

1 **SENATE FLOOR VERSION**

2 February 13, 2019

3 **AS AMENDED**

4 SENATE BILL NO. 407

By: Rader of the Senate

and

Echols of the House

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7
8 **[income tax credits - Oklahoma Equal Opportunity**
9 **Education Scholarship Act - exception to individual**
10 **limit - limits for specified tax years - effective**
11 **date]**

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

13 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.206, as
14 last amended by Section 1, Chapter 288, O.S.L. 2017 (68 O.S. Supp.
15 2018, Section 2357.206), is amended to read as follows:

16 Section 2357.206. A. This act shall be known and may be cited
17 as the "Oklahoma Equal Opportunity Education Scholarship Act".

18 B. 1. Except as provided in subsection F of this section,
19 after August 26, 2011, there shall be allowed a credit for any
20 taxpayer who makes a contribution to an eligible scholarship-
21 granting organization. The credit shall be equal to fifty percent
22 (50%) of the total amount of contributions made during a taxable
23 year, not to exceed One Thousand Dollars (\$1,000.00) for single
24 individuals, Two Thousand Dollars (\$2,000.00) for married

1 individuals filing jointly, or One Hundred Thousand Dollars
2 (\$100,000.00) for any taxpayer which is a legal business entity
3 including limited and general partnerships, corporations, subchapter
4 S corporations and limited liability companies, plus any credits
5 suspended pursuant to subparagraph c of paragraph 2 of subsection H
6 of this section; provided, if total credits claimed pursuant to this
7 paragraph exceed the caps established pursuant to ~~paragraph 1 of~~
8 subsection D of this section, the credit shall be equal to the
9 taxpayer's proportionate share of the cap for the taxable year, as
10 determined pursuant to subsection H of this section.

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

21 3. The credits authorized pursuant to the provisions of this
22 subsection shall be allocable to the partners, shareholders, members
23 or other equity owners of a taxpayer that is authorized to be
24 treated as a partnership for purposes of federal income tax

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

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

19 C. 1. Except as provided in subsection F of this section,
20 after August 26, 2011, there shall be allowed a credit for any
21 taxpayer who makes a contribution to an eligible educational
22 improvement grant organization. The credit shall be equal to fifty
23 percent (50%) of the total amount of contributions made during a
24 taxable year, not to exceed One Thousand Dollars (\$1,000.00) for

1 single individuals, Two Thousand Dollars (\$2,000.00) for married
2 individuals filing jointly, or One Hundred Thousand Dollars
3 (\$100,000.00) for any taxpayer which is a legal business entity
4 including limited and general partnerships, corporations, subchapter
5 S corporations and limited liability companies, plus any credits
6 suspended pursuant to subparagraph c of paragraph 2 of subsection H
7 of this section; provided, if total credits claimed pursuant to this
8 paragraph exceed the cap established pursuant to ~~paragraph 1 of~~
9 subsection D of this section, the credit shall be equal to the
10 taxpayer's proportionate share of the cap for the taxable year, as
11 determined pursuant to subsection H of this section.

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

1 commitment to the Oklahoma Tax Commission at the time of filing the
2 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 D. Except for the allocation of the cap by the Tax Commission
19 as otherwise provided pursuant to subsection H of this section, ~~for~~
20 ~~tax years 2017 and thereafter~~ total credits shall be subject to the
21 following:

22 1. ~~The~~ For tax years 2017 and 2018, total credits authorized
23 pursuant to subsection B of this section for all taxpayers shall not
24

1 exceed Three Million Five Hundred Thousand Dollars (\$3,500,000.00)
2 annually;

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

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

9 2. For tax years 2019 and thereafter, total credits authorized
10 pursuant to subsection B of this section for all taxpayers shall not
11 exceed **Ten Million Dollars (\$10,000,000.00)** annually and total
12 credits authorized pursuant to subsection C of this section for all
13 taxpayers shall not exceed **Ten Million Dollars (\$10,000,000.00)**.

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

1 award as educational scholarships or educational improvement grants
2 over the most recent twenty-four (24) months.

3 F. Any tax credits which are earned by a taxpayer pursuant to
4 this section during the time period beginning on ~~the effective date~~
5 ~~of this act~~ August 26, 2011, through December 31, 2012, may not be
6 claimed for any period prior to the taxable year beginning January
7 1, 2013. No credits which accrue during the time period beginning
8 on ~~the effective date of this act~~ August 26, 2011, through December
9 31, 2012, may be used to file an amended tax return for any taxable
10 year prior to the taxable year beginning January 1, 2013.

11 G. As used in this section:

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

1 household shall remain eligible until they graduate from high school
2 or reach twenty-one (21) years of age, whichever occurs first;

3 2. "Eligible special needs student" means a child who has been
4 provided services under an Individual Family Service Plan through
5 the SoonerStart program and during transition was evaluated and
6 determined to be eligible for school district services, a child of
7 school age who has attended public school in our state with an
8 individualized education program pursuant to the Individuals With
9 Disabilities Education Act, 20 U.S.C.A., Section 1400 et seq. or a
10 child who has been diagnosed by a clinical professional as having a
11 significant disability that will affect learning and who has been
12 approved by the board of a scholarship-granting organization;

13 3. "Educational scholarships" means:

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

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

13 c. scholarships to an eligible special needs student of
14 up to Twenty-five Thousand Dollars (\$25,000.00) to
15 cover all or part of the tuition, fees and
16 transportation costs of a qualified school for
17 eligible special needs students which is accredited by
18 the State Board of Education or an accrediting
19 association approved by the Board pursuant to Section
20 3-104 of Title 70 of the Oklahoma Statutes;

21 4. "Low-income eligible student" means an eligible student or
22 eligible special needs student who qualifies for a free or reduced-
23 price lunch;

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

- 5 a. is accredited by the State Board of Education or an
6 accrediting association approved by the Board pursuant
7 to Section 3-104 of Title 70 of the Oklahoma Statutes,
- 8 b. is in compliance with all applicable health and safety
9 laws and codes,
- 10 c. has a stated policy against discrimination in
11 admissions on the basis of race, color, national
12 origin or disability, and
- 13 d. ensures academic accountability to parents and
14 guardians of students through regular progress
15 reports;

16 6. "Qualified school for eligible special needs students" means
17 an early childhood, elementary or secondary private school in a
18 county in this state, including schools which provide special
19 educational programs for three-year-olds or prekindergarten
20 educational programs for four-year-olds;

21 7. "Scholarship-granting organization" means an organization
22 which:
23
24

- 1 a. is a nonprofit entity exempt from taxation pursuant to
2 the provisions of the Internal Revenue Code, 26
3 U.S.C., Section 501(c)(3),
- 4 b. distributes periodic scholarship payments as checks
5 made out to an eligible student's or eligible special
6 needs student's parent or guardian and mailed to the
7 qualified school where the student is enrolled,
- 8 c. spends no more than ten percent (10%) of its annual
9 revenue on expenditures other than educational
10 scholarships as defined in paragraph 3 of this
11 subsection,
- 12 d. spends each year a portion of its expenditures on
13 educational scholarships for low-income eligible
14 students, as defined in paragraph 4 of this
15 subsection, in an amount equal to or greater than the
16 percentage of low-income eligible students in the
17 state,
- 18 e. ensures that scholarships are portable during the
19 school year and can be used at any qualified school
20 that accepts the eligible student or at any qualified
21 school for special needs students that accepts the
22 eligible special needs student,
- 23 f. registers with the Oklahoma Tax Commission as a
24 scholarship-granting organization, and

1 g. has policies in place to:

2 (1) carry out criminal background checks on all
3 employees and board members to ensure that no
4 individual is involved with the organization who
5 might reasonably pose a risk to the appropriate
6 use of contributed funds, and

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

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

17 9. "Public school" means public schools as defined in Section
18 1-106 of Title 70 of the Oklahoma Statutes;

19 10. "Eligible school" means any public school that is ~~not~~
20 ~~located within a ten-mile radius of a qualified school in this~~
21 ~~state, or any public school that is located within a ten-mile radius~~
22 ~~of a qualified school in this state but offers grade-level~~
23 ~~instruction different from the qualified school or any public school~~

1 located within a public school district with fewer than four
2 thousand five hundred (4,500) students;

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

8 12. "Innovative educational program" means an advanced academic
9 or academic improvement program that is not part of the regular
10 coursework of a public school but that enhances the curriculum or
11 academic program of the school or provides early childhood education
12 programs to students;

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

18 14. "Educational improvement grant organization" means an
19 organization which:

- 20 a. is a nonprofit entity exempt from taxation pursuant to
21 the provisions of the Internal Revenue Code, 26
22 U.S.C., Section 501(c)(3), and
23 b. contributes at least ninety percent (90%) of its
24 annual receipts as grants to eligible schools for

1 innovative educational programs. For purposes of this
2 subparagraph, an educational improvement grant
3 organization contributes its annual cash receipts when
4 it expends or otherwise irrevocably encumbers those
5 funds for expenditure during the then current fiscal
6 year of the organization or during the next succeeding
7 fiscal year of the organization.

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

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

19 2. a. If the Tax Commission determines the total combined
20 credits claimed for contributions made to scholarship-
21 granting organizations during the most recently
22 completed calendar year by all taxpayers are in excess
23 of the statewide caps provided in paragraph 1 of
24 subsection D of this section, the Tax Commission shall

1 first allocate any amount of credits not claimed for
2 contributions made to educational improvement-granting
3 organizations, then shall determine the percentage of
4 the contribution which establishes the proportionate
5 share of the credit which may be claimed by any
6 taxpayer so that the total maximum credits authorized
7 by this section are not exceeded.

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

21 c. Beginning for tax year 2016, credits earned, but not
22 allowed due to the application of statewide caps
23 provided in subsection D of this section will be
24 considered suspended and authorized to be used in the

1 next immediate tax year and applied to the next year's
2 statewide cap; and

3 3. The Tax Commission shall publish the percentage of the
4 contribution which may be claimed as a credit by contributors for
5 the most recently completed calendar year on the Tax Commission
6 website no later than February 15 of each calendar year for
7 contributions made the previous year. Each scholarship-granting
8 organization or educational improvement grant organization shall
9 notify contributors of that amount annually.

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

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

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

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

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

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

4 3. In order to maintain eligibility under this section, an
5 educational improvement grant organization shall annually report the
6 following information to the Tax Commission by September 1 of each
7 year:

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

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

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

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

22 e. the total number and total amount of grants made
23 during the immediately preceding school year for
24

1 innovative educational programs at public school by
2 each county in which the organization made grants.

3 4. The information required under paragraph 3 of this
4 subsection shall be submitted on a form provided by the Tax
5 Commission. No later than May 1 of each year, the Tax Commission
6 shall annually distribute sample forms together with the forms on
7 which the reports are required to be made to each approved
8 organization.

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

12 L. In consultation with the State Department of Education, the
13 Tax Commission shall promulgate rules necessary to implement ~~this~~
14 act the Oklahoma Equal Opportunity Education Scholarship Act. The
15 rules shall include procedures for the registration of a
16 scholarship-granting organization or an educational improvement
17 grant organization for purposes of determining if the organization
18 meets the requirements of this act or for the revocation of the
19 registration of an organization, if applicable, and for notice as
20 required in subsection H of this section.

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

22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
23 February 13, 2019 - DO PASS AS AMENDED
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