

1 EXECUTIVE SESSION
2 MONDAY, AUGUST 9, 1982
3 U.S. Senate
4 Committee on Finance
5 Washington, D.C.

6 The Committee met at 10:17 a.m. in room 2221, Dirksen
7 Senate Office Building, Hon. Robert Dole (chairman)
8 presiding.

9 Present: Senators Dole, Packwood, Danforth, Grassley
10 and Byrd.

11 Also present: Messrs. Chapoton, Brockway, Morrison,
12 Susswein and Gates.

13 The prepared statements of Senators Dole and Grassley
14 follow.

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MOFFITT REPORTING ASSOCIATES
2849 Lafora Court
Vienna, Virginia 22180
(703) 281-8686

1 The Chairman. I understand other members are on the
2 way, and maybe we can take care of some of the preliminary
3 matters first. I just received a letter from the President,
4 which I think I will read for the record:

5 "On June 22, I transmitted to the Senate proposed
6 legislation that would allow a tax credit for tuition paid
7 by parents who send their children to private elementary
8 and secondary schools. The Educational Opportunity and
9 Equity Act of 1982 (S. 2673) has my strong support and I
10 hope it will be passed by the Congress this session.

11 "It is of great importance to the continued vitality
12 and diversity of our society that parents have a meaningful
13 choice between public education and the many forms of private
14 education that are available. The rising costs of education
15 are threatening to put private schools beyond the reach of
16 many families who cannot afford the 'double burden' of paying
17 private school tuitions and the State and local taxes that
18 support the public school system. We must also bear in mind
19 that private schools carry a significant part of the burden
20 of providing primary and secondary school education in this
21 country. If it becomes financially impossible for many of
22 the families now sending their children to private schools
23 to continue to do so, the resulting increase in public
24 school attendance will place large and unwelcome burdens on
25 state and local taxpayers.

1 "This bill will help to preserve the ability of parents
 2 to choose between the public and private schools. It does
 3 this in a fiscally responsible way. It also contains strong
 4 provisions that ensure that tax credits will not be used to
 5 promote racial discrimination.

6 "As the Finance Committee begins markup of this important
 7 legislation, I ask you to support S. 2673, to assist in
 8 moving it forward expeditiously and to help enact it into
 9 law this session of Congress.

10 "Sincerely, Ronald Reagan"

11 The Chairman. That letter, of course, will be made a
 12 part of the record. And I have copies if someone would like
 13 copies.

14 (THE LETTER FOLLOWS:)

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THE WHITE HOUSE
WASHINGTON

August 9, 1982

Dear Bob:

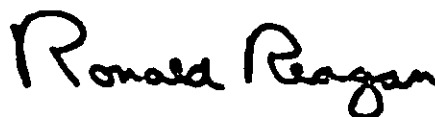
On June 22, I transmitted to the Senate proposed legislation that would allow a tax credit for tuition paid by parents who send their children to private elementary and secondary schools. The Educational Opportunity and Equity Act of 1982 (S. 2673) has my strong support and I hope it will be passed by the Congress this session.

It is of great importance to the continued vitality and diversity of our society that parents have a meaningful choice between public education and the many forms of private education that are available. The rising costs of education are threatening to put private schools beyond the reach of many families who cannot afford the "double burden" of paying private school tuitions and the State and local taxes that support the public school system. We must also bear in mind that private schools carry a significant part of the burden of providing primary and secondary school education in this country. If it becomes financially impossible for many of the families now sending their children to private schools to continue to do so, the resulting increase in public school attendance will place large and unwelcome burdens on State and local taxpayers.

This bill will help to preserve the ability of parents to choose between public and private schools. It does this in a fiscally responsible way. It also contains strong provisions that ensure that tax credits will not be used to promote racial discrimination.

As the Finance Committee begins markup of this important legislation, I ask you to support S. 2673, to assist in moving it forward expeditiously and to help enact it into law this session of Congress.

Sincerely,



The Honorable Robert Dole
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

1 The Chairman. In addition, I have letters from two
2 Committee members -- Senator Bradley and Senator Moynihan --
3 who were unable to be here. I would ask that the letter from
4 Senator Bradley be made a part of the record.

5 (THE LETTER FOLLOWS:)

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BILL BRADLEY
NEW JERSEY

COMMITTEES:
FINANCE
ENERGY AND
NATURAL RESOURCES
SPECIAL COMMITTEE ON
AGING

United States Senate

WASHINGTON, D.C. 20510

August 6, 1982

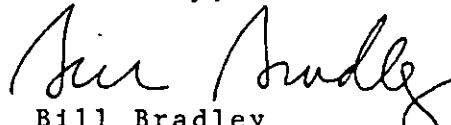
Honorable Robert Dole
Chairman
Committee on Finance
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

Unfortunately, I will be unavoidably delayed returning to Washington on Monday, August 9, and will not be present when the Finance Committee begins consideration of S.2673. Because of my deep interest in this legislation, I was reassured to learn from you that final action was not anticipated at the Committee's opening session.

I look forward to working with you on this most important issue.

Sincerely,


Bill Bradley
United States Senator

BB/mae

Daniel P. Moynihan
New York

United States Senate
Washington, D. C.

August 6, 1982

Dear Bob,

I learned yesterday of your intention to hold a mark-up on tuition tax credit legislation Monday. As you know, Senator Packwood and I have introduced tuition tax credit bills in each of the last three Congresses. And I am deeply interested in the question.

I am distressed then that I must tell you I cannot attend a mark-up on Monday morning and I understand the tax conference prevents you from holding a session in the afternoon.

Since late May I have been committed to be the keynote speaker at the annual meeting of the Council of State Legislators being held at Port Chester, New York. As I am the senior Senator from the host state, I of course accepted their invitation. I also feel honor-bound to keep my commitment.

Page 2

It is my understanding that it is not
your intention to vote Monday on the question
of reporting the bill from Committee.

Sincerely,

A handwritten signature in black ink, appearing to be 'DM', written over a horizontal line.

Daniel Patrick Moynihan

Honorable Robert Dole
United States Senate
Washington, DC 20510

1 The Chairman. I must say they both had long-standing
 2 commitments or they would have been here. I promised those
 3 Senators there would be no votes taken today. But we do want
 4 to discuss some of the areas that may be in contention so
 5 their letters are to be made a part of the record.

6 (THE LETTER FOLLOWS:)

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BOB DOLE



(R - Kansas)

2213 Dirksen Building, Washington, D.C. 20510

FOR IMMEDIATE RELEASE
MONDAY, AUGUST 9, 1982

CONTACT: WALT RIKER
(202) 224-6521

STATEMENT OF CHAIRMAN DOLE FROM TUITION TAX CREDITS MARKUP

I have been a long time supporter of providing federal income tax relief for lower and middle income families who carry the additional burden of supporting the public schools while sending their children to private schools. Because of this double burden, an alternative to public education simply is not available to lower income families today and is not available to middle income families without substantial sacrifice. Inflation in recent years has made matters worse.

Yet alternatives to public education contribute to the pluralism that help make our society strong. Alternatives to public education can also help stimulate improvements in our public schools through the competition those alternatives present. A strong system of private schools, available to all income classes, should contribute to a better education for all of our children. And an educated, skilled populace is an essential ingredient in maintaining and improving this Nation's technological and industrial prominence.

Progress Not Fast Enough?

Some maintain that we have not shown that we are serious about this legislation, that we and the Administration are dragging our feet. Nothing could be further from the truth. This legislation was introduced a bare 6 1/2 weeks ago, at a time when this Committee was preparing to markup one of the more complex and controversial tax bills ever to come from this room--the Tax Equity and Fiscal Responsibility Act of 1982. Hearings were held some 3 weeks later, just 3 weeks ago, and right before full Senate consideration of TEFRA. Now, while we are still in conference with the House on TEFRA, a bill on which rests a good deal of the hope of the financial community for some Congressional showing of fiscal responsibility, we are moving to markup tuition tax credits. Surely, this is as rapid progress as anyone could ever hope for.

Progress Too Fast?

Indeed, some, even some among the proponents of tuition tax credits, think we are moving too fast and at the wrong time. They point to the burgeoning deficit, the pending tax reform bill and wonder aloud how we can enact another tax expenditure. While I sympathize with their concerns, I do not fully share them. The cost of this bill is relatively small and can, in a responsible fashion, be made smaller. It is not incongruous to act on this bill now.

Revenue Loss Smaller--Wealthy Will Not Benefit

The Administration has wisely pared the cost of this initiative down by phasing the credit in over 3 years and by phasing the credit out for taxpayers with income between \$50,000 and \$75,000 per year. They have also limited the cost by limiting the credit to elementary and secondary school students. This has made the 3-year (FY '83, '84, and '85) cost only \$1.2 billion. By showing the phase-in even more (for example, \$100 in the first year, \$200 in the second, and \$300 in the third) and by lowering the phase-out for the wealthy to \$40,000 to \$60,000 we can reduce the cost even more--to \$900 million.

Racial Discrimination

The provisions of this bill forbidding schools that discriminate on the basis of race from benefitting from tuition tax credits have also been controversial. I know Senator Packwood has a special concern in this area and I share his concern. While the tough provisions of the bill, as drafted, should do the job, I expect the Committee Report on this bill, assuming it passes, to make crystal clear that these provisions are meant to be tough on those who may discriminate.

Refundability

Another area of concern is the refundability issue. While I generally shy away from refundable tax credits as bad tax policy, it seems to me to be sensible social policy in this case. Why should a poor family with little or no tax liability be denied the opportunity to choose between public and private schools? The 3-year cost of a refundability provision would total only \$51 million. This seems the least we can do for those in the lowest brackets who wish to sacrifice to send their sons and daughters to alternative schools. I hope to offer a Committee amendment to achieve this goal.

Staff: Inset in place of my oral statement
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Senate Committee on Finance

August 9, 1982

STATEMENT OF SENATOR CHARLES E. GRASSLEY

TUITION TAX CREDITS

Mr. Chairman. The bill before us today, (S. 2673,) would establish a nonrefundable tax credit for 50 percent of the tuition paid during a taxable year to elementary and secondary schools with non-discriminatory policies.

In its original form S. 2673 provides a maximum tuition credit to a taxpayer on behalf of each dependent in the following amounts: \$100 paid during the first taxable year beginning on or after January 1, 1983; \$300 paid on or after January 1, 1984; and \$500 paid on or after January 1, 1985. The maximum credit amount would be reduced by a specified percentage and the amount by which the taxpayer's adjusted gross income exceeds \$50,000. The credit could not be claimed by taxpayers with incomes of \$75,000 or more nor could it be claimed by those enrolling children in schools that discriminate.

Despite the considerable controversy that surrounds the concept of tuition tax credits, I believe that with changes made in lowering the cap income phase-out from a range of \$50,000-\$75,000 to \$30,000 to \$50,000, this legislation would prove to be constitutionally acceptable, educationally beneficial and supportive of a broad range of choices for parents. Historically, our nation has supported the right of parents to be intricately involved in the education of their children. ^{it was not} Indeed until the ^{last half of the} ~~19th~~ ^{19th} century schools were primarily ^{that} state-supported, state-founded or state-initiated. A pluralistic society such as our own should highly value the encouragement of increased educational choices, not narrow options. We should be stimulating innovation and flexibility, not monolithic institutions. We should be spurring genuine competition in the marketplace of ideas, not limiting the intellectual outlets.

Economically, tuition tax credits should greatly benefit lower and middle income parents. A majority of parents with children in private elementary and secondary schools have incomes of \$25,000 or less. These parents are strapped by inflation, taxation and the recession that grips us. Without tuition tax credits, the exercise of educational choice ^{will come increasingly} ~~would be~~ concentrated in the hands of the well-to-do. Tax credits, unlike deductions, give an income-constant benefit, which means lower income taxpayers will proportionately benefit more than upper income individuals. There is another economic element

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often overlooked when discussing tuition tax credits. With the rise of education costs, alternatives to public education could disintegrate, and alternatives for lower income parents have proven to be the first to fail in inflationary times. A wide array of choices, providing multiple options in an economy, promotes a downward trend in costs. A narrowing of choices, approaching the monopoly stage, tends to encourage an upward trend in costs. At this critical step in our economic history we must maximize our educational choices in order to stimulate innovation and flexibility. If alternate school enrollments decline because of increasing costs, as many educational experts believe, this will mean a lower creative investment in professional skills, or "human capital." To the extent that other types of human capital, such as on-the-job training, are imperfect substitutes for formal education, there will prove to be a break in economic growth, as there would be with a check on physical capital expansion. Less growth means less income generated, and the latter implies less revenues to the Treasury, a smaller tax base. Thus, it is conceivable that the eventual Treasury shortfall, in the absence of tuition credits could prove more serious than the contemplated "lost revenues" from enactment of tax credits.

New TT
Constitutionally, it is important to remember the often hidden side of the Free Exercise Clause. In the PIERCE case of 1922, the court decided that the state could not compel students to be educated in public schools. The difficulty in this principle becomes apparent when one considers a basic economic maxim -- a system that taxes everyone to support state-controlled schools is creating a DE FACTO compulsion in the sense that parents often cannot realistically afford an alternative choice because their money is pre-empted through educational taxes that finance one particular type of education. Thus, when parents choose an alternative school, they forego the opportunity of receiving a "free" education in the government sector. This foregoing of the opportunity is the essence of the term "cost."

Assuming that there must be ^{guidelines} ~~stringent controls~~ to disallow discrimination in recipient schools, I believe that the tuition tax credit would encourage pluralism, not stifle it. Additionally, because of the proportional advantage that tax credit allow lower-income taxpayers, there is every reason to believe that a wide array of choices in educational alternatives can greatly benefits those most hard hit by inflation, recession and economic limitations.

1 Some maintain that we have not shown that we are serious
2 about this legislation; that we and the Administration are
3 dragging our feet. Nothing could be further from the truth.
4 This legislation was introduced a bare six and a half weeks
5 ago, at a time when this Committee was preparing to markup
6 one of the more complex and controversial tax bills ever to
7 come from this room -- the Tax Equity and Fiscal
8 Responsibility Act of 1982. Hearings were held some three
9 weeks later, just three weeks ago, and right before full
10 Senate consideration of the tax act.

11 Now, while we are still in conference with the House
12 on the Tax Equity and Fiscal Responsibility Act, a bill on
13 which rests a good deal of the hope of the financial
14 community for some Congressional showing of fiscal
15 responsibility, we are moving to markup tuition tax credits.
16 Surely, this is as rapid progress as anyone could ever hope
17 for.

18 Indeed, some, even among us, among the proponents of
19 tuition tax credits, think we are moving too fast and at the
20 wrong time. They point to the burgeoning deficit, the
21 pending tax reform bill, and wonder aloud how we can enact
22 another tax expenditure.

23 While I sympathize with their concerns, I do not fully
24 share them. The cost of this bill is relatively small and
25 can, in a responsible fashion, be made smaller. It is not

1 incongruous to act on this bill now.

2 The Administration has wisely pared the cost of this
3 initiative down by phasing the credit in over three years and
4 by phasing the credit out for taxpayers with income between
5 \$50,000 and \$75,000 per year. They have also limited the cost
6 by limiting the credit to elementary and secondary school
7 students.

8 This has made the three year cost only \$1.2 billion.
9 By slowing the phase-in even more, for example, \$100 in the
10 first year, \$200 in the second and \$300 in the third and by
11 lowering the phase-out of the wealthy to \$40,000 to \$60,000,
12 we can reduce the cost even more -- to \$900 million.

13 The provisions of this bill forbidding schools that
14 discriminate on the basis of race from benefitting from tuition
15 tax credits have also been controversial. I know that
16 Senator Packwood has a special concern in this area and I
17 share his concern.

18 While the tough provisions of the bill, as drafted,
19 should do the job, I expect the Committee Report on this
20 bill, assuming it passes, to make crystal clear that these
21 provisions are meant to be tough on those who may
22 discriminate.

23 Another area of concern is the refundability issue.
24 While I generally shy away from the refundable tax credits
25 as bad tax policy, it seems to me to be a sensible social

1 policy in this case. Why should a poor family with little or
2 no tax liability be denied the opportunity to choose between
3 public and private schools? The three year cost of a
4 refundability provision would total only \$51 million. This
5 seems the least we can do for those in the lowest brackets
6 who wish to sacrifice to send their sons and daughters to
7 alternative schools.

8 We hope there will be a Committee amendment offered on
9 the Senate floor. I know Senator Packwood has indicated an
10 interest in doing that. And I am certainly pleased to join
11 him in that effort.

12 Do you have anything to say, Bob?

13 Senator Packwood. I would hope that most of us would
14 realize that this is not a new issue to this Committee. It
15 has had more hearings over the years starting in 1977 when
16 Senator Moynihan and I first introduced this -- more
17 hearings than I think any other single bill. We have spent
18 more time on the subject of general taxation, but not more
19 hearings on any particular single bill.

20 Senator Moynihan, Senator Bradley and Senator Roth
21 could not be here this morning. I talked with them. All of
22 them favor adding refundability to the bill. All of them
23 agree that if this bill is not tight enough in its
24 prohibitions against racial discrimination, it should be
25 tightened up so it is as close to being ironclad,

1 wiggle-proof, Administration-free as it can be of any
2 judgment or discretion as to whether or not there has been
3 discrimination.

4 Whether we need more language will depend upon some of
5 the answers to the questions that will be posed to the
6 witnesses or to the people here for the markup today. But
7 this is not a complex topic. It's a philosophical one. It's
8 one of great important. It is not complex. And I think most
9 people know whether or not they favor tax credits for private
10 education.

11 If they don't, they vote "no." If they do, barring
12 some other extraordinary objection to this bill, they vote
13 "yes."

14 The Chairman. Senator Danforth?

15 Senator Danforth. Well, you pretty well outlined the
16 points in your opening statement. My own view is the same
17 as yours. That is, I have favored the tuition tax credit
18 concept from the outset. I think the question is of the
19 cost and of the timing of it.

20 It's not news to this Committee that we have very
21 serious budgetary problems that have fallen on us to solve.
22 And I think really the only issue before us is is this,
23 at this particular time, consistent with the very difficult
24 decisions the Finance Committee has had to make over the
25 past half year or so.

1 The Chairman. Senator Grassley.

2 Senator Grassley. Mr. Chairman, when markup time comes,
3 I'm going to offer an amendment that I want to make the
4 Committee aware of to reduce the \$50,000 to \$75,000 figure
5 down to \$30,000 with a \$50,000 complete phase-out.

6 In addition, I would like to make this comment on the
7 bill generally. Despite the considerable controversy that
8 surrounds the concept of tuition tax credits, this legislation
9 would prove to be constitutionally acceptable, educationally
10 beneficial, and supportive of a broad range of choices for
11 parents.

12 Historically, our Nation has supported the right of
13 parents to be intricately involved in the education of their
14 children. Indeed, until the late 19th Century, schools were
15 primarily state-supported, state-founded, and state-
16 initiated.

17 A pluralistic society such as our own should highly
18 value the encouragement of increased educational choices;
19 not narrow options. We should be stimulating innovation
20 and flexibility; not monolithic institutions. We should be
21 spurring genuine competition in the marketplace of ideas;
22 not limiting intellectual outlets.

23 Economically, tuition tax credits should greatly
24 benefit lower and middle income parents. A majority of
25 parents with children in private elementary and secondary

1 schools have incomes of \$25,000 or less. These parents are
2 strapped by inflation, taxation and the recession that
3 grips us. Without tuition tax credits, the exercise of
4 educational choice will become increasingly concentrated in
5 the hands of the well-to-do.

6 Tax credits, unlike deductions, given an income-constant
7 benefit, which means lower income taxpayers will
8 proportionately benefit more than upper income individuals.

9 There is another economic element often overlooked when
10 discussing tuition tax credits. With the rise of education
11 costs, alternatives to public education could disintegrate,
12 and alternatives for lower income parents have proven to be
13 the first to fail in inflationary times.

14 A wide array of choices, providing multiple options in
15 an economy, promotes a downward trend in costs. A narrowing
16 of choices, approaching the monopoly stage, tends to encourage
17 an upward trend in costs.

18 At this critical step in our economic history, we must
19 maximize our educational choices in order to stimulate
20 innovation and flexibility. If alternate school enrollments
21 decline because of increasing costs, as many educational
22 experts believe, this will mean a lower creative investment
23 in professional skills or human capital.

24 To the extent that other types of human capital, such
25 as on-the-job training, are imperfect substitutes for

1 formal education, there will prove to be a break in economic
2 growth as there would be with a check on physical capital
3 expansion.

4 Less growth means less income generated, and the latter
5 implies less revenues to the Treasury, and a smaller tax
6 base.

7 Thus, it is conceivable that the eventual Treasury
8 shortfall, in the absence of tuition credits, could prove
9 more serious than the contemplated lost revenues from
10 enactment of the tax credits.

11 Constitutionally, it is important to remember the often
12 hidden side of the Free Exercise Clause of the First
13 Amendment. In the Pierce case of 1922, the court decided
14 that the state could not compel students to be educated in
15 the public schools. The difficulty in this principle becomes
16 apparent when one considers a basic economic maxim -- a
17 system that taxes everyone to support state-controlled
18 schools is creating a de facto compulsion in the sense that
19 parents often cannot realistically afford an alternate choice
20 because their money is pre-empted through education taxes
21 that finance one particular type of education.

22 Thus, when parents choose an alternative school, they
23 forego the opportunity of receiving a free education in the
24 government sector. This foregoing of the opportunity is the
25 essence of the term "cost."

1 Assuming that there must be guidelines to disallow
2 discrimination in recipient schools, I believe that the
3 tuition tax credit would encourage pluralism, not stifle it.

4 Additionally, because of the proportional advantage that
5 tax credits allow lower income taxpayers, there is every
6 reason to believe that a wide array of choices in educational
7 alternatives can greatly benefit those most hard hit by
8 inflation, recession and economic limitations.

9 Thank you, Mr. Chairman.

10 The Chairman. Senator Byrd.

11 Senator Byrd. Thank you, Mr. Chairman.

12 As I understand it, this would add \$1,259,000.00 to the
13 deficits in the next three years. Is that correct?

14 The Chairman. I think that is correct as it is
15 presently before the Committee. Yes.

16 Senator Byrd. Well, which of the witnesses is
17 advocating this proposal?

18 The Chairman. Well, these are Administration witnesses.

19 Mr. Chapoton. We are advocating it, Senator Byrd.

20 That's right. That's about the revenue loss through '85.

21 Senator Byrd. Well, does the Administration have a
22 proposal to reduce spending to make up for the \$1.2 billion?

23 Mr. Chapoton. Well, no. Well, not beyond the efforts
24 we are already making to reduce spending, Senator. As you
25 are well aware, we are making concentrated efforts in that

1 area. But this is a separate provision. We feel it is
2 important. The amount is not large compared to the items
3 in spending cuts and compared to many items in the tax bill.
4 And we feel it cannot be delayed any longer.

5 Senator Byrd. I think that could be said about most
6 anything. It isn't too large compared to other things. I
7 guess you could make that argument for any proposal.

8 Mr. Chapoton. Certainly that is true. But the fact
9 remains that it starts out quite slow.

10 Senator Byrd. That's the trouble. That's the problem
11 our government has gotten into right now. These programs
12 start out very little. And then they mushroom, quadruple,
13 and quintuple and then go up geometrically.

14 The food stamp program started out at \$65 million just
15 15 years ago. And now it is \$12 billion. So I am not
16 impressed just because a program starts out little. And by
17 your own figures, it goes up tremendously. It goes up from
18 \$32 billion to \$373 billion to \$854 billion.

19 Anyway, this would add to the deficit a billion and
20 a quarter dollars?

21 Mr. Chapoton. Yes, sir. Over these three years.
22 Senator, it does level off. Under the present design of
23 the system, it does level off. The credits reach the
24 maximum \$500.00 level and the revenue loss level is off.

25 Senator Byrd. Thank you.

1 The Chairman. Let me also say at this time that there
2 are two other pieces of legislation I know that the
3 President is anxious to move forward on. One is the
4 Caribbean Basin initiative. I've asked different agencies
5 involved and the staff involved and individual Senators who
6 have a direct interest in that to see if they can resolve
7 some of the problems that arose during our last discussion.

8 And the other matter is the Enterprise Zone legislation.
9 I think efforts in that area were sort of halted. I hope
10 that we might review with Treasury and the other appropriate
11 agencies whether or not we can make any progress in that
12 legislation.

13 Again, we are going to have some difficulty because the
14 tax conference will probably take most all of this week. I
15 am not certain how much time we will have next week. A
16 further markup on this proposal plus the other two.

17 Senator Byrd. The Chairman mentioned the Enterprise
18 Zone legislation. How much does that cost?

19 The Chairman. On the Enterprise Zone -- we have
20 another bargain.

21 Mr. Chapoton. Senator, it's a pilot project type pro-
22 gram.

23 The Chairman. Pilot here and pilot there, I think.

24 (Laughter)

25 Mr. Chapoton. I could get you a figure. It's a good

1 deal smaller than this.

2 Senator Byrd. Good deal smaller than what?

3 (Laughter)

4 Mr. Chapoton. Good deal smaller than the tuition
5 tax credit. It's 25 zones a year that would be added. It
6 is more of a pilot project. And that was specifically
7 designed to keep the cost down, but I don't have with me the
8 figures.

9 Senator Byrd. Thank you.

10 The Chairman. Now I wonder if we might -- since I have
11 indicated that we can't have a vote, because some of the
12 members aren't here, on any amendments, I think there are some
13 areas we should discuss. One being the antidiscrimination
14 language. The other being the cost, which Senator Byrd has
15 already focused on -- how we might reduce that cost and
16 still maintain the principle.

17 Another area is where we start the phase. Whether it is
18 \$75,000, \$50,000 to \$75,000 or \$60,000 to \$40,000 or
19 \$30,000 to \$50,000. And I guess finally the question of
20 refundability. Maybe we could start with refundability.
21 I'm not certain who is the lead. Dave, are you?

22 Mr. Brockway. Well, Mr. Chairman, under S. 2673, the
23 credit provided is a non-refundable credit of 50 percent of
24 tuition costs up to a maximum credit of \$500.00 per
25 dependent when it is fully effective. And that would be

1 1985 and thereafter. It is phased in in three steps --
2 1983 it would be \$100.00; in 1984 it would be \$300.00.

3 Under this legislation, it would be limited to the
4 tax liability of the taxpayer. Under S. 550, which is a
5 similar provision, the credit in that legislation would be
6 refundable.

7 Senator Packwood. What's the Administration's objection
8 to refundability?

9 Mr. Chapoton. Several items, Senator Packwood. The
10 first is the additional cost. Looking at the figures, it is
11 not great because, obviously, at that level there are not
12 going to be a lot of credits, refundable credits involved.

13 I think we are also concerned that this be a first step
14 toward achieving this important step into law. The refundability
15 aspect alone will cause controversy. And we would prefer
16 not to take on those problems at this time, but to establish
17 the principle of tuition tax credits into law.

18 And it does violate tax policy principles. There is no
19 refundable credit in the tax code now other than the earned
20 income credit. It does amount to a spending program in the
21 tax code, and it violates a principle that we have tried to
22 adhere to that we not have that in the tax code.

23 It is a tax relief measure, and we think it should stay
24 that.

25 Senator Packwood. Yes, but it's also an education

1 matter. And our educational policy and this Administration's
2 policy has tried to be that educational assistance programs
3 should be designed to education those most in need. And
4 where the cuts have come -- although there has been some
5 disagreement -- has been with those at the higher income
6 levels other than those desperately in need.

7 And if this is an educational bill, and indeed it is,
8 why not carry out that same policy with refundability?

9 Mr. Chapoton. Well, you have to concede those arguments
10 make sense. But when doing it in the Internal Revenue Code,
11 we are then instituting -- the same thing can be said of a
12 number of credits in the Internal Revenue Code. They are
13 designed to carry out a certain policy. They are designed to
14 let taxpayers keep their funds. And taxpayers who do not
15 have tax liability either currently or continuously would not
16 be benefited.

17 So I think when we get in the area of spending through
18 the Internal Revenue Code, we are moving into a dangerous
19 area.

20 Senator Packwood. Yes, but, Buck, when you get to a
21 situation of where you are trying to encourage something
22 beyond the market place -- and that's what we are trying to
23 do in helping people that are desperately poor -- you only
24 have two ways to do it. One is through programs that are
25 government programs financed by appropriated funds and run by

1 a department. That's what we try to do with our educational
2 support programs.

3 Your other choice is to use the tax code. And for the
4 desperately poor, you have got to have refundability or it
5 doesn't reach them. And it would seem to me that between
6 the two of the commitment of the Administration in this or
7 other educational programs is to help those in the lowest
8 strata of our society.

9 And if the Administration is going to choose to do it
10 through a tuition tax credit, you cannot in good conscience
11 say, "Yes, but we are not going to help those in the lowest
12 strata of society if we are going to use the tax code."

13 I have found that answer over and over from past
14 Treasury officials, not limited to Republican administrations.
15 But don't use the tax code for social purposes except, of
16 course, for the ones that the administration wants to use it
17 for. Don't use refundability because this is a tax bill.
18 And that just assumes that there is no social policy involved
19 in this for the poor at all. And I think it is a mistaken
20 position.

21 Wouldn't the Administration be willing to accept a
22 lower cap or a lower escalation of the 1, 3, 5 to a 1, 2, 3
23 with refundability assuming that the loss was no greater so
24 that at least you could do equity to those who otherwise
25 will not be covered by this bill?

1 Mr. Chapoton. No, Senator. I think keeping the cap
2 in the bill is important because if you drop it much below
3 that, you are really not doing anything very significant.
4 So I would be very leery of dropping the cap.

5 I think the refundability point is one that should be
6 addressed. We would hope that it would be addressed later --
7 that we would get this principle into law. And that we would
8 not raise this additional complication at this time.

9 The Chairman. Are you saying you support refund-
10 ability?

11 Mr. Chapoton. No.

12 Senator Packwood. It's more important to get the
13 principle established without refundability. I'm reluctant
14 to lower the cap because then you are excluding lots of
15 people. You get it down low enough and it doesn't even
16 affect middle income. If we could get it low enough and have
17 no refundability, it wouldn't affect anybody at some stage.

18 Mr. Chapoton. Well, if you lower the cap too much, we
19 really have done nothing. I think we ought to be careful to
20 stay away from that.

21 Just as a repeat, Mr. Chairman, we think the refund-
22 ability question certainly can be addressed. Senator
23 Packwood made some good points. It does raise the fundamental
24 questions of tax policy that we have all discussed before.
25 It does have a spending program through the tax code. And it

1 does add additional controversy to this bill at a time when
2 we would prefer to go ahead and establish the principle of
3 tuition tax credits and revisit the refundability question
4 later.

5 The Chairman. But how do you address the concerns of
6 low income families who won't benefit if we pass the bill?

7 Mr. Chapoton. We have to recognize in a credit we are
8 talking about tax relief. And that's what this would address.
9 Tax relief. It would not be a spending program.

10 The Chairman. Mr. Brockway.

11 Mr. Brockway. I should point out the revenue impact on
12 this. To make the bill as introduced refundable would
13 increase the cost about 5 percent of the total cost. It
14 would no cost in fiscal 1983. In 1984, it would be \$13
15 million. In 1985, it would be \$38 million. And in 1986,
16 \$64 million.

17 In order to pay for that by reducing the cap, you
18 would right now have it phased out -- between \$50,000 and
19 \$75,000. You would more than pay for that, for example, if
20 you moved the cap from \$40,000 to \$60,000 as the phase out.
21 There are a number of adjustments that could be made.

22 Senator Packwood. And you would more than pay for it
23 if you dropped this from 1, 3, 5 to 1, 2,3 or something
24 like that.

25 Mr. Brockway. Certainly.

1 Senator Packwood. I just think the Administration is
2 making a terrible mistake from the standpoint of equity in
3 perception. It would cost, what, \$60 million in the third
4 year on refundability did you say?

5 Mr. Brockway. In fiscal 1984, it would be \$13 million.

6 Senator Packwood. And how much in 1985?

7 Mr. Brockway. \$38 million.

8 Senator Packwood. I think the Administration is making
9 a terrible mistake for that slight amount of money. You
10 would be pegged with a bill that is going to be attacked as
11 aiding the rich. I know the arguments against it, but you
12 might as well know the arguments that are coming. This is
13 not going to be perceived by the opponents.

14 And bear in mind that there is nothing you can do to
15 placate the opponents of this bill. Refundability won't
16 placate them. Civil rights won't placate them. They are just
17 opposed to the bill period. And they are going to attack
18 this as a bill designed to aid those who are going to
19 Phillips Academy; not those who are going to Our Lady of
20 Sorrowful Sanctuary Parish Church where the tuition is
21 \$400.00 or \$500.00 and where many of the parents that go
22 there will not get any benefit out of this without refund-
23 ability.

24 Mr. Chapoton. Well, I think it is not solely by any
25 means a revenue constraint. It is the other considerations

1 that I mentioned that lead us to the conclusion that you
2 ought to take this first step and then revisit that
3 question.

4 The Chairman. Now Senator Byrd has focused on the cost
5 of this present proposal. If, for example, you could make
6 the credit \$100.00 in 1983, \$200.00 in 1984 and \$300.00 in
7 1985, and if you changed the adjusted gross income to phase
8 out between \$40,000 and \$60,000 -- and I know Senator
9 Grassley has another proposal -- but if it were between
10 \$40,000 and \$60,000 rather than \$50,000 and \$75,000 and
11 included refundability, what would be the cost of the
12 proposal?

13 Mr. Morrison. Mr. Chairman, in fiscal 1983, you would
14 save \$3 million.

15 The Chairman. I don't know if we are going to save.
16 We are going to spend.

17 Mr. Morrison. As compared to the Administration bill.

18 The Chairman. You would spend less, right?

19 Mr. Morrison. You would spend less. In fiscal 1984,
20 you would spend less by approximately \$50 million. And in
21 fiscal 1985, you would spend a little more than \$300 million
22 less than the Administration bill.

23 The Chairman. What's the comparison between the
24 proposal before us and the cost of the proposal with those
25 modifications? Total cost.

1 Mr. Morrison. Fiscal 1983, 1984 and 1985, it would be
2 over \$350 million less.

3 The Chairman. What's the cost of the measure before
4 us? One point what?

5 Mr. Morrison. It would be just slightly over \$900
6 million for those three fiscal years.

7 The Chairman. What's the cost proposal now before us?
8 One point what?

9 Mr. Morrison. It's about \$1.25.

10 The Chairman. And with these changes, the cost would
11 be how much?

12 Mr. Brockway. About \$900 million.

13 The Chairman. It would be about \$350 million differ-
14 ence with the refundability. Is that correct?

15 Mr. Brockway. Correct.

16 Mr. Chapoton. At what level was that? The limit would
17 be \$100, \$200 and \$300?

18 I just repeat, Mr. Chairman, that that would reduce
19 significantly the impact of this. Of course, you would have
20 a significantly smaller credit when you reduce the limits.
21 And tuition costs being what they are, it dilutes the effect
22 of the provision.

23 The Chairman. I just suggest that because I know of
24 some who support this legislation and feel that if cost is
25 a factor -- and cost is a factor obviously -- that they are

1 willing to make certain changes. Maybe these aren't the
2 changes that should be made, but these have been suggested as
3 possible changes to reduce that cost. Then the bill might be
4 reported and sent to the Senate floor.

5 But, again, it is going to be a cost factor. What's the
6 cost in the outyears -- 1986, 1987 and 1988?

7 Mr. Brockway. Of the revised suggestions. In 1986,
8 it would be \$786 million; in 1987 it would be \$812 million.
9 It would basically be leveling off at that period.

10 The Chairman. And it stays rather constant at that
11 level?

12 Mr. Brockway. It basically would go up with inflation.

13 The Chairman. If this legislation is adopted, how does
14 the benefits under this legislation compare to the student
15 benefit in public schools as far as taxpayers are concerned?

16 Mr. Brockway. Mr. Chairman, we will have to check on
17 those numbers. I believe that the average expenditure would
18 be somewhat greater than the \$300.00. We would have to get
19 back to you with the precise number.

20 The Chairman. As I understand from the hearing we had
21 that if, in fact, we adopted the original version without
22 change, without refundability, without changing the credits,
23 that the benefits would be comparable between those who
24 attend public and those who would attend private schools.
25 I thought it was around \$426.00. I may be mistaken.

1 Mr. Chapoton. I think that's right, Mr. Chairman. Let
2 us get that figure for it. I can't locate it now, but I have
3 seen a similar figure.

4 The Chairman. What about the antidiscrimination
5 language? Is the Administration aware of the concerns of
6 Senator Packwood and Senator Moynihan and others in that area?

7 Mr. Chapoton. Well, I am not sure specifically of the
8 concerns. This bill contains additional antidiscrimination
9 provisions over and above those presently contained in the
10 Internal Revenue Code. They are crafted, I think, rather
11 carefully to provide procedures for giving parents the right
12 to seek Justice Department action if discrimination against
13 their child does occur.

14 In addition, the institution would have to file a
15 statement annually that under penalty of perjury that the
16 institution has not discriminated. And each parent would
17 have to attach a copy of that statement on his return when he
18 claims tuition tax credit benefits.

19 This would all be in addition to any rules that are then
20 applicable after the Supreme Court decision on discrimination
21 for tax exempt organizations in general.

22 The Chairman. As I understand, there is some report
23 language being developed that satisfies the concerns
24 expressed by some on the Committee.

25 Mr. Morrison. Yes, that's correct, Mr. Chairman.

1 The Chairman. I think Senator Packwood has some
2 questions in that area.

3 Senator Packwood. I have a series of questions that
4 relate to racial discrimination. And I need the
5 Administration's position on both currently and what they
6 may be doing in the future.

7 First, I am glad to hear you say, though, that the
8 procedures in this bill are additional. And that these are
9 not an alternative to the present IRS procedures, assuming
10 that the Supreme Court upholds what the IRS has been doing.
11 Is that right?

12 Mr. Chapoton. That's correct.

13 Senator Packwood. All right. The Bob Jones case and
14 the Goldsboro Christian school cases are now before the
15 Supreme Court.

16 Mr. Chapoton. That's right.

17 Senator Packwood. Will the Administration oppose,
18 favor or take no position on those cases?

19 Mr. Chapoton. You know the history, Senator. We have
20 taken the position that under the current Internal Revenue
21 Code there is not authority to deny exemption. That case is
22 being presented to the Supreme Court.

23 Senator Packwood. There is not authority to what?

24 Mr. Chapoton. Not authority to deny the exemption.

25 Senator Packwood. Will the Administration enter the

1 case or have they entered the case on that side of the
2 argument?

3 Mr. Chapoton. There is a brief file.

4 Senator Packwood. That the IRS does not have the
5 authority?

6 Mr. Chapoton. That's correct.

7 Senator Packwood. All right, next question. Currently,
8 is the IRS granting tax exemptions, then, under 501(c)(3),
9 the new schools who apply for a tax exemption which
10 discriminate?

11 Mr. Chapoton. There is an injunction in the Wright
12 case against the IRS that prevents the IRS from granting
13 exemptions to new schools.

14 Senator Packwood. Which is the Wright case?

15 Mr. Chapoton. The Wright case was a case in the D.C.
16 District Circuit Court. An injunction has been issued which
17 prevents the IRS from granting exemptions.

18 Senator Packwood. I would assume, then, that the
19 Administration would not agree with that decision either if
20 you think the current law doesn't give the IRS the right to
21 pass on or not pass on?

22 Mr. Chapoton. That's right. But in the interim, we
23 have no choice but to follow the injunction.

24 Senator Packwood. All right. And in that case you are
25 adhering to the injunction and are not contesting it nor

1 appealing it. Is that correct?

2 Mr. Chapoton. That case, Senator, involves a related
3 question of the standing of a person to try to enforce this
4 rule in the tax code. And that question, I understand, is
5 on writ of certiorari to the Supreme Court.

6 Senator Packwood. But the Administration will not be a
7 party to that suit even in the meekest way?

8 Mr. Chapoton. No, we are a party on that issue.

9 Senator Packwood. On the standing issue.

10 Mr. Chapoton. On the standing issue.

11 Senator Packwood. But not on the substance.

12 Mr. Chapoton. Well, the substance, I think -- the
13 standing issue is the next issue so I think we have to wait
14 to determine how the Supreme Court acts on the standing issue.

15 Senator Packwood. Next question. So at the moment the
16 IRS is not issuing any declarations at all because you are
17 prohibited from doing it? You are prohibited from giving
18 an exemption to these schools under the Wright case?

19 Mr. Chapoton. That's correct.

20 Senator Packwood. If they discriminate.

21 Mr. Chapoton. And the exemptions are being granted
22 where there is no question of discrimination occurring.

23 Senator Packwood. How can the IRS give these
24 exemptions if your position is the IRS doesn't have any
25 power to review this?

1 Mr. Chapoton. The IRS is granting exemptions to
2 schools. The schools entitled to exemptions clearly under
3 the Internal Revenue Code quite apart from the discrimination
4 question.

5 Senator Packwood. Okay. But you are not granting them
6 that discriminate?

7 Mr. Chapoton. If they discriminate, they are not
8 granted.

9 Senator Packwood. Now when they come before the IRS
10 at the moment, does the IRS make any inquiries as to whether
11 they discriminate or do you assume that is simply beyond the
12 IRS' power? And if they ask for a 501(c)(3) and they meet
13 the other standards, you give it to them?

14 Mr. Chapoton. No, those inquiries are made. Obviously,
15 you couldn't follow the injunction if those inquiries were
16 not made.

17 Senator Packwood. Okay. Is the IRS currently auditing
18 schools which are already exempt to determine whether or not
19 they are discriminating based on race?

20 Mr. Chapoton. There are not audits going on for that
21 purpose now, Senator. In the Mississippi school situation
22 where there has been specific litigation, the IRS has found
23 that the five schools in Mississippi did discriminate, and
24 has made that determination. In those cases, each of those
25 schools has now filed a declaratory judgment claiming they

1 did not discriminate. So those cases are proceeding.

2 Senator Packwood. But you are not auditing and looking
3 for discrimination. You are auditing and you may find it.

4 Mr. Chapoton. That's correct.

5 Senator Packwood. Do you have any information that I
6 can have as to the number of audits and the number of
7 findings of racial discrimination that you have found, and
8 the level of enforcement by the IRS on these cases?

9 Mr. Chapoton. You mean over the past several years?

10 Senator Packwood. Yes.

11 Mr. Chapoton. There is quite a history of this in the
12 last five or six years and the 1975 revenue procedures by the
13 IRS and subsequent actions.

14 Senator Packwood. I'm particularly interested in what
15 you have discovered in the last two years since the
16 Administration came in as to level of enforcement, how many
17 cases, how many audits, what you have found, what kind of
18 follow-up you have had.

19 Mr. Chapoton. Senator, until the announcement in
20 January of this year, I think there really was no change in
21 procedure, but I will be happy to look back and see what the
22 numbers are.

23 Senator Packwood. Now I want to make sure again that
24 the procedures in this bill are accumulative and not
25 alternative to the present IRS procedures assuming those are

1 upheld.

2 Mr. Chapoton. That is correct. And I think the statute
3 is quite clear that a school must be exempt under Section
4 501(c)(3) or it will not qualify for tuition tax credits.

5 Senator Packwood. Now at the moment in order for a
6 school to qualify for the tax exemption, the school must
7 state, on terms of race discrimination, its policy publicly,
8 in its charter, its brochures and its advertising. Is the
9 IRS still enforcing that?

10 Mr. Chapoton. Yes. That is part of the 1975 revenue
11 procedure so the IRS still is enforcing that.

12 Senator Packwood. And the IRS would continue to enforce
13 that even if this bill is passed because this bill would not
14 be a replacement for that enforcement.

15 Mr. Chapoton. It would not be a replacement. But
16 that hinges, of course, on the Supreme Court's action.

17 Senator Packwood. I understand that. If they say no,
18 it's the law. And you won't try to overturn the law by
19 statute on this or abortion or anything else, I hope, with
20 the court's decision.

21 Under the bill, the Attorney General can bring a suit
22 against a school only on receipt of a petition from a
23 person who alleges that he or she has been discriminated
24 against.

25 Mr. Chapoton. That's correct.

1 Senator Packwood. Does this mean -- again, it's an
2 alternative procedure?

3 Mr. Chapoton. That's correct.

4 Senator Packwood. And assuming the Supreme Court
5 upholds the IRS, does this mean that the Attorney General
6 could not terminate tax exemptions based upon IRS audits?

7 Mr. Chapoton. That's correct. It would mean that he
8 could not.

9 Senator Packwood. He couldn't use any IRS information
10 at all. It would be left to just the IRS' denial of the
11 tax exemption?

12 Mr. Chapoton. Well, under this procedure he relies
13 upon a fact of discrimination as alleged by a person.

14 Senator Packwood. By a person. Couldn't use any of the
15 IRS information?

16 Mr. Chapoton. That's correct because the question is
17 whether an act of discrimination occurred as to a particular
18 person.

19 Senator Packwood. And under the allegations, the
20 Attorney General, like any other prosecutor, is not obligated
21 to bring a suit. He looks at the information presented by
22 the complainant; weighs it; decides whether or not there is
23 enough to go forward. And if they decide no, they don't go
24 forward.

25 Mr. Chapoton. And present those facts to the school.

1 And hear both sides of the case before the Attorney General
2 would go forward.

3 Senator Packwood. Well, I want to make sure on that.
4 You are allowed to hear from the school on this. And they can
5 come in and they can comment. But will there be room for the
6 petitioner -- complainant -- to also come in and comment
7 other than to just have him send off his allegations to the
8 Department of Justice? Because you are allowing the schools,
9 in essence, to respond to those in dealing with the Attorney
10 General directly. I want to make sure the complainant is
11 going to have the same access to the AG that the school does.

12 Mr. Chapoton. Well, I think that would be the
13 administrative discretion of the Justice Department. But
14 certainly they are acting in the first instance on the
15 petition of the individual. And certainly if doubt were
16 cast upon the facts stated in his petition, I am certain they
17 would go back to the individual and try and clear up those
18 facts.

19 Senator Packwood. Now under the bill, the school
20 shows that its discriminatory policy -- and I am quoting --
21 "has been abandoned." Does that mean that whatever
22 proceedings the Attorney General may have taken to that state
23 become mooted or dropped if the school proves that?

24 That's before you ever get to court, mind you. They
25 prove it in some fashion. I'm not quite sure how they would

1 argue that the suit should not be filed. As I read the law,
2 if they prove that those practices have been abandoned, then
3 what happens?

4 Mr. Chapoton. I think the Justice Department action
5 would be abandoned. In other words, that would encourage
6 settlement. That would reach the result you would want. The
7 discrimination is not occurring so the Justice Department
8 would have served its function and the suit against the
9 school would be terminated.

10 Senator Packwood. Now under the procedures, the
11 tuition tax credits are not denied until the case has run
12 its full gamut and gone clear to the Supreme Court.

13 Mr. Chapoton. That's correct.

14 Senator Packwood. And we may be talking about two,
15 three, four or five years by the time it is argued and
16 reargued.

17 At that stage, if the Court finds that the school has
18 discriminated, how does the IRS collect the wrongfully
19 allowed credits to the parents? Is it just a penalty and
20 a back payment? Do they take it out of future taxes?

21 You are attributing to the parent, in this case, the
22 sins of the school. What's the method of enforcement against
23 the parent?

24 Mr. Chapoton. It would be the normal deficiency. The
25 parents who had claimed tuition tax credits for the year in

1 which the Justice Department filed the petition and the two
2 succeeding years would not be allowed the credits. And they
3 would owe a deficiency.

4 Senator Packwood. But those are in the succeeding years.
5 If you have had the parents paying these for a number of
6 children for three or four or five years while their children
7 have been in school --

8 Mr. Chapoton. No, this would be for the back years.

9 Senator Packwood. Back years?

10 Mr. Chapoton. Yes. For the year the Justice Depart-
11 ment filed the petition and the two succeeding years the
12 credits would be disallowed. Those parents would have been
13 on notice, by the way, because the procedures call for that
14 notice.

15 Senator Packwood. As I recall, you have to inform the
16 parents that that school has a petition filed against them.

17 Mr. Chapoton. That the Justice Department has filed
18 a petition.

19 Senator Packwood. So they at least know the risk they
20 are running if they send their children there and claim the
21 credits.

22 Mr. Chapoton. Correct.

23 Senator Packwood. I think that's all the questions I
24 have for the moment, Mr. Chairman.

25 The Chairman. Thank you, Senator Packwood. They are

1 questions that must be addressed and I was wondering if those
2 could be made available to Secretary Chapoton. It might be
3 helpful if the Administration would provide more detailed
4 responses because I know it is difficult to do it this way.

5 Mr. Chapoton. That will be fine, Mr. Chairman.

6 Senator Packwood. Not only is it all right but I cannot
7 emphasize how critical it is to this Administration that there
8 be no odor of racial discrimination in this bill.

9 (THE QUESTIONS FOLLOW:)

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1 Senator Packwood. And you have got two kinds of
2 allegations. One is that the bill per se is discriminatory
3 because it is going to favor upper income whites as opposed
4 to lower income blacks. That's irrespective of whether the
5 schools discriminate or not. I don't think that is true. And I
6 think we can factually show that that isn't true.

7 Mr. Chapoton. The facts do not bear that out.

8 Senator Packwood. No, the facts do not bear that out.
9 Although, again, we are going to have to suffer the charge.
10 I have been up and down this Hill for five years now and I
11 know that charge will be made. The facts do not bear that
12 out.

13 But the second charge is that we are going to allow
14 credits and tax exempt status to schools that do, indeed,
15 discriminate. And it is just imperative that we do not
16 allow this. And that the Administration not be seen in any
17 way as giving countenance to that.

18 Mr. Chapoton. Senator, I assure you that we are very
19 sensitive to that charge so we will reiterate the points I
20 have made here in response to your questions.

21 Senator Packwood. I will make sure that he has all the
22 questions.

23 Mr. Chairman. Of course, I understand there are process
24 developments in the report language that will underscore the
25 points that Senator Packwood has made and which you have

1 affirmed. Is that right?

2 Mr. Susswein. That's correct, Senator.

3 The Chairman. You have worked with Senator Packwood,
4 and Senator Moynihan and others?

5 Mr. Susswein. That's correct.

6 The Chairman. In fact, all of us have an interest in
7 that.

8 Senator Danforth, do you have a question?

9 Senator Danforth. No.

10 The Chairman. Senator Grassley.

11 Senator Grassley. I would just like to raise a question
12 about the \$50,000 to \$75,000 phase out. And my suggestion
13 for reducing that to \$30,000. And then did you say that
14 there's a proposal for \$60,000 that was made before the
15 Committee?

16 The Chairman. Yes.

17 Senator Grassley. Who is going to make that? I
18 suppose I ought to talk to you then.

19 (Laughter)

20 The Chairman. I would hope we might work out some
21 agreement. The Administration may feel the \$50,000 to
22 \$75,000 is adequate. It has occurred to some of us that
23 it ought to be slightly reduced.

24 Senator Grassley. I guess the very least today I would
25 like to hear the Administration's point and the rationale

1 behind the \$50,000 to \$75,000. And I think maybe when we
2 had the hearing I brought it up, but I don't think you were
3 here, Mr. Chapoton. I think somebody else was testifying at
4 that point as I recall.

5 Mr. Chapoton. Yes. I think the Secretary was here,
6 Senator Grassley.

7 The first thing you have to address is whether there is
8 a phase out at all. If your point is to provide tax relief
9 where parents are taking burdens off of the public school
10 system but are also paying the costs of the public school
11 system, the purpose of the tuition tax credit provision in
12 general is to prevent the double tax burden in that instance.

13 But we all come to the point at some level, even though
14 the arguments still exist or the facts still exist that the
15 income level is high enough, that you think there is not a
16 meaningful burden. And it is a question of judgment where
17 that income level is. We have arrived at the \$50,000 level --
18 starting the phase out at the \$50,000, weighing those
19 considerations.

20 Senator Grassley. I guess my point, Mr. Chairman, and,
21 Mr. Chapoton, would be that people over \$50,000 would
22 naturally have higher financial resources to pay for private
23 school education. And that when we have limited resources
24 we ought to gear those towards lower income and middle
25 income people the most. And I think we have been using in

1 the rhetoric of members of this Committee, even from the other
2 side of the aisle, the income classifications of \$20,000 to
3 \$50,000 to include middle income people. And I think con-
4 sidering the state of the Treasury and still considering the
5 fact that I want to get the principle tuition tax credit
6 started, I would support a phase out of \$30,000 to \$50,000.
7 And, hence, that's why I am suggesting mine.

8 I suppose I would have to say that beyond what I have
9 already said my rationale is that we would target the
10 resources to the greatest extent to those with the greatest
11 needs.

12 Mr. Chapoton. Well, as I say, Senator, I think it is
13 a judgment consideration. We keep in mind that a lot of these
14 will be two income families. And the burdens of sending
15 several children to school can be significant. To the
16 private schools.

17 The Chairman. I would hope we could discuss that. And
18 I know Senator Bradley has concerns in this area. And there
19 may be other Senators on this side that would have concern.

20 Are there other concerns? Mike, do you have any
21 concerns on your side that we ought to discuss now?

22 Mr. Gates. No, sir.

23 The Chairman. Does Senator Long have any questions?

24 Senator Danforth. Can I ask a question?

25 The Chairman. Yes.

1 Senator Danforth. Mr. Chapoton, has the Administration
2 discussed the tuition tax credit issue in the context of the
3 general budgetary problems we are going through?

4 Mr. Chapoton. Certainly, Senator, that is a major
5 factor here. We recognize that concern. This has been an
6 item that has been on the table for a number of years.

7 Senator Danforth. Let me ask you the kind of question
8 which I think I am going to be asked. And I don't know how
9 I am going to answer it. I am for the tuition tax credit;
10 have been for it from the outset, ever since it was
11 introduced in 1977. I believe in the concept and believe in
12 helping education and believe it should be refundable.

13 Now given that, I can remember last year when we went
14 through the first phase of the budget cutting and going up
15 to Senator Baker on the floor as we were voting on that
16 budget resolution and saying to him, "Howard, I hated every
17 minute of this because we were voting to cut one good
18 program after another." If not cutting, at least capping
19 the growth of them. And they were not bad programs. They
20 were good programs.

21 Now how am I going to answer the question: How can you
22 vote to cut back -- I know this is elementary and
23 secondary -- the Pell grants or the guaranteed student loan
24 programs and just go down the whole laundry list of the good
25 things we have cut back and then put in place a new, what

1 amounts to, entitlement program? How do we answer that?

2 Mr. Chapoton. Well, first of all, I believe those
3 programs deal with the college level, do they not, Senator?
4 And this deals with secondary and elementary.

5 Senator Danforth. That's correct. But I mean they are
6 very good programs. They are absolutely essential to the future
7 of the country in my view.

8 Mr. Chapoton. Well, I don't dispute that fact at all.
9 I do think, though, that this goes to a somewhat different
10 point. And that is that we have a viable system of private
11 schools in the country. Many parents, for various reasons,
12 want to send their children to private schools. We think it
13 is important that the private school system be contingent
14 and strengthened. And that that will have the dual effect
15 of strengthening that part and strengthening public
16 education as well. And that they are suffering a double
17 tax burden when they must pay for the public school and the
18 private school as well.

19 Senator Danforth. Your answer, in essence, is that
20 regardless of the general budget situation and regardless of
21 all of the acts of budgetary restraint that we have been
22 showing for the last year and a half, this is a special case.

23 Mr. Chapoton. Certainly it has to be taken in context
24 of the budgetary situation. And it has to be taken in context
25 of the cuts that the Congress has made, and the additional

1 cuts that we are proposing. And I think the easiest way to
2 put it is this is a special case. It does rely upon the
3 individual and his decision to incur this additional cost
4 while he is also paying the cost of a public education. And
5 to prevent that dual cost from occurring.

6 Senator Danforth. Sir, is that your answer? That this
7 is just different.

8 Mr. Chapoton. It is different, I think, for the reasons
9 I have explained. Yes, sir.

10 Senator Danforth. Okay. Thank you.

11 Senator Packwood. Jack, let me say one thing. I can
12 assure you that when we introduced this bill in 1977,
13 educational expenditures were going up. And educational
14 expenditures were going up dramatically. And yet today we
15 are spending more on education at the federal level adjusted
16 for inflation than we were in 1977.

17 The opposition to this bill at its root is not
18 economic.

19 Senator Danforth. I'm not opposed to the bill. I'm for
20 the bill. I was an original co-sponsor of the bill. I
21 support it. I want to do it. My only question is amount and
22 timing. I want to vote to report a bill out. I want to do
23 that. The only question I have is how do we both things at
24 the same time. It seems we are taking one step forward and
25 one step back.

1 Senator Packwood. All I can say is if we finance this
2 bill by a tax on the windfall profits of state owned oil
3 land it would not by one whiff get us another vote. In fact,
4 it might lose us some.

5 Senator Danforth. I'm not talking about getting other
6 votes. I'm just talking about my own concern for it. Has
7 the Administration looked at anything that -- I know we have
8 just gone through the process of trying to figure out how we
9 can raise revenue by \$98 billion. But has there been any
10 thought as to ways we can pick up what will be spent on this
11 bill?

12 Mr. Chapoton. No, Senator, it is not being addressed
13 in that context. That question arises, of course, in every
14 provision we have been dealing with in the tax bill. I think
15 we just have to face the fact that this does reduce revenue
16 by some amount over the next several years. And one must
17 weigh the merits of this program, and must weigh it in the
18 context of the budget constraints we are facing today. And
19 we have done so and we conclude that it's --

20 Senator Packwood. Let me ask you a question. This
21 bill doesn't cost as much as the targeted jobs credit, I
22 don't think, for which we made no provisions for income in
23 the tax bill.

24 Mr. Chapoton. It costs about half as much as the
25 targeted jobs credit.

1 Senator Danforth. Is the Administration anticipating
2 any cuts in educational programs that it will be proposing
3 within, say, the next half year?

4 Mr. Chapoton. Senator, I cannot answer that. I would
5 have to consult with the Department of Education.

6 Senator Danforth. Could you do that?

7 Mr. Chapoton. Yes. We would be happy to.

8 The Chairman. I would like to make a part of the
9 record the markup document, which I think explains the
10 present law and the changes that we have been discussing
11 along with the cost in the event there would be a Committee
12 amendment on refundability.

13 Are there any other questions we should raise at this
14 time?

15 (No response)

16 The Chairman. If not, we will adjourn this session
17 and have the final markup as quickly as we can. One
18 problem being the conference on the spending reduction and
19 revenue increasing proposal which starts at 1:15 today and
20 will probably go until midnight tonight and which will
21 probably go all this week late into the evenings.

22 Are there any other members of the joint committee or
23 our staff or Treasury who wanted to add anything to the record
24 at this point?

25 (No response)

1 The Chairman. Nothing from the joint committee?

2 Nothing from our staff? Nothing from Treasury?

3 Mr. Chapoton. No, sir. Nothing.

4 The Chairman. Any other questions?

5 (No response)

6 The Chairman. If not, we will stand in recess, subject
7 to the call of the Chair for final markup.

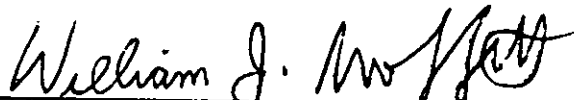
8 (Whereupon, at 11:19 a.m., the meeting was adjourned.)

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C E R T I F I C A T E

This is to certify that the foregoing proceedings before the Committee on Finance, U.S. Senate, in re: Executive Session, Monday, August 9, 1982, were held as herein appears and that this is the original transcript thereof.



WILLIAM J. MOFFITT
Official Reporter

My Commission expires April 14, 1984

Committee Amendment
--Refundability

The credit for certain education costs would be made "refundable." That is, the full amount of the credit, as computed under the bill, would be allowed to a taxpayer even if it exceeds his tax liability (after the application of all other credits).

Effective date: Applicable to taxable years beginning after December 31, 1982, for education costs paid or incurred after that date.

Revenue effect: (\$ millions)

Additional revenue lost (as compared to S. 2673)

FY	<u>83</u>	<u>84</u>	<u>85</u>	<u>86</u>	<u>87</u>
	0	13	38	64	64

DESCRIPTION OF S. 2673 AND S. 550
Relating to
TUITION TAX CREDIT FOR CERTAIN EDUCATION COSTS

Scheduled for a Markup
on
August 9, 1982
by the
Senate Committee on Finance

Prepared by the Staff
of the
Joint Committee on Taxation
August 6, 1982

JCX-35-82

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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).