

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

SUBCOMMITTEE RECOMMENDATION

FOR ENGROSSED

SENATE BILL NO. 445

By: Newhouse, Standridge and
Loveless of the Senate

and

Calvey of the House

SUBCOMMITTEE RECOMMENDATION

[income tax - Oklahoma Equal Opportunity Education
Scholarship Act - cap on annual credits - 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
taxpayer who makes a contribution to an eligible scholarship-
granting organization. The credit shall be equal to fifty percent

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

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

23 3. The credits authorized pursuant to the provisions of this
24 subsection shall be allocable to the partners, shareholders, members

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

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

21 C. 1. Except as provided in subsection F of this section,
22 after August 26, 2011, there shall be allowed a credit for any
23 taxpayer who makes a contribution to an eligible educational
24 improvement grant organization. The credit shall be equal to fifty

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

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

1 section. The taxpayer shall provide evidence of the written
2 commitment to the Oklahoma Tax Commission at the time of filing the
3 refund claim.

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

19 D. Except as otherwise provided pursuant to subsection H of
20 this section, for tax years 2017 and thereafter:

21 1. The total credits authorized pursuant to subsection B of
22 this section for all taxpayers shall not exceed Three Million Five
23 Hundred Thousand Dollars (\$3,500,000.00) annually;
24

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

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

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

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

1 file an amended tax return for any taxable year prior to the taxable
2 year beginning January 1, 2013.

3 G. As used in this section:

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

19 2. "Eligible special needs student" means a child who has been
20 provided services under an Individual Family Service Plan through
21 the SoonerStart program and during transition was evaluated and
22 determined to be eligible for school district services, a child of
23 school age who has attended public school in our state with an
24 individualized education program pursuant to the Individuals With

1 Disabilities Education Act, 20 U.S.C.A., Section 1400 et seq. or a
2 child who has been diagnosed by a clinical professional as having a
3 significant disability that will affect learning and who has been
4 approved by the board of a scholarship-granting organization;

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

1 accrediting association approved by the Board pursuant
2 to Section 3-104 of Title 70 of the Oklahoma Statutes,
3 or

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

12 4. "Low-income eligible student" means an eligible student or
13 eligible special needs student who qualifies for a free or reduced-
14 price lunch;

15 5. "Qualified school" means an early childhood, elementary or
16 secondary private school in this state, including schools which
17 provide special educational programs for three-year-olds or
18 prekindergarten educational programs for four-year-olds, which:

- 19 a. is accredited by the State Board of Education or an
20 accrediting association approved by the Board pursuant
21 to Section 3-104 of Title 70 of the Oklahoma Statutes,
22 b. is in compliance with all applicable health and safety
23 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 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 program" means a special
educational program for eligible special needs students who are
three (3) years of age or a prekindergarten educational 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

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.

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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