

DESCRIPTION OF S. 2673 AND S. 550

Relating to

TUITION TAX CREDIT FOR CERTAIN EDUCATION COSTS

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INTRODUCTION

This document provides a description of the provisions of S. 2673 (introduced by Senators Dole, Roth, and D'Amato) and S. 550 (introduced by Senators Packwood, Moynihan, Roth, Durenberger, Heinz, and others). S. 2673 is the Administration proposal, and would provide a nonrefundable tax credit for tuition paid to elementary and secondary schools that have racially nondiscriminatory policies. 1/ S. 550 would provide a refundable tax credit for tuition paid to a tax-exempt private elementary or secondary school that does not exclude persons from admission on the grounds of race, color, or national or ethnic origin, or to a public or private college or vocational school. 2/ The Senate Committee on Finance has scheduled an initial markup of S. 2673 for August 9, 1982.

A public hearing on S. 2673 was held by the Committee on Finance on July 16, 1982. Public hearings on S. 550 were held by the Finance Subcommittee on Taxation and Debt Management on June 3 and 4, 1981.

The first part of the document is a description of present law. This is followed in the second part by a description of S. 2673. The third part is a description of the primary differences between S. 550 and S. 2673. The fourth part is a description of possible modifications to S. 2673.

1/ For a more detailed description of the provisions of S. 2673, see "Description of S. 2673, The Educational Opportunity and Equity Tax Act of 1982, Relating to Tuition Tax Credit for Elementary and Secondary Education" (JCS-31-82, July 15, 1982).

2/ For a more detailed description of S. 550, see "Description of S. 550, Tuition Tax Relief Act of 1981" (JCS-24-81, May 30, 1981).



I. DESCRIPTION OF PRESENT LAW

A. Present Law Relating to Tax Benefits for Educational Expenses

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.

B. Effect of Racial Discrimination on Tax-Exempt Status of Private Schools

The Internal Revenue Service issued a revenue ruling and a revenue procedure,^{1/} in 1971 and 1972, which state that private schools with racially discriminatory policies as to students will not be recognized as organizations exempt from Federal income tax. These documents also set forth guidelines for determining whether certain private schools have adequately publicized their racially nondiscriminatory policies so as to enable them to qualify for tax-exempt status.

Revenue Procedure 75-50^{2/} sets forth guidelines and record-keeping requirements for determining whether private schools have racially nondiscriminatory policies. A school's failure to comply with these guidelines ordinarily results in the proposed revocation of the tax-exempt status of the school.

^{1/} Rev. Rul. 71-447, 1971-2 C.B. 230 and Rev. Proc. 72-54, 1972-2 C.B. 834. These documents were issued in response to Green v. Connally, 330 F. Supp. 1150 (D.D.C.) aff'd per curiam sub nom. Coit v. Green, 404 U.S. 997 (1971), which held that racially discriminatory private schools are not entitled to the Federal tax exemption provided for educational organizations and that gifts to such schools are not deductible as charitable contributions by the donors.

^{2/} 1975-2 C.B. 587.

Through provisions enacted as part of appropriations legislation, the Congress has forbidden the Internal Revenue Service to develop or carry out any rulings, procedures, or other positions concerning tax exemption for racially discriminatory private schools beyond those that were in effect prior to August 22, 1978.

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).



II. DESCRIPTION OF S. 2673

A. 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.

B. Eligible Educational Institutions

The credit would be available only with respect to tuition paid to an institution which:

- (1) provides a full-time program of elementary or secondary education;
- (2) is a privately operated, not-for-profit, day or residential school; and
- (3) is a section 501(c)(3) organization.

C. Maximum Credit Amount

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.



D. Adjusted Gross Income Phaseout

The maximum credit amount would be reduced by a specified percentage of the amount by which the taxpayer's adjusted gross income exceeds \$50,000 (\$25,000 in the case of a married individual filing a separate return). A taxpayer with adjusted gross income of \$75,000 or more (\$50,000 in the case of a married individual filing separately) could not claim any credit.

E. Disallowance of Credit with Respect to Amounts Paid to Racially Discriminatory Institutions 3/

No tax credit would be permitted for tuition payments to schools that have racially discriminatory policies.

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. A racially discriminatory policy 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.

A school would be required to file annually with the Internal Revenue Service a statement declaring that it had not followed a racially discriminatory policy and also must indicate whether the Attorney General has brought a declaratory judgment action against it during the current, or any of the two preceding, calendar years. The nondiscrimination statement would be furnished to each person who paid tuition to the school, and a taxpayer claiming the credit would have to attach a copy to his return.

3/ The question of whether the Internal Revenue Code provides tax exemption for racially discriminatory schools currently is pending before the Supreme Court in the Bob Jones and Goldsboro litigation. The litigating position of the Administration in these cases is that section 501(c)(3) does not authorize the disallowance of tax exemption to an otherwise qualified educational institution that maintains a racially discriminatory policy as to students. However, the Administration has announced its intention to seek legislation that would disallow tax exemption to discriminatory private schools in the event that the Supreme Court decides that existing law does not so provide. In transmitting this bill to the Congress, the Administration noted that the nondiscrimination provisions of the bill are intended to supplement the standards that must be satisfied in order for a private school to obtain tax exemption.

F. Declaratory Judgment Proceedings

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, in a U.S. District Court, seeking a declaratory judgment that the school has followed a racially discriminatory policy.

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 (i.e., until all parties to the action have exhausted all appellate review). 4/

G. 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.

4/ The period for assessing a deficiency attributable to the disallowance of tuition tax credits as a result of a declaratory judgment would not expire until three years after a final judgment.



III. SUMMARY OF PRIMARY DIFFERENCES BETWEEN
S. 2673 AND S. 550

A. Credit for Tuition Expenses

S. 550 would allow an individual to claim a refundable tax credit (i.e., the credit could exceed tax liability) for 50 percent of educational expenses paid by him or her to one or more educational institutions for himself or herself, his or her spouse, or any of his or her dependents.

S. 2673 would provide a nonrefundable tax credit for educational expenses of dependents under age 20.

B. Eligible Educational Institutions

S. 550 would allow a credit for tuition paid to institutions of higher education and vocational schools, as well as to private, tax-exempt elementary and secondary schools.

S. 2673 would provide credits only for tuition paid to private elementary and secondary schools.

C. Maximum Credit Amount

S. 550 would provide a maximum credit of \$250 for education furnished after July 31, 1982, increasing to \$500 for education furnished after July 31, 1983. There would be no adjusted gross income phaseout.

S. 2673 would provide a maximum credit of \$100 in 1983, \$300 in 1984, and \$500 in 1985, with an adjusted gross income phaseout.

D. Racial Discrimination

S. 550 provides that no credit would be available to a private elementary or secondary school that excludes persons from admission on the grounds of race, color, or national, or ethnic origin. The schools would not have to file annually with the IRS, nor does the bill provide a specific declaratory judgment procedure.

S. 2673 would require schools to file annual nondiscrimination statements and would provide a new declaratory judgment procedure for determining whether a school is racially discriminatory.

IV. POSSIBLE MODIFICATIONS TO S. 2673

A. Refundability

The credit could be made refundable. That is, the full amount of the credit could be allowed to taxpayers even if it exceeds tax liability.

B. Maximum Credit Amount

The maximum credit amount could be reduced. For example, it could be \$100 in 1983, \$200 in 1984, and \$300 in 1985 and subsequent years.

C. Adjusted Gross Income Phaseout

The credit could be phased out at a lower adjusted gross income level. For example, it could be phased out for taxpayers with income between \$40,000 and \$60,000 (rather than incomes between \$50,000 and \$75,000).

