

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 969

By: Newberry, Ford, Holt,
Jolley, Stanislawski,
Simpson, Russell and Brown
of the Senate

6 and

7 Denney of the House

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to income tax; creating the Oklahoma
11 Equal Opportunity Education Scholarship Act;
12 providing credit for donation to certain scholarship-
13 granting organizations; limiting percentage of
14 credit; limiting amount of credit based on filing
15 status; limiting amount of total credits annually;
16 providing credit for donation to certain improvement
17 grant organizations; limiting percentage of credit;
18 limiting amount of credit based on filing status;
19 allowing for increase in credit percentage based on
20 certain commitment; limiting amount of total credits
21 annually; requiring organizations to award certain
22 percentage of contributions; providing for
23 calculation of percentage; delaying ability to claim
24 credits; defining terms; providing for allocation of
credits; allowing for allocation of unused credit
pool under certain circumstances; prohibiting refund;
requiring certain application; requiring certain
consultation; requiring report containing certain
information; providing for carryover of unused
credit; requiring Tax Commission to promulgate rules
in consultation with State Department of Education;
providing for codification; providing an effective
date; and declaring an emergency.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 2357.206 of Title 68, unless
4 there is created a duplication in numbering, reads as follows:

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

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

22 2. a. The total credits authorized by paragraph 1 of this
23 subsection for all single individuals and married
24 individuals filing jointly shall not exceed One

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

3 b. The total credits authorized by paragraph 1 of this
4 subsection for all other taxpayers not subject to
5 subparagraph a of this paragraph shall not exceed One
6 Million Seven Hundred Fifty Thousand Dollars
7 (\$1,750,000.00) annually.

8 c. Each cap on total credits as provided for in this
9 paragraph shall be allocated by the Oklahoma Tax
10 Commission as provided in subsection G of this
11 section.

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

1 taxpayer's proportionate share of the cap for the taxable year, as
2 determined pursuant to subsection G of this section.

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

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

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

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

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

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

23 F. As used in this section:
24

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

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

20 3. "Educational scholarships" means:

- 21 a. scholarships to an eligible student of up to Five
22 Thousand Dollars (\$5,000.00) or eighty percent (80%)
23 of the average per-pupil expenditure in the school
24 district where the recipient student resides,

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

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

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

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

21 a. accredited by the State Board of Education or an
22 accrediting association approved by the Board pursuant
23 to Section 3-104 of Title 70 of the Oklahoma Statutes,
24

- b. in compliance with all applicable health and safety 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,

- 1 d. spends each year a portion of its expenditures on
2 educational scholarships for low-income eligible
3 students, as defined in paragraph 4 of this
4 subsection, in an amount equal to or greater than the
5 percentage of low-income eligible students in the
6 state,
- 7 e. ensures that scholarships are portable during the
8 school year and can be used at any qualified school
9 that accepts the eligible student or at any qualified
10 school for special needs students that accepts the
11 eligible special needs student,
- 12 f. registers with the Oklahoma Tax Commission as a
13 scholarship-granting organization, and
- 14 g. has policies in place to:
- 15 (1) carry out criminal background checks on all
16 employees and board members to ensure that no
17 individual is involved with the organization who
18 might reasonably pose a risk to the appropriate
19 use of contributed funds, and
- 20 (2) maintain full and accurate records with respect
21 to the receipt of contributions and expenditures
22 of those contributions and supply such records
23 and any other documentation required by the Tax
24

Commission to demonstrate financial
accountability;

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

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

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

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

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

1 13. "Educational improvement grant" means a grant to an
2 eligible public school to implement an innovative educational
3 program for students, including the ability for multiple public
4 schools to make an application and be awarded a grant to jointly
5 provide an innovative educational program; and

6 14. "Educational improvement grant organization" means an
7 organization which:

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

20 G. Total credits authorized by this section shall be allocated
21 as follows:

22 1. By January 10 of the year immediately following each
23 calendar year, a scholarship-granting organization or an educational
24 improvement grant organization which accepts contributions pursuant

1 to this section shall provide electronically to the Tax Commission
2 information on each contribution accepted during such taxable year.
3 At least once each taxable year, the scholarship-granting
4 organization or the educational improvement grant organization shall
5 notify each contributor that Oklahoma law provides for a total,
6 statewide cap on the amount of income tax credits allowed annually;

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

21 b. 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 taxpayers not subject

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

11 c. If the Tax Commission determines the total combined
12 credits claimed for contributions made to educational
13 improvement grant organizations during the most
14 recently completed calendar year by all single
15 individual taxpayers, married individuals filing
16 jointly and all other taxpayers are in excess of One
17 Million Five Hundred Thousand Dollars (\$1,500,000.00),
18 plus any additional amount allocated pursuant to
19 subsection H of this section, the Tax Commission shall
20 determine the percentage of the contribution which
21 establishes the proportionate share of the credit
22 which may be claimed by any taxpayer so that the
23 maximum credits authorized by subparagraph a of
24

1 paragraph 3 of subsection C of this section are not
2 exceeded; and

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

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

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

20 2. If for any calendar year there is any amount of available
21 credit remaining pursuant to the provisions of paragraph 2 of
22 subsection G of this section, and the other two tax credit pools
23 have both been fully utilized, the remaining amount from the tax
24 credit pool which was not fully utilized shall be divided by the

1 whole number two (2) and the resulting amount shall be allocated to
2 and added to the amount of available tax credits for each of the
3 other tax credit pools.

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

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

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

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

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

19 2. The Commission shall review and approve or disapprove the
20 application, in consultation with the State Department of 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 Commission by September 1 of each year:
24

- 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 Commission. No later than May 1 of each year, the 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 Commission shall not require any other information be
2 provided by an organization, except as expressly authorized in this
3 section.

4 L. In consultation with the State Department of Education, the
5 Tax Commission shall promulgate rules necessary to implement this
6 act. The rules shall include procedures for the registration of a
7 scholarship-granting organization or an educational improvement
8 grant organization for purposes of determining if the organization
9 meets the requirements of this act, 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 July 1, 2011.

13 SECTION 3. It being immediately necessary for the preservation
14 of the public peace, health and safety, an emergency is hereby
15 declared to exist, by reason whereof this act shall take effect and
16 be in full force from and after its passage and approval.

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