

OPPORTUNITY SCHOLARSHIP TAX CREDIT PROGRAM

Business Guidelines and Applications | May 2018

Award of Tax Credits to Business Firms for Contributions to Opportunity Scholarship Organizations



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Opportunity Scholarship Tax Credit

Award of Tax Credits to Business Firms

I. Purpose

Under Article XX-B of the Public School Code of 1949, 24 P.S. Section 20-2001-B, et seq., the Opportunity Scholarship Tax Credit (OSTC) is to be administered by the Department of Community and Economic Development (the Department). Tax credits may be awarded to operating business firms that make contributions to Opportunity Scholarship Organizations which have been approved and appear on a list published by the Department.

II. Eligibility

Entities eligible to apply for OSTC are operating businesses firms authorized to do business in the Commonwealth of Pennsylvania that are subject to the following taxes: Personal Income Tax, Capital Stock/Foreign Franchise Tax, Corporate Net Income Tax, Bank Shares Tax, Title Insurance & Trust Company Shares Tax, Insurance Premiums Tax (excluding unauthorized, domestic/foreign marine), Mutual Thrift Tax, Malt Beverage Tax or Surplus Lines Tax. Such business firms include pass-through entities and special purpose pass-through entities. Special purpose pass-through entities are created for the purpose of making contributions under Article XX-B of the Public School Code of 1949 and whose shareholders, partners or members are composed of owners or employees of other business firms. To receive tax credits, business firms must be approved to make contributions to Opportunity Scholarship Organizations which have been approved and appear on a list published by the Department.

For purposes of the OSTC, a "contribution" from a business firm is defined as a donation of cash, personal property or services the value of which is the net cost of the donation to the donor or the pro rata hourly wage, including benefits, of the individual performing the services. No tax credits shall be approved for activities that are part of the business' normal course of business.

The current list of Opportunity Scholarship Organizations can be found on the Department's website at www.dced.pa.gov/OSTC.

III. Application and Approval

A. Business Firm Application

All applications for the Opportunity Scholarship Tax Credit Program must be completed and submitted online using DCED's Single Application for Assistance which can be accessed at dced.pa.gov or www.esa.dced.state.pa.us. Paper applications will not be accepted. To ensure timely consideration of applications, applicants should carefully follow instructions outlined in the online Single Application, and provide all requested information at the time of application.

New for 2018, the Department of Revenue will be evaluating all applications for State Tax Compliance.

- Entities seeking the credit must obtain state tax compliance with the laws and regulations of the Commonwealth of Pennsylvania, to the satisfaction of the Department of Revenue.
- Notification of Non-Compliance: Applications identified by the Department of Revenue as non-compliant will be ineligible for the credit, unless the applicant resolves the non-compliant issues in the determination period set by the Department of Revenue and communicated to the applicant.

B. Application Requirements

Applicants will be required to complete all required fields within the online Single Application. For applicants who are applying from out-of-state please select “Statewide Project” under the required county dropdown menu on the addenda tab of the application.

C. Application Approval

An eligible business firm that submits an application to the Department and agrees to make a contribution to an organization approved on the current published list of Opportunity Scholarship Organizations maintained by the Department shall be awarded Opportunity Scholarship Tax Credits to the extent that such tax credits remain available for the fiscal year in which application is made.

A business firm will be approved for a tax credit equal to 75% of its contribution(s) to approved organization(s), up to a maximum of \$750,000 per taxable year. The tax credit may be increased to 90% of the contribution(s) made, up to a maximum of \$750,000 per taxable year, if the business firm agrees at the time of application to provide the same amount of contribution for two consecutive tax years. To ensure the receipt and retention of the 90% tax credit, the business firm must make the same amount of contribution in each of the two consecutive tax years.

Applications for tax credits for program fiscal year 2018-19 (July 1, 2018 through June 30, 2019) will be accepted beginning July 2, 2018. Tax credit applications will be processed on a first-come-first-served basis by submission date. All applications received on a specific day will be processed on a random basis prior to acceptance of the next day's applications. Applications will be approved until the amount of available tax credits is exhausted.

A business firm that has been approved for tax credits (at 90%) based upon a consecutive two-year commitment, must submit another application to the Department no later than June 30 of the first program fiscal year to ensure the availability and application of tax credits for the second consecutive year. Applications for the second year of a two-year commitment will be accepted beginning May 15, and, if received by the Department on or before June 30, will be processed prior to any other applications for tax credits received by the Department. Applications for the second year of a two-year commitment that are not received on or before June 30 will be processed on a first-come-first-served basis by submission date, along with all other business firm applications received by the Department, with no assurance that tax credits will remain available at the time of processing.

A business firm that has fulfilled a two-year commitment in the most recently completed fiscal year may renew its application beginning May 15 for another two-year commitment. Applications submitted after June 30 to renew a two-year commitment which was fulfilled in the most recently completed fiscal year will be processed on a first-come-first-served basis by date submitted. There is no assurance that tax credits will remain available for applications submitted as part of a two-year commitment renewal.

Beginning October 1 through November 30 if all tax credits have not been awarded, applicants are eligible to apply for additional tax credits beyond the maximum credit limit of \$750,000 per taxable year. Applicants received during this timeframe will be recognized as a one-year commitment and will only be eligible for a 75% tax credit. The Department will accept applications for additional tax credit awards during this timeframe and will award credits at the conclusion of the 60 day application period. Applications received during this timeframe from applicants who have not exceeded the \$750,000 maximum credit limit shall be approved on a first-come first-served basis. All maximum tax credit limitations shall be reinstated as of December 1. To inquire about the availability of additional tax credits during the 60 day application period please, contact the Department at that time to discuss.

Beginning January 1, if Opportunity Scholarship Tax Credits remain available they shall be reallocated to Educational Improvement Tax Credits under the categories of Scholarship Organization and Pre-K Scholarship Organization. The Department will notify applicants on either of these wait lists that credits have been made available and if the applicant elects they will be approved for their desired tax credit. After the Department has awarded reallocated tax credits to wait list applicants the Department shall accept new applications for reallocated tax credits. The reallocation of Opportunity Scholarship Tax Credits shall not be made available to the category of Educational Improvement Organization.

IV. Earning of Tax Credits

Upon receipt of written notification from the Department that the business firm has been approved for tax credits, the business firm must make its contribution(s) to an approved Opportunity Scholarship Organization(s) within 60 days of the date of the approval letter, and must provide proof of the contribution in the form of a written acknowledgment from the organization to the Department within 90 days of the date of the approval letter. A business firm will only receive tax credits for donating to an approved organization for the amount that is specified in the application and approval letter. For services donated to an organization that will not be performed until after the 60-day period, the business firm must submit a copy of a letter sent by the business firm to the recipient organization, dated within 60 days of the date of the approval letter and signed and accepted by the recipient organization, committing the business firm to donate the services described. The Department of Revenue will consider tax credits awarded under this program to be effective on the first day of the taxable year in which the contribution was made.

If the business firm does not make the contribution within 60 days of the date on the approval letter, or the Department does not receive proof of contribution within 90 days of the letter, the approval of tax credits will be rescinded.

No tax credits shall be approved for activities that are part of the applicant business' normal course of business.

V. Use of Tax Credits - As administered by the PA Department of Revenue

The OSTC Irrevocable Election to Pass Through form (REV 1123) is available at www.revenue.pa.gov.

(Reference: Forms Publications, Forms for Business, Corporation Tax)

For questions regarding utilization of the Opportunity Scholarship Tax Credit, contact the PA Department of Revenue at (717)772-3896. For questions regarding the REV-1123 call (717)787-8285.

Upon receipt of proof of a contribution, the Department of Community and Economic Development will notify the Department of Revenue that the entity has been awarded a credit within the program.

Business firms may apply the credit against the following:

- Personal Income Tax
- Capital Stock/Foreign Franchise Tax
- Corporate Net Income Tax
- Bank Shares Tax
- Title Insurance & Trust Company Shares Tax
- Insurance Premiums Tax (excluding surplus lines, unauthorized, domestic/foreign marine)
- Mutual Thrift Tax
- Malt Beverage Tax
- Surplus Lines Tax

Please note, the definition of a business firm includes pass-through entities and special purpose pass-through entities, but it does not include sole proprietorships or entities not subject to tax.

The entity decides if the tax credit will be applied towards corporation tax and/or passed through to its partners, shareholders or members. The tax credit cannot be sold or assigned.

Credit awarded within the program may be applied against the business firm's tax liability for use in the taxable year in which the contribution is made. An OSTC granted for any one taxable year may not exceed the combined tax liability of the entity and its owners.

If the business firm is a pass-through entity or special purpose pass-through entity, it may make an irrevocable election in writing, prior to the due date of the entity's tax return, to pass through any remaining OSTC to its owners in proportion to the share of the entity's distributive income to which the owners are entitled, for use by the owners in the year the contribution was made, or in the taxable year immediately following the year in which the contribution was made. A pass through OSTC can be applied to all classes of income earned by the owners.

An OSTC not used in the taxable year in which the contribution was made may not be sold, assigned, carried forward or carried back and it is not refundable or transferable, except for an approved election by a pass-through entity to apply any unused OSTC to the tax liability of the owners in the taxable year immediately following the year in which the contribution is made. If an election is not made to pass through any unused OSTC to the owners, the OSTC will expire.

To make an irrevocable election to pass through an OSTC to partners, shareholders or members, a business firm should visit the Department of Revenue's website at www.revenue.pa.gov and complete REV-1123, Educational Improvement Tax Credit Election Form. This same form is used for the Opportunity Scholarship Tax Credit program.

New for 2018, the REV-1123 must be sent to the Revenue's Bureau of Individual Taxes by the tax return filing due date (including extensions) of the entity. However, REV-1123 must be sent separately from the entity's tax return.

- The amount of the tax credit passed through to partners, shareholders or members is based on the percentage of income distribution from the entity receiving the tax credit.
- The tax credit may be applied to 100 percent of the entity's liability or 100 percent of the entity owners' liabilities.
- Pennsylvania does not allow the deduction of certain expenses used to qualify for the Opportunity Scholarship Tax Credit. If the expenses were deducted in calculating federal-taxable income, the amount should be reported as a reduction in expenses on PA-205/PA-65 Schedule M, Part B, Section E, Line F. Do not reduce Pennsylvania-taxable income by the amounts paid to qualify for the tax credit.
- The tax credit cannot be applied against any tax withheld by an employer from an employee under Article III of the Tax Reform Code.

After the REV-1123 has been accepted by the Department, partners, shareholders or members may claim the credit on their Individual Tax Return utilizing the PA Schedule OC – Other Credits, which can be found on the Department of Revenue website at: www.revenue.pa.gov.

For additional guidance, please refer to an informational notice on the Department of Revenue's website at: www.revenue.pa.gov, under the general tax information link to incentives credits and programs; tax credits page.

VI. Contact Information

For program inquiries:

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