

1 **SENATE FLOOR VERSION**

2 April 1, 2014

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2643

By: Denney of the House

and

Halligan of the Senate

6
7
8
9 [revenue and taxation - Oklahoma Equal Opportunity
10 Education Scholarship Act - allocation of tax credits
11 - effective date]

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

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

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

17 B. 1. Except as provided in subsection E of this section,
18 after ~~the effective date of this act~~ August 26, 2011, and before
19 January 1, 2017, there shall be allowed a credit for any taxpayer
20 who makes a contribution to an eligible scholarship-granting
21 organization. The credit shall be equal to fifty percent (50%) of
22 the total amount of contributions made during a taxable year, not to
23 exceed One Thousand Dollars (\$1,000.00) for single individuals, Two
24 Thousand Dollars (\$2,000.00) for married individuals filing jointly,

1 or One Hundred Thousand Dollars (\$100,000.00) for any taxpayer which
2 is a legal business entity including limited and general
3 partnerships, corporations, subchapter S corporations and limited
4 liability companies; provided, if total credits claimed pursuant to
5 this paragraph exceed the caps established pursuant to paragraph 2
6 of this subsection, the credit shall be equal to the taxpayer's
7 proportionate share of the cap for the taxable year, as determined
8 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 For any taxpayer who makes a contribution to an eligible
24 scholarship-granting organization and makes a written commitment to

1 contribute the same amount for two (2) additional consecutive years
2 the credit shall be equal to seventy-five percent (75%) of the total
3 amount of the contribution established in paragraph 1 of this
4 subsection, not to exceed the amounts established in paragraph 1 of
5 this subsection for the taxable year in which the credit provided in
6 this subsection is claimed. The taxpayer shall provide evidence of
7 the written commitment to the Oklahoma Tax Commission at the time of
8 filing the refund claim.

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

24

1 C. 1. Except as provided in subsection ~~E~~ F of this section,
2 after ~~the effective date of this act~~ August 26, 2011, and before
3 January 1, 2017, there shall be allowed a credit for any taxpayer
4 who makes a contribution to an eligible educational improvement
5 grant organization. The credit shall be equal to fifty percent
6 (50%) of the total amount of contributions made during a taxable
7 year, not to exceed One Thousand Dollars (\$1,000.00) for single
8 individuals, Two Thousand Dollars (\$2,000.00) for married
9 individuals filing jointly, or One Hundred Thousand Dollars
10 (\$100,000.00) for any taxpayer which is a legal business entity
11 including limited and general partnerships, corporations, subchapter
12 S corporations and limited liability companies; provided, if total
13 credits claimed pursuant to this paragraph exceed the cap
14 established pursuant to paragraph 3 of this subsection, the credit
15 shall be equal to the taxpayer's proportionate share of the cap for
16 the taxable year, as determined pursuant to subsection G of this
17 section.

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

1 in which the credit provided in this subsection is claimed;
2 provided, if total credits claimed pursuant to this paragraph exceed
3 the cap established pursuant to paragraph 3 of this subsection, the
4 credit shall be equal to the taxpayer's proportionate share of the
5 cap for the taxable year, as determined pursuant to subsection G of
6 this section. The taxpayer shall provide evidence of the written
7 commitment to the Oklahoma Tax Commission at the time of filing the
8 refund claim.

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

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

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

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

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

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

15 3. The cap on total credits provided for in this subsection
16 shall be allocated by the Tax Commission as provided in subsection G
17 of this section.

18 E. For credits claimed for eligible contributions made during
19 tax year 2014 and thereafter, a credit shall not be allowed by the
20 Oklahoma Tax Commission for contributions made to a scholarship-
21 granting organization or an educational improvement grant
22 organization if that organization's percentage of funds actually
23 awarded is less than ninety percent (90%). For purposes of this
24 section, the "percentage of funds actually awarded" shall be

1 determined by dividing the total amount of funds actually awarded as
2 educational scholarships or educational improvement grants over the
3 most recent twenty-four (24) months by the total amount available to
4 award as educational scholarships or educational improvement grants
5 over the most recent twenty-four (24) months.

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

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

15 1. "Eligible student" means a child of school age who is
16 lawfully present in the United States and who is a member of a
17 household in which the total annual income during the preceding tax
18 year does not exceed an amount equal to three hundred percent (300%)
19 of the income standard used to qualify for a free or reduced school
20 lunch or who, during the immediately preceding school year, attended
21 or, by virtue of the location of such student's place of residence,
22 was eligible to attend a public school in this state which has been
23 identified for school improvement as determined by the State Board
24 of Education pursuant to the requirements of the No Child Left

1 Behind Act of 2001, P.L. No. 107-110. Once a student has received
2 an educational scholarship, as defined in paragraph 3 of this
3 subsection, the student and any siblings who are members of the same
4 household shall remain eligible until they graduate from high school
5 or reach twenty-one (21) years of age, whichever occurs first;

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

10 3. "Educational scholarships" means:

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

23 b. scholarships to an eligible special needs student of
24 up to Twenty-five Thousand Dollars (\$25,000.00) to

1 cover all or part of the tuition, fees and
2 transportation costs of a qualified school for
3 eligible special needs students which is accredited by
4 the State Board of Education or an accrediting
5 association approved by the Board pursuant to Section
6 3-104 of Title 70 of the Oklahoma Statutes;

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

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

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

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

3 7. "Scholarship-granting organization" means an organization
4 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),

8 b. distributes periodic scholarship payments as checks
9 made out to an eligible student's or eligible special
10 needs student's parent or guardian and mailed to the
11 qualified school where the student is enrolled,

12 c. spends no more than ten percent (10%) of its annual
13 revenue on expenditures other than educational
14 scholarships as defined in paragraph 3 of this
15 subsection,

16 d. spends each year a portion of its expenditures on
17 educational scholarships for low-income eligible
18 students, as defined in paragraph 4 of this
19 subsection, in an amount equal to or greater than the
20 percentage of low-income eligible students in the
21 state,

22 e. ensures that scholarships are portable during the
23 school year and can be used at any qualified school
24 that accepts the eligible student or at any qualified

1 school for special needs students that accepts the
2 eligible special needs student,

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

5 g. has policies in place to:

6 (1) carry out criminal background checks on all
7 employees and board members to ensure that no
8 individual is involved with the organization who
9 might reasonably pose a risk to the appropriate
10 use of contributed funds, and

11 (2) maintain full and accurate records with respect
12 to the receipt of contributions and expenditures
13 of those contributions and supply such records
14 and any other documentation required by the Tax
15 Commission to demonstrate financial
16 accountability;

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

21 9. "Public school" means public schools as defined in Section
22 1-106 of Title 70 of the Oklahoma Statutes;

23 10. "Eligible school" means any public school that is not
24 located within a ten-mile radius of a qualified school in this

1 state, or any public school that is located within a ten-mile radius
2 of a qualified school in this state but offers grade-level
3 instruction different from the qualified school or any public school
4 located within a public school district with fewer than four
5 thousand five hundred (4,500) students;

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

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

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

19 14. "Educational improvement grant organization" means an
20 organization which:

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

24

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

10 G. Total credits authorized by this section shall be allocated
11 as follows:

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

21 2. a. If the Tax Commission determines the total combined
22 credits claimed for contributions made to scholarship-
23 granting organizations during the most recently
24 completed calendar year by all ~~single individual~~

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

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

3 ~~e.~~ If the Tax Commission determines the total combined
4 credits claimed for contributions made to educational
5 improvement grant organizations during the most
6 recently completed calendar year by all ~~single~~
7 ~~individual taxpayers, married individuals filing~~
8 ~~jointly and all other taxpayers~~ are in excess of ~~One~~
9 ~~Million Five Hundred Thousand Dollars (\$1,500,000.00),~~
10 ~~plus any additional amount allocated pursuant to~~
11 ~~subsection H of this section,~~ the statewide caps
12 provided in paragraph 2 of subsection D of this
13 section, the Tax Commission shall determine the
14 percentage of the contribution which establishes the
15 proportionate share of the credit which may be claimed
16 by any taxpayer so that the maximum credits authorized
17 by ~~subparagraph a of paragraph 3 of subsection C of~~
18 this section are not exceeded; and

19 3. The Tax Commission shall publish the percentage of the
20 contribution which may be claimed as a credit by contributors for
21 the most recently completed calendar year on the Tax Commission
22 website no later than February 15 of each calendar year for
23 contributions made the previous year. Each scholarship-granting
24

1 organization or educational improvement grant organization shall
2 notify contributors of that amount annually.

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

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

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

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

23

24

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

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

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

12 b. describes the proposed innovative educational program
13 or programs supported by the organization.

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

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

21 a. the name of the innovative educational program or
22 programs and the total amount of the grant or grants
23 made to those programs during the immediately
24 preceding school year,

- 1 b. a description of how each grant was utilized during
2 the immediately preceding school year and a
3 description of any demonstrated or expected innovative
4 educational improvements,
- 5 c. the names of the public school and school districts
6 where innovative educational programs that received
7 grants during the immediately preceding school year
8 were implemented,
- 9 d. where the organization collects information on a
10 county-by-county basis, and
- 11 e. the total number and total amount of grants made
12 during the immediately preceding school year for
13 innovative educational programs at public school by
14 each county in which the organization made grants.

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

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

1 ~~H.~~ K. In consultation with the State Department of Education,
2 the Tax Commission shall promulgate rules necessary to implement
3 this act. The rules shall include procedures for the registration
4 of a scholarship-granting organization or an educational improvement
5 grant organization for purposes of determining if the organization
6 meets the requirements of this act, ~~7~~ or for the revocation of the
7 registration of an organization, if applicable, and for notice as
8 required in subsection G of this section.

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

10 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
11 April 1, 2014 - DO PASS AS AMENDED
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