OKLAHOMA TAX COMMISSION

TAX POLICY DIVISION
RICK MILLER, DIRECTOR

PHONE (405) 521-3133
FACSIMILE (405) 522-0063

February 22, 2013

RE: LR-12-028 (Tax Credits Inquiry)

Dear

I am writing this letter in response to your request of March 5, 2012 concerning the Oklahoma Equal Opportunity Education Scholarship Act. Set forth verbatim are the facts presented along with the response thereto.

Facts:

Per our brief telephone conversation on February 29, 2012, I have several questions/clarifications regarding the Oklahoma Equal Opportunity Education Scholarship Act that was passed during the 2011 legislative session. The questions are as follows:

1) The total credits for both programs ($1,750,000 & $1,500,000) are statewide and annual, correct?
2) The maximum credit for single individuals is $1,000 per program ($2,000 total), $1,000 for the Eligible Scholarship-Granting Organization Credit and $1,000 for the Eligible Educational Improvement Credit, correct?
3) For any taxpayer who makes a contribution to an Eligible Educational Improvement Grant Organization and makes a written commitment to contribute the same amount for two additional consecutive years the credit shall be equal to 75% instead of 50%. Is the 75% for all three years or is it 75% for just year 1?
4) What happens when an individual is a partner/LLC member of a pass-through entity that has a $100,000 in education credits? Are they still going to be limited to $1,000 per program? If so, even after the 3 yr. carryover many of the credits could expire unused, correct?
5) Can the credits be applied to offset an S Corps Oklahoma Franchise Tax?
6) Credits for both programs can be earned in 2012, but cannot be utilized until your 2013 tax return, correct?

7) Any unused credits (both programs) can be carried forward for 3 years post 2013, correct?
8) From what I understand each scholarship-granting organization and educational improvement organization will notify each contributor annually of the percentage of the contribution that may be claimed as a credit by the contributor, correct? Will the organizations also provide some type of certificate that is required to be attached to the individual's tax return?
9) When and where will the list of organizations that qualify for each program be listed on the OTC website?
10) If an organization wanted to get "qualified/eligible" with the Oklahoma Tax Commission to become an Eligible Scholarship-Granting Organization or an Eligible Educational Improvement Grant Organization, who would they contact?

Response:

1) Yes, the total credits for both programs ($1,750,000 & $1,500,000) are statewide and annual.
2) Yes, the maximum credit for single individuals is $1,000 per program ($2,000 total), $1,000 for the Eligible Scholarship-Granting Organization Credit and $1,000 for the Eligible Educational Improvement Credit.
3) Pursuant to OAC 710:50-15-115, a taxpayer who makes an eligible contribution and makes a written commitment to contribute the same amount for two (2) additional consecutive years is entitled to a credit of seventy-five percent (75%) of the amount of the contribution for the first year, and fifty percent (50%) of the amount of the contributions for the following two (2) years.
4) Pass-through entities that create tax credits can pass such credits though to an individual on the Oklahoma K-1; however, the individual limitations of either $1,000 for single filers or $2,000 for married joint filers would apply regardless of how much credit the pass-through entity generated. Yes, it is possible that after the three (3) year carryover many of the credits will expire.
5) No, the tax credits cannot be applied to offset a S Corporation's Oklahoma Franchise Tax.
6) Yes, tax credits may be earned in 2012, but cannot be utilized until the tax year 2013 tax return is filed in 2014.
7) Yes, any credit allowed but unused may be carried over, in order, to each of the three (3) subsequent taxable years. This is true for both programs.
8) Yes, each scholarship-granting organization and educational improvement organization will notify each contributor annually of the percentage of the contribution which may be claimed as a tax credit. The organizations are not required to provide some type of certificate to be attached to an individual's tax return.
9) The Oklahoma Equal Opportunity Education Scholarship Act does not require the list of organizations that qualify for each program to be published on the Oklahoma Tax Commission (OTC) website.
10) To become an Eligible Scholarship-Granting Organization or an Eligible Educational Improvement Grant Organization, an organization should fill out and return OTC Form 80002 or OTC Form 80001, respectively. Said forms can be found on the OTC website → Forms & Publications → Business Tax Forms.

This response applies only to the circumstances set out in your request of March 5, 2012. Pursuant to Commission Rule 710:1-3-73(e), this Letter Ruling may be generally relied upon **only** by the entity to whom it is issued, assuming that all pertinent facts have been accurately and completely stated, and that there has been no change in applicable law.

Please be advised that the issuance of this ruling does not preclude the Oklahoma Tax Commission from conducting an audit or examination under 68 Okla. Stat. §206 of any report or return claiming a credit for the transactions outlined in this letter ruling. The Commission reserves the right to issue any assessment, correction, or adjustment authorized under 68 Okla. Stat. §221.

Sincerely,

OKLAHOMA TAX COMMISSION

Michael C. Kaufmann
Tax Policy Analyst