

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 HOUSE BILL 3537

By: Caldwell

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5
6 AS INTRODUCED

7 An Act relating to income tax; amending 68 O.S. 2011,
8 Section 2357.206, as last amended by Section 1,
9 Chapter 288, O.S.L. 2017 (68 O.S. Supp. 2017, Section
10 2357.206), which relates to the Oklahoma Equal
11 Opportunity Education Scholarship Act; increasing cap
12 on annual credits; providing circumstances in which
13 cap may be increased for subsequent tax year;
14 modifying certain definitions; requiring Tax
15 Commission to make certain calculation and to publish
16 certain cap; and providing an 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 2017, 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~~ E of this section,
24 after August 26, 2011, there shall be allowed a credit for any
taxpayer who makes a contribution to an eligible scholarship-
granting organization. The credit shall be equal to fifty percent

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

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

23 3. The credits authorized pursuant to the provisions of this
24 subsection shall be allocable to the partners, shareholders, members

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

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

21 C. 1. Except as provided in subsection F of this section,
22 after August 26, 2011, there shall be allowed a credit for any
23 taxpayer who makes a contribution to an eligible educational
24 improvement grant organization. The credit shall be equal to fifty

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

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

1 section. The taxpayer shall provide evidence of the written
2 commitment to the Oklahoma Tax Commission at the time of filing the
3 refund claim.

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

19 D. Except as otherwise provided pursuant to subsection H of this
20 section, for tax years ~~2017~~ 2018 and thereafter:

21 1. ~~The~~ Subject to the adjustment set forth in paragraph 2 of
22 this subsection, the total credits authorized pursuant to subsection
23 B of this section for all taxpayers shall not exceed ~~Three Million~~

24

1 ~~Five Hundred Thousand Dollars (\$3,500,000.00)~~ Ten Million Dollars
2 (\$10,000,000.00) annually;

3 2. ~~The~~ When the total credits issued pursuant to subsection B
4 of this section are equal to or exceed eighty-five percent (85%) of
5 the authorized total credits set forth in paragraph 1 of this
6 subsection, the authorized total credits in the subsequent tax year
7 shall increase by twenty-five percent (25%) and shall establish the
8 new total credits authorized under paragraph 1 of this subsection;

9 3. Subject to the adjustment set forth in paragraph 2 of this
10 subsection, the total credits authorized pursuant to subsection C of
11 this section for all taxpayers shall not exceed ~~One Million Five~~
12 ~~Hundred Thousand Dollars (\$1,500,000.00)~~ Five Million Dollars
13 (\$5,000,000.00) annually; and

14 4. When the total credits issued pursuant to subsection C of
15 this section are equal to or exceed eighty-five percent (85%) of the
16 authorized total credits set forth in paragraph 3 of this
17 subsection, the authorized total credits in the subsequent tax year
18 shall increase by twenty-five percent (25%) and shall establish the
19 new total credits set forth in paragraph 3 of this subsection; and

20 ~~3.~~ 5. The cap on total credits provided for in this subsection
21 shall be allocated by the Tax Commission as provided in subsection H
22 of this section.

23 E. For credits claimed for eligible contributions made during
24 tax year 2014 and thereafter, a credit shall not be allowed by the

1 Oklahoma Tax Commission for contributions made to a scholarship-
2 granting organization or an educational improvement grant
3 organization if that organization's percentage of funds actually
4 awarded is less than ninety percent (90%). For purposes of this
5 section, the "percentage of funds actually awarded" shall be
6 determined by dividing the total amount of funds actually awarded as
7 educational scholarships or educational improvement grants over the
8 most recent twenty-four (24) months by the total amount available to
9 award as educational scholarships or educational improvement grants
10 over the most recent twenty-four (24) months.

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

19 G. As used in this section:

20 1. "Eligible student" means a child of school age who is
21 lawfully present in the United States and who is a member of a
22 household in which the total annual income during the preceding tax
23 year does not exceed an amount equal to three hundred percent (300%)
24 of the income standard used to qualify for a free or reduced school

1 lunch or who, during the immediately preceding school year, attended
2 or, by virtue of the location of such student's place of residence,
3 was eligible to attend a public school in this state which has been
4 identified for school improvement as determined by the State Board
5 of Education pursuant to the requirements of the No Child Left
6 Behind Act of 2001, P.L. No. 107-110. Once a student has received
7 an educational scholarship, as defined in paragraph 3 of this
8 subsection, the student and any siblings who are members of the same
9 household shall remain eligible until they graduate from high school
10 or reach twenty-one (21) years of age, whichever occurs first;

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

21 3. "Educational scholarships" means:

22 a. scholarships to an eligible student of up to Five
23 Thousand Dollars (\$5,000.00) or eighty percent (80%)
24 of the statewide annual average per-pupil expenditure

1 as determined by the National Center for Education
2 Statistics, U.S. Department of Education, whichever is
3 greater, to cover all or part of the tuition, fees and
4 transportation costs of a qualified school which is
5 accredited by the State Board of Education or an
6 accrediting association approved by the Board pursuant
7 to Section 3-104 of Title 70 of the Oklahoma Statutes,

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

20 c. scholarships to an eligible special needs student of
21 up to Twenty-five Thousand Dollars (\$25,000.00) to
22 cover all or part of the tuition, fees and
23 transportation costs of a qualified school for
24 eligible special needs students which is accredited by

1 the State Board of Education or an accrediting
2 association approved by the Board pursuant to Section
3 3-104 of Title 70 of the Oklahoma Statutes;

4 4. "Low-income eligible student" means an eligible student or
5 eligible special needs student who ~~qualifies for a free or reduced-~~
6 ~~price lunch~~ lives in a household with a family income of equal to or
7 less than three hundred percent (300%) of the federal poverty level;

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

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

23 6. "Qualified school for eligible special needs students" means
24 an early childhood, elementary or secondary private school in a

1 county in this state, including schools which provide special
2 educational programs for three-year-olds or prekindergarten
3 educational programs for four-year-olds;

4 7. "Scholarship-granting organization" means an organization
5 which:

- 6 a. is a nonprofit entity exempt from taxation pursuant to
7 the provisions of the Internal Revenue Code, 26
8 U.S.C., Section 501(c)(3),
- 9 b. distributes periodic scholarship payments as checks
10 made out to an eligible student's or eligible special
11 needs student's parent or guardian and mailed to the
12 qualified school where the student is enrolled,
- 13 c. spends no more than ten percent (10%) of its annual
14 revenue on expenditures other than educational
15 scholarships as defined in paragraph 3 of this
16 subsection,
- 17 d. spends each year a portion of its expenditures on
18 educational scholarships for low-income eligible
19 students, as defined in paragraph 4 of this
20 subsection, in an amount equal to or greater than ~~the~~
21 percentage seventy-five percent (75%) of low-income
22 total scholarships awarded to eligible students in the
23 state,

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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 first allocate any amount of credits not claimed for
10 contributions made to educational improvement-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 total maximum credits authorized
15 by this section are not exceeded.

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

1 the contribution which establishes the proportionate
2 share of the credit which may be claimed by any
3 taxpayer so that the maximum credits authorized by
4 this section are not exceeded.

5 c. Beginning for tax year 2016, credits earned, but not
6 allowed due to the application of statewide caps
7 provided in subsection D of this section will be
8 considered suspended and authorized to be used in the
9 next immediate tax year and applied to the next year's
10 statewide cap.

11 d. Beginning for tax year 2017, credits in excess of the
12 statewide cap shall be a reduction in the immediate
13 subsequent tax year's statewide cap and credits earned
14 in the most recently completed tax year shall be
15 allowed at its full credit amount; and

16 3. The Tax Commission shall ~~publish~~ calculate the percentage of
17 the ~~contribution which may be claimed as a credit by contributors~~
18 credits earned from the current tax year. If the tax credits earned
19 is in excess of the statewide cap for the most recently completed
20 calendar year ~~on~~, the Tax Commission shall publish on its website no
21 later than February 15 of each calendar year the new statewide cap
22 for contributions made the ~~previous~~ immediate subsequent year,
23 subject to any adjustments pursuant to paragraphs 2 and 4 of
24 subsection D of this section and subparagraph d of this subsection.

1 Each scholarship-granting organization or educational improvement
2 grant organization shall notify ~~contributors~~ its patrons of that
3 amount annually.

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

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

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

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

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

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

22 3. In order to maintain eligibility under this section, an
23 educational improvement grant organization shall annually report the
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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, 2018.

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