

[JOINT COMMITTEE PRINT]

**DESCRIPTION OF S. 550  
TUITION TAX RELIEF ACT OF 1981**  
SCHEDULED FOR HEARINGS

BEFORE THE  
SUBCOMMITTEE ON TAXATION AND  
DEBT MANAGEMENT  
OF THE  
COMMITTEE ON FINANCE  
ON JUNE 3 AND 4, 1981

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PREPARED FOR THE USE OF THE  
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### INTRODUCTION

The Senate Finance Committee's Subcommittee on Taxation and Debt Management has scheduled public hearings on June 3 and 4, 1981, on S. 550, the Tuition Tax Relief Act of 1981 (introduced by Senators Packwood, Moynihan, Roth, Durenberger, Heinz, and others).

This pamphlet, prepared in connection with the hearings, contains seven parts. The first part is a summary of present law and the bill. Parts two and three contain brief descriptions of present law relating to tax benefits for educational expenses and nontax benefits for education, respectively. Part four discusses prior Congressional action relating to tuition tax benefits. Part five provides a brief summary of selected issues. Part six provides a more detailed description of the provisions of S. 550, and part seven contains the estimated revenue costs of the bill.



## I. SUMMARY

### *Present Law*

Present law provides no tax credit or deduction for personal educational expenses. However, in certain cases, taxpayers are entitled to a personal exemption for a dependent, which they could not claim otherwise, because the dependent is a student. Moreover, individuals generally may exclude from gross income amounts received as scholarships and fellowships, or amounts received under qualified educational assistance programs. Finally, certain types of "job-related" education expenses may be deducted.

Private elementary and secondary education is financed, primarily, with private funds. However, many private schools and their students receive some sort of public, financial assistance.

Currently, the Federal Government provides more than \$13 billion for postsecondary education. The bulk of these funds are made available through Pell Grants, Guaranteed Student Loans, and the Social Security Student Benefit Program. Moreover, there are several, smaller college student assistance programs, such as Supplemental Educational Opportunity Grants, National Direct Student Loans, and the College Work Study Program. Funds for postsecondary education also are made available through grants from such agencies as the National Science Foundation and the Public Health Service.

### *Summary of S. 550*

In general, the bill would provide a refundable tax credit for 50 percent of the educational expenses paid by an individual for himself, his spouse, or his dependents. Qualified educational expenses would be tuition and fees required for enrollment or attendance at a private elementary or secondary school, or a public or private college or vocational school.

The maximum amount of the credit would be \$250 for educational expenses allocable to education furnished after July 31, 1982, and before August 1, 1983. Thereafter, the maximum credit amount would be \$500. In addition, the credit would be available for graduate students and half-time students for educational expenses allocable to education furnished after July 31, 1984.

The bill would be effective for taxable years ending after July 31, 1982, with respect to amounts paid after that date for educational expenses incurred after that date.

## **II. PRESENT LAW RELATING TO TAX BENEFITS FOR EDUCATIONAL EXPENSES**

### **A. Special Rule for Claiming Dependency Exemption for a Child Who is a Student**

In certain cases, taxpayers are entitled to a personal exemption for a dependent, which they otherwise could not claim, because the dependent is a student. Generally, a taxpayer may claim a \$1,000 personal exemption deduction for each dependent who has less than \$1,000 gross income for a taxable year. However, the gross income limitation does not apply if the dependent is the taxpayer's child and is under the age of 19 or is a student (Code sec. 151).

### **B. Income Tax Exclusion for Scholarships and Fellowships**

Individuals generally may exclude from income amounts received as scholarships and fellowships (Code sec. 117). The exclusion also covers incidental amounts received to cover expenses for travel, research, clerical help, and equipment when they are expended for these purposes. The exclusion for scholarships and fellowship grants is restricted to educational grants by relatively disinterested grantors who do not require any significant consideration (e.g., promises of future services) from the recipient, except in the case of certain Federal grants. Similarly, where an educational institution allows delayed payment of tuition, the Internal Revenue Service regards tuition postponement to be a loan and, therefore, not includible as income to the student (Rev. Rul. 72-2, 1972-1 C.B. 19).

In general, an amount that is received by an individual as a grant under a Federal program, which would be excludible from gross income but for the fact that the individual recipient is required to perform future services as a Federal employee, is excludible if the individual establishes that it was used for tuition and related expenses.

### **C. Deduction for "Job-Related" Educational Expenses**

Education expenses which qualify as trade or business expenses under Code section 162 may be deducted. Expenditures made by an individual for his own education generally are deductible if they are for education which (1) maintains or improves skills required by the individual's employment or other trade or business or (2) meets the express requirements of the individual's employer or the requirements of applicable law or regulations imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation (Treas. Reg. sec. 1.162-5(a)). These types of education commonly are called "job-related" education.

#### **D. Income Tax Exclusion for Amounts Received Under Educational Assistance Programs**

For taxable years beginning after December 31, 1978, and before December 31, 1983, amounts paid by an employer for an employee's educational expenses may be excluded from the employee's income if paid pursuant to a qualified educational assistance program (Code sec. 127). A qualified educational assistance program must be a separate written plan of an employer for the exclusive benefit of employees. The plan also must meet requirements with respect to nondiscrimination in contributions or benefits and in eligibility for enrollment, but it need not be funded or approved in advance by the Internal Revenue Service. For a program to qualify, the employees must be given adequate notification and must not be able to choose taxable benefits in lieu of the educational assistance.

Benefits which may be provided under the program include tuition, fees, and similar payments, books, supplies, and equipment. Covered studies need not be restricted to courses which are job-related or part of a degree program.<sup>1</sup> However, an employee claiming an exclusion under this section may not claim any other deduction or credit (e.g., a Code sec. 162 deduction for job-related education) with respect to any excludible benefits.

#### **E. Tax-Exempt Bonds for Student Loans**

Present law provides an exemption from taxation for the interest on bonds ("qualified scholarship funding bonds") issued by certain private, non-profit corporations to finance college student loan programs (Code secs. 103(a)(2) and (e)).

A qualified scholarship funding bond is an obligation of a non-profit corporation organized by, or requested to act by, a State or a political subdivision of a State (or a possession of the United States), solely to acquire student loan notes incurred under the Higher Education Act of 1965. The entire income of such a corporation (after payment of expenses and provision for debt service requirements) must accrue to the State or political subdivision, or be required to be used to purchase additional student loan notes.

#### **F. Other Tax Provisions of Benefit to Education**

Some provisions that benefit education, in general, and sometimes students, in particular, include the exclusion from income of gifts (Code sec. 102), which may comprise a large portion of a student's support, and the charitable contribution deduction (Code sec. 170), which allows a deduction for contributions to educational institutions. Other provisions, such as the exclusion of interest on State and municipal bonds (Code sec. 103) and the deduction for State and local taxes (Code sec. 164) indirectly assist publicly-supported educational institutions by easing the financial burden on State and local governments.

<sup>1</sup> Generally, however, no exclusion is permitted for educational assistance furnished for courses involving sports, games, or hobbies.

### III. NONTAX BENEFITS FOR EDUCATION

#### A. Elementary and Secondary Education

Private elementary and secondary education is financed primarily from private funds. However, many private schools receive some type of public, financial assistance. For example, some States furnish private schools with standardized tests and scoring services, loan textbooks to private school students, and provide transportation to and from school. The Federal Government is authorized to furnish private school students with compensatory instruction and certain other services under the Elementary and Secondary Education Act, the Education of the Handicapped Act, and other Federal legislation dealing with education.

Federal assistance is provided for public elementary and secondary education through a variety of programs administered by the Department of Education. These programs include the Elementary and Secondary Education Act of 1965, Impact Aid, the Adult Education Act, the Vocational Education Act, and the Education of the Handicapped Act.

#### B. Postsecondary Education <sup>1</sup>

The greatest amount of Federal student assistance for postsecondary education is furnished through programs authorized under title IV of the Higher Education Act, which is administered by the Department of Education. The five principal sources of assistance under that Act are the Guaranteed Student Loan program, Pell Grants (formerly, Basic Educational Opportunity Grants), Supplemental Educational Opportunity Grants, College Work Study, and the National Direct Student Loan program. With the exception of Guaranteed Student Loans, these programs provide "needs-based" assistance. In addition to these programs, the Department of Education administers several, smaller programs that provide grants, loans, and other types of special student services. These programs include the State Student Incentive Grant program and the Graduate and Professional Opportunity Grant, Graduate Fellowship, and Legal Training programs, as well as several programs, that provide special services to students, such as the Veterans Cost-of-Instruction, Migrant Student, and Law School Clinical Experience programs.

The largest sources of Federal student assistance outside of the Department of Education are the Social Security Student Benefit program, administered by the Department of Health and Human Services, and several veterans education programs, administered by

<sup>1</sup> For a more complete description of Federal assistance to postsecondary education, as well as proposed budget cuts, see Congressional Research Service Issue Brief Number IB 81042, "Student Financial Assistance: FY 82 Budget."

the Veterans Administration. Also, outside of the Department of Education is the Student Loan Marketing Association, a Federally chartered, privately owned corporation that provides secondary marketing for the Guaranteed Student Loan program.

#### C. Fiscal 1982 Budget Considerations

The Administration has proposed to consolidate about 45 separate education programs into two block grants and to cut overall spending for education and training by approximately 25 percent. The conference report on the first budget resolution provides \$14.2 billion in outlays for fiscal year 1982, which is about \$900 million above the \$13.3 billion recommended by the Administration. In January, the Carter Administration had recommended \$15.8 billion in outlays for education in 1982.

#### IV. PRIOR CONGRESSIONAL ACTION RELATING TO TUITION TAX BENEFITS

In the 1950's, tax deductions from adjusted gross income for some portion of college expenses and an additional personal exemption for each student were the most common legislative proposals for tax relief for educational expenses. In the 1960's, tax credit proposals became popular. From 1967 to 1977, six education tax credit proposals passed the Senate, but none was ever approved by the House of Representatives.

##### *1977 Legislation*

The Social Security Financing Amendments of 1977, as passed by the Senate, contained an amendment, known as the "Roth amendment," to provide a tax credit for certain educational expenses. This amendment was deleted from the bill by the conferees.

The 1977 amendment would have allowed a tax credit for educational expenses paid by an individual for himself, his spouse, or his dependents. The credit would have covered 100 percent of the eligible educational expenses at institutions of higher education (but not graduate schools) or postsecondary vocational schools, up to a maximum of \$250 for any one individual. This credit would have been refundable only for the first year that it was effective.

##### *1978 Legislation*

In February 1978, the Senate Finance Committee reported a House-passed tariff bill with an amendment providing a refundable credit for tuition and fees paid for undergraduate college and post-secondary vocational school expenses after August 1, 1978, and for elementary and secondary school expenses after August 1, 1980. On August 1, 1981, this credit would have been extended to the educational expenses of graduate students and part-time students. The credit would have been for an amount equal to 50 percent of tuition and fees, with a maximum credit of \$250 per-student per-year as of August 1, 1978, increasing to a maximum of \$500 per student on August 1, 1980. This bill was never considered on the Senate floor.

The House Ways and Means Committee, in April, 1978, reported a bill (the "Tuition Tax Credit Act of 1978") that would have provided a nonrefundable credit equal to 25 percent of the tuition paid by the taxpayer to one or more eligible educational institutions for himself, his spouse, or any of his dependents.<sup>1</sup>

This credit would have been available only for tuition paid to undergraduate institutions of higher education and postsecondary vocational schools. The maximum credit would have been \$100 for 1978, \$150 for 1979, and \$250 for 1980.

<sup>1</sup> H.R. Rep. No. 95-1056, 95th Cong., 2d Sess. (1978).

The House amended this bill to provide a credit, with the same limits applicable to tuition paid to undergraduate institutions, for graduate postsecondary expenses. In addition, the bill was amended to provide a credit for expenses paid to elementary and secondary schools. The maximum credit for elementary and secondary school expenses would have been \$50 for 1978, \$100 for 1979, and \$100 for 1980.

The Senate Finance Committee, in August, 1978, reported the House-passed bill with amendments (the "Tuition Tax Relief Act of 1978").<sup>2</sup> This bill would have provided a nonrefundable credit for an amount equal to 50 percent of the educational expenses paid by the taxpayer during the taxable year. Beginning August 1, 1978, the maximum credit for undergraduate college or postsecondary school expenses would have been \$250. This amount would have increased to \$500 on October 1, 1980. In addition, the credit would have been expanded to cover students in private elementary and secondary schools (including vocational secondary schools) and half-time undergraduate students, as of October 1, 1981. The maximum credit for elementary and secondary school expenses would have been \$250. The Senate amended this bill by deleting coverage for elementary and secondary school expenses and by providing that no credit would be allowed after December 31, 1983.

On October 3, 1978, the Conference Committee reported a bill that would have provided a credit equal to 35 percent of tuition paid to institutions of higher education and postsecondary vocational schools.<sup>3</sup> The maximum credit allowed under this proposal would have been \$100 for 1978, \$150 for 1979, \$250 for 1980, and \$250 for 1981. The House rejected this proposal, and the Conference Committee submitted a second report that, in addition to a credit for higher education expenses, would have allowed a credit for secondary education expenses (a maximum credit of \$50 in 1978, \$100 in 1979, \$100 in 1980, and \$100 in 1981).<sup>4</sup> This proposal was rejected by the Senate.

#### *96th Congress*

Although there were several bills providing for tuition tax credits introduced in the 96th Congress, no legislative action was taken on them.

<sup>2</sup> S. Rep. No. 95-1066, 95th Cong., 2nd Sess. (1978).

<sup>3</sup> H.R. Rep. No. 95-1682, 95th Cong., 2d Sess. (1978). A similar provision was contained in the Senate version of the Revenue Act of 1978, but was deleted in conference. (See, H.R. Rep. No. 95-1800, 95th Cong., 2d Sess. (1978).)

<sup>4</sup> H.R. Rep. No. 95-1790, 95th Cong., 2d Sess. (1978).

## V. SUMMARY OF SELECTED ISSUES

### A. Constitutional Issues

The constitutionality of providing Federal tax benefits to nonpublic school students or their parents has long been a subject of debate because of the sectarian character of most nonpublic schools. No case dealing with tax credits or deductions directly related to the actual cost of nonpublic school tuition has been decided by the Supreme Court. However, in *Committee for Public Education and Religious Liberty v. Nyquist*, 413 U.S. 756 (1973), the Court held that a New York State income tax deduction for each child attending nonpublic secondary or elementary school in an amount unrelated to the actual cost of tuition violated the establishment clause of the First Amendment of the U.S. Constitution.<sup>1</sup> Although the *Nyquist* decision did not deal specifically with tax credits or deductions based on the actual cost of tuition, the Court's opinion suggests that these types of benefits also might be unconstitutional. In testing the constitutionality of a statute under the establishment clause of the First Amendment, the Court applied three cumulative tests:<sup>2</sup>

- (1) the statute must have a secular purpose;
- (2) the primary effect of the statute must neither advance nor inhibit religion; and
- (3) the statute must not foster excessive government entanglement with religion.

The Court concluded that the New York State statute met the secular purpose test, but held that the statute failed the primary effect test, and indicated *in dicta* that prospects for passing the excessive entanglement test were not good. In its decision, the court cited the case of *Kosydar v. Wolman*, 353 F. Supp. 744 (S.D. Ohio 1972) in which the United States district court held that a State refundable tuition tax credit based on educational expenses incurred and subject to a dollar limitation violated the Establishment Clause.

Although tax credits or deductions for nonpublic elementary or secondary schools may entail constitutional difficulties, Federal aid to church-related colleges and universities generally has been regarded with less suspicion by the Supreme Court. In upholding construction grants to church-related colleges and universities for nonsectarian facilities, the Court found in *Tilton v. Richardson*, 403 U.S. 672 (1971), that there was much less likelihood that religion would permeate secular education at that level, and, thus, the risk that government aid would support religious activities or foster excessive government entanglement with religion was reduced significantly.

<sup>1</sup> The First Amendment states that: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof \* \* \*"

<sup>2</sup> To be found constitutional under the establishment clause, a statute must pass all three tests. *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

## B. Policy Issues

### Arguments for tuition tax credits

Several arguments have been advanced in favor of tuition tax credits. In general, those in favor of such credits point out that private elementary and secondary schools serve a useful function that merits some sort of public support, that private schools allow parents to choose the education that is best for their children, and that private schools need more support in order to maintain their high standard of quality and to prevent loss of enrollments. It also is argued that, with ever-increasing college costs, some relief should be provided to families and students who are trying to keep up with those costs.

Moreover, it is maintained that tuition tax credits would provide middle- and lower-income families with some of the opportunities now enjoyed by upper-income families who have the means to choose private schools and expensive colleges for their children. Furthermore, it is argued that tuition tax credits would be simple to claim and easy to administer.

### Arguments against tuition tax credits

Those who oppose tuition tax credits argue that public money should not be used to support private schools, and that the credits merely would be a windfall to families who already can afford to provide their children with a private school or college education. These people argue that direct aid programs are better targeted to needy individuals than tuition tax credits. Moreover, some opponents of tuition tax credits believe that they would provide an excuse for private schools and colleges to increase their tuition even more. Furthermore, some people believe that providing tuition tax credits for private education could lead, eventually, to Federal Government control of private institutions.

## C. Technical Issues

Any proposal for a tax credit involves several technical issues. These issues, involving, for example, the form of the credit, whether the credit should be refundable, and eligibility for the credit, also involve substantive questions.

### Form of the credit

Issues relating to the form of the credit concern, primarily, whether the credit should be a flat amount or a percentage credit, the maximum amount of the credit, and whether the credit should be on a per-taxpayer or per-student basis.

A percentage credit would add complexity, as compared to a credit for a flat amount, for those who could claim it because it would require an extra computation. However, allowing a credit for only some fraction of tuition expenses would assure that the taxpayer pays some part of the tuition out of his or her own funds.

Putting a maximum amount on the credit helps in holding down the overall revenue loss of the proposal. However, the level of the maximum amount could have some effect on the types of individuals and institutions who would benefit from the credit.

The credit could be applied on a per-taxpayer or per-student basis. While allowing the credit on a per-taxpayer basis generally would hold down the cost, some might argue that this would discriminate against large families.

#### **Refundability**

A refundable tax credit involves larger revenue costs than a non-refundable credit. However, a refundable credit would extend benefits to individuals who have no tax liability or whose tax liability is too small to benefit fully from the full amount of the credit.

#### **Income phaseout**

Some tax credits provided under present law contain income phase-outs (*e.g.*, disability income credit, earned income credit, and credit for the elderly) in order to direct their benefits toward lower- and middle-income taxpayers. Whether or not to adopt an income phase-out with respect to tuition tax credits would depend upon whether the Congress wanted the benefits to be phased out for upper-income groups or whether it wanted all taxpayers to be potentially eligible for the same amount of credit.

#### **Eligible institutions**

A major issue with respect to tuition tax credits concerns which institutions should be covered by the credit. That is, whether the credit should be extended to all colleges and private elementary and secondary schools; whether the credit should be limited to colleges, private secondary schools, or private elementary schools (or some combination of the three); or whether the credit should be extended to public, as well as private, elementary and secondary schools. A related issue is whether the credit for private education should be limited to schools that are exempt from Federal income tax.

Many proponents of credits for elementary and secondary education who are concerned about potential constitutional issues with respect to those credits have contended that combining credits for elementary and secondary schools with credits for higher education might reduce the likelihood that the elementary and secondary provisions would be held unconstitutional.

#### **Other issues**

Tuition tax credits give rise to several other issues. These issues include whether the credits should be available for part-time students and graduate students; whether creditable expenses should be offset by certain benefits (*e.g.*, scholarships and fellowships); whether other tax benefits for creditable expenses should be disallowed; and what effect tuition tax credits should have on other educational assistance programs.

**VI. DESCRIPTION OF S. 550**  
**(THE TUITION TAX RELIEF ACT OF 1981)**

**A. Declaration of Policy**

The bill contains a statement of policy. This statement would declare that it is to be the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. It states, further, that Federal legislation should recognize the right of parents to direct the education and upbringing of their children, and the heavy financial burden now borne by individuals and families who must pay tuition to obtain the education that best serves their needs and aspirations (whether at the primary, secondary, or post-secondary level), and should provide some relief.

Moreover, this statement would declare that Congress finds, without the relief to be granted by this bill, the personal liberty, diversity, and pluralism which constitute important strengths of education in America would be diminished and that the assistance provided by the bill can appropriately be provided through the income tax structure with a minimum of complexity and governmental interference in the lives of individuals and families. While the Congress would recognize that the Supreme Court is ultimately responsible for determining the constitutionality of provisions of the law, this policy statement would provide that Congress finds that the relief to be provided by the bill is in accord with all provisions of the Constitution.

The policy statement concludes that the primary purpose of the bill would be to enhance equality of educational opportunity for all Americans at the schools and colleges of their choice.

**B. General Provisions**

Under the bill, an individual would be allowed to claim a tax credit for 50 percent of the educational expenses paid by him or her during the taxable year to one or more educational institutions for himself or herself, his or her spouse, or any of his or her dependents. This would be a refundable credit. That is, if the amount of this credit exceeded an individual's tax liability, the difference would be received in the form of a direct payment from the Treasury.

The benefits to be provided by the bill would take effect in stages. The maximum amount of educational expenses that could be taken into account with respect to any individual, for the taxable year, would be \$500 for expenses that are allocable to education furnished after July 31, 1982, and before August 1, 1983. The maximum amount of educational expenses that could be taken into account for expenses allocable to education furnished after July 31, 1983, would be \$1,000. Thus, the maximum credit would be \$250 for education furnished after July 31, 1982, increasing to \$500 for education furnished after July 31,

1983. If an individual made payments, within one taxable year, for education furnished before August 1, 1983, as well as for education furnished after July 31, 1983, the maximum credit would be \$500, but only \$500 of the expenses paid for education furnished before August 1, 1983 could be taken into account.

Prior to August 1, 1984, creditable expenses would be expenses for the education of a full-time, undergraduate, college student or a full-time student at a vocational school, a private secondary school, or a private elementary school. (Amounts paid before August 1, 1984, for educational expenses allocable to education furnished on or after that date would be treated as having been paid on August 1, 1984.) A full-time student would be an individual who, during any four calendar months during the calendar year in which the taxable year of the taxpayer begins, is a full-time student at an educational institution. The credit would be extended to graduate students and half-time students in the case of expenses allocable to education furnished after July 31, 1984. A graduate would be one who has been awarded a baccalaureate degree by an institution of higher education. A half-time student would be an individual who, during any four calendar months during the calendar year in which the taxable year of the taxpayer begins, is a half-time student at an eligible institution under regulations which are consistent with regulations prescribed by the Secretary of Education.

### C. Specific Provisions

#### 1. Eligible educational institutions

The credit to be provided by the bill would be available with respect to educational expenses paid to: (1) an institution of higher education,<sup>1</sup> (2) a vocational school,<sup>2</sup> (3) a secondary school, or (4) an elementary school.

An eligible elementary school would be a privately operated, not-for-profit, day or residential school which provides elementary education; which is exempt from taxation under Code section 501(a) as an organization described in Code section 501(c)(3); and which does not exclude persons from admission to the school, or participation in the school, on account of race, color, or national or ethnic origin.

An eligible secondary school would be a privately operated, not-for-profit, day or residential school which provides secondary education that does not exceed grade 12, which also is a tax-exempt organization and does not exclude persons because of race, color, or national or ethnic origin.

Furthermore, eligible elementary and secondary schools would include facilities (whether or not privately operated) that offer education, as a substitute for regular public elementary or secondary education, for individuals who are physically or mentally handicapped.

<sup>1</sup> Defined as an institution described in section 1201(a) or 481(a) of the Higher Education Act of 1965 (as in effect on January 1, 1981).

<sup>2</sup> An area vocational education school (as defined in section 195(2) of the Vocational Education Act of 1963, as in effect on January 1, 1981) which is located in any State.

Payments for education furnished by an elementary or secondary school of a State educational agency that is privately operated would not qualify for the credit unless the payments are incurred for the education of handicapped individuals.

## **2. Eligible expenses**

Expenses eligible for the credit would be tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, including any required fees for courses.

Specifically excluded from the category of eligible expenses would be any amounts paid, directly or indirectly, for the following items: (1) books, supplies, and equipment for courses of instruction at an educational institution; (2) meals, lodging, transportation, or similar personal, living, or family expenses; and (3) education below the first-grade level or attendance at a kindergarten or nursery.

If an amount paid for tuition and fees includes payment for an item that does not qualify as an educational expense (for example, a charge for books), and the charge with respect to that item is not separately stated, then the taxpayer would have to document the portion of the total amount paid that is attributable to educational expenses.

## **3. Reduction of creditable expenses**

The bill would require that otherwise eligible educational expenses be reduced by certain amounts attributable to the payment of educational expenses. These amounts would be: (1) amounts received from a tax-free scholarship or fellowship grant; (2) certain Veterans' benefits;<sup>3</sup> and (3) any other payment (except for a gift, bequest, devise, or inheritance which is excludible under Code sec. 102(a)) for educational expenses, or attributable to attendance at an educational institution, that is exempt from income taxation under any law of the United States.

In addition, pursuant to Treasury Regulations, otherwise eligible expenses would be reduced by any amount attributable to the payment of educational expenses received with respect to any individual to the extent that it is an interest subsidy on any loan received by the individual, or constitutes any other form of financial assistance to the individual. Offsets for these amounts would apply only with respect to amounts received after the date on which final Treasury Regulations are issued.

If an amount which must be applied to reduce otherwise eligible educational expenses is not specifically limited to the payment of educational expenses, then the portion of such amount which is attributable to the payment of educational expenses would be determined under Treasury Regulations.

## **4. Taxpayer who is a dependent of another taxpayer and treatment of spouse**

An individual would not be permitted to claim a credit for educational expenses if the individual is a dependent of another taxpayer.<sup>4</sup>

<sup>3</sup> Specifically, educational assistance allowances paid under chapter 32, 34, or 35 of title 38, United States Code.

<sup>4</sup> For example, a student whose parents are entitled to claim a personal exemption for him could not claim a credit for his own educational expenses. The student's parents could claim a credit for educational expenses they pay for the student, provided the expenses otherwise are eligible.

Moreover, an individual could claim a credit for a spouse's educational expenses only if the individual is entitled to claim a personal exemption for the spouse or if the individual and his spouse file a joint return.

**5. Disallowance of expenses as credit or deductions**

Under the bill, an individual would not be permitted to claim any deduction or credit, under any other section of the Internal Revenue Code, for any educational expenses that have been taken into account in determining the amount of credit that is claimed with respect to educational expenses. However, a taxpayer would be permitted to elect, under Treasury Regulations, not to claim a credit for educational expenses.

**6. Limitation on examination of books and records**

The bill would provide that nothing contained therein could be construed to grant additional authority to examine the books of account, or the activities, of any school that is operated, supervised, or controlled by, or in connection with, a church or convention or association of churches (or the examination of the books of account or religious activities of such church or convention or association of churches).

**7. Separability**

The bill provides that the invalidation of any of its provisions, or the application thereof to any persons or circumstances, would not invalidate the remaining provisions or the application of those provisions to other persons or circumstances.

**8. Relationship of credit to other educational assistance programs**

The bill would provide that any tax refund received by an individual, or any reduction in tax liability of any individual, as a result of this credit would not be taken into account as income or receipts for purposes of determining the individual's eligibility (or any other individual's eligibility) for benefits or assistance, or the amount or extent thereof, under any Federal program of educational assistance or under any State or local program of educational assistance that is financed in whole, or in part, with Federal funds.

**9. Credit not to be considered as Federal assistance**

The fact that an educational institution enrolls a student for whom a credit is claimed would not deem such institution to be a recipient of Federal assistance.

**D. Effective Date**

The bill would apply to amounts paid after July 31, 1982 (in taxable years ending after that date) for educational expenses incurred after that date.

## VII. REVENUE EFFECT

The provisions of S. 550 are estimated to reduce budget receipts by \$99 million in fiscal year 1982, \$2,691 million in 1983, \$5,160 million in 1984, \$6,308 million in 1985, and \$6,857 million in 1986.

The following table gives a breakdown (for fiscal years 1982-1986) of the estimated revenue cost of the credit attributable to elementary and secondary education and the cost attributable to college and other postsecondary education.

### ESTIMATED REVENUE EFFECT OF S. 550, FISCAL YEARS 1982-1986

[Millions of dollars]

Item	1982	1983	1984	1985	1986
Elementary and secondary education.....	-40	-1,082	-2,030	-2,198	-2,276
College and other postsecondary education.....	-59	-1,609	-3,130	-4,110	-4,581
Total revenue effect of the bill.....	-99	-2,691	-5,160	-6,308	-6,857

(17)

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