

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 1247

By: McBride and Fincher of the
House

6 and

7 Pemberton of the Senate

8
9 COMMITTEE SUBSTITUTE

10 [education scholarships - mandating quadrennial
11 submission of financial statement to Oklahoma Tax
12 Commission - requiring annual reporting by
13 scholarship-granting organization - effective date]

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

15 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.206, as
16 last amended by Section 1, Chapter 288, O.S.L. 2017 (68 O.S. Supp.
17 2018, Section 2357.206), is amended to read as follows:

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

20 B. 1. Except as provided in subsection F of this section,
21 after August 26, 2011, there shall be allowed a credit for any
22 taxpayer who makes a contribution to an eligible scholarship-
23 granting organization. The credit shall be equal to fifty percent
24 (50%) of the total amount of contributions made during a taxable

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

12 2. For any taxpayer who makes a contribution to an eligible
13 scholarship-granting organization and makes a written commitment to
14 contribute the same amount for an additional year, the credit for
15 the first year and the additional year shall be equal to seventy-
16 five percent (75%) of the total amount of the contribution made
17 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. The taxpayer shall
20 provide evidence of the written commitment to the Oklahoma Tax
21 Commission at the time of filing the refund claim.

22 3. The credits authorized pursuant to the provisions of this
23 subsection shall be allocable to the partners, shareholders, members
24 or other equity owners of a taxpayer that is authorized to be

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

13 4. On or before December 31, 2017, and once every four (4)
14 years thereafter, such scholarship-granting organization and
15 educational improvement granting organization shall submit to the
16 Oklahoma Tax Commission, Governor, President Pro Tempore of the
17 Senate and the Speaker of the House of Representatives, an audited
18 financial statement for the organization along with information
19 detailing the benefits, successes or failures of the program. The
20 Tax Commission shall publish and make publicly available on its
21 website the financial statement and information submitted pursuant
22 to this paragraph.

23 C. 1. Except as provided in subsection F of this section,
24 after August 26, 2011, there shall be allowed a credit for any

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

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

1 shall be equal to the taxpayer's proportionate share of the cap for
2 the taxable year, as determined pursuant to subsection H of this
3 section. The taxpayer shall provide evidence of the written
4 commitment to the Oklahoma Tax Commission at the time of filing the
5 refund claim.

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

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

23

24

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

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

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

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

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

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

6 G. As used in this section:

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

23 2. "Eligible special needs student" means a child who has been
24 provided services under an Individual Family Service Plan through

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

9 3. "Educational scholarships" means:

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

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

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

16 4. "Low-income eligible student" means an eligible student or
17 eligible special needs student who ~~qualifies for a free or reduced-~~
18 ~~price lunch~~ lives in a household which has an income of less than
19 one hundred eighty-five percent (185%) of the federal poverty level;

20 5. "Qualified school" means an early childhood, elementary or
21 secondary private school in this state, including schools which
22 provide special educational programs for three-year-olds or
23 prekindergarten educational programs for four-year-olds, which:
24

- 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

- 1 needs student's parent or guardian and mailed to the
2 qualified school where the student is enrolled,
- 3 c. spends no more than ten percent (10%) of its annual
4 revenue on expenditures other than educational
5 scholarships as defined in paragraph 3 of this
6 subsection,
- 7 d. spends each year a portion of its expenditures on
8 educational scholarships for low-income eligible
9 students, as defined in paragraph 4 of this
10 subsection, in an amount equal to or greater than the
11 percentage of low-income eligible students in the
12 state,
- 13 e. ensures that scholarships are portable during the
14 school year and can be used at any qualified school
15 that accepts the eligible student or at any qualified
16 school for special needs students that accepts the
17 eligible special needs student,
- 18 f. registers with the Oklahoma Tax Commission as a
19 scholarship-granting organization, and
- 20 g. has policies in place to:
- 21 (1) carry out criminal background checks on all
22 employees and board members to ensure that no
23 individual is involved with the organization who
24

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

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

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

13 9. "Public school" means public schools as defined in Section
14 1-106 of Title 70 of the Oklahoma Statutes;

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

22 11. "Early childhood education program" means a special
23 educational program for eligible special needs students who are
24 three (3) years of age or a prekindergarten educational program

1 provided to children who are at least four (4) years of age but not
2 more than five (5) years of age on or before September 1;

3 12. "Innovative educational program" means an advanced academic
4 or academic improvement program that is not part of the regular
5 coursework of a public school but that enhances the curriculum or
6 academic program of the school or provides early childhood education
7 programs to students;

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

13 14. "Educational improvement grant organization" means an
14 organization which:

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

1 year of the organization or during the next succeeding
2 fiscal year of the organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 3 a. the name of the innovative educational program or
4 programs and the total amount of the grant or grants
5 made to those programs during the immediately
6 preceding school year,
- 7 b. a description of how each grant was utilized during
8 the immediately preceding school year and a
9 description of any demonstrated or expected innovative
10 educational improvements,
- 11 c. the names of the public ~~school~~ schools and school
12 districts where innovative educational programs that
13 received grants during the immediately preceding
14 school year were implemented,
- 15 d. where the organization collects information on a
16 county-by-county basis, and
- 17 e. the total number and total amount of grants made
18 during the immediately preceding school year for
19 innovative educational programs at public ~~school~~
20 schools by each county in which the organization made
21 grants.

22 4. The information required under paragraph 3 of this
23 subsection shall be submitted on a form provided by the Tax
24 Commission. No later than May 1 of each year, the Tax Commission

1 shall annually distribute sample forms together with the forms on
2 which the reports are required to be made to each approved
3 organization.

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

7 L. 1. In order to maintain registration, a scholarship-
8 granting organization shall annually report to the Tax Commission by
9 September 1 of each year the following information regarding the
10 educational scholarships funded by the organization in the previous
11 academic year:

- 12 a. the name and address of the scholarship-granting
13 organization,
- 14 b. the names of the qualifying schools that received
15 funding for educational scholarships, the total amount
16 of funds paid to each qualifying school and the total
17 number of scholarship recipients enrolled in each
18 qualifying school,
- 19 c. the total number and total dollar amount of
20 contributions received during the previous academic
21 year,
- 22 d. the total number and total dollar amount of
23 educational scholarships awarded and funded during the
24 previous academic year,

1 e. the total number, total dollar amount and percentage
2 of educational scholarships awarded and funded during
3 the previous academic year disaggregated into the
4 following categories:

5 (1) students who qualify for the federal free and
6 reduced-price lunch program,

7 (2) students who during the immediately preceding
8 school year attended or who were eligible by
9 virtue of the residence of the student to attend
10 a public school in the state which was identified
11 for school improvement by the State Board of
12 Education,

13 (3) eligible special needs students, and

14 (4) students who were first-time recipients of a
15 scholarship, including information about the type
16 of public or private school the student was
17 enrolled in during the entire previous academic
18 year,

19 f. the percentage of the total amount of education
20 scholarship expenditures spent on low-income eligible
21 students, and

22 g. the percentage of annual revenue received by the
23 organization which was not expended on scholarships.

1 2. The Tax Commission shall publish and make available on its
2 website:

3 a. the information submitted by the scholarship-granting
4 organization pursuant to paragraph 1 of this
5 subsection, and

6 b. a list of participating schools.

7 3. A scholarship-granting organization shall annually submit
8 verification to the Tax Commission that the organization still meets
9 the criteria set forth in paragraph 7 of subsection G of this
10 section.

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

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

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21 57-1-2135 EB 9/30/2019 9:27:45 AM