

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1846

By: Fugate

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5  
6 AS INTRODUCED

7 An Act relating to education scholarships; amending  
8 68 O.S. 2011, Section 2357.206, as last amended by  
9 Section 1, Chapter 288, O.S.L. 2017 (68 O.S. Supp.  
10 2020, Section 2357.206), which relates to the  
11 Oklahoma Equal Opportunity Education Scholarship Act;  
12 modifying definitions; revising household income  
13 limitations for scholarship eligibility; updating  
14 reference to federal law; requiring annual  
15 documentation for eligibility; and providing an  
16 effective date.

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

18 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.206, as  
19 last amended by Section 1, Chapter 288, O.S.L. 2017 (68 O.S. Supp.  
20 2020, Section 2357.206), is amended to read as follows:

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

23 B. 1. Except as provided in subsection F of this section,  
24 after August 26, 2011, there shall be allowed a credit for any  
25 taxpayer who makes a contribution to an eligible scholarship-  
26 granting organization. The credit shall be equal to fifty percent  
27 (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 Governor, President Pro Tempore of the Senate and the Speaker of the  
17 House of Representatives, an audited financial statement for the  
18 organization along with information detailing the benefits,  
19 successes or failures of the program.

20 C. 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 educational  
23 improvement grant organization. The credit shall be equal to fifty  
24 percent (50%) of the total amount of contributions made during a

1 taxable year, not to exceed One Thousand Dollars (\$1,000.00) for  
2 single 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 cap  
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 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 as otherwise provided pursuant to subsection H of  
19 this section, for tax years 2017 and thereafter:

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

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

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

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

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

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

3 G. As used in this section:

4 1. "Eligible student" means a child of school age who is  
5 lawfully present in the United States and who is a member of a  
6 household in which the total annual adjusted gross income during the  
7 preceding tax year does not exceed ~~an amount equal to three hundred~~  
8 ~~percent (300%) of the income standard used to qualify for a free or~~  
9 ~~reduced school lunch~~ Sixty Thousand Dollars (\$60,000.00) per year or  
10 who, during the immediately preceding school year, attended or, by  
11 virtue of the location of such student's place of residence, was  
12 eligible to attend a public school in this state which has been  
13 identified for school improvement as determined by the State Board  
14 of Education pursuant to the requirements of the ~~No Child Left~~  
15 ~~Behind Act of 2001, P.L. No. 107-110~~ Every Student Succeeds Act,  
16 P.L. No. 114-95. Once a student has received an educational  
17 scholarship, as defined in paragraph 3 of this subsection, the  
18 student ~~and any siblings who are members of the same household~~  
19 shall ~~remain~~ submit documentation annually to confirm the student  
20 remains eligible until they graduate from high school or reach  
21 ~~twenty one (21) years of age, whichever occurs first~~ pursuant to  
22 this paragraph;

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;

19 5. "Qualified school" means an early childhood, elementary or  
20 secondary private school in this state, including schools which  
21 provide special educational programs for three-year-olds or  
22 prekindergarten educational programs for four-year-olds, which:  
23  
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- 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  
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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 and school districts  
12 where innovative educational programs that received  
13 grants during the immediately preceding school year  
14 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 by  
20 each county in which the organization made grants.

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

1 which the reports are required to be made to each approved  
2 organization.

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

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

14 SECTION 2. This act shall become effective November 1, 2021.

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