

1 **SENATE FLOOR VERSION**

2 February 2, 2016

3 **AS AMENDED**

4 SENATE BILL NO. 920

5 By: **Brecheen**, Quinn and **Mazzei**
6 of the Senate

7 [income tax credits - eligible scholarship-granting
8 and educational improvement organizations - time
9 period - effective date]

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

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

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

19 3. The credits authorized pursuant to the provisions of this
20 subsection shall be allocable to the partners, shareholders, members
21 or other equity owners of a taxpayer that is authorized to be
22 treated as a partnership for purposes of federal income tax
23 reporting for the taxable year for which the tax credits authorized
24 by this subsection are claimed on the applicable return, together

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

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

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

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

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

24

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

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

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

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

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

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

21 G. As used in this section:

22 1. "Eligible student" means a child of school age who is
23 lawfully present in the United States and who is a member of a
24 household in which the total annual income during the preceding tax

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

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

23 3. "Educational scholarships" means:
24

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

22 or

23 c. scholarships to an eligible special needs student of
24 up to Twenty-five Thousand Dollars (\$25,000.00) to

1 cover all or part of the tuition, fees and
2 transportation costs of a qualified school for
3 eligible special needs students which is accredited by
4 the State Board of Education or an accrediting
5 association approved by the Board pursuant to Section
6 3-104 of Title 70 of the Oklahoma Statutes;

7 4. "Low-income eligible student" means an eligible student or
8 eligible special needs student who qualifies for a free or reduced-
9 price lunch;

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

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

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

6 7. "Scholarship-granting organization" means an organization
7 which:

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

11 b. distributes periodic scholarship payments as checks
12 made out to an eligible student's or eligible special
13 needs student's parent or guardian and mailed to the
14 qualified school where the student is enrolled,

15 c. spends no more than ten percent (10%) of its annual
16 revenue on expenditures other than educational
17 scholarships as defined in paragraph 3 of this
18 subsection,

19 d. spends each year a portion of its expenditures on
20 educational scholarships for low-income eligible
21 students, as defined in paragraph 4 of this
22 subsection, in an amount equal to or greater than the
23 percentage of low-income eligible students in the
24 state,

1 e. ensures that scholarships are portable during the
2 school year and can be used at any qualified school
3 that accepts the eligible student or at any qualified
4 school for special needs students that accepts the
5 eligible special needs student,

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

8 g. has policies in place to:

9 (1) carry out criminal background checks on all
10 employees and board members to ensure that no
11 individual is involved with the organization who
12 might reasonably pose a risk to the appropriate
13 use of contributed funds, and

14 (2) maintain full and accurate records with respect
15 to the receipt of contributions and expenditures
16 of those contributions and supply such records
17 and any other documentation required by the Tax
18 Commission to demonstrate financial
19 accountability;

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

1 9. "Public school" means public schools as defined in Section
2 1-106 of Title 70 of the Oklahoma Statutes;

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

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

15 12. "Innovative educational program" means an advanced academic
16 or academic improvement program that is not part of the regular
17 coursework of a public school but that enhances the curriculum or
18 academic program of the school or provides early childhood education
19 programs to students;

20 13. "Educational improvement grant" means a grant to an
21 eligible public school to implement an innovative educational
22 program for students, including the ability for multiple public
23 schools to make an application and be awarded a grant to jointly
24 provide an innovative educational program; and

1 14. "Educational improvement grant organization" means an
2 organization 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), and

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

15 H. Total credits authorized by this section shall be allocated
16 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 M. No credits shall be allowed pursuant to the Oklahoma Equal
21 Opportunity Education Scholarship Act for contributions made on or
22 after January 1, 2018, unless this section is reauthorized by the
23 Oklahoma Legislature after evaluation by the Incentive Evaluation
24

1 Commission pursuant to Section 7004 of Title 62 of the Oklahoma
2 Statutes.

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

4 COMMITTEE REPORT BY: COMMITTEE ON FINANCE
5 February 2, 2016 - DO PASS AS AMENDED
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