

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 2240

By: Mulready

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5
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 361, O.S.L. 2015 (68 O.S. Supp.
10 2016, Section 2357.206), which relates to the
11 Oklahoma Equal Opportunity Education Scholarship Act;
12 clarifying language; and providing an effective date.

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

14 SECTION 1. AMENDATORY 68 O.S. 2011, Section 2357.206, as
15 last amended by Section 1, Chapter 361, O.S.L. 2015 (68 O.S. Supp.
16 2016, Section 2357.206), is amended to read as follows:

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

19 B. 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 scholarship-
22 granting organization. The credit shall be equal to fifty percent
23 (50%) of the total amount of contributions made during a taxable
24 year, not to exceed One Thousand Dollars (\$1,000.00) for single

1 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; provided, if total
6 credits claimed pursuant to this paragraph exceed the caps
7 established pursuant to paragraph 1 of subsection D of this section,
8 the credit shall be equal to the taxpayer's proportionate share of
9 the cap for the taxable year, as determined pursuant to subsection H
10 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; provided, if total
6 credits claimed pursuant to this paragraph exceed the cap
7 established pursuant to paragraph 2 of subsection D of this section,
8 the credit shall be equal to the taxpayer's proportionate share of
9 the cap for the taxable year, as determined pursuant to subsection H
10 of this section.

11 2. For any taxpayer who makes a contribution to an eligible
12 educational improvement grant organization and makes a written
13 commitment to contribute the same amount for an additional year, the
14 credit for the first year and the additional year shall be equal to
15 seventy-five percent (75%) of the total amount of the contribution
16 made 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; provided, if total
19 credits claimed pursuant to this paragraph exceed the cap
20 established pursuant to paragraph 3 of this subsection, the credit
21 shall be equal to the taxpayer's proportionate share of the cap for
22 the taxable year, as determined pursuant to subsection H of this
23 section. The taxpayer shall provide evidence of the written
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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. 1. The total credits authorized pursuant to subsection B of
19 this section for all taxpayers shall not exceed Three Million Five
20 Hundred Thousand Dollars (\$3,500,000.00) annually.

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

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

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

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

24 G. As used in this section:

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

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

3 3. "Educational scholarships" means:

- 4 a. 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 all or part of the tuition, fees and
10 transportation costs of a qualified school which is
11 accredited by the State Board of Education or an
12 accrediting association approved by the Board pursuant
13 to Section 3-104 of Title 70 of the Oklahoma Statutes,
- 14 b. 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 the educational costs of a qualified
20 school which does not charge tuition, which enrolls
21 special populations of students and which is
22 accredited by the State Board of Education or an
23 accrediting association approved by the Board pursuant
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1 to Section 3-104 of Title 70 of the Oklahoma Statutes,
2 or

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

11 4. "Low-income eligible student" means an eligible student or
12 eligible special needs student who qualifies for a free or reduced-
13 price lunch;

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

18 a. is accredited by the State Board of Education or an
19 accrediting association approved by the Board pursuant
20 to Section 3-104 of Title 70 of the Oklahoma Statutes,

21 b. is in compliance with all applicable health and safety
22 laws and codes,
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- 1 c. has a stated policy against discrimination in
2 admissions on the basis of race, color, national
3 origin or disability, and
- 4 d. ensures academic accountability to parents and
5 guardians of students through regular progress
6 reports;

7 6. "Qualified school for eligible special needs students" means
8 an early childhood, elementary or secondary private school in a
9 county in this state, including schools which provide special
10 educational programs for three-year-olds or prekindergarten
11 educational programs for four-year-olds;

12 7. "Scholarship-granting organization" means an organization
13 which:

- 14 a. is a nonprofit entity exempt from taxation pursuant to
15 the provisions of the Internal Revenue Code, 26
16 U.S.C., Section 501(c)(3),
- 17 b. distributes periodic scholarship payments as checks
18 made out to an eligible student's or eligible special
19 needs student's parent or guardian and mailed to the
20 qualified school where the student is enrolled,
- 21 c. spends no more than ten percent (10%) of its annual
22 revenue on expenditures other than educational
23 scholarships as defined in paragraph 3 of this
24 subsection,

- 1 d. spends each year a portion of its expenditures on
2 educational scholarships for low-income eligible
3 students, as defined in paragraph 4 of this
4 subsection, in an amount equal to or greater than the
5 percentage of low-income eligible students in the
6 state,
- 7 e. ensures that scholarships are portable during the
8 school year and can be used at any qualified school
9 that accepts the eligible student or at any qualified
10 school for special needs students that accepts the
11 eligible special needs student,
- 12 f. registers with the Oklahoma Tax Commission as a
13 scholarship-granting organization, and
- 14 g. has policies in place to:
- 15 (1) carry out criminal background checks on all
16 employees and board members to ensure that no
17 individual is involved with the organization who
18 might reasonably pose a risk to the appropriate
19 use of contributed funds, and
- 20 (2) maintain full and accurate records with respect
21 to the receipt of contributions and expenditures
22 of those contributions and supply such records
23 and any other documentation required by the Tax
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1 Commission to demonstrate financial
2 accountability;

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

7 9. "Public school" means public schools as defined in Section
8 1-106 of Title 70 of the Oklahoma Statutes;

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

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

21 12. "Innovative educational program" means an advanced academic
22 or academic improvement program that is not part of the regular
23 coursework of a public school but that enhances the curriculum or
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1 academic program of the school or provides early childhood education
2 programs to students;

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

8 14. "Educational improvement grant organization" means an
9 organization which:

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

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

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

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

10 2. a. If the Tax Commission determines the total combined
11 credits claimed for contributions made to scholarship-
12 granting organizations during the most recently
13 completed calendar year by all taxpayers are in excess
14 of the statewide caps provided in paragraph 1 of
15 subsection D of this section, the Tax Commission shall
16 determine the percentage of the contribution which
17 establishes the proportionate share of the credit
18 which may be claimed by any taxpayer so that the
19 maximum credits authorized by this section are not
20 exceeded.

21 b. If the Tax Commission determines the total combined
22 credits claimed for contributions made to educational
23 improvement grant organizations during the most
24 recently completed calendar year by all taxpayers are

1 in excess of the statewide caps provided in paragraph
2 of subsection D of this section, the Tax Commission
3 shall determine the percentage of the contribution
4 which establishes the proportionate share of the
5 credit which may be claimed by any taxpayer so that
6 the maximum credits authorized by this section are not
7 exceeded; and

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

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

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

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

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

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

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

10 3. In order to maintain eligibility under this section, an
11 educational improvement grant organization shall annually report the
12 following information to the Tax Commission by September 1 of each
13 year:

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

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

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

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

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

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

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

18 L. In consultation with the State Department of Education, the
19 Tax Commission shall promulgate rules necessary to implement this
20 ~~act~~ section. The rules shall include procedures for the
21 registration of a scholarship-granting organization or an
22 educational improvement grant organization for purposes of
23 determining if the organization meets the requirements of this ~~act~~
24 section or for the revocation of the registration of an

1 organization, if applicable, and for notice as required in
2 subsection H of this section.

3 SECTION 2. This act shall become effective November 1, 2017.

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