

DESCRIPTION OF S. 2673

THE EDUCATIONAL OPPORTUNITY AND EQUITY ACT OF 1982

Relating to

Tuition Tax Credit for Elementary and Secondary Education

Scheduled for a Hearing

on

July 16, 1982

by the

Senate Committee on Finance

Prepared by the Staff

of the

Joint Committee on Taxation

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JCX-31-82

INTRODUCTION

This document describes S. 2673 (Senators Dole, Roth, and D'Amato), which would provide a tax credit for tuition paid to elementary and secondary schools that have racially non-discriminatory policies. The bill is scheduled for a hearing on July 16, 1982, by the Senate Committee on Finance.

Last year (June 3 and 4, 1981), the Finance Subcommittee on Taxation and Debt Management held a hearing on S. 550 (Senators Packwood, Moynihan, Roth, Durenberger, Heinz, and others), which would provide a refundable tax credit for 50 percent of tuition paid to a private elementary or secondary 1/ school, or to a public or private college or vocational school.

The first part of the document is a summary. This is followed in the second part with a more detailed description of S. 2673.

1/ For a more complete discussion of that bill see "Description of S. 550, Tuition Tax Relief Act of 1981" (JCS-24-81, May 30, 1981).

I. SUMMARY

Present law provides no tax credit or deduction for personal educational expenses.

The bill would provide a nonrefundable credit for 50 percent of tuition expenses paid to elementary and secondary schools for certain qualified dependents of the taxpayer. The maximum credit would be \$100 in 1983, \$300 in 1984, and \$500 in 1985 and subsequent years. The maximum credit amount would be phased down for taxpayers with adjusted gross income of greater than \$50,000, and no credit would be allowed for taxpayers with adjusted gross income of \$75,000 or more.

For tuition expenses to be creditable, a school would have to file annually with the Treasury a statement indicating that it has not followed a racially discriminatory policy. (A copy of this statement would have to be furnished to each individual who pays tuition to the school.) Furthermore, the bill would authorize the Attorney General, upon petition by an individual who claims to have been racially discriminated against, to seek a declaratory judgment, in a U.S. district court, that a school has a racially discriminatory policy.

The provisions of the bill would apply to taxable years beginning after December 31, 1982, for tuition expenses paid after that date.



II. DESCRIPTION OF S. 2673

The Educational Opportunity and Equity Act of 1982

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 that they could not claim otherwise, because the dependent is a student. Moreover, individuals generally may exclude from gross income amounts received as scholarships, or amounts received under qualified educational assistance programs. Finally, certain types of "job-related" education expenses may be deducted as ordinary and necessary business expenses.

Explanation of the Bill

Congressional findings

The bill contains a policy statement that sets forth several propositions that would be based upon a Congressional finding that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. This policy statement concludes that the primary purpose of the bill is to enhance equality of educational opportunity, diversity, and choice for all Americans and that the bill will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

Credit for tuition expenses

Under the bill, an individual would be allowed to claim a nonrefundable tax credit for 50 percent of the tuition expenses paid during the taxable year to one or more educational institutions for certain dependents who are under age 20 at the close of the taxable year in which the expenses are paid and with respect to whom the individual is permitted to claim dependency exemptions.^{1/}

^{1/} Dependents, the payment of whose tuition expenses would qualify for credit under the bill, would be any one of the following individuals over half of whose support is received from the taxpayer: (1) a son or daughter or a descendant of either, (2) a stepson or stepdaughter, (3) a brother, sister, step-brother, or stepsister, (4) a son or daughter of a brother or sister, or (5) an individual (other than the taxpayer's spouse) who has as his or her principal place of abode the home of the taxpayer and who is a member of the taxpayer's household. Except for the taxpayer's children, these individuals must have less than \$1,000 of gross income for the calendar year in order to be claimed as dependents.

Eligible educational institutions and qualified tuition expenses

The credit would be available only with respect to tuition paid to certain educational institutions. An educational institution would have to meet the following requirements in order for tuition paid to it to be a creditable expense:

- (1) It must provide a full-time program of elementary or secondary education;
- (2) It must be a privately operated, not-for-profit, day or residential school; and
- (3) It must be exempt from taxation under Code section 501(a) as an organization described in section 501(c)(3).^{2/} (Under the bill, church schools that currently are exempt from the requirement that they notify the Internal Revenue Service of their applications for recognition of tax-exempt status would continue to be so exempt.)

Tuition expenses eligible for the credit would be tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including fees for courses. However, amounts paid for (1) books, supplies, and equipment for courses of instruction; (2) meals, lodging, transportation, or personal living expenses; (3) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution; and (4) education above the twelfth-grade level would not be eligible for the credit.

^{2/} These are organizations that are organized and operated exclusively for religious, charitable, educational, and other enumerated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual and which meet certain other specified requirements.



Limitations on credit amount

The credit would be subject both to a maximum dollar amount and a phase-out based upon the amount of a taxpayer's adjusted gross income. Both the maximum dollar amount of the credit and the maximum phase-out rate would be phased in over a period of three calendar years.

The maximum credit allowable to a taxpayer with respect to tuition expenses paid on behalf of each dependent would be:

(1) \$100 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1983;

(2) \$300 in the case of tuition expenses paid during the taxpayer's first taxable year beginning on or after January 1, 1984; and

(3) \$500 in the case of tuition expenses paid for each taxable year of the taxpayer beginning on or after January 1, 1985.

The maximum credit amount would be reduced by a specified percentage of the amount by which the taxpayer's adjusted gross income for the taxable year exceeds \$50,000 (\$25,000 in the case of a married individual filing a separate return). The phase-out rate would be 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983; 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and 2.0 percent for each taxable year of the taxpayer beginning on or after January 1, 1985. Thus, a taxpayer with adjusted gross income of \$75,000 or more (\$50,000 in the case of a married individual filing a separate return) would receive no tax credit.

Special rules

Under the bill, otherwise eligible tuition expenses would be reduced by certain amounts paid to the taxpayer or his dependents. These amounts would be: (1) amounts received from a tax-free scholarship or fellowship grant; (2) certain Veterans benefits; and (3) other tax-exempt educational financial assistance (except for excludable gifts, bequests, devises, or inheritances).

In addition, the bill provides that a taxpayer could not claim any allowable deduction or credit for tuition expenses that have been taken into account in determining the allowable tuition tax credit. However, the taxpayer could elect not to claim the tuition tax credit and, instead, claim other allowable deductions or credits.



Declaratory judgment proceedings

The bill would allow no tax credit for tuition payments to schools that have racially discriminatory policies. Moreover, the bill would provide for a declaratory judgment proceeding for determining whether a school has a racially discriminatory policy.

Under the bill, a person who alleges that he has been discriminated against under a racially discriminatory policy of an educational institution could petition the Attorney General. The Attorney General would be authorized, upon a finding of good cause, to bring an action against the educational institution. Such action would be brought in the United States district court in the district in which the educational institution is located and would seek a declaratory judgment that the institution has followed a racially discriminatory policy and has, pursuant to that policy, discriminated against the person who filed the petition.

The person who alleges that racial discrimination has occurred would be required to file the petition with the Attorney General within 180 days after the alleged act of racial discrimination.

The Attorney General would be required, upon receipt of a petition, promptly to notify the educational institution, in writing, of the existence of the petition and the allegations contained therein. Before commencing a declaratory judgment action, the Attorney General also would be required to give the institution a fair opportunity to comment on the allegations made against it and to show that the racially discriminatory policy alleged in the petition either does not exist or has been abandoned.

The Attorney General could file a declaratory judgment action no later than one year after receiving a petition.

Disallowance of credit with respect to amounts paid to racially discriminatory institutions

In order for an individual to claim a credit with respect to tuition paid to any educational institution, the institution must file an annual nondiscrimination statement with the Secretary and must furnish a copy of such statement to each person who paid tuition expenses to the institution in the calendar year to which the statement relates. A taxpayer claiming the credit would have to attach the copy to his return.

The nondiscrimination statement would be required to declare that the educational institution has not followed a racially discriminatory policy during the calendar year and also must indicate whether the Attorney General has brought a declaratory judgment action against the institution during the current calendar year or either of the two preceding calendar years.

The annual statement must be filed with the Secretary at the end of the calendar year, and copies must be furnished to persons paying tuition no later than January 31 of the subsequent calendar year.

If an educational institution is found, in a declaratory judgment proceeding, to have followed a racially discriminatory policy, then no credit would be allowed for tuition expenses paid to the institution in the calendar year in which the Attorney General commenced the declaratory judgment action or in the two calendar years immediately succeeding that year. No credit, however, could be disallowed until the judgment in the declaratory judgment action becomes final. 3/ If tax credits are disallowed as a result of a declaratory judgment, then the period for assessing a deficiency attributable to such disallowance would not expire until three years after a final judgment.

Under the bill, an educational institution would have a racially discriminatory policy if it refuses, on account of race (1) to admit applicants as students; (2) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or (3) to allow students to participate in its scholarship, loan, athletic, or other programs.4/ A racially discriminatory policy

3/ A judgment would become final when all parties to the action have exhausted all appellate review.

4/ The issue of whether schools with racially discriminatory policies may qualify for tax-exempt status currently is pending before the U.S. Supreme Court in the cases of Goldsboro Christian Schools, Inc. v. United States (No. 81-1) and Bob Jones University v. United States (No. 81-3). For more detail on this issue see "Background Relating to the Effect of Racially Discriminatory Policies on the Tax-Exempt Status of Private Schools" (JCS-1-82, January 29, 1982).

would not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term "race" would include color or national origin.

The exclusive authority to enforce the prohibition against following a racially discriminatory policy would be vested in the Attorney General. The Secretary of the Treasury would have authority solely to receive annual nondiscrimination statements, to disallow credits with respect to institutions that fail to file nondiscrimination statements, to disallow credits to taxpayers who fail to attach copies of nondiscrimination statements to their returns, and to disallow credits with respect to payments to an institution against which a final judgment has been entered.

Credit not to be considered as Federal assistance

The bill provides that tuition tax credits would not constitute Federal financial assistance to educational institutions or to the recipients thereof.

Effective Date

The bill would apply to taxable years beginning after December 31, 1982, for tuition expenses paid after that date.

Revenue Effect

The bill is estimated to reduce fiscal year budget receipts by \$32 million in 1983, \$373 million in 1984, \$854 million in 1985, \$1,280 million in 1986, and \$1,337 million in 1987.

