

# yes. every kid. foundation.

To: Oklahoma Tax Commission

From: yes. every kid. foundation.

Date: October 12, 2023

Subject: Public Comment on Oklahoma Parental Choice Tax Credit Proposed Emergency Rule

## **About yes. every kid. foundation.**

yes. every kid. foundation. (Yes Foundation) promotes a bold vision of transforming education in America with a families-first approach, advocates for families in policy implementation and design, and defends families and innovative education entrepreneurs. YES Foundation has advised and collaborated with multiple other states to implement their educational choice programs to provide user-friendly experiences for families and students. Our mission is to become a leading partner for states through collaboration, technical assistance, and capacity building. Our vision is that every program intended to give families freedom in education is easy to sign up for, easy to use, and meets the needs and desires of families.

In Oklahoma, Yes Foundation's sister organization, yes. every kid., worked alongside policymakers on The Parental Choice Tax Credit Act to put an end to the one-size-fits-all model that has been in place in Oklahoma for far too long – and to unlock opportunities for families and students for years to come.

## **Summary**

Given our mission, we believe the Oklahoma Parental Choice Tax Credit presents an exciting opportunity to empower Oklahoma families to customize educational services that will help their children reach their full potential.

The Oklahoma Parental Choice Tax Credit has the potential to become the most accessible and successful education choice program in the country.

In reviewing the draft rules, the home school option of the program properly operates as a tax credit, while the private school option does not. The private school option is being administered solely as a government payment, with payments sent directly to private schools in the name of the taxpayer, akin to a voucher. While the law lays out an option for such an up-front government payment for those who need it, to implement the program wholly as this option and ignore the larger rule does not follow the law.

Yes Foundation proposes promulgating rules for the program per the legislative intent as a straightforward tax credit implemented like any other tax credit rather than a direct government payment, thereby simplifying all the processes related to the program by removing unnecessary government involvement and control.

The following section elaborates on this issue, and subsequent sections provide context on additional areas of concern. In turn, we propose changes for the respective issues and offer recommendations for the Oklahoma Tax Commission to consider during implementation.

### **Issue 1: Claiming the Private School Tax Credit**

As proposed, the rules do not permit taxpayers to claim the tax credit on their income tax return when utilizing the private school option.

As support for the intent, we can look at other provisions in the law. For example, 70 O.S. § 28-101(B) reads, "...hereby created the Oklahoma Parental Choice Tax Credit Program to provide an income tax credit to a taxpayer." The next section reads, "...there shall be allowed against the tax imposed by Section 2355 of Title 68 of the Oklahoma Statutes a credit for any Oklahoma taxpayer who incurs a qualified expense." Additionally, 70 O.S. § 28-101(F) reads subsection f of section 2 applies to taxpayers claiming either the private or home school tax credit. These provisions must be relied upon in addition to the option addressed in 70 O.S. § 28-101(E) directing how taxpayers may "receive the credit in two installments" where taxpayers need and request the up-front installments.

#### **Recommendation 1:**

Allow taxpayers to claim the private school education expense on their income tax return. Simplify the process by allowing the taxpayer to reserve the tax credit, send up-front installments directly to the taxpayer, and add a section to the income tax return that allows the taxpayer to accurately reflect the payments received in advance.

### **Issue 2: Definition of Another Accrediting Association**

The law provides an intentionally broad definition of an accredited private school to include private schools accredited by the State Board of Education (SBE) or another accrediting association. The proposed rule extends beyond the law to define that "another accrediting association" means an accrediting association approved by SBE and cites statute 70 O.S. § 3-104.

The cited statute was written to provide private schools with an optional avenue by which to receive accreditation by the state. A private school in Oklahoma is not required to be accredited by the state and can seek accreditation from any accrediting association. Relying on SBE's non-comprehensive list of voluntarily accredited private schools would unnecessarily narrow a law written to apply broadly to private schools to which parents choose to send their children. Numerous accredited private schools are operating in Oklahoma that have been accredited by an association other than SBE or an SBE-approved association.

One example is Evergreen Academy (part of the Acton Academy Network), which is accredited through the International Association of Learner Driven Schools. Evergreen Academy would be considered a qualified education expense under the law, but not the proposed rule.

Per the proposed rule, the Commission would receive a list of accredited private schools from the state education agency, limited only to private schools accredited by SBE or an SBE-approved association. The Commission would then use the list to create a closed menu of options for applicants to select from when completing their application to claim the credit. This will prevent certain accredited private schools, like Evergreen Academy, from participating in the program and thus limiting educational options for Oklahoma families.

#### **Recommendation 2:**

Delete the proposed definition of "another accrediting association" as it exceeds statutory requirements for the program. Align with the law and allow families to use their tax credit at

private schools accredited by accrediting associations not necessarily approved by the State Board of Education. Alternatively, the Tax Commission could consider confirming or working with SBE to confirm the school is accredited by a regional, national, or specialized independent organization established to assess the standards and affirm the quality and effectiveness of educational institutions.

### **Issue 3: Private School Registration and Reporting**

The proposed rules impose significant administrative requirements on private schools, such as an extensive enrollment affidavit, annual registration, and detailed annual financial reporting. These obligations particularly affect smaller private schools with limited resources and are not needed in this format to confirm eligibility if the previous issues are addressed.

The enrollment affidavit necessitates completion by both the taxpayer and the private school, potentially leading to application delays due to back-and-forth exchanges. Additionally, private schools may be hesitant to collect and manage student social security numbers, and families may be reluctant to share this information.

Additionally, some of the information required in the annual registration is already captured in the affidavit of enrollment, such as name and address, or by the Oklahoma Department of Education, such as proof of accreditation. The Commission should not require documentation of the private school's compliance with all relevant state and local regulations since the law does not require this.

As proposed, private schools will have to allocate additional staff, time, and resources to the process. Schools with limited resources may struggle to fulfill all requirements promptly, penalizing the taxpayer who should instead have control of their tax credit.

### **Recommendation 3:**

Require the taxpayer to provide the student's SSN in the application and upload the affidavit of enrollment completed by the private school separately.

Eliminate the annual registration process for private schools. Some of the information required in the registration process is already provided on the affidavit of enrollment. Rather than creating another step in the process, simply revise the affidavit of enrollment. The Commission should not require documentation of the private school's compliance with all relevant state and local regulations as the law does not require this.

Eliminate the annual reporting process for private schools. As directed by the law, the Commission should leverage existing auditing capabilities and work with the State Department of Education to track students who transferred to public schools. It is both inefficient and incohesive to make private schools responsible for these duties.

### **Issue 4: Timeline of Application to Claim the Credit**

The proposed emergency rule outlines an application process that follows the calendar/tax year instead of the school year. This creates a barrier for families prioritized in this program, and they may want to utilize the parental choice tax credit to switch to a private school for the first time.

### **Recommendation 4:**

Launch an application that covers only the spring semester of the 2023-24 school year. After that, the normal yearly application window would commence on March 1 to cover the entire

school year. As such, an application launched on March 1, 2024, would cover the 2024-2025 school year. Eligibility criteria and application deadlines should remain consistent with the first application window. This revised timeline will better align with the school year calendar.

**Issue 5: Notification of Application Approval**

The proposed emergency rule does not address when the taxpayer will be notified of their application's approval or rejection. Families need timely information to make informed decisions about their children's educational options.

**Recommendation 5:**

Notify the taxpayer within 30 days of submitting the application or within 30 days of the application submission deadline.