

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1982

By: Lepak

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6 AS INTRODUCED

7 An Act relating to revenue and taxation; amending 68
8 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 income tax
credits for certain education related organizations;
providing for adjustment to tax credit cap amount;
and providing an effective date.

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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 2020, 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 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~~ through 2021:

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; and

7 4. In tax year 2022 and each tax year thereafter, the tax
8 credit cap amount is the tax credit cap amount in the prior tax
9 year. However, in any tax year when the annual tax credit amount
10 for the prior tax year is equal to or greater than ninety percent
11 (90%) of the tax credit cap amount applicable to that tax year, the
12 tax credit cap amount shall increase by twenty-five percent (25%);

13 5. Paragraph 4 of this subsection shall not apply in years
14 where the total state budget of the fiscal year that begins in the
15 relevant tax year fails to meet or exceed the size of the total
16 state budget of the prior state fiscal year. In such case, the tax
17 credit cap shall remain the same amount as the amount in the prior
18 tax year.

19 E. For credits claimed for eligible contributions made during
20 tax year 2014 and thereafter, a credit shall not be allowed by the
21 Oklahoma Tax Commission for contributions made to a scholarship-
22 granting organization or an educational improvement grant
23 organization if that organization's percentage of funds actually
24 awarded is less than ninety percent (90%). For purposes of this

1 section, the "percentage of funds actually awarded" shall be
2 determined by dividing the total amount of funds actually awarded as
3 educational scholarships or educational improvement grants over the
4 most recent twenty-four (24) months by the total amount available to
5 award as educational scholarships or educational improvement grants
6 over the most recent twenty-four (24) months.

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

15 G. As used in this section:

16 1. "Eligible student" means a child of school age who is
17 lawfully present in the United States and who is a member of a
18 household in which the total annual income during the preceding tax
19 year does not exceed an amount equal to three hundred percent (300%)
20 of the income standard used to qualify for a free or reduced school
21 lunch or who, during the immediately preceding school year, attended
22 or, by virtue of the location of such student's place of residence,
23 was eligible to attend a public school in this state which has been
24 identified for school improvement as determined by the State Board

1 of Education pursuant to the requirements of the No Child Left
2 Behind Act of 2001, P.L. No. 107-110. Once a student has received
3 an educational scholarship, as defined in paragraph 3 of this
4 subsection, the student and any siblings who are members of the same
5 household shall remain eligible until they graduate from high school
6 or reach twenty-one (21) years of age, whichever occurs first;

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

17 3. "Educational scholarships" means:

18 a. scholarships to an eligible student of up to Five
19 Thousand Dollars (\$5,000.00) or eighty percent (80%)
20 of the statewide annual average per-pupil expenditure
21 as determined by the National Center for Education
22 Statistics, U.S. Department of Education, whichever is
23 greater, to cover all or part of the tuition, fees and
24 transportation costs of a qualified school which is

- 1 accredited by the State Board of Education or an
2 accrediting association approved by the Board pursuant
3 to Section 3-104 of Title 70 of the Oklahoma Statutes,
4 b. scholarships to an eligible student of up to Five
5 Thousand Dollars (\$5,000.00) or eighty percent (80%)
6 of the statewide annual average per-pupil expenditure
7 as determined by the National Center for Education
8 Statistics, U.S. Department of Education, whichever is
9 greater, to cover the educational costs of a qualified
10 school which does not charge tuition, which enrolls
11 special populations of students and which is
12 accredited by the State Board of Education or an
13 accrediting association approved by the Board pursuant
14 to Section 3-104 of Title 70 of the Oklahoma Statutes,
15 or
16 c. scholarships to an eligible special needs student of
17 up to Twenty-five Thousand Dollars (\$25,000.00) to
18 cover all or part of the tuition, fees and
19 transportation costs of a qualified school for
20 eligible special needs students which is accredited by
21 the State Board of Education or an accrediting
22 association approved by the Board pursuant to Section
23 3-104 of Title 70 of the Oklahoma Statutes;
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1 4. "Low-income eligible student" means an eligible student or
2 eligible special needs student who qualifies for a free or reduced-
3 price lunch;

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

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

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

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

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

3 g. has policies in place to:

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

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

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

19 9. "Public school" means public schools as defined in Section
20 1-106 of Title 70 of the Oklahoma Statutes;

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

1 instruction different from the qualified school or any public school
2 located within a public school district with fewer than four
3 thousand five hundred (4,500) students;

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

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

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

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

21 a. is a nonprofit entity exempt from taxation pursuant to
22 the provisions of the Internal Revenue Code, 26
23 U.S.C., Section 501(c)(3), and
24

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

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

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

21 2. a. If the Tax Commission determines the total combined
22 credits claimed for contributions made to scholarship-
23 granting organizations during the most recently
24 completed calendar year by all taxpayers are in excess

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

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

23 c. Beginning for tax year 2016, credits earned, but not
24 allowed due to the application of statewide caps

1 provided in subsection D of this section will be
2 considered suspended and authorized to be used in the
3 next immediate tax year and applied to the next year's
4 statewide cap; and

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

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

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

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

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

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

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

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

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

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

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

22 d. where the organization collects information on a
23 county-by-county basis, and
24

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

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

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

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

22 SECTION 2. This act shall become effective November 1, 2021.
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24 58-1-5732 MAH 01/16/21