

HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

4 COMMITTEE SUBSTITUTE
FOR ENGROSSED
5 SENATE BILL NO. 969

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

and

Denney, Richardson,
Shumate, Wright, Billy,
Ortega, Newell and Hickman
of the House

COMMITTEE SUBSTITUTE

An Act relating to income tax; creating the Oklahoma Equal Opportunity Education Scholarship Act; providing credit for donation to certain scholarship-granting organizations; limiting percentage of credit; limiting amount of credit based on filing status; limiting amount of total credits annually; providing credit for donation to certain improvement grant organizations; limiting percentage of credit; limiting amount of credit based on filing status; allowing for increase in credit percentage based on certain commitment; limiting amount of total credits annually; requiring organizations to award certain percentage of contributions; providing for calculation of percentage; delaying ability to claim 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

1 credit; requiring Tax Commission to promulgate rules
2 in consultation with State Department of Education;
3 providing for codification; providing an effective
4 date; and declaring an emergency.

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

6 SECTION 1. NEW LAW A new section of law to be codified

7 in the Oklahoma Statutes as Section 2357.206 of Title 68, unless
8 there is created a duplication in numbering, reads as follows:

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

11 B. 1. Except as provided in subsection E of this section,
12 after the effective date of this act, there shall be allowed a
13 credit for any taxpayer who makes a contribution to an eligible
14 scholarship-granting organization. The credit shall be equal to
15 fifty percent (50%) of the total amount of contributions made during
16 a taxable year, not to exceed One Thousand Dollars (\$1,000.00) for
17 single individual, Two Thousand Dollars (\$2,000.00) for married
18 individuals filing jointly, or One Hundred Thousand Dollars
19 (\$100,000.00) for any taxpayer which is a legal business entity
20 including limited and general partnerships, corporations, and
21 limited liability companies; provided, if total credits claimed
22 pursuant to this paragraph exceed the caps established pursuant to
23 paragraph 2 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. a. The total credits authorized by paragraph 1 of this
4 subsection for all single individuals and married
5 individuals filing jointly shall not exceed One
6 Million Seven Hundred Fifty Thousand Dollars
7 (\$1,750,000.00) annually.

8 b. The total credits authorized by paragraph 1 of this
9 subsection for all other taxpayers not subject to
10 subparagraph a of this paragraph shall not exceed One
11 Million Seven Hundred Fifty Thousand Dollars
12 (\$1,750,000.00) annually.

13 c. Each cap on total credits as provided for in this
14 paragraph shall be allocated by the Oklahoma Tax
15 Commission as provided in subsection G of this
16 section.

17 C. 1. Except as provided in subsection E of this section,
18 after the effective date of this act, there shall be allowed a
19 credit for any taxpayer who makes a contribution to an eligible
20 educational improvement grant organization. The credit shall be
21 equal to fifty percent (50%) of the total amount of contributions
22 made during a taxable year, not to exceed One Thousand Dollars
23 (\$1,000.00) for single individual, Two Thousand Dollars (\$2,000.00)

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

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

24

SB969 HFLR

Page 4

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

D. For credits claimed for eligible contributions made during year 2014 and thereafter, a credit shall not be allowed by the Oklahoma Tax Commission for contributions made to a scholarship-
nting organization or an education improvement grant organization
that organization's percentage of funds actually awarded is less
n ninety percent (90%). For purposes of this section, the
percentage of funds actually awarded" shall be determined by
iding the total amount of funds actually awarded as educational
olarchships or educational improvement grants over the most recent
nty-four (24) months by the total amount available to award as
cational scholarships or educational improvement grants over the
t recent twenty-four (24) months.

E. Any tax credits which are earned by a taxpayer pursuant to this section during the time period beginning on the effective date

1 of this act through December 31, 2012, may not be claimed for any
2 period prior to the taxable year beginning January 1, 2013. No
3 credits which accrue during the time period beginning on the
4 effective date of this act through December 31, 2012, may be used to
5 file an amended tax return for any taxable year prior to the taxable
6 year beginning January 1, 2013.

7 F. As used in this section:

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

23

24

SB969 HFLR

Page 6

UNDERLINED language denotes Amendments to present Statutes.

BOLD FACE CAPITALIZED language denotes Committee Amendments.

~~Strike thru~~ language denotes deletion from present Statutes.

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

5 3. "Educational scholarships" means:

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

16 b. scholarships to an eligible special needs student of
17 up to Twenty-five Thousand Dollars (\$25,000.00) to
18 cover all or part of the tuition, fees and
19 transportation costs of a qualified school for
20 eligible special needs students which is accredited by
21 the State Board of Education or an accrediting
22 association approved by the Board pursuant to Section
23 3-104 of Title 70 of the Oklahoma Statutes;

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

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

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

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

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

1 a. is a nonprofit entity exempt from taxation pursuant to
2 the provisions of the Internal Revenue Code, 26
3 U.S.C., Section 501(c)(3),
4 b. distributes periodic scholarship payments as checks
5 made out to an eligible student's or eligible special
6 needs student's parent or guardian and mailed to the
7 qualified school where the student is enrolled,
8 c. spends no more than ten percent (10%) of its annual
9 revenue on expenditures other than educational
10 scholarships as defined in paragraph 3 of this
11 subsection,
12 d. spends each year a portion of its expenditures on
13 educational scholarships for low-income eligible
14 students, as defined in paragraph 4 of this
15 subsection, in an amount equal to or greater than the
16 percentage of low-income eligible students in the
17 state,
18 e. ensures that scholarships are portable during the
19 school year and can be used at any qualified school
20 that accepts the eligible student or at any qualified
21 school for special needs students that accepts the
22 eligible special needs student,

- f. registers with the Oklahoma Tax Commission as a scholarship-granting organization, and
- g. has policies in place to:
 - (1) carry out criminal background checks on all employees and board members to ensure that no individual is involved with the organization who might reasonably pose a risk to the appropriate use of contributed funds, and
 - (2) maintain full and accurate records with respect to the receipt of contributions and expenditures of those contributions and supply such records and any other documentation required by the Tax Commission to demonstrate financial accountability;

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

19 9. "Public school" means public schools as defined in Section
20 1-106 of Title 70 of the Oklahoma Statutes;

21 10. "Eligible school" means any public school that is not
22 located within a ten-mile radius of a qualified school in this
23 state, or any public school that is located within a ten-mile radius

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

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

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

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

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

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

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

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

12 b. 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 taxpayers not subject
16 to subparagraph a of this paragraph are in excess of
17 One Million Seven Hundred Fifty Thousand Dollars
18 (\$1,750,000.00), plus any additional amount allocated
19 pursuant to subsection H of this section, the Tax
20 Commission shall determine the percentage of the
21 contribution which establishes the proportionate share
22 of the credit which may be claimed by any taxpayer so
23 that the maximum credits authorized by subparagraph b

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

c. If the Tax Commission determines the total combined credits claimed for contributions made to educational improvement grant organizations during the most recently completed calendar year by all single individual taxpayers, married individuals filing jointly and all other taxpayers are in excess of One Million Five Hundred Thousand Dollars (\$1,500,000.00), plus any additional amount allocated pursuant to subsection H of this section, the Tax Commission shall determine the percentage of the contribution which establishes the proportionate share of the credit which may be claimed by any taxpayer so that the maximum credits authorized by subparagraph a of paragraph 3 of subsection C of this section are not exceeded; and

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

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

- a. enables the Commission to confirm that the organization is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), and
- b. describes the proposed innovative educational programs or programs supported by the organization.

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

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

16 subsection shall be submitted on a form provided by the Commission.

17 No later than May 1 of each year, the Commission shall annually

18 distribute sample forms together with the forms on which the reports

19 | are required to be made to each approved organization.

5. The Commission shall not require any other information be

21 provided by an organization, except as expressly authorized in this
22 section.

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

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

14
15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
04-07-2011 - DO PASS, As Amended and Coauthored.

16

17

18

19

20

21

22

23

24

SB969 HFLR

Page 18

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.