STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

SUBCOMMITTEE RECOMMENDATION
FOR
HOUSE BILL NO. 1857 By: Fugate

SUBCOMMITTEE RECOMMENDATION

An Act relating to education scholarships; amending 68 O.S. 2011, Section 2357.206, as last amended by Section 1, Chapter 288, O.S.L. 2017 (68 O.S. Supp. 2018, Section 2357.206), which relates to the Oklahoma Equal Opportunity Education Scholarship Act; modifying terms; revising household income limitations for scholarship eligibility; 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 288, O.S.L. 2017 (68 O.S. Supp. 2018, 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~~ E 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

(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 caps established pursuant to paragraph 1 of subsection D 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 H of this section.

2. For any taxpayer who makes a contribution to an eligible scholarship-granting organization 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. The taxpayer shall provide evidence of the written commitment to the Oklahoma Tax Commission at the time of filing the refund claim.

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

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

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

C. 1. Except as provided in subsection ~~F~~ E of this section, after August 26, 2011, there shall be allowed a credit for any taxpayer who makes a contribution to an eligible educational improvement grant organization. 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 1 of subsection D 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 H of this section.

2. For any taxpayer who makes a contribution to an eligible educational improvement grant organization 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 H of this

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

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

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

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

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

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

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

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

G. As used in this section:

1. "Eligible student" means a child of school age who is lawfully present in the United States and who is a member of a household in which the total annual income from taxable and nontaxable sources during the preceding tax year does not exceed an amount equal to ~~three hundred percent (300%) of the income standard used to qualify for a free or reduced school lunch~~ two times the applicable federal poverty level or Sixty Thousand Dollars ($60,000.00) per year, whichever is more, or who, during the immediately preceding school year, attended or, by virtue of the location of such student's place of residence, was eligible to attend a public school in this state which has been identified for school improvement as determined by the State Board of Education pursuant to the requirements of the No Child Left Behind Act of 2001, P.L. No. 107-110. Once a student has received an educational scholarship, as defined in paragraph 3 of this subsection, the student and any siblings who are members of the same household shall remain eligible until they graduate from high school or reach twenty-one (21) years of age, whichever occurs first;

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

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

3. "Educational scholarships" means:

a. scholarships to an eligible student of up to Five Thousand Dollars ($5,000.00) or eighty percent (80%) of the statewide annual average per-pupil expenditure as determined by the National Center for Education Statistics, U.S. Department of Education, whichever is greater, to cover all or part of the tuition, fees and transportation costs of a qualified school which is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes,

b. scholarships to an eligible student of up to Five Thousand Dollars ($5,000.00) or eighty percent (80%) of the statewide annual average per-pupil expenditure as determined by the National Center for Education Statistics, U.S. Department of Education, whichever is greater, to cover the educational costs of a qualified school which does not charge tuition, which enrolls special populations of students and which is accredited by the State Board of Education or an accrediting association approved by the Board pursuant to Section 3-104 of Title 70 of the Oklahoma Statutes, or

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

4. "Low-income eligible student" means an eligible student or eligible special needs student who qualifies ~~for a free or reduced-price lunch~~ based on the annual household income criteria established in paragraph 1 of this subsection;

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

a. is accredited by the State Board of Education or an accrediting association approved by the Board pursuant 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 scholarships as defined in paragraph 3 of this subsection,

d. spends each year a portion of its expenditures on educational scholarships for low-income eligible students, as defined in paragraph 4 of this subsection, in an amount equal to or greater than the percentage of low-income eligible students in the state,

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

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

g. has policies in place to:

(1) carry out criminal background checks on all employees and board members to ensure that no individual is involved with the organization who

might reasonably pose a risk to the appropriate use of contributed funds, and

(2) maintain full and accurate records with respect to the receipt of contributions and expenditures of those contributions and supply such records and any other documentation required by the Tax Commission to demonstrate financial accountability;

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

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

14. "Educational improvement grant 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), and

b. contributes at least ninety percent (90%) of its annual receipts as grants to eligible schools for innovative educational programs. For purposes of this subparagraph, an educational improvement grant organization contributes its annual cash receipts when it expends or otherwise irrevocably encumbers those funds for expenditure during the then current fiscal year of the organization or during the next succeeding fiscal year of the organization.

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

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

2. a. If the Tax Commission determines the total combined credits claimed for contributions made to scholarship-granting organizations during the most recently completed calendar year by all taxpayers are in excess of the statewide caps provided in paragraph 1 of subsection D of this section, the Tax Commission shall first allocate any amount of credits not claimed for contributions made to educational improvement-granting organizations, then shall determine the percentage of the contribution which establishes the proportionate share of the credit which may be claimed by any

taxpayer so that the total maximum credits authorized by this section are not exceeded.

b. If the Tax Commission determines the total combined credits claimed for contributions made to educational improvement grant organizations during the most recently completed calendar year by all taxpayers are in excess of the statewide caps provided in paragraph 2 of subsection D of this section, the Tax Commission shall first allocate any amount of credits not claimed for contributions made to scholarship-granting organizations, then shall determine the percentage of the contribution which establishes the proportionate share of the credit which may be claimed by any taxpayer so that the maximum credits authorized by this section are not exceeded.

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

3. The Tax Commission shall publish the percentage of the contribution which may be claimed as a credit by contributors for the most recently completed calendar year on the Tax Commission

website no later than February 15 of each calendar year for contributions made the previous year. Each scholarship-granting organization or educational improvement grant organization shall notify contributors of that amount annually.

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

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

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

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

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

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

3. In order to maintain eligibility under this section, an educational improvement grant organization shall annually report the

following information to the Tax Commission by September 1 of each year:

a. the name of the innovative educational program or programs and the total amount of the grant or grants made to those programs during the immediately preceding school year,

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

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

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

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

4. The information required under paragraph 3 of this 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.

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

L. In consultation with the State Department of Education, the Tax Commission shall promulgate rules necessary to implement this act. The rules shall include procedures for the registration of a scholarship-granting organization or an educational improvement grant organization for purposes of determining if the organization meets the requirements of this act or for the revocation of the registration of an organization, if applicable, and for notice as required in subsection H of this section.

SECTION 2. This act shall become effective November 1, 2019.

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