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## TUITION TAX CREDIT ACT OF 1978

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OCTOBER 2 (legislative day, SEPTEMBER 28), 1978.—Ordered to be printed

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Mr. LONG, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany H.R. 12050]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12050) to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition, having met, after full and free conference have, agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

#### SECTION 1. SHORT TITLE.

*This Act may be cited as the "Tuition Tax Credit Act of 1978".*

#### SEC. 2. CREDIT FOR CERTAIN TUITION.

(a) *IN GENERAL.*—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1954 (relating to credits allowable) is amended by inserting before section 45 the following new section:

##### "SEC. 44C. CERTAIN TUITION.

"(a) *GENERAL RULE.*—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 35 percent of the tuition paid by him for the calendar year in which such taxable year begins to one or more eligible educational institutions for himself, his spouse, or any of his dependents (as defined in section 152).

"(b) *MAXIMUM DOLLAR AMOUNT.*—The maximum dollar amount allowable as a credit under subsection (a) with respect to tuition for any individual shall not exceed the applicable amount determined under the following table:

"Calendar year:	Applicable amount:
1978-----	\$100
1979-----	150
1980 or 1981-----	250

"(c) *APPLICATION WITH OTHER CREDITS.*—The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43.

"(d) *PAYMENTS TAKEN INTO ACCOUNT.*—

"(1) *WHEN PAYMENTS MUST BE MADE AND EDUCATION FURNISHED.*—Payments shall be treated as paid for any calendar year—

"(A) *FOR 1978.*—In the case of calendar 1978, only if such payments—

"(i) are made on or after August 1, 1978, and before February 1, 1979, and

"(ii) are for education furnished on or after August 1, 1978, and before January 1, 1979, or

"(B) *FOR 1978 OR THEREAFTER.*—In the case of any calendar year after 1978, only if such payments—

"(i) are made during such calendar year or during the 1-month period before or the 1-month period after such year, and

"(ii) are for education furnished during such calendar year.

"(2) *TUITION MUST BE FOR GENERAL COURSE OF INSTRUCTION.*—

"(A) *IN GENERAL.*—Tuition attributable to a course of instruction which is not a general course of instruction shall not be taken into account under subsection (a).

"(B) *GENERAL COURSE OF INSTRUCTION DEFINED.*—For purposes of subparagraph (A), the term 'general course of instruction' means a course of instruction for which credit is allowable toward—

"(i) a baccalaureate or associate degree by an institution of higher education, or

"(ii) a certificate of required course work at a vocational school,

but does not include any course of instruction which is part of the graduate program of the individual.

"(3) *INDIVIDUAL MUST BE FULL-TIME STUDENT OR (FOR CALENDAR YEARS AFTER 1979) A QUALIFIED HALF-TIME STUDENT.*—

"(A) *IN GENERAL.*—Amounts paid for the education of an individual shall be taken into account under subsection (a)—

"(i) for calendar year 1978 or 1979, only if such individual is a full-time student for such calendar year, or

"(ii) for any calendar year after 1979, only if such individual is a full-time student or a qualified half-time student for such calendar year.

"(B) *FULL-TIME AND QUALIFIED HALF-TIME STUDENT DEFINED.*—For purposes of this section—

"(i) The term 'full-time student' means any individual who, during any 4 calendar months during the calendar year, is a full-time student at an eligible educational institution.

“(ii) The term ‘qualified half-time student’ means any individual who, during any 4 calendar months during the calendar year, is a half-time student (determined in accordance with regulations prescribed by the Secretary) at an eligible educational institution. Regulations prescribed for purposes of the preceding sentence with respect to the determination of whether an individual is a half-time student shall not be inconsistent with regulations prescribed by the Commissioner of Education under section 411(a)(2)(A)(ii) of the Higher Education Act of 1965 for purposes of part A of title IV of such Act.

“(e) **TUITION DEFINED.**—

“(1) **IN GENERAL.**—For purposes of this section, the term ‘tuition’ means tuition and fees required for the enrollment or attendance of a student at an eligible educational institution, including required fees for courses.

“(2) **CERTAIN AMOUNTS NOT INCLUDED.**—The term ‘tuition’ does not include any amount paid, directly or indirectly, for—

“(A) books, supplies, or equipment for courses of instruction,

or

“(B) meals, lodging, transportation, or similar personal, living, or family expenses.

“(3) **AMOUNTS NOT SEPARATELY STATED.**—If an amount paid for tuition includes an amount for any item described in subparagraph (A) or (B) of paragraph (2) which is not separately stated, the portion of such amount which is attributable to such item shall be determined under regulations prescribed by the Secretary.

“(f) **ELIGIBLE EDUCATIONAL INSTITUTION.**—For purposes of this section—

“(1) **ELIGIBLE EDUCATIONAL INSTITUTION.**—The term ‘eligible educational institution’ means—

“(A) an institution of higher education, or

“(B) a postsecondary vocational school.

“(2) **INSTITUTION OF HIGHER EDUCATION.**—The term ‘institution of higher education’ means an institution described in section 1201(a) or 491(b) of the Higher Education Act of 1965 (as in effect on January 1, 1978).

“(3) **POSTSECONDARY VOCATIONAL SCHOOL.**—The term ‘postsecondary vocational school’ means—

“(A) an area vocational education school as defined in subparagraph (C) or (D) of section 195(2) of the Vocational Education Act of 1963 (as in effect on January 1, 1978), which

“(B) is located in any State.

“(4) **MARITAL STATUS.**—The determination of marital status shall be made under section 143.

“(g) **SPECIAL RULES.**—

“(1) **TREATMENT OF CERTAIN SCHOLARSHIPS AND VETERANS’ BENEFITS.**—

“(A) **OFFSET AGAINST TUITION DOLLAR FOR DOLLAR.**—For purposes of this section, any amount received as a nontaxable scholarship or educational assistance allowance for any period shall be treated—

“(i) as used for tuition attributable to such period, and

“(ii) as tuition not paid by the taxpayer.

**“(B) NONTAXABLE SCHOLARSHIP OR EDUCATIONAL ASSISTANCE ALLOWANCE DEFINED.**—For purposes of subparagraph (A), the term ‘nontaxable scholarship or educational assistance allowance’ means—

“(i) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) or similar award which is not includible in gross income, and

“(ii) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code.

**“(2) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER.**—No credit shall be allowed to a taxpayer under subsection (a) for amounts paid for any calendar year for tuition for the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

**“(3) SPOUSE.**—No credit shall be allowed under subsection (a) for amounts paid for any calendar year for tuition for the spouse of the taxpayer unless—

“(A) the taxpayer is entitled to an exemption for his spouse under section 151(b) for the taxable year beginning in such calendar year, or

“(B) the taxpayer files a joint return with his spouse under section 6013 for such taxable year.

**“(h) DISALLOWANCE OF CREDITED EXPENSES AS CREDIT OR DEDUCTION.**—No deduction or credit shall be allowed under any other section of this chapter for any amount paid for tuition for any individual except to the extent that such amount exceeds the amount necessary for the allowance of the maximum amount which may be allowed under this section for tuition for such individual for the taxable year. The preceding sentence shall not apply to any amount paid for tuition by any taxpayer who, under regulations prescribed by the Secretary, elects not to apply the provisions of this section with respect to such tuition for the taxable year.

**“(i) TERMINATION.**—No credit shall be allowed under this section for education furnished after December 31, 1981.”

**(b) LIMITATION ON EXAMINATION OF BOOKS AND RECORDS.**—Section 7605 of such Code (relating to time and place of examination) is amended by adding at the end thereof the following new subsection:

**“(d) EXAMINATION OF BOOKS AND RECORDS OF CHURCH-CONTROLLED SCHOOLS.**—Nothing in section 44C (relating to credit for tuition) shall be construed to grant additional authority to examine the books of account, or the activities, of any school which 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) except to the extent necessary to determine whether the school is an eligible educational institution within the meaning of section 44C(f)(1).”

**(c) TAX CREDIT NOT TO BE CONSIDERED AS FEDERAL ASSISTANCE TO INSTITUTION.**—Any educational institution which enrolls a student for whom a tax credit is claimed under this Act shall not be considered to be a recipient of Federal assistance under this Act.

(d) *EXPEDITED REVIEW OF CONSTITUTIONALITY OF TUITION CREDIT.*—

(1) *CERTIFICATION OF QUESTIONS OF CONSTITUTIONALITY.*—In any action brought in a district court of the United States, including an action for declaratory judgment or injunctive relief, concerning the constitutionality of any provision of section 44C of the Internal Revenue Code of 1954 (relating to credit for certain tuition) or any other provision of such Code relating to such section, the district court shall certify immediately all questions of constitutionality of such provision to the United States Court of Appeals for the circuit involved, which shall hear the matter sitting en banc.

(2) *APPEAL TO SUPREME COURT.*—Notwithstanding any other provisions of law, any decision on a matter certified under paragraph (1) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal shall be brought no later than 20 days after the decision of the Court of Appeals.

(3) *EXPEDITED CONSIDERATION.*—It shall be the duty of the Court of Appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under paragraph (1).

(4) *SEPARABILITY.*—If any provision of section 44C of the Internal Revenue Code of 1954 (or any other provision of such Code relating to such section), or the application thereof to any person or circumstances, is held invalid, the remainder of such provisions, and the application of such provisions to other persons or circumstances, shall not be affected.

(e) *DISREGARD OF REDUCTION OF TAX LIABILITY.*—Any reduction in the income tax liability of any individual by reason of section 44C of the Internal Revenue Code of 1954 (relating to credit for certain tuition) shall not be taken into account for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program of educational assistance or under any State or local program of educational assistance financed in whole or in part with Federal funds.

(f) *CONFORMING AMENDMENTS.*—

(1) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting immediately before the item relating to section 45 of the following:

“Sec. 44C. Certain tuition.”

(2) Subsection (c) of section 56 of such Code (defining regular tax deduction) is amended by striking out “credits allowable under—” and all that follows and inserting in lieu thereof “credits allowable under subpart A of part IV other than under sections 31, 39, and 43.”

(3) Subsection (b) of section 6096 of such Code (relating to designation of income tax payment to Presidential Election Campaign Fund) is amended by striking out “and 44B” and inserting in lieu thereof “44B, and 44C”.

**SEC. 3. EFFECTIVE DATE.**

*The amendments made by section 2 of this Act shall apply to taxable years ending on or after August 1, 1978, with respect to amounts paid on or after such date for education furnished on or after such date.*

And the Senate agree to the same.

RUSSELL B. LONG,  
ABRAHAM RIBICOFF,  
LLOYD BENTSEN,  
DANIEL PATRICK MOYNIHAN,  
BOB PACKWOOD,  
BILL ROTH,  
BOB DOLE,

*Managers on the Part of the Senate.*

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BARBER B. CONABLE,  
JOHN J. DUNCAN,

*Managers on the Part of the House.*

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 12050) to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition, submit the following joint statement to the House and the Senate in explanation of the effect of the action (other than action of a technical nature) agreed upon by the managers and recommended in the accompanying conference report.

### ELIGIBLE EDUCATION INSTITUTIONS

#### *House bill*

The House bill provided that only tuition paid to an eligible educational institution is eligible for the credit. The term "eligible educational institution" was defined in the House bill to mean (1) an institution of higher education, (2) a postsecondary vocational school, (3) a secondary school, and (4) an elementary school.

#### *Senate amendment*

The Senate amendment provides that only educational expenses paid to institutions of higher education and postsecondary vocational schools are eligible for the credit.

#### *Conference agreement*

The conference agreement follows the Senate amendment. Thus, under the conference agreement, only tuition paid to institutions of higher education and postsecondary vocational schools is eligible for the credit.

### PERCENTAGE OF TUITION PAYMENTS ELIGIBLE FOR CREDIT

#### *House bill*

The House bill provided a nonrefundable credit against income tax for an amount equal to 25 percent of the tuition paid by the taxpayer for the calendar year in which the taxable year begins to one or more eligible educational institutions for himself, his spouse, or any of his dependents.

#### *Senate amendment*

The Senate amendment is generally the same as the House provision except that the credit is for an amount equal to 50 percent of the educational expenses paid by the taxpayer during the taxable year.

#### *Conference agreement*

The conference agreement provides a nonrefundable credit against income tax for an amount equal to 35 percent of the tuition paid by the taxpayer for the calendar year in which the taxable year begins to one or more eligible educational institutions for himself, his spouse, or any of his dependents.

## MAXIMUM AMOUNT OF CREDIT

*House bill*

The House bill provided two sets of dollar limits on the maximum amount of credit for each calendar year to which the new section 44C applied. One set, which applied to institutions of higher education and postsecondary vocational schools, provided a maximum credit of \$100 for 1978, \$150 for 1979, and \$250 for 1980. The other set, which applied to elementary and secondary schools, provided for a maximum credit of \$50 for 1978, \$100 for 1979, and \$100 for 1980. Generally, under the House bill, payments were to be taken into account for purposes of determining the maximum amount of credit if they were made during the calendar year (or during the month before or after the calendar year) for education furnished during such calendar year.

*Senate amendment*

In general, the Senate amendment provides for a maximum credit of \$250 for expenses allocable to education furnished before October 1, 1980, and \$500 for expenses allocable to education furnished after September 30, 1980.

*Conference agreement*

The conference agreement provides, with respect to institutions of higher education and postsecondary vocational schools, a maximum credit of \$100 for 1978, \$150 for 1979, \$250 for 1980, and \$250 for 1981. Tuition payments are to be taken into account for purposes of determining the maximum credit if they are made during the calendar year (or during the month before or after the calendar year) for education furnished during such calendar year.

## DEFINITION OF TUITION

*House bill*

The House bill provided that the term "tuition" means tuition and fees required for enrollment or attendance of a student at an eligible educational institution, including required fees for courses. Under the House bill, tuition did not include amounts paid, directly or indirectly, for books, supplies, or equipment, for meals, lodging, transportation, or similar personal living or family expenses, or for education below the first-grade level (or for attendance at a kindergarten or nursery).

*Senate amendment*

The Senate amendment uses the term "educational expenses," but reaches results consistent with those reached by the term "tuition" in the House bill.

*Conference agreement*

The conference agreement provides that the term "tuition" means tuition and fees required for enrollment or attendance of a student at an eligible educational institution, including required fees for courses. Under the conference agreement, tuition does not include amounts paid, directly or indirectly, for books, supplies, or equipment, or for meals, lodging, transportation, or similar personal living or family expenses. Where an amount paid for tuition includes any amount (not separately stated) for an item which is not tuition, the portion attributable to such item is to be determined under regulations.



Under the conference agreement, as under the House bill and the Senate amendment, tuition attributable to education which is part of the graduate program of the individual shall not be taken into account.

#### ELIGIBLE STUDENTS

##### *House bill*

The House bill provided that payments may be taken into account only with respect to full-time and qualified part-time students. Under the House bill, a qualified part-time student was one who is taking, during any 8 months of the calendar year, at least one-half of the course of instruction required of a full-time student.

##### *Senate amendment*

The Senate amendment provides that payments may be taken into account only with respect to full-time and half-time students. Under the Senate amendment a half-time student is one who, during any 4 months of the calendar year, is a half-time student (determined in accordance with regulations prescribed by the Secretary of the Treasury). The Senate amendment provides that such regulations shall not be inconsistent with regulations prescribed by the Commissioner of Education for purposes of part A of title IV of the Higher Education Act of 1965. Under the Senate amendment expenses of a half-time student may not be taken into account unless paid or incurred after September 30, 1980.

##### *Conference agreement*

The conference agreement provides that tuition payments may be taken into account only with respect to full-time and half-time students. Under the conference agreement a half-time student is one who, during any 4 months of the calendar year, is a half-time student (determined in accordance with regulations prescribed by the Secretary of the Treasury). The conference agreement provides that such regulations shall not be inconsistent with regulations prescribed by the Commissioner of Education for purposes of part A of title IV of the Higher Education Act of 1965. Under the conference agreement tuition payments with respect to a half-time student may not be taken into account unless paid or incurred for education furnished after December 31, 1979.

#### OFFSETS FOR SCHOLARSHIPS AND EDUCATIONAL ASSISTANCE ALLOWANCES

##### *House bill*

The House bill provided that any amount received as a nontaxable scholarship or educational assistance allowance was to be treated as used on a ratable basis for all expenses of the recipient for which such scholarship or allowance may be used, with the amount so used for tuition treated as an amount not paid by the taxpayer.

##### *Senate amendment*

The Senate amendment reduces the expenses which are eligible for the credit by the amount received as a nontaxable scholarship or educational assistance allowance. The reduction under the Senate amendment is on a dollar-for-dollar basis so that each dollar of such a scholarship or allowance reduces the eligible expenses by \$1.

In addition, the Senate amendment reduces the amount of the credit for amounts received under subpart 1 or 2 of part A of title IV of the Higher Education Act of 1965.

*Conference agreement*

The conference agreement provides that the amount taken into account for tuition payments is to be offset on a dollar-for-dollar basis for the amount received as a nontaxable scholarship or educational assistance allowance.

DISALLOWANCE OF EXPENSES AS DEDUCTION OR ANOTHER CREDIT

*House bill*

The House bill provided that, unless the taxpayer elected not to have the credit for tuition apply for the taxable year, no deduction or credit was to be allowed for amounts paid for tuition except to the extent that such amounts exceeded the amount necessary for the maximum amount which may be allowed under the credit for tuition.

*Senate amendment*

The Senate amendment contains a similar provision.

*Conference agreement*

The conference agreement includes the House provision.

TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER

*House bill*

The House bill provided that no credit was to be allowed for tuition paid for a taxpayer if the taxpayer is a dependent of another person.

*Senate amendment*

The Senate amendment contains a similar provision.

*Conference agreement*

The conference agreement includes the House provision.

CREDIT NOT TO BE CONSIDERED AS FEDERAL ASSISTANCE TO INSTITUTION

*House bill*

The House bill provided that an educational institution which enrolls a student for whom this credit is claimed is not to be considered to be a recipient of Federal assistance by reason of this credit.

*Senate amendment*

No provision.

*Conference agreement*

The conference agreement includes the House provision.

EXAMINATION OF BOOKS AND RECORDS

*House bill*

The House bill provided that the new credit for tuition was not to be construed as granting the Internal Revenue Service additional authority to examine the books and records of certain religious organizations.

*Senate amendment*

The Senate amendment contains the same provision as the House bill.

*Conference agreement*

The conference agreement includes this provision.

## JUDICIAL REVIEW

*House bill*

The House bill provided a special procedure for testing the constitutionality of this credit for tuition.

*Senate amendment*

The Senate amendment contains the same provision as the House bill.

*Conference agreement*

The conference agreement includes this provision.

## SEPARABILITY

*House bill*

No provision.

*Senate amendment*

The Senate amendment contains a separability provision with respect to this new credit.

*Conference agreement*

The conference agreement follows the Senate provision.

## REPORTS TO CONGRESS

*House bill*

No provision.

*Senate amendment*

The Senate amendment provides for two reports to be made to the Congress with respect to the effectiveness of the Internal Revenue Service's enforcement of policies against racial and other discrimination in private education.

*Conference agreement*

Because the conference agreement does not provide a credit for tuition paid to elementary and secondary schools, the conference agreement does not include the Senate amendment.

## EFFECTIVE DATE

*House bill*

The House bill provided that this credit was to apply to taxable years ending on or after August 1, 1978, with respect to amounts paid on or after such date for education furnished on or after such date.

*Senate amendment*

The Senate amendment provides the same effective date as the House bill.

*Conference agreement*

The conference agreement includes the House provision.

## TERMINATION DATE

*House bill*

The House bill provided that no credit was to be allowed for any taxable year beginning after December 31, 1980.

*Senate amendment*

The Senate amendment provides that no credit is to be allowed for any taxable year beginning after December 31, 1983.

*Conference agreement*

The conference agreement provides that no credit is to be allowed for education furnished after December 31, 1981.

## PARTICIPATION OF PRIVATE SCHOOL CHILDREN IN ELEMENTARY AND SECONDARY EDUCATION ACT

*House bill*

No provision.

*Senate amendment*

The Senate amendment provides for increases in the participation of private school students in programs under titles I and IV of the Elementary and Secondary Education Act of 1965, expands the bypass mechanism, and requires the Comptroller General to study and report on the impact which Federal assistance for, and tuition tax credits with respect to, private elementary and secondary schools may have on public elementary and secondary schools.

*Conference agreement*

The conference agreement does not include the Senate amendment.

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