

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 2621

By: Echols

4  
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 288, O.S.L. 2017 (68 O.S. Supp.  
10 2018, Section 2357.206), which relates to income tax  
11 credits for contributions made to certain education  
12 improvement or scholarship granting organizations;  
13 prescribing treatment of certain suspended tax  
14 credits; modifying maximum amount of tax credits;  
15 modifying definition; and providing an effective  
16 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 2018, 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, plus any suspended  
8 credits pursuant to subparagraph c of paragraph 2 of subsection H of  
9 this section; provided, if total credits claimed pursuant to this  
10 paragraph exceed the caps established pursuant to paragraph 1 of  
11 subsection D of this section, the credit shall be equal to the  
12 taxpayer's proportionate share of the cap for the taxable year, as  
13 determined pursuant to subsection H of this section.

14 2. For any taxpayer who makes a contribution to an eligible  
15 scholarship-granting organization and makes a written commitment to  
16 contribute the same amount for an additional year, the credit for  
17 the first year and the additional year shall be equal to seventy-  
18 five percent (75%) of the total amount of the contribution made  
19 during a taxable year, not to exceed the amounts established in  
20 paragraph 1 of this subsection for the taxable year in which the  
21 credit provided in this subsection is claimed. The taxpayer shall  
22 provide evidence of the written commitment to the Oklahoma Tax  
23 Commission at the time of filing the 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           4. On or before December 31, 2017, and once every four (4)  
17 years thereafter, such scholarship-granting organization and  
18 educational improvement granting organization shall submit to the  
19 Governor, President Pro Tempore of the Senate and the Speaker of the  
20 House of Representatives, an audited financial statement for the  
21 organization along with information detailing the benefits,  
22 successes or failures of the program.

23           C. 1. Except as provided in subsection F of this section,  
24 after August 26, 2011, there shall be allowed a credit for any

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

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

1 established pursuant to paragraph 3 of this subsection, the credit  
2 shall be equal to the taxpayer's proportionate share of the cap for  
3 the taxable year, as determined pursuant to subsection H of this  
4 section. The taxpayer shall provide evidence of the written  
5 commitment to the Oklahoma Tax Commission at the time of filing the  
6 refund claim.

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

22 D. Except as otherwise provided pursuant to subsection H of  
23 this section, for tax years 2017 and thereafter:

24

1           1. The total credits authorized pursuant to subsection B of  
2 this section for all taxpayers shall not exceed ~~Three Million Five~~  
3 ~~Hundred Thousand Dollars (\$3,500,000.00)~~ Thirty Million Dollars  
4 (\$30,000,000.00) annually;

5           2. The total credits authorized pursuant to subsection C of  
6 this section for all taxpayers shall not exceed ~~One Million Five~~  
7 ~~Hundred Thousand Dollars (\$1,500,000.00)~~ Thirty Million Dollars  
8 (\$30,000,000.00) annually; and

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

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

24

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

9 G. As used in this section:

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

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

11           3. "Educational scholarships" means:

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

10 c. scholarships to an eligible special needs student of  
11 up to Twenty-five Thousand Dollars (\$25,000.00) to  
12 cover all or part of the tuition, fees and  
13 transportation costs of a qualified school for  
14 eligible special needs students which is accredited by  
15 the State Board of Education or an accrediting  
16 association approved by the Board pursuant to Section  
17 3-104 of Title 70 of the Oklahoma Statutes;

18 4. "Low-income eligible student" means an eligible student or  
19 eligible special needs student who qualifies for a free or reduced-  
20 price lunch;

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

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

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

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

- a. is a nonprofit entity exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3),
- b. distributes periodic scholarship payments as checks made out to an eligible student's or eligible special

- 1 needs student's parent or guardian and mailed to the  
2 qualified school where the student is enrolled,
- 3 c. spends no more than ten percent (10%) of its annual  
4 revenue on expenditures other than educational  
5 scholarships as defined in paragraph 3 of this  
6 subsection,
- 7 d. spends each year a portion of its expenditures on  
8 educational scholarships for low-income eligible  
9 students, as defined in paragraph 4 of this  
10 subsection, in an amount equal to or greater than the  
11 percentage of low-income eligible students in the  
12 state,
- 13 e. ensures that scholarships are portable during the  
14 school year and can be used at any qualified school  
15 that accepts the eligible student or at any qualified  
16 school for special needs students that accepts the  
17 eligible special needs student,
- 18 f. registers with the Oklahoma Tax Commission as a  
19 scholarship-granting organization, and
- 20 g. has policies in place to:
- 21 (1) carry out criminal background checks on all  
22 employees and board members to ensure that no  
23 individual is involved with the organization who  
24

1                   might reasonably pose a risk to the appropriate  
2                   use of contributed funds, and

3                   (2) maintain full and accurate records with respect  
4                   to the receipt of contributions and expenditures  
5                   of those contributions and supply such records  
6                   and any other documentation required by the Tax  
7                   Commission to demonstrate financial  
8                   accountability;

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

13                  9. "Public school" means public schools as defined in Section  
14                  1-106 of Title 70 of the Oklahoma Statutes;

15                  10. "Eligible school" means any public school that is ~~not~~  
16                  ~~located within a ten-mile radius of a qualified school in this~~  
17                  ~~state, or any public school that is located within a ten-mile radius~~  
18                  ~~of a qualified school in this state but offers grade-level~~  
19                  ~~instruction different from the qualified school or any public school~~  
20                  located within a public school district with fewer than ~~four~~  
21                  ~~thousand five hundred (4,500)~~ eight thousand five hundred (8,500)  
22                  students;

23                  11. "Early childhood education program" means a special  
24                  educational program for eligible special needs students who are

1 three (3) years of age or a prekindergarten educational program  
2 provided to children who are at least four (4) years of age but not  
3 more than five (5) years of age on or before September 1;

4 12. "Innovative educational program" means an advanced academic  
5 or academic improvement program that is not part of the regular  
6 coursework of a public school but that enhances the curriculum or  
7 academic program of the school or provides early childhood education  
8 programs to students;

9 13. "Educational improvement grant" means a grant to an  
10 eligible public school to implement an innovative educational  
11 program for students, including the ability for multiple public  
12 schools to make an application and be awarded a grant to jointly  
13 provide an innovative educational program; and

14 14. "Educational improvement grant organization" means an  
15 organization which:

- 16 a. is a nonprofit entity exempt from taxation pursuant to  
17 the provisions of the Internal Revenue Code, 26  
18 U.S.C., Section 501(c)(3), and
- 19 b. contributes at least ninety percent (90%) of its  
20 annual receipts as grants to eligible schools for  
21 innovative educational programs. For purposes of this  
22 subparagraph, an educational improvement grant  
23 organization contributes its annual cash receipts when  
24 it expends or otherwise irrevocably encumbers those

1 funds for expenditure during the then current fiscal  
2 year of the organization or during the next succeeding  
3 fiscal year of the organization.

4 H. Total credits authorized by this section shall be allocated  
5 as follows:

6 1. By January 10 of the year immediately following each  
7 calendar year, a scholarship-granting organization or an educational  
8 improvement grant organization which accepts contributions pursuant  
9 to this section shall provide electronically to the Tax Commission  
10 information on each contribution accepted during such taxable year.

11 At least once each taxable year, the scholarship-granting  
12 organization or the educational improvement grant organization shall  
13 notify each contributor that Oklahoma law provides for a total,  
14 statewide cap on the amount of income tax credits allowed annually;

15 2. a. If the Tax Commission determines the total combined  
16 credits claimed for contributions made to scholarship-  
17 granting organizations during the most recently  
18 completed calendar year by all taxpayers are in excess  
19 of the statewide caps provided in paragraph 1 of  
20 subsection D of this section, the Tax Commission shall  
21 first allocate any amount of credits not claimed for  
22 contributions made to educational improvement-granting  
23 organizations, then shall determine the percentage of  
24 the contribution which establishes the proportionate

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

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

17 c. Beginning for tax year 2016, credits earned, but not  
18 allowed due to the application of statewide caps  
19 provided in subsection D of this section will be  
20 considered suspended and authorized to be used in the  
21 next immediate tax year and applied to the next year's  
22 statewide cap; and

23 3. The Tax Commission shall publish the percentage of the  
24 contribution which may be claimed as a credit by contributors for

1 the most recently completed calendar year on the Tax Commission  
2 website no later than February 15 of each calendar year for  
3 contributions made the previous year. Each scholarship-granting  
4 organization or educational improvement grant organization shall  
5 notify contributors of that amount annually.

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

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

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

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

19 b. describes the proposed innovative educational program  
20 or programs supported by the organization.

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

24



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

- 5           a. the name of the innovative educational program or  
6           programs and the total amount of the grant or grants  
7           made to those programs during the immediately  
8           preceding school year,
- 9           b. a description of how each grant was utilized during  
10           the immediately preceding school year and a  
11           description of any demonstrated or expected innovative  
12           educational improvements,
- 13           c. the names of the public school and school districts  
14           where innovative educational programs that received  
15           grants during the immediately preceding school year  
16           were implemented,
- 17           d. where the organization collects information on a  
18           county-by-county basis, and
- 19           e. the total number and total amount of grants made  
20           during the immediately preceding school year for  
21           innovative educational programs at public school by  
22           each county in which the organization made grants.

23           4. The information required under paragraph 3 of this  
24 subsection shall be submitted on a form provided by the Tax

1 Commission. No later than May 1 of each year, the Tax Commission  
2 shall annually distribute sample forms together with the forms on  
3 which the reports are required to be made to each approved  
4 organization.

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

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

16 SECTION 2. This act shall become effective November 1, 2019.

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18 57-1-7339 MAH 01/11/19

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