

TUITION TAX CREDITS

ISSUE BRIEF NUMBER IB81075

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DATE ORIGINATED 05/05/81
DATE UPDATED 07/19/82

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ISSUE DEFINITION

Should taxpayers be permitted to claim a tax credit for education tuition payments? Such credits would represent a significant change in the Federal Government's role in education. Currently most Federal aid for elementary and secondary education is provided for specific purposes, such as vocational education, through categorical grants to States and local school districts. Tuition tax credit aid would instead be provided for general educational purposes in the form of tax reductions to students' families. Nearly all such money would assist families of students attending private schools. While most Federal aid for postsecondary education already is provided directly to students and their families, it generally is based on their relative financial need. Tuition tax credits would not be closely related to such need.

These proposed changes are controversial, particularly with respect to their cost, whether there should be additional public support of private education, and whether such support would be constitutional. Other important issues involve the effect tuition tax credits would have on equal educational opportunity and the desirability of using tax expenditure financing.

Legislation: The President submitted the Administration's bill to Congress on June 22, 1982. Hearings have been held on it and the Packwood-Moynihan bill.

BACKGROUND AND POLICY ANALYSIS

This section is divided into 10 parts:

1. Summary and Major Pros and Cons
2. Current Law and Legislative Options
3. Support for Private Elementary and Secondary Education
4. Postsecondary Student Financial Assistance
5. Constitutionality
6. Equal Educational Opportunity
7. Cost
8. Tax Expenditure Financing
9. Federal Role in Education
10. Legislative History Prior to the 97th Congress

1. SUMMARY AND MAJOR PROS AND CONS

Tuition tax credits are one possible kind of tax allowance for educational expenses, several other types of which are presently authorized. The particular form of a tuition tax credit can vary considerably, depending on such matters as what portion of tuition payments may be taken into consideration, whether the credit is refundable to those whose tax liability is less than the credit, and what kinds of schools are covered. In 1978 both the House and the Senate passed tuition tax credit bills but differences between them were not resolved by the time Congress adjourned. "The Reagan Administration," according to Secretary of Education Terrel Bell, "heartily endorses tuition tax credits...." Administration officials have testified in support of a tuition tax credit like that contained in S. 550 (the

Packwood/Moynihan bill, summarized below), although they have raised questions about how much it might cost, how it can be coordinated with other Federal expenditures for education, and when it should be implemented. President Reagan announced the outlines of the Administration's own proposal on Apr. 15, 1982, and submitted legislation to implement it on June 22, 1982 (for details, see the entry under the former date in the Chronology section, below, as well as the summary of S. 2673 in the Legislation section, also below).

Proponents of tuition tax credits might make the following arguments:

1. Private elementary and secondary schools serve important functions that merit public support. They enable parents to select the education that is most suitable for their children. Some private schools need public money to maintain their quality and enrollments.
2. Tuition tax credits are needed to provide tax relief to families and students trying to meet postsecondary education expenses. While they would not be need based, tax credits, unlike a tax deduction, would not give more money to families with higher income.
3. Federal tuition tax credit legislation can be drafted in such a way that it avoids the constitutional problems frequently found in State legislation. In any case, the Congress should not prejudge the issue of constitutionality, but should leave that to the courts.
4. Tuition tax credits would give lower income families many of the same options for schools that higher income families now have. They would encourage voluntary integration in private schools.
5. Tuition tax credits should be seen not as increasing the Federal budget deficit as much as specifying a particular tax revision. They might be enacted as a tax reform measure.
6. Considering the numerous tax expenditures already authorized, to say that there can be no more for education would discriminate against an important social function. Education benefits society as much as the other activities subsidized by tax allowances. The cost of education tax expenditures can be weighed against other Federal spending in the annual budget process.
7. Tuition tax credits would be simple to administer. In contrast to current categorical grant programs, they would have neither the specified purposes nor the associated requirements that result in Federal control of education.

Among the organizations supporting tuition tax credits are the Council for American Private Education, the Lutheran Church-Missouri Synod, the National Association of Independent Schools, the National Society for Hebrew Day Schools, and the United States Catholic Conference.

Opponents of tuition tax credits might make the following arguments:

1. Public money should be used to support only public schools, many of which need additional financial support. Public schools play a critical role in American society, promoting equality of educational opportunity and harmony among different ethnic and economic groups.
2. Postsecondary education tuition tax credit money would go to families and students with relatively high income. There would be no needs test for tuition tax credits, as there is for most Federal postsecondary student financial assistance programs.
3. Since tuition tax credits would for the most part benefit families of students who attend sectarian schools, the Supreme Court is likely to find them unconstitutional.
4. Most elementary and secondary tuition tax credit money would go to families with relatively high incomes, thereby impeding equality of educational opportunity. Tax credit money would also benefit schools with few if any low income or minority students, and even schools enrolling students trying to avoid desegregated public schools.
5. Tuition tax credits would be costly. Given current economic problems, no legislation should be enacted that would increase the Federal budget deficit.
6. As a tax expenditure, tuition tax credits would not be subject to legislative review by the committees that deal with other education programs. Numerous tax expenditures complicate the tax code.
7. There would be no restrictions on the use of tuition tax credit money to ensure it is spent efficiently and for public purposes. (Some opponents believe, contrary to this argument, that tuition tax credits would eventually lead to government control of private education.) There are national education problems which the Federal Government ought specifically to address with the limited educational funds it has available.

Among the organizations opposing tuition tax credits are the American Federation of Teachers, the League of Women Voters of the United States, the National Urban League, the National Education Association, and the National Parent-Teacher Association.

2. CURRENT LAW AND LEGISLATIVE OPTIONS

Tuition tax credit legislation would amend the Internal Revenue Code to permit a taxpayer to claim a credit for educational tuition payments made for himself, his spouse, or his dependents. Tuition tax credits are one form of a number of possible tax allowances that an individual might be permitted for educational expenses. At the present time only three such allowances are explicitly authorized in the Code:

1. Taxpayers may deduct expenses for education that the law or an employer requires for keeping one's salary, status, or employment; or for education that maintains or improves skills that are needed for one's present employment, trade, or business.
2. Taxpayers may claim a dependent's exemption if they contribute more than half the support of a student dependent, even if such would otherwise not be allowed on the basis of the student's income or age.
3. Taxpayers need not report as taxable income amounts they received as scholarships or fellowship grants.

In addition to these allowances, other provisions of the Internal Revenue Code provide indirect reimbursement for education expenses (for example, credits for certain child care expenses, or deductions for interest paid for educational loans) or provide economic benefits to schools (for example, deductions for charitable contributions to nonprofit educational institutions).

For many people, whether tuition tax credits should be made an allowance as well depends on the particular form of credit being proposed. One key question is whether there in fact would be a credit or whether there might be a deduction. In general, a tax credit would result in taxpayers who made equal payments for allowable tuition charges receiving tax benefits that are equal, while a tax deduction would result in their receiving benefits that are proportional to their taxable income. Setting aside the issue of refundability (discussed below), for all taxpayers who made the same allowable tuition payments (say, \$1,000), a credit would reduce their taxes by the same dollar amount (perhaps by 35% of what was paid, or \$350) while a deduction, being calculated on the marginal tax rates, would reduce the taxes of those with high taxable income more (perhaps \$490) than those with low taxable income (perhaps \$210).

Another possible allowance variation would be to have a tax deferral rather than a credit or a deduction. Under a deferral, taxes for allowable tuition payments could be postponed until a later tax year, such as after the student ceases to attend school. The taxes owed would then have to be paid, perhaps along with interest charges, over a certain time period. It would also be possible to have a deferral for money that is saved in anticipation of future tuition payments.

A second important question is whether the tuition tax credit would be refundable. It is possible for the amount of a tax credit to exceed the amount of taxes that people with relatively low taxable income have to pay.

If the credit were refundable, such people would be eligible to receive a payment equal to that portion of the credit which could not be used to offset their tax liability. If the credit were not refundable, they could not receive this payment; in effect, the credit they might receive would be reduced.

Third, a tuition tax credit might be made available without any income limitation, or it might be restricted to taxpayers with incomes below a certain level, such as \$30,000. The amount of the credit that could be claimed might be proportionally reduced as taxable incomes increase.

A fourth question is what proportion of educational expenses might be counted for purposes of the tuition tax credit. Allowable expenses might include just tuition payments per se, or they might include other required expenses (such as laboratory fees) or even other costs (such as fees for books or field trips). Either all of the allowable expenses might be counted, or just a proportion (such as one-third or one-half). A maximum dollar limit (such as \$250 or \$500) might be applied for each student.

Fifth, tuition tax credits can vary with respect to the schools that could be considered in defining allowable tuition payments. The principal distinction is between institutions of postsecondary education on the one hand and elementary and secondary schools on the other. Among postsecondary institutions, the program might be limited to only colleges and universities, with or without graduate or professional schools, or technical or vocational schools might be included as well. Both elementary and secondary schools might be included, or only one or the other. Also important is the question of whether to include tuition payments made to public schools (perhaps limited to those cases where children attend schools outside their district) and to proprietary schools (that is, schools that are operated for profit).

Sixth, the tuition tax credit might cover allowable tuition payments made for any person enrolled in school, or they might be restricted just to those who are studying full-time. Another distinction that might be drawn is between those who are enrolled to obtain a degree and those who are simply taking courses.

Seventh, the tuition tax credit might become effective upon enactment of the legislation, or its effective date might be delayed, perhaps just for certain categories of schools or students.

Finally, tuition tax credit legislation might include sections specifying what the purpose of the tax credit is. There might also be provisions dealing with a number of other matters, such as whether schools must meet certain nondiscrimination standards or whether postsecondary education student assistance programs may take into account the amount of a credit a family receives.

3. SUPPORT FOR PRIVATE ELEMENTARY AND SECONDARY EDUCATION

Private education in the United States undoubtedly would benefit financially from a tuition tax credit for elementary and secondary education tuition payments (see section 4, below for a discussion of a postsecondary education tuition tax credit). Exactly how much it would gain depends on how many additional families elect to enroll their children in private schools and on what portion of the tax money credited to parents is shifted to the schools themselves, perhaps in the form of higher tuition payments. The

extent to which either of these things would occur is not known. Nonetheless, it is reasonable to presume that an elementary and secondary tuition tax credit would contribute to an increase in the 5 million private school students there currently are in the country (a number that represents about 11% of all elementary and secondary school students) and that some tax credit funds would indirectly benefit many of the Nation's 19,000 private schools (which represent about 18% of all of the elementary and secondary schools in the country). (For additional information on private schools in the United States, see CRS IB81049, Nonpublic Elementary and Secondary Education: Providing Federal Aid, by Jim Stedman.)

Private elementary and secondary education in the United States is primarily financed with private funds, but many private schools and their students receive public financial assistance of one sort or another. For example, some States provide private schools standardized tests and scoring services, and some loan their students textbooks and give them free transportation to and from school. The Federal Government provides private school students with compensatory instruction and other services under the Education Consolidation and Improvement Act, the Education of the Handicapped Act, and other Federal education legislation; it also reimburses many private schools for part of the cost of student lunches they serve. In addition, many States and the Federal Government have tax expenditures that benefit private schools and their students. Reliable data on the total amount of public financial assistance to private education are not available.

Proponents of elementary and secondary tuition tax credits generally believe that there should be more public support for private education in the United States. One argument they make is that private schools serve important functions that merit public aid. In their view, private schools maintain cultural and educational diversity in a country where public school programs have grown increasingly similar. They enable parents to select the schooling that is the most suitable for their children, particularly with respect to their moral development. It is also said that they provide educational opportunities for students who for one reason or another cannot succeed in public schools. Tuition tax credit proponents also argue that some private schools need public aid to maintain their quality and enrollments. Constantly rising costs have forced a number of schools to cut their programs or to set their fees higher than many parents can afford. Unless extra funds become available, such schools may decline in quality or even close.

Opponents of elementary and secondary tuition tax credits generally believe that private education should not receive additional public support, or even any public support at all. The principal argument they make is that public funds should be used only to support public schools. Scarce resources should not be diverted to private schools, it is claimed, even if they do have financial problems, when public schools need additional help. Some argue that this is particularly true at the present time, when Federal funds for many education programs are being cut and States like California, Michigan, and Massachusetts are facing severe fiscal problems. Opponents of tuition tax credits also argue that public schools play a critical role in American society. They stress the widely held view that the public schools, more than any other institution, have been responsible not only for instilling democratic values but also for forming what common culture there is in the United States.

4. POSTSECONDARY STUDENT FINANCIAL ASSISTANCE

A tax credit for postsecondary education tuition payments undoubtedly would benefit most students enrolled in postsecondary education. As with an elementary and secondary tuition tax credit, some postsecondary tuition tax credit money might be shifted to the schools themselves, perhaps in the form of higher tuition charges. However, in contrast to elementary and secondary education, where for the most part only families of students attending private schools could claim the credit, a postsecondary education tuition tax credit would benefit nearly all students since public as well as private postsecondary institutions typically charge tuition. (According to the College Board, the average annual tuition charges at public 4-year colleges is \$819; at private 4-year colleges it is \$3,709). At the present time there are approximately 3,100 institutions of higher education in the United States (about 1,450 of them public and 1,650 private); together they have approximately 11,250,000 students (about 8,750,000 of them in public institutions and 2,500,000 in private institutions). Reliable data are not available on how many other postsecondary educational institutions there are (such as proprietary and vocational schools), nor on how many students they have.

At present, the Federal Government provides more than \$12 billion for postsecondary education in the United States. Most of these funds are made available through three large student assistance programs: Pell Grants (FY82 budget authority: \$2.3 billion), Guaranteed Student Loans (FY82 budget authority for Federal obligations: \$1.7 billion, with legislation for a supplemental \$1.3 billion under consideration; FY81 new loan volume based on funds generated from non-Federal sources: \$7.7 billion), and Social Security student benefits (FY81 outlays for postsecondary students: approximately \$1.6 billion). In addition, there are various smaller student assistance programs like Supplemental Educational Opportunity Grants, National Direct Student Loans, and the College Work-Study Program. Funds for postsecondary education are also made available through grants from such agencies as the National Science Foundation and the Public Health Service. (For current information on funding for postsecondary education student assistance, see CRS IB82018, Student Financial Assistance: FY83 Budget, by David Osman.)

Opponents of tuition tax credits argue that Federal money for postsecondary student financial assistance should be channeled into existing programs, not new ones. They claim that this is particularly the case at the present time since Congress is reducing the overall funding for some of the existing programs and the assistance eligibility levels for others. Opponents also point out that with the exception of Social Security student benefits, existing Federal postsecondary student financial assistance programs are need based, that is, they typically limit the amount of money a student is eligible to receive to his unmet costs of attending school (legislation has been enacted to phase out Social Security student benefits for postsecondary students). Tuition tax credits would not be need based: students or their families would be reimbursed for part of their tuition payments regardless of whether the money is needed to pay for schooling (and perhaps regardless of family income). Opponents might cite Congressional Budget Office figures showing that with a hypothetical \$250 refundable credit covering 50% of postsecondary tuition cost, nearly 60% of the funds would go to families with incomes greater than \$30,000, nearly 30% would go to families with incomes between \$15,000 and \$30,000 and only a little more than

10% would go to families with incomes less than \$15,000 (see section 6, below, for estimates on what proportion of elementary and secondary tuition tax credit money would go to these family groupings).

Proponents of tuition tax credits argue that the credits should not be compared directly with existing Federal student financial assistance programs. Their purpose is tax relief for families overburdened by educational expenses; they do not modify principles underlying existing programs so much as supplement them. According to proponents, families paying postsecondary education tuition charges are making an investment in education which the tax laws ought to encourage; the fact that the credit would benefit some kinds of families (in general, those that pay more taxes) more than others does not negate the need for giving them tax relief. It is sometimes pointed out that there are other provisions of the tax code that benefit high income families more than low income families, such as the exclusion of limited amounts of dividend income or deductions for mortgage interest payments. Finally, proponents of tuition tax credits stress that the amount of the tax credit (at least of a refundable tax credit) does not increase with income, as the amount would with a tax deduction. As a result, the credit would represent a higher percentage of income for a low income family than it would for a high income family.

5. CONSTITUTIONALITY

Tuition tax credits would benefit many families with students enrolled in private schools. Since 80% of private elementary and secondary schools are sectarian, as are almost 50% of the private institutions of higher education, the question arises whether the credits would be constitutional. The issue is whether a Federal tax credit for tuition payments made to a sectarian school would violate the first amendment's prohibition that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof"

In considering recent cases involving public aid to sectarian schools, the United States Supreme Court has developed three guidelines for assessing constitutionality. One test is whether the aid program has a secular purpose, that is, whether the aim of the program, explicitly stated or not, is something other than the advancement of religion. A second is whether the aid program would bring about excessive entanglement of government and religion, that is, whether the program would involve government in how sectarian schools are administered, or perhaps would result in political divisions along religious lines. The third test is whether the primary effect, or indeed any principal effect, of the program is to aid religion. For this last test the Court has looked at such things as whether the aid the program provides is only incidental or substantial, whether it is restricted to secular uses, and whether the group it benefits is broad and diverse.

Even with these tests, the determination of whether a given program does or does not constitute an establishment of religion in violation of the first amendment is not unambiguous. In its rulings in more than a dozen cases, the Supreme Court has held some programs benefitting sectarian schools to be constitutional and others to be unconstitutional. However, in general both the excessive entanglement and primary effect tests have proven to be substantial barriers to the Court's sanctioning public aid for educational functions at sectarian schools, particularly at the elementary and secondary levels. The Court has also ruled that the first amendment restrictions apply not only to aid provided directly to sectarian schools but also to aid

provided to the students or the parents of students who attend such schools. In one of the tax allowance cases it has considered, the Court held unconstitutional a New York State law authorizing a tax deduction for tuition payments to private schools (Committee for Public Education v. Nyquist, 413 U.S. 756 (1973)). Subsequently the Court has affirmed several lower Federal court decisions invalidating other tax allowances for such payments. (For a detailed analysis of the constitutional issues affecting tuition tax credits, see the CRS paper, "Analysis of Constitutionality of S. 550 of the 97th Congress. The Compatibility of Tax Credits for Tuition and Fees Incurred at Elementary Secondary, Vocational, and Postsecondary Schools with the Religion Clauses of the First Amendment," by David Ackerman).

Opponents of tuition tax credits argue that the Supreme Court is likely to find a Federal tuition tax credit unconstitutional. They argue that a tax credit for elementary and secondary school tuition payments would benefit only a small proportion of American schools (about 18%), most of which are sectarian, and an even smaller proportion of school children (about 11%), most of whom attend sectarian schools. In addition, they claim that the aid provided by an elementary and secondary tax credit could not be described as "incidental": with median tuition costs of about \$500 for private elementary schools and \$1,200 for private secondary schools (Congressional Budget Office estimates), a tax credit of several hundred dollars would not be insubstantial. Most important, pointing to the sectarian instruction in many private schools, opponents argue that tax credit money could not be restricted to secular uses, at least not without close governmental supervision.

Proponents of tuition tax credits generally argue that only the Supreme Court can rule definitively on constitutionality and that the Congress should not prejudge the issue. They also assert that carefully drawn legislation can avoid some of the pitfalls associated with State programs. The group that benefits could be larger and more heterogeneous, particularly if postsecondary education tuition expenses are included as well. A national purpose of promoting freedom of choice and fostering competition among schools could be made clear. How Federal funds strengthen basic instruction in private schools, benefitting society as a whole, could be emphasized. Proponents also argue that the Court's guidelines have not been applied with consistency, that some constitutional historians criticize them, and that it is possible they may be modified or even abandoned in the future.

6. EQUAL EDUCATIONAL OPPORTUNITY

Whether tuition tax credits would further or impede efforts to provide equality of educational opportunity is a matter of debate. Proponents argue that tuition tax credits would give lower income families many of the same educational options that higher income families now have. In particular, they claim that lower income families now forced to enroll their children in poor quality, and often dangerous, inner city public schools would be able to send them to alternative schools. It is sometimes added that allowing parents to choose schools in this manner might stimulate all schools, public as well as private, to do better. Proponents deny that tuition tax credits would foster more school segregation in the United States. They might point out that Catholic schools, which constitute about three-quarters of all private elementary and secondary schools, together have an enrollment in which more than 8% of the students are black and more than 8% are Hispanic. Proponents also claim that tuition tax credits would further voluntary integration in schools, arguing that parents might not be so reluctant to

have their children attend desegregated schools if they believe that the schools, because they are private, will remain stable and maintain their academic standards.

Opponents of tuition tax credit argue that since most tuition tax credit money would go to families with relatively high incomes, it would do little to promote equal educational opportunity. According to Congressional Budget Office estimates, with a hypothetical \$250 refundable credit for elementary and secondary education tuition payments covering 50% of tuition costs, approximately 42% of the money would go to families with incomes greater than \$30,000, about 42% would go families with incomes between \$15,000 and \$30,000, and only 16% would go to families with incomes less than \$15,000. If the credit were not refundable, families with relatively low incomes would get even less of the money (see section 4, above, for estimates on what proportion of postsecondary education tuition tax credit money would go to these family groupings). Opponents also argue that tuition tax credits would benefit schools with few if any low income or minority students. They assert that many of the private schools that would be aided attract students who are trying to avoid desegregated public schools. (In January, 1982, the Administration announced that it would no longer deny tax exempt status -- a requirement for tuition tax credit eligibility under S. 550 and many other tax allowance bills -- to schools that discriminate by race. Although the Administration subsequently sent legislation to the Congress that would re-establish the prohibition for schools with racially discriminatory policies, and although the Department of the Treasury presently is under a court order prohibiting it from granting exemptions to such schools, the ultimate outcome of the issue remains unclear. For additional information see the CRS paper "Legal Analysis of Administration Bill Regarding the Tax Exempt Status of Private Schools that Discriminate on the Basis of Race" by David Ackerman).

7. COST

Since tuition tax credits would reduce the revenue otherwise collected by the Internal Revenue Service, what they would cost has become an issue (see section 8, below, for analysis of the issue of tax expenditure financing). The extent to which Federal revenues would be reduced depends on the particular form of tax credit authorized. According to the Congressional Budget Office, a hypothetical \$250 nonrefundable credit, covering 50% of elementary and secondary tuition payments, would cost \$1,324,000,000 (this and subsequent figures refer to the estimated cost for 1 year, assuming current school enrollments). The identical credit for postsecondary tuition payments is estimated to cost \$945,000,000. If this same credit were refundable (that is, if the taxpayer were to be paid the amount which his total credit exceeded his tax liability), the cost would be \$1,431,000,000 for elementary and secondary education and \$1,043,000,000 for postsecondary education. A \$500 nonrefundable credit for elementary and secondary education is estimated to cost \$1,901,000,000; for postsecondary education, the cost is estimated to be \$1,475,000,000.

The Congressional Budget Office has also estimated the revenue loss for S. 550 (the Packwood/Moynihan bill, described below). Its projections, made in the spring of 1981, are shown in the following table:

Estimated revenue effect of S. 550, fiscal years 1982-1986
(Millions of dollars)

	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

The Office of Tax Analysis in the Department of the Treasury has estimated the cost of S. 2673, President Reagan's elementary and secondary education tuition tax credit proposal. (Note: the OTA estimates given here are revisions of estimates released earlier for the President's plan. The previous estimates, which may still be found in some analyses of the plan, were somewhat higher.)

Estimated revenue effect of S. 2673, fiscal years 1983-1987
(millions of dollars)

	1983	1984	1985	1986	1987
	32	373	854	1,280	1,337

Opponents of tuition tax credits argue that these costs are unjustifiable. Given concern over the Nation's economic problems, particularly about the way the Federal budget deficit may contribute to them, they argue that new measures which in effect increase Federal expenditures are not warranted. Some also argue that tuition tax credits should not be enacted at a time when Federal support for other educational programs is being cut.

Proponents of tuition tax credits argue that they should not be considered a new expenditure; rather, they should be viewed as a form of tax reduction for families that are overburdened because of the additional investment they make in education. Now is said to be an appropriate time to authorize tuition tax credits since Congress is considering ways to reform taxes in general. Some proponents also question whether tax credits should be considered a Federal expenditure at all since they believe this would imply that money which is not paid in taxes belongs to the government.

8. TAX EXPENDITURE FINANCING

Tuition tax credits would be classified as tax expenditures according to the Congressional Budget Act of 1974 (P.L. 93-344) since they would be

"revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income, or which provide a special credit, a preferential rate of tax, or a deferral of tax liability." Some opponents of tuition tax credits argue that tax expenditures are not an appropriate way for the Federal Government to finance education. They point out that since tax credit legislation would not normally be considered by the committees that have jurisdiction over legislation authorizing Federal education programs, or that oversee those programs, there would be no committee that could compare all pieces of educational legislation, assess their strengths and weaknesses, and shape them according to a general policy perspective. In particular, it is argued that tuition tax credit legislation needs to be carefully studied in light of existing Federal postsecondary education student assistance programs and Federal efforts to promote equality of educational opportunity (see sections 4 and 6, above). Tuition tax credits would not be subject to annual appropriation reviews, making it difficult to weigh their cost to the government against the revenue needs of other education programs included in the Federal budget. Some people also argue that tax expenditures in general ought to be restricted: in their view, tax expenditures unnecessarily complicate the tax code, create problems of tax equity, and place administrative burdens on the Internal Revenue Service.

Tuition tax credit proponents might argue that the tax code already is widely used as a funding mechanism. Numerous tax expenditures are currently authorized, including such familiar provisions as deductions for interest paid for consumer debt or home mortgage loans, exclusions of limited amounts of dividend income, and residential energy credits (see section 2 on p. 5 for Federal tax expenditures related to education). Proponents could cite estimates the Joint Committee on Taxation made prior to the passage of the Tax Incentive Act of 1981 that the total of all tax expenditures for individuals and corporations would exceed \$260 billion in FY82 (while the Tax Incentive Act authorized expanded tax expenditures, the dollar total may decline since the Act also reduced many tax rates). In their view, to say that there could be no additional tax expenditures for education would be to discriminate against an important social function. Proponents might also argue that there are numerous legislative issues for which one congressional committee does not have comprehensive jurisdiction. They could point out that tax expenditures could be subject to comparative evaluations with other programs through the annual budget process. (For additional information about Federal tax expenditures, including a listing of them by budget function, see "Special Analysis G" in The Budget for Fiscal Year 1983.)

9. FEDERAL ROLE IN EDUCATION

Tuition tax credits would represent a significant change in the Federal role in education. At present, nearly all Federal funds for elementary and secondary education are provided through categorical programs for particular purposes, such as compensatory education, handicapped education, or vocational education (though beginning in July 1982, a number of the smaller elementary and secondary programs have been consolidated into multi-purpose block grants). Many of these programs have requirements designed to further equality of educational opportunity, such as a provision in the compensatory education programs funded under Chapter 1 of the Education Consolidation and Improvement Act that children in low income areas be served first. Tuition tax credit money would not be restricted to a particular educational purpose (though conceivably it might be limited to students at certain kinds of schools), nor would it be explicitly directed toward promoting equal

educational opportunity. Most Federal postsecondary student assistance programs currently are need based in that students are not eligible to receive more support than they require (considering their family income and other resources) to attend school. Tuition tax credits would not be so restricted.

Proponents of tuition tax credits argue that these changes are long overdue. In their view, the many Federal categorical programs must be administered by a large bureaucracy that has gained too much influence over schools and colleges. The programs' numerous provisions and requirements are said to generate confusion and paperwork; they are said to frustrate educators' efforts to work on the very problems Federal programs were designed to solve. In contrast, it is claimed that aid provided through tuition tax credits would be simple to administer; it would not constrain parents and educators who are trying to improve schools; and it would not give the Federal Government the control it now has over American education.

Opponents of tuition tax credits argue that it is essential to specify some conditions on recipients of Federal aid. They could claim that without restrictions there would be no assurance that public funds get used efficiently or for public purposes. For example, tuition tax credit money might only result in higher prices for education (if schools simply charged more for what they now provide), or it might only supplant current sources of support (if parents spent the money they now pay for tuition on other things). (Contrary to this argument, some opponents believe that tuition tax credits would entail conditions that eventually could result in government control of private education.) Opponents also argue that it is important for the Federal Government to identify the purposes for which its money ought to be used. In their view, there are national education problems that require national attention and resources. Without such direction, Federal money would be used only for general educational expenses, which traditionally has been the responsibility of the States, local communities, and parents.

10. LEGISLATIVE HISTORY PRIOR TO THE 97th CONGRESS

Congress has considered tuition tax credit legislation a number of times in recent years. The Senate passed tuition tax credit measures in 1967, 1969, 1971, 1976, and 1977, but it was not until 1978, when both the House and the Senate passed such measures, that tuition tax credit legislation came close to obtaining final congressional approval. (For details of this legislative activity, including references to recorded votes, see the CRS paper "Legislative Activity on Tuition Tax Credits Prior to the 97th Congress," by Bob Lyke.)

In April 1978, the House Committee on Ways and Means reported H.R. 12050, the Tuition Tax Credit Act of 1978, with amendments. As reported, the bill would provide a nonrefundable tax credit for 25% of undergraduate postsecondary education expenses, up to a limit of \$100 in 1978, \$150 in 1979, and \$250 in 1980. When H.R. 12050 was passed by the House on June 1, 1978, it was amended to include graduate postsecondary education expenses, up to the same limits, as well as elementary and secondary tuition expenses, up to a limit of \$50 in 1978 and \$100 in each of 1979 and 1980.

In the Senate, the Committee on Finance reported H.R. 12050, which it renamed the Tuition Tax Relief Act of 1978, with amendments in early August of 1978. (In February the committee had previously reported H.R. 3946, a House-passed bill dealing with import duties on wool, striking its language

and substituting provisions for a refundable tax credit for 50% of tuition expenses for elementary, secondary, undergraduate, or postsecondary vocational schools, up to certain limits. This bill was never considered on the Senate floor). As reported, H.R. 12050 would provide a nonrefundable tax credit for 50% of undergraduate tuition expenses, up to a limit of \$250 prior to Oct. 1, 1980, and \$500 thereafter; it also would provide such a credit for elementary and secondary tuition expenses, though only after Sept. 30, 1980, up to a limit of \$250. When H.R. 12050 was passed by the Senate on Aug. 8, 1978, the undergraduate tuition expense provision was expanded to include postsecondary education in general, while the elementary and secondary provision was deleted. Authorization for credits was limited to the period before Jan. 1, 1984.

On Oct. 3, 1978, the Conference Committee on H.R. 12050 reported a version of the bill that would provide a nonrefundable credit for 35% of postsecondary education tuition expenses, up to a limit of \$100 in 1978, \$150 in 1979, and \$250 in 1980 and 1981. No credit was authorized for elementary or secondary school tuition payments. The House rejected this proposal, voting on Oct. 12 to recommit the Conference Report. The Conference Committee submitted a second report on Oct. 13, amending the version of the bill it had reported earlier to include a nonrefundable credit for 35% of secondary (but not elementary) school expenses, up to a limit of \$50 in 1978 and \$100 in 1979, 1980, and 1981. On Oct. 15, shortly before it adjourned for the remainder of the session, the Senate rejected this second proposal.

During the final days of the session one other attempt was made to authorize tuition tax credits. On Oct. 6, the Senate amended H.R. 13511, the Revenue Act of 1978, to include a nonrefundable tax credit for 35% of postsecondary education tuition expenses, up to a limit of \$100 in 1978, \$150 in 1979, and \$250 in 1980 and 1981 (the same provisions reported in the first report of the Conference Committee on H.R. 12050, described above. On Oct. 15, the Conference Committee on H.R. 13511 reported a version of the bill that excluded any tuition tax credit. Both the House and the Senate immediately approved the bill in this form.

Thus no tuition tax credit legislation was enacted during the 95th Congress. One reason for this was strong opposition from President Carter, who threatened to veto any such measure. Another was that shortly before adjournment Congress instead enacted the Middle Income Student Assistance Act (P.L. 95-566). Among other things, this Act reduced the assessment rate applied to parental discretionary income in applications for Basic Educational Opportunity Grants (now named Pell Grants) and eliminated the family income limit for determining eligibility for interest subsidies for Guaranteed Student Loans. Because of these provisions, some people argued that tax credits for postsecondary education tuition payments were no longer necessary.

LEGISLATION

S. 550 (Packwood)

Tuition Tax Relief Act of 1981. Amends the Internal Revenue Code to allow an individual taxpayer to claim a credit for educational expenses paid for himself, his spouse, or his dependents. The credit for any one such individual during a taxable year shall not exceed 50% of the educational expenses (defined as tuition and required fees, but not including such matters as books, supplies, equipment, transportation, or living expenses),

after these have been reduced by scholarships and other forms of financial assistance, educational expenses taken into consideration shall not exceed \$500 for the period from Aug. 1, 1982 through July 31, 1983, or \$1,000 for each taxable year thereafter. Credit cannot be claimed for expenses prior to Aug. 1, 1982. The credit is to be refundable.

Credit may be claimed for educational expenses at institutions of higher education, area vocational schools, and private elementary and secondary schools (including facilities, whether public or private, that offer education for the handicapped as a substitute for regular elementary or secondary education). Elementary and secondary schools must be exempt from taxation under section 501 of the Internal Revenue Code; in addition, they must not exclude persons from admission or participation on account of race, color, or national or ethnic origin. Credit may be claimed for graduate students and part-time students (provided they are at least half-time) only after July 31, 1984.

No other credit or deduction shall be allowed for any educational expenses taken into account (after the above-mentioned limits are applied) in calculating the credit for educational expenses.

Reductions in taxes or refunds due to credits for educational expenses shall not be taken into account as income for purposes of determining eligibility or amount of assistance under any Federal educational assistance program (or under any such State or local program financed with Federal funds).

Nothing in this Act shall be construed as granting additional authority to examine the account books or activities of any church-related school.

If any provisions, or their applications, of this Act (or of the Internal Revenue Code relating to this Act) are held invalid, the remainder of the provisions, and their applications, shall not be affected.

Congress declares it to be the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. Federal legislation should recognize the right of parents to direct the education and upbringing of their children; it should also provide relief for the financial burden families must bear to obtain the education that best serves their needs and aspirations.

Introduced Feb. 24, 1981: referred to Committee on Finance. Hearings held by Subcommittee on Taxation and Debt Management on June 3-4, 1981.

S. 2673 (Dole)/H.R. 6701 (Gradison/Biaggi)

Educational Opportunity and Equity Act of 1982. (This bill is President Reagan's tuition tax credit proposal.) Amends the Internal Revenue Code to allow an individual taxpayer to claim a credit for 50% of the tuition for full-time elementary or secondary school enrollment (including required course fees) paid by the taxpayer during the tax year for certain dependents who have not attained the age of 20 by the end of that year. Limits the credit with respect to each such dependent to \$100 in 1983, \$300 in 1984, and \$500 in 1985 and after. Reduces those limits by 0.4, 1.2, and 2.0%, respectively, of the adjusted gross income each year in excess of \$50,000 (or of \$25,000, in the case of a married individual filing a separate return).

Provides that tuition expenses for which credit is allowed may not include

amounts attributable to scholarships, veterans' educational benefits, or other tax exempt financial assistance for education (other than gifts and inheritances, etc.). States that no other Federal tax credit or deduction shall be permitted for any tuition expenses taken into account in determining the amount of the credit.

Includes provision that schools which eligible dependents attend must be private, nonprofit institutions exempt from taxation under sec. 501 of the Internal Revenue Code. They must provide full-time programs of elementary or secondary education. In addition, the schools must not follow a "racially discriminatory policy." (The term "race" is to include color and national origin.) Failure to pursue or achieve any racial quota, proportion, or representation in the student body shall not be deemed such a policy.

Measure states that a person who alleges he has been discriminated against under a racially discriminatory policy may within 180 days file a petition with the Attorney General, who shall promptly notify the school in writing of the allegations. Within one year after receiving the petition, and upon finding of good cause, the Attorney General is authorized to bring an action in Federal district court in which the school is located, seeking a declaratory judgment that the school has followed a racially discriminatory policy and discriminated against the person filing the petition. Before bringing such an action, the Attorney General shall give the school a fair opportunity to comment on the allegations and to show that the racially discriminatory policy does not exist or has been abandoned. States that exclusive authority to enforce the prohibition against racially discriminatory policies lies with the Attorney General.

Provides that no credit shall be allowed unless at the end of a calendar year the school files with the Secretary of the Treasury a statement, subject to the penalties for perjury, that the school has not followed a racially discriminatory policy that year and indicating whether the Attorney General has brought an action for declaratory judgment during that or either of the two preceding years. A copy of this statement shall be furnished to all persons who paid tuition that year and must be attached to their tax return in order for them to claim the credit.

Also provides that no credit shall be allowed for tuition paid to schools for which a declaratory judgment sought by the Attorney General has become final (that is, when all parties have exhausted all appellate review), beginning with the calendar year in which the action was brought. However, credit shall not be disallowed until a declaratory judgment becomes final. If a previously claimed credit is disallowed, any tax deficiency shall not expire until 3 years from the final judgment.

States that tax credits do not constitute Federal financial assistance to recipients or to educational institutions.

Measure states that Congress finds that it is the policy of the United States to foster educational opportunity, diversity, and choice. Federal legislation should recognize that pluralism is one of the great strengths of American society and that nonpublic schools play an indispensable role in providing diversity; that public education is strengthened through competition; that Americans should have equal opportunities to choose between public and private education; that increasing numbers of families are unable to afford nonpublic school tuition in addition to State and local taxes for public schools; that tax credits would result in small revenue loss compared to the cost to State and local taxpayers of providing public school

education; and that equality of educational opportunity is the policy of the United States and that tax credits should not be used to promote racial discrimination.

S. 2673 introduced June 23, 1982 and referred to Committee on Finance; hearings held by the committee on July 16, 1982. H.R. 6701 introduced June 24, and referred to Committee on Ways and Means.

HEARINGS

- U.S. Congress. House. Committee on the Budget. Task force on tax expenditures, government organization and regulation. Hearings, 95th Congress, 1st session. College tuition tax credits. Apr. 28 and May 12, 1977. Washington, U.S. Govt. Print. Off., 1977. 114 p.
- U.S. Congress. House, Committee on Education and Labor. Subcommittee on Elementary, Secondary, and Vocational Education. Oversight on private schools. Hearings, 97th Congress, 1st session. May 13-14 and Sept. 16 and 22-23, 1981. Washington, U.S. Govt. Print. Off., 1981. 324 p.
- U.S. Congress. House. Committee on Ways and Means. Tax treatment of tuition expenses. Hearings, 95th Congress, 2d session. Feb. 14-17 and 21, 1978. Washington, U.S. Govt. Print. Off., 1978. 627 p.
"Serial no. 95-56"
- U.S. Congress. Senate. Committee on Finance. Subcommittee on Taxation and Debt Management Generally. Federal tax proposals to help defray middle income families' education costs. Parts 1-2 plus supplementary material. Hearings, 95th Congress, 2d session. Jan. 18-20, 1978. Washington, U.S. Govt. Print. Off., 1978. 724 p.
- Tuition Tax Credits. Parts 1-2. Hearings, 97th Congress, 1st session. June 13-14, 1981. Washington, U.S. Govt. Print. Off., 1981. 1003 p.

REPORTS AND CONGRESSIONAL DOCUMENTS

- Revenue Act of 1978, H.R. 13511. (Debate and vote in the Senate). Congressional record, [daily ed.] v. 124, Oct. 5-6, 1978. S17193-S17200 and S17332-S17334.
- Tuition Tax Credit Act of 1978, H.R. 12050. (Debate and vote in the House). Congressional record, [daily ed.] v. 124, June 1 and Oct. 12, 1978: H4727-H4799 and H12612.
- Tuition Tax Credit Act of 1978, H.R. 12050. (Debate and vote in the Senate). Congressional Record, [daily ed.] v. 124, Oct. 15, 1978: S19141-S19144. (CR date of Oct. 14, 1978).
- Tuition Tax Relief Act of 1978, H.R. 12050. (Debate and vote in the Senate). Congressional record, [daily ed.] v. 124,

Aug. 10-11 and 14-15, 1978:
S13070-S13072, S13106-S13136, S13146-S13161, S13191-
S13231, S13236-S13256, and S13310-S13387.

U.S. Congress. Joint Committee on Taxation.
Summary of testimony on tuition tax credits and other proposals
relating to educational financial assistance. Apr.
7, 1978. 37 p. (95th Congress, 2d session.)
"Serial no. 16-78."

CHRONOLOGY OF EVENTS

- 07/16/82 -- The Senate Committee on Finance held a day of hearings on S. 2673, the Administration's tuition tax credit bill.
- 06/22/82 -- President Reagan submitted to Congress legislation for implementing the tuition tax credit proposal he announced on Apr. 15, 1982. The bill was introduced by Senator Dole as S. 2673 (for a summary of the bill, see the Legislation section, above).
- 04/30/82 -- The Eighth Circuit Court of Appeals upheld the constitutionality of Minnesota's tuition tax deduction law, which authorizes taxpayers to deduct from the calculation of their gross income certain tuition, textbook, and transportation expenses incurred on behalf of dependents attending public or private elementary and secondary schools.
- 04/15/82 -- President Reagan announced the Administration's draft proposal for tuition tax credits. Under this proposal, parents of children attending private, nonprofit elementary or secondary schools would be able to claim an income tax credit for 50% of the tuition paid for each child, up to a per child maximum credit of \$100 in 1983, \$300 in 1984, and \$500 in 1985. The full credit would be available only to families with adjusted gross income up to \$50,000; above that sum the credit would be reduced, being phased out entirely for families with adjusted gross incomes of more than \$75,000. The credit would not be available with respect to schools that discriminate on the basis of race, color, or national origin. According to the White House, a draft bill will be transmitted to Congress later this spring after congressional consultation.
- 02/08/82 -- The President's FY83 budget stated that "Later in the year, the Administration will transmit to Congress a plan to implement a program of tax credits for families of tuition paying students."
- 01/18/82 -- President Reagan submitted to Congress legislation that would deny tax exempt status to schools with racially discriminatory policies.

- 01/08/82 -- The Treasury Department announced that it would no longer deny tax exempt status to private schools that discriminate on the basis of race.
- 09/22/81 -- The House Subcommittee on Elementary, Secondary, and Vocational Education held one day of hearings on proposals for tuition tax credits.
- 08/18/81 -- President Reagan signed H.R. 4242, the Tax Incentive Act of 1981 (P.L. 97-34). The Act does not contain a provision for tuition tax credits. Such a provision was not formally considered in the House, either during deliberations of the Committee on Ways and Means or during floor debate. In the Senate, a tuition tax credit provision was formally considered during deliberations of the Committee on Finance (see the entry below for June 24, 1981), but not during floor debate.
- 06/24/81 -- The Senate Committee on Finance rejected by a vote of 10-3 a proposal to provide a tax credit of up to \$500 per student for tuition payments to private elementary and secondary schools.
- 06/03/81 -- The Subcommittee on Taxation and Debt Management of the Senate Committee on Finance started 2 days of hearings on tuition tax credits.
- 02/24/81 -- The Subcommittee on Savings, Pensions, and Investment Policy of the Senate Committee on Finance held one day of hearings on S. 24 and S. 243, bills which among other things would authorize tax deductions for higher education savings accounts.
- 02/18/81 -- President Reagan stated in his economic address to the Congress that he would join with others to seek various changes in Federal tax laws, including enactment of tuition tax credits, "at the earliest date possible," after his program for economic recovery (which would include tax cuts) had been acted upon.

ADDITIONAL REFERENCE SOURCES

Epstein, Noel and Marshall Smith, Violating the Reagan creed, Apr. 12, 1981, Washington post, D1, D5.

Government neutrality and separation of church and State: tuition tax credits. Harvard law review, v. 92, Jan. 1979: 696-717.

Hollings, Ernest F. The case against tuition tax credits. Phi delta kappan, v. 60, Dec. 1978: 277-279.

Hunter, Howard O. The continuing debate over tuition tax credits. Hastings constitutional law quarterly, v. 7,

winter 1980: 523-578.

Jacobs, Martha J. An update; who would benefit from tuition tax credits? Phi delta kappa, v. 61, June 1980: 679-681.

Love, Orlan. Freedom of choice for inner-city parents. National review, v. 32, July 25, 1980: 903-907.

McNulty, John K. Tax policy an tuition credit legislation: Federal income tax allowances for personal costs of higher education. California law review, v. 61, Jan. 1973: 1-80.

Moynihan, Daniel Patrick. The case for tuition tax credits. Phi delta kappa, v. 60, Dec. 1978: 274-276.

----- What do you do when the Supreme Court is wrong? The public interest, no. 57, fall 1979: 3-24.

Romano, Roberta. Segregating schools: the foreseeable consequences of tuition tax credits. Yale law journal, v. 89, Nov. 1979: 1681-93.

Stanfield, Rochelle. The public school lobby fends off tuition tax credits -- at least for now. National journal, v. 13, June 13, 1981: 1063-1066.

U.S. Congress. Congressional Budget Office. Federal aid to postsecondary students: tax allowances and alternative subsidies. Washington, Jan. 1978: i-xx; 1-68.

West, E.G. Tuition tax credit proposals: an economic analysis of the 1978 Packwood/Moynihan bill. Policy review, no. 3, winter 1978: 61-75.

Yale, Glen A. Income tax deductions and credits for nonpublic education: toward a fair definition of net income. Harvard journal on legislation, v. 16, Dec. 1979: 91-128.