. "Annual revenue" means the total amount or value of
24 contributions received by an organization from taxpayers awarded

1 credits during the organization's fiscal year and all amounts earned
2 from interest or investments;

3 9. "Public school" means public schools as defined in Section
4 1-106 of Title 70 of the Oklahoma Statutes;

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

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

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

20 13. "Educational improvement grant" means a grant to an
21 eligible public school to implement an innovative educational
22 program for students, including the ability for multiple public
23 schools to make an application and be awarded a grant to jointly
24 provide an innovative educational program; and

1 14. "Educational improvement grant organization" means an
2 organization which:

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

6 b. contributes at least ninety percent (90%) of its
7 annual receipts as grants to eligible schools for
8 innovative educational programs. For purposes of this
9 subparagraph, an educational improvement grant
10 organization contributes its annual cash receipts when
11 it expends or otherwise irrevocably encumbers those
12 funds for expenditure during the then current fiscal
13 year of the organization or during the next succeeding
14 fiscal year of the organization.

15 G. Total credits authorized by this section shall be allocated
16 as follows:

17 1. By January 10 of the year immediately following each
18 calendar year, a scholarship-granting organization or an educational
19 improvement grant organization which accepts contributions pursuant
20 to this section shall provide electronically to the Tax Commission
21 information on each contribution accepted during such taxable year.
22 At least once each taxable year, the scholarship-granting
23 organization or the educational improvement grant organization shall
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1 notify each contributor that Oklahoma law provides for a total,
2 statewide cap on the amount of income tax credits allowed annually;

3 2. a. 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 ~~single individual~~
7 ~~taxpayers and married individuals filing jointly~~ are
8 in excess of ~~One Million Seven Hundred Fifty Thousand~~
9 ~~Dollars (\$1,750,000.00), plus any additional amount~~
10 ~~allocated pursuant to subsection H of this section,~~
11 the statewide caps provided in paragraph 1 of
12 subsection D of this section, the Tax Commission shall
13 determine the percentage of the contribution which
14 establishes the proportionate share of the credit
15 which may be claimed by any taxpayer so that the
16 maximum credits authorized by ~~subparagraph a of~~
17 ~~paragraph 2 of subsection B of this section~~ are not
18 exceeded.

19 b. ~~If the Tax Commission determines the total combined~~
20 ~~credits claimed for contributions made to scholarship-~~
21 ~~granting organizations during the most recently~~
22 ~~completed calendar year by all taxpayers not subject~~
23 ~~to subparagraph a of this paragraph are in excess of~~
24 ~~One Million Seven Hundred Fifty Thousand Dollars~~

1 ~~(\$1,750,000.00), plus any additional amount allocated~~
2 ~~pursuant to subsection H of this section, the Tax~~
3 ~~Commission shall determine the percentage of the~~
4 ~~contribution which establishes the proportionate share~~
5 ~~of the credit which may be claimed by any taxpayer so~~
6 ~~that the maximum credits authorized by subparagraph b~~
7 ~~of paragraph 2 of subsection B of this section are not~~
8 ~~exceeded.~~

9 e. 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 statewide caps~~
18 ~~provided in paragraph 2 of subsection D of this~~
19 ~~section,~~ the Tax Commission shall determine the
20 percentage of the contribution which establishes the
21 proportionate share of the credit which may be claimed
22 by any taxpayer so that the maximum credits authorized
23 by ~~subparagraph a of paragraph 3 of subsection C of~~
24 this section are not exceeded; and

1 3. The Tax Commission shall publish the percentage of the
2 contribution which may be claimed as a credit by contributors for
3 the most recently completed calendar year on the Tax Commission
4 website no later than February 15 of each calendar year for
5 contributions made the previous year. Each scholarship-granting
6 organization or educational improvement grant organization shall
7 notify contributors of that amount annually.

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

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

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

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1 ~~and added to the amount of available tax credits for each of the~~
2 ~~other tax credit pools.~~

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

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

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

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

16 b. describes the proposed innovative educational program
17 or programs supported by the organization.

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

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

- a. the name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year,
- b. a description of how each grant was utilized during the immediately preceding school year and a description of any demonstrated or expected innovative educational improvements,
- c. the names of the public school and school districts where innovative educational programs that received grants during the immediately preceding school year were implemented,
- d. where the organization collects information on a county-by-county basis, and
- e. the total number and total amount of grants made during the immediately preceding school year for innovative educational programs at public school by each county in which the organization made grants.

4. The information required under paragraph 3 of this subsection shall be submitted on a form provided by the Tax Commission. No later than May 1 of each year, the Tax Commission shall annually distribute sample forms together with the forms on which the reports are required to be made to each approved 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.~~ K. In consultation with the State Department of Education,
5 the Tax Commission shall promulgate rules necessary to implement
6 this act. The rules shall include procedures for the registration
7 of a scholarship-granting organization or an educational improvement
8 grant organization for purposes of determining if the organization
9 meets the requirements of this act, or for the revocation of the
10 registration of an organization, if applicable, and for notice as
11 required in subsection G of this section.

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

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