

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1200

By: Casey

AS INTRODUCED

An Act relating to revenue and taxation; amending 68 O.S. 2011, Section 2357.206, as last amended by Section 1, Chapter 361, O.S.L. 2016 (68 O.S. Supp. 2016, Section 2357.206), which relates to the Oklahoma Equal Opportunity Education Scholarship Act; permitting credit for taxpayer who makes contribution to public school; providing amount of credit based upon taxpayer status; providing for certain credit if taxpayer contributes to public school and makes commitment to contribute same amount for additional year; providing that credits are to be allocable to certain owners authorized to be treated as a partnership; providing that total credits for taxpayers who contribute to public school shall not exceed certain amounts; updating statutory reference; updating references; requiring Tax Commission to make certain determinations; 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. 2016 (70 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".

1 B. 1. Except as provided in subsection ~~F~~ G of this section,
2 after August 26, 2011, there shall be allowed a credit for any
3 taxpayer who makes a contribution to an eligible scholarship-
4 granting organization. The credit shall be equal to fifty percent
5 (50%) of the total amount of contributions made during a taxable
6 year, not to exceed One Thousand Dollars (\$1,000.00) for single
7 individuals, Two Thousand Dollars (\$2,000.00) for married
8 individuals filing jointly, or One Hundred Thousand Dollars
9 (\$100,000.00) for any taxpayer which is a legal business entity
10 including limited and general partnerships, corporations, subchapter
11 S corporations and limited liability companies; provided, if total
12 credits claimed pursuant to this paragraph exceed the caps
13 established pursuant to paragraph 1 of subsection ~~D~~ E of this
14 section, the credit shall be equal to the taxpayer's proportionate
15 share of the cap for the taxable year, as determined pursuant to
16 subsection ~~H~~ I of this section.

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

1 provide evidence of the written commitment to the Oklahoma Tax
2 Commission at the time of filing the refund claim.

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

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

1 C. 1. Except as provided in subsection ~~F~~ G of this section,
2 after August 26, 2011, there shall be allowed a credit for any
3 taxpayer who makes a contribution to an eligible educational
4 improvement grant organization. The credit shall be equal to fifty
5 percent (50%) of the total amount of contributions made during a
6 taxable year, not to exceed One Thousand Dollars (\$1,000.00) for
7 single individuals, Two Thousand Dollars (\$2,000.00) for married
8 individuals filing jointly, or One Hundred Thousand Dollars
9 (\$100,000.00) for any taxpayer which is a legal business entity
10 including limited and general partnerships, corporations, subchapter
11 S corporations and limited liability companies; provided, if total
12 credits claimed pursuant to this paragraph exceed the cap
13 established pursuant to paragraph 2 of subsection ~~D~~ E of this
14 section, the credit shall be equal to the taxpayer's proportionate
15 share of the cap for the taxable year, as determined pursuant to
16 subsection ~~H~~ I of this section.

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

1 credits claimed pursuant to this paragraph exceed the cap
2 established pursuant to paragraph 3 of this subsection, the credit
3 shall be equal to the taxpayer's proportionate share of the cap for
4 the taxable year, as determined pursuant to subsection ~~¶~~ I of this
5 section. The taxpayer shall provide evidence of the written
6 commitment to the Oklahoma Tax Commission at the time of filing the
7 refund claim.

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

23 D. 1. After August 26, 2017, there shall be allowed a credit
24 for any taxpayer who makes a contribution to a public school. The

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

2. For any taxpayer who makes a contribution to a public school and makes a written commitment to contribute the same amount for an additional year, the credit for the first year and the additional year shall be equal to seventy-five percent (75%) of the total amount of the contribution made during a taxable year, not to exceed the amounts established in paragraph 1 of this subsection for the taxable year in which the credit provided in this subsection is claimed; provided, if total credits claimed pursuant to this paragraph exceed the cap established pursuant to paragraph 3 of this subsection, the credit shall be equal to the taxpayer's proportionate share of the cap for the taxable year, as determined pursuant to subsection I of this section. The taxpayer shall

1 provide evidence of the written commitment to the Oklahoma Tax
2 Commission at the time of filing the refund claim.

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

18 E. 1. The total credits authorized pursuant to subsection B of
19 this section for all taxpayers shall not exceed Three Million Five
20 Hundred Thousand Dollars (\$3,500,000.00) annually.

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

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

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

7 ~~E.~~ F. For credits claimed for eligible contributions made
8 during tax year 2014 and thereafter, a credit shall not be allowed
9 by the Oklahoma Tax Commission for contributions made to a
10 scholarship-granting organization or an educational improvement
11 grant organization if that organization's percentage of funds
12 actually awarded is less than ninety percent (90%). For purposes of
13 this 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.~~ G. Any tax credits which are earned by a taxpayer pursuant
20 to this section during the time period beginning on the effective
21 date of this act through December 31, 2012, may not be claimed for
22 any 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.~~ H. 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~~ Elementary and Secondary
15 Education Act of 1965, as reauthorized and amended by P.L. No. 114-
16 95, also known as the Every Student Succeeds Act (ESSA). Once a
17 student has received an educational scholarship, as defined in
18 paragraph 3 of this subsection, the student and any siblings who are
19 members of the same household shall remain eligible until they
20 graduate from high school or reach twenty-one (21) years of age,
21 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.~~ I. Total credits authorized by this section shall be
23 allocated as follows:

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

12 2. a. 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 are in excess
16 of the statewide caps provided in paragraph 1 of
17 subsection ~~D~~ E of this section, the Tax Commission
18 shall determine the percentage of the contribution
19 which establishes the proportionate share of the
20 credit which may be claimed by any taxpayer so that
21 the maximum credits authorized by this section are not
22 exceeded~~ed~~,
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~~ E of this section, the Tax
5 Commission shall determine the percentage of the
6 contribution which establishes the proportionate share
7 of the credit which may be claimed by any taxpayer so
8 that the maximum credits authorized by this section
9 are not exceeded,

10 c. If the Tax Commission determines the total combined
11 credits claimed for contributions made to public
12 schools during the most recently completed calendar
13 year by all taxpayers are in excess of the statewide
14 caps provided in paragraph 3 of subsection E of this
15 section, the Tax Commission shall determine the
16 percentage of the contribution which establishes the
17 proportionate share of the credit which may be claimed
18 by any taxpayer so that the maximum credits authorized
19 by this section are not exceeded; and

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

1 organization ~~or~~, educational improvement grant organization or
2 public school shall notify contributors of that amount annually.

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

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

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

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

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

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

21 3. In order to maintain eligibility under this section, an
22 educational improvement grant organization shall annually report the
23 following information to the Tax Commission by September 1 of each
24 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 subsection shall be submitted on a form provided by the Tax Commission. No later than May 1 of each year, the Tax Commission shall annually distribute sample forms together with the forms on which the reports are required to be made to each approved organization.

1 5. The Tax Commission shall not require any other information
2 be provided by an organization, except as expressly authorized in
3 this section.

4 ~~H.~~ M. In consultation with the State Department of Education,
5 the Tax Commission shall promulgate rules necessary to implement
6 this act. The rules shall include procedures for the registration
7 of a 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~~ I of this section.

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

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