

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

COMMITTEE SUBSTITUTE
FOR ENGROSSED

SENATE BILL NO. 445

By: Newhouse, Standridge and
Loveless of the Senate

and

Calvey of the House

COMMITTEE SUBSTITUTE

An Act relating to income tax; amending 68 O.S. 2011, Section 2357.206, as last amended by Section 1, Chapter 361, O.S.L. 2015 (68 O.S. Supp. 2016, Section 2357.206), which relates to the Oklahoma Equal Opportunity Education Scholarship Act; modifying manner in which cap on annual credits is allocated and calculated; conforming references, language and procedures; and providing an 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 361, O.S.L. 2015 (68 O.S. Supp. 2016, 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

1 taxpayer who makes a contribution to an eligible scholarship-
2 granting organization. The credit shall be equal to fifty percent
3 (50%) of the total amount of contributions made during a taxable
4 year, not to exceed One Thousand Dollars (\$1,000.00) for single
5 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 caps
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 scholarship-granting organization and makes a written commitment to
17 contribute the same amount for an additional year, the credit for
18 the first year and the additional year shall be equal to seventy-
19 five percent (75%) of the total amount of the contribution made
20 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. The taxpayer shall
23 provide evidence of the written commitment to the Oklahoma Tax
24 Commission at the time of filing the refund claim.

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 organization shall submit to the
19 Governor, President Pro Tempore of the Senate and the Speaker of the
20 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 ~~2~~ 1 of subsection D of this
12 section, the credit shall be equal to the taxpayer's proportionate
13 share of the cap for the taxable year, as determined pursuant to
14 subsection H 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 and thereafter:
23
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1 1. The total credits authorized pursuant to subsection B of
2 this section for all taxpayers shall not exceed Three Million Five
3 Hundred Thousand Dollars (\$3,500,000.00) annually~~;~~;

4 2. The total credits authorized pursuant to subsection C of
5 this section for all taxpayers shall not exceed One Million Five
6 Hundred Thousand Dollars (\$1,500,000.00) annually~~;~~; and

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

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

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

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

6 G. As used in this section:

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

22 2. "Eligible special needs student" means a child who has been
23 provided services under an Individual Family Service Plan through
24 the SoonerStart program and during transition was evaluated and

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

8 3. "Educational scholarships" means:

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

1 school which does not charge tuition, which enrolls
2 special populations of students and which is
3 accredited by the State Board of Education or an
4 accrediting association approved by the Board pursuant
5 to Section 3-104 of Title 70 of the Oklahoma Statutes,
6 or

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

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

- 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 of its expenditures on
4 educational scholarships for low-income eligible
5 students, as defined in paragraph 4 of this
6 subsection, in an amount equal to or greater than the
7 percentage of low-income eligible students in the
8 state,

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

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

16 g. has policies in place to:

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

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

1 and any other documentation required by the Tax
2 Commission to demonstrate financial
3 accountability;

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

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

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

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

22 12. "Innovative educational program" means an advanced academic
23 or academic improvement program that is not part of the regular
24 coursework of a public school but that enhances the curriculum or

1 academic program of the school or provides early childhood education
2 programs to students;

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

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

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

22 H. Total credits authorized by this section shall be allocated
23 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 organizations, then shall determine the percentage of
19 the contribution which establishes the proportionate
20 share of the credit which may be claimed by any
21 taxpayer so that the total maximum credits authorized
22 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; ~~and.~~

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.
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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 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 or for the revocation of the
10 registration of an organization, if applicable, and for notice as
11 required in subsection H of this section.

12 SECTION 2. This act shall become effective November 1, 2017.

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