

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

SUBCOMMITTEE
RECOMMENDATION
FOR

HOUSE BILL NO. 3537

By: Caldwell

SUBCOMMITTEE RECOMMENDATION

[income tax credits - Oklahoma Equal Opportunity
Education - annual limit on total credits allowed -
effective date]

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

SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.206, as
last amended by Section 1, Chapter 288, O.S.L. 2017 (68 O.S. Supp.
2017, 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".

B. 1. Except as provided in subsection F of this section,
after August 26, 2011, there shall be allowed a credit for any
taxpayer who makes a contribution to an eligible scholarship-

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

14 2. For any taxpayer who makes a contribution to an eligible
15 scholarship-granting organization and makes a written commitment to
16 contribute the same amount for an additional year, the credit for
17 the first year and the additional year shall be equal to seventy-
18 five percent (75%) of the total amount of the contribution made
19 during a taxable year, not to exceed the amounts established in
20 paragraph 1 of this subsection for the taxable year in which the
21 credit provided in this subsection is claimed. The taxpayer shall
22 provide evidence of the written commitment to the Oklahoma Tax
23 Commission at the time of filing the refund claim.

24

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

16 4. On or before December 31, 2017, and once every four (4)
17 years thereafter, such scholarship-granting organization and
18 educational improvement ~~granting~~ grant organization shall submit to
19 the Governor, President Pro Tempore of the Senate and the Speaker of
20 the House of Representatives, an audited financial statement for the
21 organization along with information detailing the benefits,
22 successes or failures of the program.

23 C. 1. Except as provided in subsection F of this section,
24 after August 26, 2011, there shall be allowed a credit for any

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

15 2. For any taxpayer who makes a contribution to an eligible
16 educational improvement grant organization and makes a written
17 commitment to contribute the same amount for an additional year, the
18 credit for the first year and the additional year shall be equal to
19 seventy-five percent (75%) of the total amount of the contribution
20 made during a taxable year, not to exceed the amounts established in
21 paragraph 1 of this subsection for the taxable year in which the
22 credit provided in this subsection is claimed; provided, if total
23 credits claimed pursuant to this paragraph exceed the cap
24 established pursuant to paragraph 3 of this subsection, the credit

1 shall be equal to the taxpayer's proportionate share of the cap for
2 the taxable year, as determined pursuant to subsection H of this
3 section. The taxpayer shall provide evidence of the written
4 commitment to the Oklahoma Tax Commission at the time of filing the
5 refund claim.

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

21 D. Except as otherwise provided pursuant to subsection H of
22 this section, for tax years ~~2017~~ 2018 and thereafter:

23 1. ~~The~~
24

1 a. Subject to the adjustment provided for in subparagraph
2 b of this paragraph, the total credits authorized
3 pursuant to subsection B of this section for all
4 taxpayers shall not exceed ~~Three Million Five Hundred~~
5 ~~Thousand Dollars (\$3,500,000.00)~~ Ten Million Dollars
6 (\$10,000,000.00) annually.

7 b. When total estimated credits determined pursuant to
8 the requirements of subsection H of this section equal
9 or exceed eighty-five percent (85%) of the cap
10 provided in subparagraph a of this paragraph, the
11 authorized total credits allowed in the next tax year
12 shall increase by twenty-five percent (25%) and shall
13 establish the new total credits authorized pursuant to
14 subsection B of this section;

15 2. ~~The~~

16 a. Subject to the adjustment provided for in subparagraph
17 b of this paragraph, the total credits authorized
18 pursuant to subsection C of this section for all
19 taxpayers shall not exceed ~~One Million Five Hundred~~
20 ~~Thousand Dollars (\$1,500,000.00)~~ Five Million Dollars
21 (\$5,000,000.00) annually.

22 b. When total estimated credits determined pursuant to
23 the requirements of subsection H of this section equal
24 or exceed eighty-five percent (85%) of the cap

1 provided in subparagraph a of this paragraph, the
2 authorized total credits allowed in the next tax year
3 shall increase by twenty-five percent (25%) and shall
4 establish the new total credits authorized pursuant to
5 subsection C of this section; and

6 3. The cap on total credits provided for in this subsection
7 shall be allocated by the Tax Commission as provided in subsection H
8 of this section.

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

21 F. Any tax credits which are earned by a taxpayer pursuant to
22 this section during the time period beginning on ~~the effective date~~
23 ~~of this act~~ August 26, 2011, through December 31, 2012, may not be
24 claimed for any period prior to the taxable year beginning January

1 1, 2013. No credits which accrue during the time period beginning
2 on ~~the effective date of this act~~ August 26, 2011, through December
3 31, 2012, may be used to file an amended tax return for any taxable
4 year prior to the taxable year beginning January 1, 2013.

5 G. As used in this section:

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

21 2. "Eligible special needs student" means a child who has been
22 provided services under an Individual Family Service Plan through
23 the SoonerStart program and during transition was evaluated and
24 determined to be eligible for school district services, a child of

1 school age who has attended public school in our state with an
2 individualized education program pursuant to the Individuals With
3 Disabilities Education Act, 20 U.S.C.A., Section 1400 et seq. or a
4 child who has been diagnosed by a clinical professional as having a
5 significant disability that will affect learning and who has been
6 approved by the board of a scholarship-granting organization;

7 3. "Educational scholarships" means:

- 8 a. scholarships to an eligible student of up to Five
9 Thousand Dollars (\$5,000.00) or eighty percent (80%)
10 of the statewide annual average per-pupil expenditure
11 as determined by the National Center for Education
12 Statistics, U.S. Department of Education, whichever is
13 greater, to cover all or part of the tuition, fees and
14 transportation costs of a qualified school which is
15 accredited by the State Board of Education or an
16 accrediting association approved by the Board pursuant
17 to Section 3-104 of Title 70 of the Oklahoma Statutes,
18 b. 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 as determined by the National Center for Education
22 Statistics, U.S. Department of Education, whichever is
23 greater, to cover the educational costs of a qualified
24 school which does not charge tuition, which enrolls

1 special populations of students and which is
2 accredited by the State Board of Education or an
3 accrediting association approved by the Board pursuant
4 to Section 3-104 of Title 70 of the Oklahoma Statutes,
5 or

6 c. 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 early childhood, elementary or
18 secondary private school in this state, including schools which
19 provide special educational programs for three-year-olds or
20 prekindergarten educational programs for four-year-olds, which:

21 a. is 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. is 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 early childhood, elementary or secondary private school in a county in this state, including schools which provide special educational programs for three-year-olds or prekindergarten educational programs for four-year-olds;

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

1 scholarships as defined in paragraph 3 of this
2 subsection,

3 d. spends each year ~~a portion~~ at least fifty percent
4 (50%) of its total expenditures on educational
5 scholarships for scholarships to low-income eligible
6 students, as defined in paragraph 4 of this
7 subsection, ~~in an amount equal to or greater than the~~
8 ~~percentage of low-income eligible students in the~~
9 ~~state,~~

10 e. ensures that scholarships are portable during the
11 school year and can be used at any qualified school
12 that accepts the eligible student or at any qualified
13 school for special needs students that accepts the
14 eligible special needs student,

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

17 g. has policies in place to:

18 (1) carry out criminal background checks on all
19 employees and board members to ensure that no
20 individual is involved with the organization who
21 might reasonably pose a risk to the appropriate
22 use of contributed funds, and

23 (2) maintain full and accurate records with respect
24 to the receipt of contributions and expenditures

1 of those contributions and supply such records
2 and any other documentation required by the Tax
3 Commission to demonstrate financial
4 accountability;

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

9 9. "Public school" means public schools as defined in Section
10 1-106 of Title 70 of the Oklahoma Statutes;

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

18 11. "Early childhood education program" means a special
19 educational program for eligible special needs students who are
20 three (3) years of age or a prekindergarten educational program
21 provided to children who are at least four (4) years of age but not
22 more than five (5) years of age on or before September 1;

23 12. "Innovative educational program" means an advanced academic
24 or academic improvement program that is not part of the regular

1 coursework of a public school but that enhances the curriculum or
2 academic program of the school or provides early childhood education
3 programs to students;

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

9 14. "Educational improvement grant organization" means an
10 organization which:

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

23 H. Total credits authorized by this section shall be allocated
24 as follows:

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

10 2. a. If the Tax Commission determines the total combined
11 credits claimed for contributions made to scholarship-
12 granting organizations during the most recently
13 completed calendar year by all taxpayers are in excess
14 of the statewide caps provided in ~~paragraph 1 of~~
15 subsection D of this section, the Tax Commission shall
16 first allocate any amount of credits not claimed for
17 contributions made to educational ~~improvement-granting~~
18 improvement grant organizations, then shall determine
19 the percentage of the contribution which establishes
20 the proportionate share of the credit which may be
21 claimed by any taxpayer so that the total maximum
22 credits authorized by this section are not exceeded.

23 b. If the Tax Commission determines the total combined
24 credits claimed for contributions made to educational

1 improvement grant organizations during the most
2 recently completed calendar year by all taxpayers are
3 in excess of the statewide caps provided in ~~paragraph~~
4 ~~2 of~~ subsection D of this section, the Tax Commission
5 shall first allocate any amount of credits not claimed
6 for contributions made to scholarship-granting
7 organizations, then shall determine the percentage of
8 the contribution which establishes the proportionate
9 share of the credit which may be claimed by any
10 taxpayer so that the maximum credits authorized by
11 this section are not exceeded.

12 c. Beginning for tax year 2016, credits earned, but not
13 allowed due to the application of statewide caps
14 provided in subsection D of this section will be
15 considered suspended and authorized to be used in the
16 next immediate tax year and applied to the next year's
17 statewide cap; and

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

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

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

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

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

14 b. describes the proposed innovative educational program
15 or programs supported by the organization.

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

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

23 a. the name of the innovative educational program or
24 programs and the total amount of the grant or grants

1 made to those programs during the immediately
2 preceding school year,

3 b. a description of how each grant was utilized during
4 the immediately preceding school year and a
5 description of any demonstrated or expected innovative
6 educational improvements,

7 c. the names of the public school and school districts
8 where innovative educational programs that received
9 grants during the immediately preceding school year
10 were implemented,

11 d. where the organization collects information on a
12 county-by-county basis, and

13 e. the total number and total amount of grants made
14 during the immediately preceding school year for
15 innovative educational programs at public school by
16 each county in which the organization made grants.

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

14 SECTION 2. This act shall become effective November 1, 2018.

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