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A bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1982".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. Therefore, Federal legislation should recognize that:

(A) pluralism is one of the great strengths of American society, that diversity in education is an important contributor to that pluralism, and that nonpublic schools play an indispensable role in making that diversity possible;

(B) the existence and availability of alternatives to public education tends to strengthen public education through competition and improves the educational opportunities of all Americans;

(C) Americans should have equal opportunities to choose between the education offered by public schools and that available in private educational systems and should not be compelled because of economic circumstances to accept education provided by government created and government operated school systems, and that to force such a selection is an unfair and unjust discrimination against persons of lesser means;

(D) increasing numbers of American families are unable to afford nonpublic school tuition in addition to the state and local taxes that go to support public schools, and that tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the primary and secondary level;

(E) tax relief in the form of tuition tax credits is the fairest way to extend a choice in education to a wide range of individuals, that tax relief in the form of tuition tax credits creates the least possible danger of interference in the lives of individuals and families consistent with achieving these ends, and that tax relief in the form of tuition tax credits achieves these ends with a minimum of complexity so that those for whom the tax relief is intended will be able to understand and take advantage of it;

(F) the tax revenue loss occasioned by a tuition tax credit for a child would be far exceeded by the cost to state and local taxpayers of educating the child at a public school.

Therefore, the primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for Americans. The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

SEC. 3. CREDIT FOR TUITION EXPENSES.

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. 44H. CREDIT FOR TUITION EXPENSES.

"(a) General Rule. -- In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by the taxpayer during the taxable year to one or more educational institutions for any of his dependents (as defined in section 152(a)(1), (2), (3), (6), or (9)) who has not attained the age of 20 at the close of the taxable year in which the tuition expenses are paid and with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

"(b) Limitations. --

"(1) Maximum Dollar Amount Per Individual. -- The amount of the credit allowable to a taxpayer under subsection (a) with respect to tuition expenses paid on behalf of each dependent shall not exceed --

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

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

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

"(2) Phase-out of Credit Above Certain Adjusted Gross Income Amounts. -- The maximum amount specified in paragraph

(1) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $50,000 ($25,000 in the case of a married individual filing a separate return) --

"(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

"(B) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

"(C) 2.0 percent for each taxable year of the taxpayer beginning on or after January 1, 1985.

"(c) Special Rules. --

"(1) Adjustment for Scholarships and Financial Assistance. -- Tuition expenses paid by the taxpayer shall be reduced by any amounts which were paid to the taxpayer or his dependents as --

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which is not includible in gross income under section 117;

"(B) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

"(C) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(2) Disallowance of Credited Expenses as Deduction. -- No deduction or credit shall be allowed under any other section of this chapter for any tuition expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(d) Tax Credit Not Allowed for Amounts Paid to Racially Discriminatory Institutions. --

"(1) Required Annual Statements. -- No credit shall be allowed under subsection (a) for amounts paid to an educational institution during a calendar year unless, at the end of such calendar year, the educational institution files with the Secretary (in such manner as the Secretary shall by regulation prescribe) a statement that such institution has not followed a racially discriminatory policy during such calendar year.

"(2) Declaratory Judgment Proceedings. -- If an educational institution is declared to have followed a racially discriminatory policy in an action brought pursuant to section 7408, then no credit shall be allowed under subsection (a) for amounts paid to such educational institution --

"(A) in the calendar year during which the Attorney General commenced the action pursuant to section 7408, and

"(B) in the two calendar years immediately succeeding the year specified in subparagraph (A).

"(3) Definition. -- For purposes of this subsection, an educational institution follows a 'racially diiscriminatory policy' if it refuses, on account of race --

(A) to admit applicants as students;

(B) to admit students to the rights, privileges, programs, and activities generally made available to students by the educational institution; or

(C) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy does not include failure to pursue or achieve any racial quota, proportion, or representation in the student body. The term 'race' shall include color or national origin.

"(4) Time of Disallowance. -- No credit shall be disallowed under paragraph (2) until the judgment against the educational institution in the action brought under section 7408 has become final. A judgment becomes final within the meaning of this paragraph when all parties to the action have exhausted all appellate review.

"(5) Statute of Limitations. -- If a credit is disallowed under paragraph (2), the period for assessing a deficiency attributable to the disallowance of such credit shall not expire before the expiration of 3 years from the date the judgment becomes final within the meaning of paragraph (4). Any such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(6) Enforcement Responsibility. -- Exclusive authority to enforce the prohibition against following a racially discriminatory policy under this subsection, or to undertake activities connected with enforcing this subsection, is vested in the Attorney General. Under this subsection, the Secretary has authority solely to receive the statements referred to in paragraph (1); to disallow credits for amounts paid to an educational institution which has failed to file such a statement as provided in paragraph (1); and to disallow credits for amounts paid to an educational institution against which a final judgment has been entered in an action under section 7408 as provided in paragraphs (2) and (4).

"(e) Definitions. -- For purposes of this section --

"(1) Educational Institution. --

"(A) In General. -- The term 'educational institution' means an elementary or secondary school which is

"(i) an educational organization described in section 170(b)(1)(A)(ii);

"(ii) a privately operated, not-for-profit, day or residential school; and

"(iii) exempt from taxation under section 501(c)(3), including church-operated schools to which subsections (a) and (b) of section 508 do not apply.

"(B) Exception. -- The term 'educational institution' does not include a school wth a curriculum of exclusively religious content.

"(2) Tuition Expenses. -- The term 'tuition expenses' means tuition and fees paid for the full-time enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses; or

"(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution."

SEC. 4. DECLARATORY JUDGMENT PROCEEDING.

Subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to judicial proceedings) is amended by redesignating section 7408 as section 7409 and by inserting after section 7407 the following new section:

"SEC. 7408. DECLARATORY JUDGMENT RELATING TO RACIALLY DISCRIMINATORY POLICIES OF SCHOOLS.

"(a) In General. -- Upon petition by a person who has been discriminated against under a racially discriminatory policy, the Attorney General is authorized, upon finding good cause, to bring an action against an educational institution in the United States district court in the district in which the educational institution is located, seeking a declaratory judgment that the educational institution has followed a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition.

"(b) Time for Filing Petition. -- The petition shall be filed with the Attorney General within 180 days after the date on which the act of racial discrimination is alleged to have been committed against the person filing the petition.

"(c) Notification and Opportunity to Comment. -- Upon receipt of the petition, the Attorney General shall promptly notify the educational institution in writing of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandonend.

"(d) Time for Bringing Action. -- An action may be filed by the Attorney General no later than 1 year after receiving the petition.

"(e) Definitions. -- When used in this section, the terms 'educational institution' and 'racially discriminatory policy' shall have the same meaning as assigned to such terms in section 44H.

SEC. 5. TECHNICAL AND CONFORMING AMENDMENT.

(a) 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 the following: "SEC. 44H. Tuition expenses."

(b) Section 6504 of the Internal Revenue Code of 1954 (relating to cross references with respect to periods of limitation) is amended by adding a new paragraph (12) at the end thereof:

"(12) Disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(d)(5)."

(c) The table of sections for subchapter A of chapter 76 of the Internal Revenue Code of 1954 (relating to civil actions by the United States) is amended by striking out the item relating to section 7408 and inserting in lieu thereof:

"Sec. 7408. Declaratory judgment relating to racially discriminatory policies of schools.

"Sec. 7409. Cross references."

SEC. 6. TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under this section shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits.

SEC. 7. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable years beginning after December 31, 1982, for tuition expenses paid after that date.

5/26/82

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(C) Americans should have equal opportunities to choose between the education offered by public schools and that available in private educational systems and should not

be compelled because of economic circumstances to accept education provided by government created and government operated school systems, and that to force such a selection is an unfair and unjust discrimination against persons of lesser means;

(D) increasing numbers of American families are unable to afford nonpublic school tuition in addition to the state and local taxes that go to support public schools, and that tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the primary and secondary level;

(E) tax relief in the form of tuition tax credits is the fairest way to extend a choice ~~in education~~ to a wide range of individuals at all income levels, that tax relief in the form of tuition tax credits creates the least possible danger of ~~entanglement between government and the value structures of the various nonpublic school systems and of~~ interference in the lives of individuals and families consistent with achieving these ends, and that tax relief in the form of tuition tax credits achieves these ends with a minimum of complexity so that those for whom the tax relief is intended will be able to understand and take advantage of it;

(F) the tax revenue loss occasioned by a tuition tax credits for a child would be far exceeded by the cost to state and local taxpayers of educating the child at a public school.

Therefore, the primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for all Americans. The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

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"SEC. 44H. (CREDIT FOR) TUITION EXPENSES.

"(a) GENERAL RULE. In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by ~~him~~ (the taxpayer.) during the taxable year to one or more educational institutions for any of his dependents (as defined in section 152(a)(1), (2), (3), (6) or (9)) who has not ~~yet~~ attained the age of 20 at the close of the taxable year in which the tuition expenses are paid. [and with respect to whom the taxpayer is entitled ~~the taxpayer~~ ~~an exemption~~ (to ~~the taxpayer~~) ~~is allowable~~ under section 151 to a deduction for the taxable year] "(b) LIMITATIONS.--

"(1) MAXIMUM DOLLAR AMOUNT PER INDIVIDUAL.--The amount of the credit allowable to a taxpayer under subsection (a) with respect to ~~amounts~~ tuition expenses paid on behalf of each dependent ~~on whose behalf a credit is claimed~~ shall not exceed--

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

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

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

"(2) MARRIED INDIVIDUALS.--In the case of a husband and wife who file a joint return under section 6013, the maximum dollar amounts specified ~~under this subsection (b)~~ in paragraph (1) shall apply to the joint return. In the case of a married individual filing a separate return, ~~subsection (b)~~ paragraph (1) shall be applied by reducing the maximum dollar amount for each taxable year by 50 percent.

"(3) PHASE-OUT OF CREDIT ABOVE CERTAIN ADJUSTED GROSS INCOME AMOUNTS. ~~Notwithstanding any other provision of this section, t~~The MAXIMUM amount ~~credit allowable under~~

~~paragraph (1)~~ specified in paragraph (1)

~~this subsection (b)~~ shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $50,000 ($25,000 in the case of a married individual filing a separate return) --

"(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

"(B) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

"(C) 2.0 percent for ~~the first~~ each taxable year of the taxpayer ~~ending~~ beginning on or after ~~December 31,~~ January 1, 1985.

"(4) PART-TIME STUDENTS. Tuition expenses paid with respect to any individual who is not a full-time student at an educational institution shall not be taken into account under subsection (a).

"(c) SPECIAL RULES. --

"(1) ADJUSTMENT FOR SCHOLARSHIPS AND FINANCIAL ASSISTANCE. ~~The amounts deemed paid by the taxpayer under subsection (a) as~~ Tuition expenses paid by the taxpayer shall ~~not~~ be reduced by ~~include~~ any amounts which were received by the taxpayer or his dependent as --

5 spaces

"(A) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which is not includible in gross income under section 117;

5 spaces

"(~~ii~~ B) an educational assistance allowance under chapter 32, 34, or 35 of title 38, United States Code; or

"(~~iii~~ C) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(2) DISALLOWANCE OF CREDITED EXPENSES AS DEDUCTION. No deduction or credit shall be allowed under any other section of this chapter for any tuition expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(3) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid during the taxable year for tuition expenses of the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning with or within the taxable year of the taxpayer.

(d))

"(A) TAX CREDIT NOT ALLOWED FOR AMOUNTS PAID TO RACIALLY DISCRIMINATORY EDUCATIONAL INSTITUTION.

"(A) No credit shall be allowed under subsection (a) for amounts paid to any educational institution in a calendar year during which such institution has been declared by a United States district court, in an action brought by the United States pursuant to subparagraph (C) of this paragraph, to follow a 'racially discriminatory policy', and in the two calendar years succeeding such judgment.

"(B) (i) For purposes of this subsection, an institution follows a 'racially discriminatory policy' if it refuses, on account of race:

(a) to admit applicants as students;

(b) to admit students to the rights, privileges, programs, and activities generally made available to students by that institution; or

(c) to allow students to participate in its scholarship, loan, athletic, or other programs.

A racially discriminatory policy does not include failing to pursue or achieve any racial quota, proportion, or representation in the student body.

(ii) The term 'race' shall include color or national origin.

"(C) (i) To enforce this paragraph, the Attorney General, upon petition by a person who has been discriminated against under a policy as described in subparagraph (B) of this paragraph, is authorized, upon finding good cause, to bring an

action against an institution in the United States district court in the district in which such institution is located, seeking a declaratory judgment that the institution is following a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition.

(ii) The petition must be filed with the Attorney General within one year of the act of racial discrimination alleged to have been committed against the person filing the petition. Upon receipt of the petition, the Attorney General shall promptly notify the affected institution in writing of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandoned. An action may be filed by the Attorney General no later than two years after receiving the petition. Exclusive authority to enforce, and to undertake activities connected with enforcing, the prohibition against following a racially discriminatory policy under subparagraph (A) of this paragraph is vested in the Attorney General.

(iii) A tax credit shall be disallowed during the entire calendar year in which a district court judgment that the institution follows a racially discriminatory policy has been entered and during the two immediately succeeding calendar years.

(iv) No credit shall be disallowed under subparagraph (A) of this paragraph until all parties to the

action have exhausted all appellate review.

"(5) STATUTE OF LIMITATIONS. If --

"(A) a credit is allowed to a taxpayer in any taxable year under subsection (a) for expenses paid to an institution --

"(i) in a calendar year during which the United States district court for the district in which such institution is located enters a judgment that such institution follows a racially discriminatory policy, as provided in paragraph (4) of subsection (c), or

"(ii) in either of the two calendar years immediately succeeding the calendar year specified in clause (i), and

"(B) that judgment has become final because --

"(i) the period within which the institution may seek review of that judgment has expired and the institution has failed to petition for review; or

"(ii) the judgment has been affirmed by a court of appeals and the period within which the institution may seek review of that decision has expired,

then the period within which a deficiency attributable to the disallowance of any credit allowed with respect to such expenses shall expire three years after such judgment becomes final within the meaning of subparagraph (B). Any such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment. Whenever a judgment against an educational institution has become final

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(1) MAXIMUM DOLLAR AMOUNT PER INDIVIDUAL. The amount of the credit allowable to a taxpayer under subsection (a) with respect to amounts paid on behalf of each dependent on whose behalf a credit is claimed shall not exceed--

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

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

(2) MARRIED INDIVIDUALS. In the case of a husband and wife who file a joint return under section 6013, the maximum dollar amounts specified under this subsection (b) shall apply to the joint return. In the case of a married individual filing a separate return, subsection (b) shall be applied by reducing the maximum dollar amount for each taxable year by 50 percent.

(3) PHASE-OUT OF CREDIT ABOVE CERTAIN ADJUSTED GROSS INCOME AMOUNTS. Notwithstanding any other provision of this section, the credit allowable under

this subsection (b) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $50,000 ($25,000 in the case of a married individual filing a separate return).

(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

(2) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

(3) 2.0 percent for the first taxable year of the taxpayer ending on or after December 31, 1985.

"(4) PART-TIME STUDENTS. Tuition expenses paid with respect to any individual who is not a full-time student at an educational institution shall not be taken into account under subsection (a).

"(c) SPECIAL RULES.

"(1) ADJUSTMENT FOR SCHOLARSHIPS AND FINANCIAL ASSISTANCE. The amounts deemed paid by the taxpayer under subsection (a) as tuition expenses shall not include any amounts which were received by the taxpayer or his dependent as

(i) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which is not includible in gross income under section 117;

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

(iii) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(2) DISALLOWANCE OF CREDITED EXPENSES AS DEDUCTION. No deduction or credit shall be allowed under any other section of this chapter for any tuition expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(3) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid during the taxable year for tuition expenses of the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning with or within the taxable year of the taxpayer.

"(4) TAX CREDIT NOT ALLOWED FOR AMOUNTS PAID TO RACIALLY DISCRIMINATORY EDUCATIONAL INSTITUTION.

"(A) No credit shall be allowed under subsection (a) for amounts paid to any educational institution in a calendar year during which such institution has been declared by a United States district court, in an action brought by the United States pursuant to subparagraph (C) of this paragraph, to follow a 'racially discriminatory policy', and in the two calendar years succeeding such judgment.

"(B) (i) For purposes of this subsection, an institution follows a 'racially discriminatory policy' if it refuses, on account of race:

(a) to admit applicants as students;

(b) to admit students to the rights, privileges, programs, and activities generally made available to students by that institution; or

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(ii) The term 'race' shall include color or national origin.

"(C) (i) To enforce this paragraph, the Attorney General, upon petition by a person who has been discriminated against under a policy as described in subparagraph (B) of this paragraph, is authorized, upon finding good cause, to bring an

action against an institution in the United States district court in the district in which such institution is located, seeking a declaratory judgment that the institution is following a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition.

(ii) The petition must be filed with the Attorney General within one year of the act of racial discrimination alleged to have been committed against the person filing the petition. Upon receipt of the petition, the Attorney General shall promptly notify the affected institution in writing of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandoned. An action may be filed by the Attorney General no later than two years after receiving the petition. Exclusive authority to enforce, and to undertake activities connected with enforcing, the prohibition against following a racially discriminatory policy under subparagraph (A) of this paragraph is vested in the Attorney General.

(iii) A tax credit shall be disallowed during the entire calendar year in which a district court judgment that the institution follows a racially discriminatory policy has been entered and during the two immediately succeeding calendar years.

(iv) No credit shall be disallowed under subparagraph (A) of this paragraph until all parties to the

action have exhausted all appellate review.

"(5) STATUTE OF LIMITATIONS. If --

"(A) a credit is allowed to a taxpayer in any taxable year under subsection (a) for expenses paid to an institution --

"(i) in a calendar year during which the United States district court for the district in which such institution is located enters a judgment that such institution follows a racially discriminatory policy, as provided in paragraph (4) of subsection (c), or

"(ii) in either of the two calendar years immediately succeeding the calendar year specified in clause (i), and

"(B) that judgment has become final because --

"(i) the period within which the institution may seek review of that judgment has expired and the institution has failed to petition for review; or

"(ii) the judgment has been affirmed by a court of appeals and the period within which the institution may seek review of that decision has expired,

then the period within which a deficiency attributable to the disallowance of any credit allowed with respect to such expenses shall expire three years after such judgment becomes final within the meaning of subparagraph (B). Any such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment. Whenever a judgment against an educational institution has become final

within the meaning of subparagraph (B), the Attorney General shall promptly notify the Secretary.

"(d) DEFINITIONS. For purposes of this section --

"(1) EDUCATIONAL INSTITUTION.

"(A) The term 'educational institution' means an elementary or secondary school which is a privately operated, not-for-profit, day or residential school and which is exempt from taxation under section 501(a) as an organization described in section 501(c)(3).

"(2) TUITION EXPENSES. The term 'tuition expenses' means tuition and fees required for the enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

"(A) books, supplies, and equipment for courses of instruction at the educational institution;

"(B) meals, lodging, transportation, or personal living expenses; or

"(C) education below the first-grade level, such as attendance at a kindergarten, nursery school, or similar institution.

"(e) TAX CREDITS ARE NOT FEDERAL FINANCIAL ASSISTANCE.

Tax credits claimed under this section shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits."

SEC. 4. CONFORMING AMENDMENT.

(a) 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 the following: "Sec. 44H. Tuition expenses."

(b) Section 6504 of the Internal Revenue Code of 1954 (relating to cross references with respect to periods of limitation) is amended by adding a new paragraph (12) at the end thereof:

"(12) Disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(c)(5)."

SEC. 5. EFFECTIVE DATE.

The amendments made by section 3 of this Act shall apply to taxable year beginning after December 31, 1982, for tuition expenses incurred after that date.

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

May 26, 1982

FOR: EDWIN MEESE III
EDWIN L. HARPER

FROM: MICHAEL M. UHLMANN

SUBJECT: Tuition Tax Credit Legislation

Attached is the draft bill to establish tuition tax credits, which includes provisions banning credits to parents who send their children to racially discriminatory schools.

The bill has received the informal approval of Evangelical, Catholic, and other supporters of tuition tax credits. William Ball told my deputy that he was "very happy" with the bill and thought it "good news" from the White House.

Because of the enthusiastic preliminary reaction we have gotten from the Catholics and the Evangelicals, the central political judgment that you will have to make is to assess the extent of vocal dissatisfaction that will arise from the civil rights spokesmen.

I asked Mel Bradley to take discreet soundings. Mel has so far been able to sound out one civil rights leader who provided this assessment: The civil rights community will not support the bill in any case. The bill, he said, appears to go overboard to satisfy the private school community. He criticized the exhaustion of appellate review before credits are disallowed. He concluded that the battle would not be fought over the anti-discrimination provision and that "we can probably get away with this language" and that "it would not make much difference".

As I previously indicated, you may anticipate opposition to this bill from traditional civil rights organizations, who are generally (and strongly) opposed to tuition tax credits. Although the bill's language does in fact provide adequate legal safeguards against discrimination by private schools, some will no doubt complain that these provisions are insufficient. It has been our objective to draft a bill that simultaneously and fairly protects the legitimate interests of both the civil rights and private school communities.

There was general agreement and support for the bill by the following Administration officials: Brad Reynolds, Dan Oliver, and Morton Blackwell.

Treasury, as you are aware, wanted the Bob Jones language and is, therefore, unhappy about this language but had no technical objections.

Peter Rusthoven, of the Counsel's office, who was involved in this draft, finds the bill acceptable and will so recommend to Fred Fielding.

A bill to amend the Internal Revenue Code of 1954 to provide a Federal income tax credit for tuition.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SEC. 1. SHORT TITLE.

This Act may be cited as the "Educational Opportunity and Equity Act of 1982".

SEC. 2. CONGRESSIONAL FINDINGS.

The Congress finds that it is the policy of the United States to foster educational opportunity, diversity, and choice for all Americans. Therefore Federal legislation should recognize that —

(A) pluralism is one of the great strengths of American society, that diversity in education is an important contributor to that pluralism, and that nonpublic schools play an indispensable role in making that diversity possible;

(B) the existence and availability of alternatives to public education tends to strengthen public education through competition and improves the educational opportunities of all Americans;

(C) Americans should have equal opportunities to choose between the education offered by public schools and that available in private educational systems and should not

be compelled because of economic circumstances to accept education provided by government created and government operated school systems, and that to force such a selection is an unfair and unjust discrimination against persons of lesser means;

(D) increasing numbers of American families are unable to afford nonpublic school tuition in addition to the state and local taxes that go to support public schools, and that tax relief for nonpublic school tuition expenses is necessary if American families are to continue to have a meaningful choice between public and private education at the primary and secondary level;

(E) tax relief in the form of tuition tax credits is the fairest way to extend a choice in education to a wide range of individuals at all income levels, that tax relief in the form of tuition tax credits creates the least possible danger of entanglement between government and the value structures of the various nonpublic school systems and of interference in the lives of individuals and families consistent with achieving these ends, and that tax relief in the form of tuition tax credits achieves these ends with a minimum of complexity so that those for whom the tax relief is intended will be able to understand and take advantage of it;

(F) the tax revenue loss occasioned by a tuition tax credits for a child would be far exceeded by the cost to state and local taxpayers of educating the child at a public school.

Therefore, the primary purpose of this Act is to enhance equality of educational opportunity, diversity, and choice for all Americans. The Congress finds that this Act will expand opportunities for personal liberty, diversity, and pluralism that constitute important strengths of education in America.

SECTION 3. CREDIT FOR TUITION EXPENSES.

(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. 44H. TUITION EXPENSES.

"(a) GENERAL RULE. In the case of an individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 50 percent of the tuition expenses paid by him during the taxable year to one or more educational institutions for any of his dependents (as defined in section 152(a)(1), (2), (3), (6) or (9)) who has not yet attained the age of 20 at the close of the taxable year in which the tuition expenses are paid.

"(b) LIMITATIONS.

(1) MAXIMUM DOLLAR AMOUNT PER INDIVIDUAL. The amount of the credit allowable to a taxpayer under subsection (a) with respect to amounts paid on behalf of each dependent on whose behalf a credit is claimed shall not exceed--

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

"(B) $300 in the case of tuition expenses

beginning on or after January 1, 1984; and

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

(2) MARRIED INDIVIDUALS. In the case of a husband and wife who file a joint return under section 6013, the maximum dollar amounts specified under this subsection (b) shall apply to the joint return. In the case of a married individual filing a separate return, subsection (b) shall be applied by reducing the maximum dollar amount for each taxable year by 50 percent.

(3) PHASE-OUT OF CREDIT ABOVE CERTAIN ADJUSTED GROSS INCOME AMOUNTS. Notwithstanding any other provision of this section, the credit allowable under

this subsection (b) shall be reduced by the following percent of the amount by which the adjusted gross income of the taxpayer for the taxable year exceeds $50,000 ($25,000 in the case of a married individual filing a separate return).

(A) 0.4 percent for the first taxable year of the taxpayer beginning on or after January 1, 1983;

(2) 1.2 percent for the first taxable year of the taxpayer beginning on or after January 1, 1984; and

(3) 2.0 percent for the first taxable year of the taxpayer ending on or after December 31, 1985.

"(4) PART-TIME STUDENTS. Tuition expenses paid with respect to any individual who is not a full-time student at an educational institution shall not be taken into account under subsection (a).

"(c) SPECIAL RULES.

"(1) ADJUSTMENT FOR SCHOLARSHIPS AND FINANCIAL ASSISTANCE. The amounts deemed paid by the taxpayer under subsection (a) as tuition expenses shall not include any amounts which were received by the taxpayer or his dependent as

(i) a scholarship or fellowship grant (within the meaning of section 117(a)(1)) which is not includible in gross income under section 117;

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

(iii) other financial assistance which is for educational expenses, or attributable to attendance at an educational institution, and that is exempt from income taxation by any law of the United States (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)).

"(2) DISALLOWANCE OF CREDITED EXPENSES AS DEDUCTION. No deduction or credit shall be allowed under any other section of this chapter for any tuition expense to the extent that such expense is taken into account in determining the amount of the credit allowed under subsection (a) unless the taxpayer elects, in accordance with regulations prescribed by the Secretary, not to apply the provisions of this section to such tuition expenses for the taxable year.

"(3) TAXPAYER WHO IS A DEPENDENT OF ANOTHER TAXPAYER. No credit shall be allowed to a taxpayer under subsection (a) for amounts paid during the taxable year for tuition expenses of the taxpayer if such taxpayer is a dependent of any other person for a taxable year beginning with or within the taxable year of the taxpayer.

"(~~A~~ d) TAX CREDIT NOT ALLOWED FOR AMOUNTS PAID TO RACIALLY DISCRIMINATORY EDUCATIONAL INSTITUTION.

(A) ~~DISALLOWANCE FOR CREDIT AMOUNTS PAID~~

"(~~A~~ 1) (A) No credit shall be allowed under subsection (a) for amounts paid to any educational institution (i) in a calendar year during which such institution has been declared by a United States district court, in an action brought by the United States pursuant to ~~sub~~paragraph (C) of this ~~paragraph~~ subsection, to follow a 'racially discriminatory policy', and (ii) in the two calendar years succeeding such judgment.

"(B) ~~(i)~~ For purposes of this subsection, an institution follows a 'racially discriminatory policy' if it refuses, on account of race:

(~~a~~ i) to admit applicants as students;

(~~b~~ ii) to admit students to the rights, privileges, programs, and activities generally made available to students by that institution; or

(~~c~~ iii) to allow students to participate in its scholarship, loan, athletic, or other programs.

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A racially discriminatory policy does not include failing to pursue or achieve any racial quota, proportion, or representation in the student body.

~~(ii)~~ The term 'race' shall include color or national origin.

"(~~C~~ 2) ENFORCEMENT. ~~(i)~~ (A) To enforce this paragraph, the Attorney General, upon petition by a person who has been discriminated against under a policy as described in ~~sub~~paragraph (B) of this ~~paragraph~~ subsection, is authorized, upon finding good cause, to bring an

action against an institution in the United States district court in the district in which such institution is located, seeking a declaratory judgment that the institution is following a racially discriminatory policy and has, pursuant to such policy, discriminated against the person filing the petition.

(b) D ~~(ii)~~ The petition must be filed with the Attorney General within one year of the act of racial discrimination alleged to have been committed against the person filing the petition. Upon receipt of the petition, the Attorney General shall promptly notify the affected institution in writing of such petition and the allegations contained therein. Before any action may be filed, the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the racially discriminatory policy alleged in the petition does not exist or has been abandoned. An action may be filed by the Attorney General no later than two years after receiving the petition. Exclusive authority to enforce, and to undertake activities connected with enforcing, the prohibition against following a racially discriminatory policy under ~~sub~~paragraph (A) of this subsection ~~paragraph~~ is vested in the Attorney General.

E ~~(iii)~~ A tax credit shall be disallowed during the entire calendar year in which a district court judgment that the institution follows a racially discriminatory policy has been entered and during the two immediately succeeding calendar years.

(E) ~~(iv)~~ No credit shall be disallowed under subparagraph (A) of this paragraph until all parties to the

action have exhausted all appellate review.

"(~~4~~ 3) STATUTE OF LIMITATIONS. If --

"(A) a credit is allowed to a taxpayer in any taxable year under subsection (a) for expenses paid to an institution --

"(i) in a calendar year during which the United States district court for the district in which such institution is located enters a judgment that such institution follows a racially discriminatory policy, as provided in ~~paragraph (4) of subsection (c)~~ subsection (d), or

"(ii) in either of the two calendar years immediately succeeding the calendar year specified in clause (i), and

"(B) that judgment has become final because --

"(i) the period within which the institution may seek review of that judgment has expired and the institution has failed to petition for review; or

"(ii) the judgment has been affirmed by a court of appeals and the period within which the institution may seek review of that decision has expired,

then the period within which a deficiency attributable to the disallowance of any credit allowed with respect to such expenses shall expire three years after such judgment becomes final within the meaning of subparagraph (B). Any such deficiency may be assessed before the expiration of such three-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment. Whenever a judgment against an educational institution has become final

within the meaning of subparagraph (B), the Attorney General shall promptly notify the Secretary.

"(d) DEFINITIONS. For purposes of this section --

"(1) EDUCATIONAL INSTITUTION.

"(A) The term 'educational institution' means an elementary or secondary school which is a privately operated, not-for-profit, day or residential school and which is exempt from taxation under section 501(a) as an organization described in section 501(c)(3).

"(2) TUITION EXPENSES. The term 'tuition expenses' means tuition and fees required for the enrollment or attendance of a student at an educational institution, including required fees for courses, and does not include any amount paid for

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Tax credits claimed under this section shall not constitute Federal financial assistance to educational institutions or to the recipients of such credits."

SEC. 4. CONFORMING AMENDMENT.

(a) 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 the following: "Sec. 44H. Tuition expenses."

(b) Section 6504 of the Internal Revenue Code of 1954 (relating to cross references with respect to periods of limitation) is amended by adding a new paragraph (12) at the end thereof:

"(12) Disallowance of tuition tax credits because of a declaratory judgment that a school follows a racially discriminatory policy, see section 44H(c)(5)."

SEC. 5. EFFECTIVE DATE.

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