SESSION OF 2025

SUPPLEMENTAL NOTE ON SENATE BILL NO. 75

As Amended by Senate Committee on Education

Brief*

SB 75, as amended, would establish an education opportunity tax credit for taxpayers who have eligible, dependent children not enrolled in a public K-12 school.

Tax Credits

Tax Credit Applicability

Beginning for tax year 2025, the bill would provide a refundable Education Opportunity Tax Credit against an individual's Kansas income tax liability for each dependent child an individual who that is eligible to be enrolled in kindergarten through grade 12 in a Kansas public school but is instead enrolled full-time in either an accredited or nonaccredited private school.

The tax credit would be an amount equal to the expenditures directly attributable to the the tuition and related costs required for attendance at a private school, including the cost of books, materials, and equipment. For each taxpayer, the credit would be capped at $8,000 per dependent child enrolled in an accredited private school within the state or $4,000 per dependent child enrolled in a nonaccredited school.

[*Note:* The bill would require the accredited private school attended by an individual's dependent to be either

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at https://klrd.gov/

accredited by the State Board of Education (Board) or an accrediting agency recognized by the Board, or is working towards such accreditation in good faith for purposes for receiving up to the $8,000 credit.]

The bill would authorize an individual receiving an Education Opportunity Tax Credit to claim the tax credit either in advance during the tax year or claim the credit on their annual income tax forms. Should the tax credit exceed the amount of taxes owed by the individual taxpayer, the taxpayer would receive the difference as a tax refund.

Tax Credit Cap and Administration

The bill would establish an annual program cap of $125 million in tax credits beginning in tax year 2025. Should the tax credits claimed meet or exceed 90.0 percent of the maximum amount of credits for that tax year, the bill would increase the annual program cap by 25.0 percent for the following tax year. Should applications exceed the available tax credits, the bill would require the Kansas Department of Revenue (KDOR) to prioritize taxpayers who have previously received the credit.

Taxpayers seeking to claim an Education Opportunity Tax Credit would also be required by the bill to provide valid Social Security numbers of each dependent being claimed. The taxpayer would not be eligible to claim the tax credit for any child receiving a scholarship under the Tax Credit for Low Income Students Scholarship Program.

The bill would exempt Education Opportunity Tax Credits from being considered as income under the Kansas Income Tax Act should the federal government consider the tax credit as income.

The bill would require KDOR to submit an annual report to the Legislature on or before January 15 of each year on the Education Opportunity Tax Credit for the second preceding year. The bill would require each such report to include, but not be limited to, the total amount of credits claimed and any information on known fraudulent claims for the credit.

Penalties

The bill would make any individual who intentionally files a false claim for the Education Opportunity Tax Credit or receives said credit without sending their dependents to a private school subject to civil penalties prescribed in KSA 79-3228(e), which includes a penalty equal to the unpaid balance of tax due, plus interest, and, if convicted, a fine of no more than $1,000, imprisonment in a county jail for between 30 and 365 days, or both.

Legal Proceedings

Should the law prescribed in the bill be challenged in court, the bill would put the burden of proof on the State to establish that the law is necessary and does not impose any undue burden on the taxpayer. The bill would also authorize individuals receiving the Education Opportunity Tax Credit to intervene in any lawsuits against the bill for the purposes of defending the tax credit program's constitutionality.

If any provision or clause of the bill to any person or circumstance is held invalid, the bill would state the invalidity would not affect other provisions or applications of the bill that could be given effect without the invalid provision or application. The provisions of the bill would be severable.

Background

The bill was introduced by the Senate Committee on Education at the request of Senator Erickson.

Senate Committee on Education

In the Senate Committee hearing, **proponent** testimony was provided by representatives of the Catholic Diocese of Wichita, Central Christian School, Kansas Policy Institute, and Maranatha Christian Academy, and by five private citizens. The proponents generally stated that the bill would give Kansas families more choice in where and how they educate their children.

Written-only proponent testimony was provided by representatives of Americans for Prosperity Kansas, Archdiocese of Kansas City in Kansas, Kansas Catholic Conference, Kansas Chamber, Kansas Family Voice, Maranatha Christian Academy, Urban Preparatory Academy, and Yes. Every Kid., and by a private citizen.

Opponent testimony was provided by Representative Poskin; representatives of Game On for Kansas Schools, Kansas Association of School Boards, Kansas Interfaith Action, Kansas PTA, and Mainstream Coalition; and three private citizens. The opponents generally stated that the bill would divert public funds to private schools and private education.

Written-only opponent testimony was provided by representatives of the American Federation of Teachers Kansas, Kansas National Education Association, Kansas State Board of Education, Olathe Public Schools, and Stand Up Blue Valley: Families for Our Schools, and by 50 private citizens.

No other testimony was provided.

The Senate Committee amended the bill to do the following:

- Make the tax credits an amount equal to the expenditures directly attributable to the tuition and related costs required for attendance at a private school with the credits not exceeding the $4,000 or $8,000 caps rather than $8,000 for each dependent child enrolled full time in a private school or $4,000 for each dependent child enrolled full time in a nonaccredited private school;

- Remove language allowing KDOR to consult with the Kansas State Department of Education (KSDE) for the purpose of determining whether a child of a claimant is enrolled in a public school during the tax year for which the credit is claimed; and

- Remove language stating a claimant of the tax credit acknowledges that KDOR may consult with and receive information from the State Department of Education regarding public school enrollment of any dependent children.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget (DOB) on the bill, as introduced, KDOR estimates that the maximum credits allowed in the bill, $125.0 million, would be claimed during fax year 2025. The estimate is based upon student count data from KSDE showing that the number of accredited private school students, without factoring in non-accredited private school students, multiplied by the amounts of the credit would exceed the total amount of tax credits allowed by the bill ($8,000 x 26,396 students = $211,160,000). Furthermore, KDOR estimates that the cap would increase pursuant to the bill and that all of the $156.3 million of tax credits for tax year 2026 would likely be claimed.

Due to the overlap of tax years and fiscal years, KDOR estimates that for FY 2026 revenues to the State General Fund (SGF) would be reduced by $281.3 million, including $125.0 million for tax year 2025 and $156.3 million for tax year 2026. KDOR states that since the tax credit could be claimed at any time, the fiscal effect of both tax year 2025 and tax year 2026 would be anticipated to be experienced in

FY 2026. KDOR also estimates a $195.4 million reduction in revenues to the SGF for FY 2027 and a $244.1 million reduction in revenues to the SGF for FY 2028.

KDOR indicates that it would require $271,306 from SGF in FY 2026 to implement the bill and modify the automated tax system and 1.0 FTE to answer questions from taxpayers and to assist with the administration of the new program. The 1.0 FTE would be ongoing and KDOR estimates an ongoing expense of $72,181 in SGF for FY 2027. Required programming for this bill would be performed by existing staff of KDOR. However, KDOR states that if the combined effect of implementing this bill and other enacted legislation exceeds the agency's programming resources then additional resources would be required to contract outside programming services.

DOB estimates that some parents currently using the Tax Credit for Low Income Students Scholarship Program would likely stop utilizing the program in order to utilize the Educational Opportunity Tax Credit. KSDE further notes that if participation in the tax credit scholarship program declines, the amount of tax credits claimed under the program could also change.

The Department of Administration indicates that adjusting state income tax collections has the potential to have a fiscal effect on the amount of revenue collected from its debt setoff program which intercepts individual income tax refunds and homestead tax refunds and applies the amounts to debts owed to state agencies, municipalities, district courts, and state agencies in other states.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2026 Governor's Budget Report*.

Education; K-12 Education; income tax; tax credit; accredited private school; nonaccredited private school