**Collection:** Barr, William Files
**Folder Title:** Tuition Tax Credit Bill (10)
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# TUITION TAX CREDIT CONTACT SHEET

Senate Finance Committee
Markup: Wednesday, September 15, 1982
Staff Contact by COB Monday, September 13, 1982
Administration official contact of Senator by COB Tuesday, September 14, 1982

| SENATOR | STAFF | WHITE HOUSE/ TREASURY STAFF | ADMINISTRATION OFFICIAL |
|---|---|---|---|
| Dole | Bob Lighthizer (4-4515) | White House | Buck Chapaton<br>Brad Reynolds |
| Packwood | John Colvin (4-7978) | White House | Buck Chapaton |
| Roth | Phil Ufholz (4-2441) | Treasury | Buck Chapaton |
| Danforth | Jim Conley (4-1417) | White House | |
| Chafee | Mark Gorman (4-2921)<br>Bob Vastine | White House | |
| Heinz | Steve Sommers (4-6324) | White House | Brad Reynolds |
| Wallop | Mike Hoon (4-6441)<br>Lindsay Hooper | White House | Brad Reynolds |
| Durenberger | Barbara Washburn (4-3244) | White House | Buck Chapaton |
| Armstrong | Brian Waidman (4-5941) | Treasury | Brad Reynolds |
| Symms | Ann Canfield (4-1528) | White House | Brad Reynolds |
| Grassley | Susan Hollywood (4-3744) | Treasury | Brad Reynolds |

| SENATOR | STAFF | WHITE HOUSE/ TREASURY STAFF | ADMINISTRATION OFFICIAL |
|---|---|---|---|
| Long | Mike Stern (4-5315) | White House | Buck Chapaton |
| H. Byrd | ? (4-4024) | White House | Brad Reynolds |
| Bentsen | John Raffaelli (4-5922) | Treasury | Buck Chapaton |
| Matsunaga | ? (4-6361) | Treasury | Buck Chapaton |
| Moynihan | Jim Moors (4-4451) | White House | Buck Chapaton |
| Baucus | Dick Hargesheimer (4-2651) | Treasury | Buck Chapaton |
| Boren | ? (4-4721) | White House | Brad Reynolds |
| Bradley | Gine Despres (4-3224) | White House | Buck Chapaton |
| Mitchell | ? (4-5344) | Treasury | Brad Reynolds |

TUITION TAX CREDIT CONTACT SHEET

Senate Finance Committee
Markup: Wednesday, September 15, 1982 9:30 - 10:00
Staff Contact by COB Monday, September 13, 1982
Administration official contact of Senator by COB Tuesday, September 14, 1982

| SENATOR | STAFF | WHITE HOUSE/ TREASURY STAFF | ADMINISTRATION OFFICIAL |
|---|---|---|---|
| N Dole | Bob Lighthizer (4-4515) | White House | Buck Chapaton<br>Brad Reynolds |
| N Packwood | John Colvin (4-7978) | White House | Buck Chapaton |
| N Roth | Phil Ufholz (4-2441) 3215 | Treasury | Buck Chapaton |
| Y Danforth | Jim Conley (4-1417) 460 | White House | Brad Reynolds |
| Y Chafee | Mark Gorman (4-2921) -BK<br>Bob Vastine 145 | White House | ? |
| Heinz | Steve Sommers (4-6324) | White House | Brad Reynolds |
| N Wallop | 204 Mike Hoon (4-6441)<br>Lindsay Hooper | White House | Brad Reynolds |
| N Durenberger | 1:30 Barbara Washburn (4-3244) R 353<br>2:00 | White House | Buck Chapaton |
| Armstrong N | Brian Waidman (4-5941) | Treasury | Brad Reynolds |
| N Symms | Ann Canfield (4-1528) | White House | Brad Reynolds |
| N Grassley | 232 Susan Hollywood (4-3744) | Treasury | Brad Reynolds |

| SENATOR | | STAFF | WHITE HOUSE/ TREASURY STAFF | ADMINISTRATION OFFICIAL |
|---|---|---|---|---|
| Long | N | Mike Stern (4-5315) | White House | Buck Chapaton |
| H. Byrd | N | ? Dick Sealey 245 (4-4024) | White House | Brad Reynolds |
| ~~Bentsen~~ | Y | John Raffaelli (4-5922) | Treasury | Buck Chapaton |
| Matsunaga | Y | Ed Ing ? (4-6361) | Treasury | Buck Chapaton |
| Moynihan | N | Jim Moors (4-4451) | White House | Buck Chapaton |
| ~~Baucus~~ | Y | Dick Hargesheimer (4-2651) | Treasury | Buck Chapaton |
| Boren | 440 Y | ? Denise Bode (4-4721) | White House | Brad Reynolds |
| Bradley | Y | Gine Despres (4-3224) | White House | Buck Chapaton |
| ~~Mitchell~~ | Y | ? Tom Gallagher (4-5344) | Treasury | Brad Reynolds |

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

September 17, 1982

MEMORANDUM FOR THE RECORD

FROM: WILLIAM P. BARR

SUBJECT: Tuition Tax Credit Bill -- Status Report

## Overall

The tuition tax credit bill was favorably reported by the Senate Finance Committee yesterday. A number of bad amendments were added, but overall we are in fairly satisfactory shape.

## One Politically Sensitive Matter

One amendment is particularly sensitive, and we must be aware of it in our public comments. Over our objections, the Committee inserted a requirement that, to be credited, tuition must be paid to schools, attendance at which satisfies State compulsory attendance laws. Some Fundamentalist groups strongly oppose this because they believe it will invite NEA and other opponents of their schools to use those State laws as weapons against them. (In two states, Ohio and Nebraska, they feel this is already occurring.) Certain Fundamentalist groups feel so strongly about this that they asked us to kill the bill in Committee after the amendment was adopted and are now considering opposing the bill.

These groups do not blame the Administration for the amendment and understand that we opposed it.

In expressing our general satisfaction with the bill, we should qualify our support by saying that the Committee adopted certain amendments which we opposed and which we are concerned about.

## Catholic Reaction

The Catholic groups seem to be extremely pleased with the Administration's performance. For example, the Knights of Columbus are sending a letter out to their members crediting the President with pushing the bill through.

One amendment relating to handicapped rights was proposed that potentially threatened the Catholic schools, but we successfully gutted it, and it should pose no problem.

Other Amendments

The following Committee Amendments were adopted.

1. In lieu of Bradley's IRS civil rights enforcement amendments, the Committee adopted a compromise, postponing the effective date of credits until 501(c)(3) enforcement is resolved.

2. The cap was lowered from a $50-75,000 phase-out to a $40-50,000 phase out.

3. The maximim credit was reduced from $500 to $300, and the phase-in period was stretched out.

Knights of Columbus
A TRADITION OF DEVOTION · A CENTURY OF SERVICE
1882·1982
SUPREME OFFICE • COLUMBUS PLAZA • NEW HAVEN, CONNECTICUT 06507

VIRGIL C DECHANT
SUPREME KNIGHT

September 16, 1982

To: Board of Directors, State Deputies, Vice Supreme Masters, Masters, District Deputies, Grand Knights and Faithful Navigators throughout the United States

At the very moment I write this letter, the Senate Finance Committee is in the process of marking up the Tuition Tax Credit Bill (S.2673 H.6701). Passage of this bill will serve to afford a measure of justice to parents of children in nonpublic schools by alleviating the double burden they bear in providing an education of their own choice to their children.

Following release from the Senate Finance Committee the bill will go to the full Senate and then to the House of Representatives for voting.

As you can understand, time is of the essence. I urge you immediately to wire and call your Senators and Congresspersons, asking them to vote for passage of this vital bill. The enclosed flyer will inform you of the general provisions of the tuition tax credit measure.

You may reach your legislators by calling the switchboard at (202) 224-3121 and asking for the Senator or Congressperson by name. Wires should be sent to them at United States Senate, Washington, D.C. 20510; House of Representatives, Washington, D.C. 20515. Follow up your wire or call with a letter. Contact members of your council to do the same. I cannot stress enough the urgency of your response.

Fraternally,

Virgil C Dechant

Virgil C. Dechant
Supreme Knight

P.S. A letter mailed yesterday asked your action in contacting your legislators on the Pro-Life issue. Today's news carried the unwelcome report that the Pro-Life matter will be delayed until the next Congress. We will be back in touch with you next spring on Pro-Life. However, this points up dramatically that the time for you to be heard on Tuition Tax Credits is NOW.

+Archdiocese of Washington
Archdiocesan Pastoral Center: 5001 Eastern Avenue
Mailing Address: Post Office Box 29260, Washington, D.C. 20017

Catholic Schools Office
(301) 853-4587

September 17, 1982

Mr. William Barr
Deputy Assistant Director for
 Legal Policies
The White House
Washington, D. C. 20025

Dear Bill,

I want to thank and commend you for your efforts in securing passage of the tuition tax credit bill in the Senate Finance Committee. I know how hard you worked on it and I can assure you that we are appreciative.

Since I was principally responsible for getting this issue highlighted, while on the Reagan-Bush Committee during the 1980 campaign, you can be sure that I am personally committed to continued maximum cooperation with you in this effort.

I have also written to Jim Baker and Ed Meese to thank them. In my letters to them, I also pointed out how helpful and valuable your efforts have been.

Again thanks and I look forward to working with you to final passage.

Sincerely,

Len

Leonard DeFiore
Superintendent of Schools

LDF/tb

Ø19720.311

DISCUSSION DRAFT
September 17, 1982

97th CONGRESS
2d Session

S. 2673

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

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IN THE SENATE OF THE UNITED STATES

June 23 (legislative day, June 8), 1982

Mr. Dole (for himself, Mr. Roth, and Mr. D'Amato) introduced the following bill; which was read twice and referred to the Committee on Finance

---

# 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,

## SECTION 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~~ this Act ~~should~~ recognizes that--

(1) 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;

(2) the existence and availability of alternatives to public education tend to strengthen public education

through competition and to improve the educational opportunities of all Americans;

(3) 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;

(4) 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 elementary and secondary levels;

(5) 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;

(6) the tax revenue loss occasioned by a tuition tax credit for a child would be small compared to the cost to State and local taxpayers of educating the child at a public school; and

(7) equality of educational opportunity is the policy of the United States, and the tax relief afforded by this legislation should not be used to promote racial

discrimination.

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 after section 44G the following new section:

''SEC. 44H. CREDIT FOR TUITION EXPENSES.

''(a) General Rule.--At the election of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the qualified tuition expenses paid by such individual during the taxable year for any qualified dependent.

''(b) Limitations.--

''(1) Maximum dollar amount per qualified dependent.--

''(A) In general.--The amount of the credit allowable to the taxpayer under subsection (a) with respect to any qualified dependent for any taxable year shall not exceed the applicable amount.

''(B) Applicable amount.--For purposes of this paragraph, the term 'applicable amount' means the excess, if any, of--

''(i) $300, over

''(ii) 3 percent (6 percent in the case of married individual who does not file a joint return) ~~under section 6013~~) of the amount, if any, by which the adjusted gross income of the taxpayer for the taxable year exceeds $40,300 ($20,000 in the case of ~~a~~ such married individual who does not file a joint return under section 6013).

''(C) Transitional rule.--For taxable years beginning after December 31, 1982, and before January 1, 1985, subparagraph (B) shall be applied--

''(i) in taxable years beginning in 1983, by substituting--

''(I) '$100' for '$300', and

''(II) '1 percent' for '3 percent', and

(III) "2 percent" for "6 percent"

''(ii) in taxable years beginning in 1984, by substituting--

''(I) '$200' for '$300', and

''(II) '2 percent' for '3 percent'.

(III) "4 percent" for "6 percent"

''(2) Application with other credits.--The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43.

non-refundable

''(c) 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).

''(d) Credit Denied for Amounts Paid to Racially Discriminatory Institutions.--

''(1) Declaratory judgment entered.--

''(A) In general.--No credit shall be allowed under this section for any amount paid to an educational institution during any calendar year if--

''(i) within such calendar year or in any preceding calendar year, a judgment has been entered by a district court of the United States under section 7408 (regardless of whether such judgment is appealed) declaring that such educational institution follows a racially discriminatory policy, and

''(ii) no order described in section 7408 (f) (2) with respect to such educational institution has ~~become final and no longer appealable at any time subsequent to such judgment.~~ been entered (regardless of whether such order is appealed).

''(B) Reversals of declaratory judgments.--

''(i) In general.--A judgment by a district court described in subparagraph (A) (i) entered in an action brought with respect to an educational institution shall not be taken into account under subparagraph (A) if another judgment is subsequently entered in such action which--

''(I) declares that such educational institution does not have a racially discriminatory policy, and

''(II) is final and no longer appealable.

''(ii) Waiver of limitations.--Notwithstanding section 6511 (a) or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by this chapter which arises by reason of this subparagraph may be filed by any person at any time within the 1-year period beginning on the date on which any judgment described in clause (i) becomes final and no longer appealable. Sections 6511 (b) and 6514 of the Internal Revenue Code of 1954 shall not apply to any claim for credit or refund filed under this paragraph within such 1-year period.

''(C) Stay of declaratory judgment.--

''(i) In general.--Any judgment described in subparagraph (A) (i) shall not be taken into account under subparagraph (A) for any taxable year if such judgment is stayed at the close of such taxable year.

''(ii) Removal of stay.--If a stay entered against a judgment described in subparagraph (A)(i) is removed after the close of the taxable year and such judgment becomes final and nonappealable--

''(I) this subparagraph shall not apply with respect to such judgment for such taxable year, and

''(II) notwithstanding any other provision of this title or of any other law, the statutory period for the assessing of a deficiency attributable to the disallowance of any credit under this section by reason of this clause shall not expire before the date which is 3 years after the date on which such stay is removed.

''(2) Required statements.--

''(A) Statements furnished by institutions to the Secretary.--No credit shall by allowed under subsection (a) for amounts paid to an educational institution during a calendar year if, at the end of such calendar year, the educational institution has not filed with the Secretary (in such manner and form as the Secretary shall by regulation prescribe) a verified statement which--

''(i) declares that such institution has not followed a racially discriminatory policy during such calendar year;

''(ii) indicates whether--

''(I) a declaratory judgment has been entered against such institution in an action brought under section 7408; and

''(II) an order described in section 7408 (f) (2) has been entered in such action; and

''(iii) attests that such institution has complied with the requirements of subsection (e) (3) (D) during such calendar year.

''(B) Statements furnished to taxpayers.--On or before January 31 of the calendar year succeeding the calendar year to which the statement described in subparagraph (A) relates, the institution shall furnish a copy of such statement to all persons who paid tuition expenses to the institution in the calendar year to which such statement relates.

''(C) Statements furnished by taxpayers to the Secretary.-- No credit shall be allowed to a taxpayer under subsection (a) for amounts paid to an educational institution during a calendar year if the taxpayer does not attach to the return on which the taxpayer claims the credit the statement described in subparagraph (A) which is furnished by such institution for the calendar year ending with or within the taxable year of the taxpayer.

''(3) Enforcement responsibility.--The Attorney General shall have exclusive authority under this subsection to investigate and to determine whether an educational institution is following a racially discriminatory policy. Upon request of the Attorney General or upon his own volition motion, the Secretary shall supply the Attorney General with all information in the possession of the Secretary relevant to such investigation or determination or to any action which may be brought under section 7408.

''(4) Racially discriminatory policy.--For purposes of this subsection--

''(A) In general.--An educational institution follows a racially discriminatory policy if such institution refuses, on the basis of race to--

''(i) admit applicants as students;

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

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

''(B) Quotas, etc.--A racially discriminatory ~~An educational institution~~ policy shall not include ~~shall not be treated as following a racially discriminatory policy solely by reason of the~~ failure ~~of such institution~~ to pursue or achieve any racial quota, proportion, or representation in the student body.

''(C) Race.--The term 'race' shall include color or national origin.

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

''(1) Qualified tuition expenses.--The term 'qualified tuition expenses' means the excess of--

''(A) the amount of tuition expenses paid by the taxpayer during the taxable year to any eligible educational institution for any qualified dependent of such taxpayer, over

''(B) any scholarship or financial assistance paid during such taxable year to such qualified dependent or to the taxpayer with respect to such qualified dependent.

''(2) Qualified dependent.--The term 'qualified dependent' means any individual--

''(A) who is a dependent of the taxpayer (other than an individual described in paragraph (4), (5), (7), or (8) of section 151 (a)), ''(B) who has not attained 20 years of age at the close of the taxable year, and

''(C) with respect to whom a deduction under section 151 is allowable to the taxpayer for the taxable year.

''(3) Eligible educational institution.--The term 'eligible educational institution' means an educational institution--

''(A) which provides a full-time program of elementary or secondary education;

''(B) which is a privately operated, not-for-profit, day or residential school;

''(C) which is exempt from taxation under section 501(a) as an organization described in section 501(c)(3), including church-operated schools to which subsections (a) and (b) of section 508 do not apply;

''(D) which, in its ~~to the extent it otherwise publishes~~ by-laws, advertisements, admission application forms ~~and other such publications,~~ includes therein (as the Secretary shall by regulation prescribe) a statement that it does not discriminate against student applicants or students on the basis of race;

''(E) which does not have an admissions policy that discriminates against handicapped children; and

''(F) attendance at which satisfies the requirements of any law of the State in which such institution is located which requires children to attend school.

''(4) Admissions policy which discriminates against handicapped children.--

''(A) In general.--An educational institution has an admissions policy which discriminates against handicapped children if such institution refuses to admit otherwise qualified applicants on the basis of their status as handicapped children.

''(B) Inability to meet special needs.--An educational institution which denies admission to any handicapped child shall not be treated as having an admissions policy which discriminates against handicapped children if such denial is due to the inability of such institution to provide the special facilities or personnel which such child needs by reason of his handicap.

''(C) Handicapped children.--The term 'handicapped children' has the same meaning given such term by section 602 (1) of the Education of the Handicapped Act.

''(5) Tuition expenses.--

''(A) In general.--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.

''(B) Certain expenses excluded.--The term 'tuition expenses' does not include any amount paid for--

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

''(ii) meals, lodging, transportation, or personal living expenses;

''(iii) education below the first-grade level (such as attendance at a kindergargarten, nursery school, or similar institution); or

''(iv) education above the twelfth-grade level.

''(6) Scholarship or financial assistance.--The term 'scholarship or financial assistance' means any--

''(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--

''(i) is for educational expenses, or attributable to attendance at an educational institution, and

''(ii) 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)).

''(f) Election.--The election provided under subsection (a) shall be made at such time and in such manner as the Secretary shall by regulations prescribe.''.

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.

definition

''(a) In General.--Upon filing of an appropriate pleading by the Attorney General under subsection (b), the district court of the United States for the district in which an eligible educational institution is located may make a declaration with respect to whether such institution follows a racially discriminatory policy. Any such declaration shall have the force and effect of a final juigment of the district court and shall be reviewable as such.

''(b) Filing of Petition.--

''(1) In general.--The Attorney General is authorized to

and directed, to seek a declaratory judgment under subsection (a) against an ~~eligible~~ educational institution upon--

''(A) receipt by the Attorney General of any allegation of discrimination against such institution, and

''(B) a finding by the Attorney General of good cause. ~~to believe that such institution is following a racially discriminatory policy.~~

''(2) Allegation of discrimination.--For purposes of this subsection, the term 'allegation of discrimination' means an allegation made by any person which specifies that--

''(A) a named educational institution has, pursuant to a racially discriminatory policy, discriminated against a named student applicant or student within one year preceding the date on which such allegation is made to the Attorney General, or

''(B) the educational institution made a statement, within one year preceding such date, communicating an intent to follow a racially discriminatory policy.

''(3) Notice of allegations of discrimination.--Upon receipt of any allegation of discrimination made against an eligible educational institution, the Attorney General shall promptly give written notice of such allegation to such institution.

''(4) Opportunity to comment.--Before any action may be filed against an eligible educational institution by the Attorney General under subsection (a), the Attorney General shall give the institution a fair opportunity to comment on all allegations made against it and to show that the alleged racially discriminatory policy does not exist or has been abandoned.

''(5) Notice to complainant.--If an allegation of discrimination against an eligible educational institution is made to the Attorney General and the Attorney General declines to bring an action under subsection (a) against such institution, the Attorney General shall promptly give written notice of the basis of the decision not to bring such an action to the person who made such allegation.

''(c) Requirements for a Finding of Following a Racially Discriminatory Policy.--A district court ~~may~~ shall declare that an eligible educational institution follows a racially discriminatory policy in an action brought under subsection (a) only if the Attorney General establishes in such action that--

''(1) the institution has, pursuant to such policy, taken an action discriminating against a student applicant or student within the two years preceding commencement of such action;

''(2) the institution has, within the two years preceding commencement of such action, made a statement communication [an intent to follow] a racially discriminatory policy against student applicants or students; or

''(3) the institution has engaged in a pattern of conduct intended to implement a racially discriminatory policy, and that some act in furtherance of this pattern of conduct was committed within two years preceding commencement of such action.

''(d) Settlements.--Prior to, and in lieu of, filing an action under subsection (a), the Attorney General may, at his discretion, enter into a settlement agreement with the eligible educational institution against which an allegation of discrimination has been made if the Attorney General finds that the institution has been acting in good faith and has abandoned its racially discriminatory policy. No petition need be filed for the Attorney General to initiate action to enforce the terms of such settlement agreement.

``(e) Retention of Jurisdiction.--Any district court which makes a declaration under subsection (a) that an eligible educational institution follows a racially discriminatory policy shall retain jurisdiction of such case.

``(f) Discontinuance of Racially Discriminatory Policy.--

``(1) Motion.--

``(A) In general.--At any time after the date which is 1 year after the date on which a judgment is entered in an action brought under subsection (a) declaring that an eligible educational institution follows a racially discriminatory policy, such institution may file with the district court a motion to modify such judgment to include a declaration that such institution no longer follows a racially discriminatory policy.

``(B) Affidavits.--Any motion filed under subparagraph (A) shall contain affidavits--

``(i) describing with specificity the ways in which the eligible educational institution has changed its previous racially discriminatory policy;

``(ii) describing with specificity the ways in which such institution has taken reasonable steps to communicate its policy of nondiscrimination to students, to faculty, and school administrators, and to the public in the area it serves;

``(iii) averring that such institution has not discriminated against an applicant or student pursuant to a racially discriminatory policy during the preceding year; and ''(iv) averring that such institution has complied with the requirements of section 44H (e) (3) (D).

''(2) Order.--If a motion is made under paragraph (1), the district court shall issue an order modifying the judgment entered in the action to include a declaration that the eligible educational institution no longer follows a discriminatory policy unless the Attorney General establishes that--

''(A) the institution has not in fact stopped following its previous discriminatory policy;

''(B) the institution has discriminated against an applicant or student pursuant to a racially discriminatory policy within the preceding year;

''(C) the institution has made statements communicating an intent to follow a racially discriminatory policy within the preceding year; or

''(D) the institution has not, in fact, complied with the publications requirements of clauses (ii) and (iv) of paragraph (1) (B).

''(3) Appeal of orders.--Any order of the district court granting or denying a motion made under paragraph (1) shall be reviewable.

''(g) Attorneys Fees.--If an eligible educational institution prevails in an action under this section, the court shall award the institution costs and attorney's fees in such action.

''(h) Definitions.--For purposes of this section, the terms 'eligible educational institution' and 'racially discriminatory policy' shall have the respective meaning given 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 65Ø4 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 74Ø8 and inserting in lieu thereof:

> ''Sec. 74Ø8. Declaratory judgment relating to racially discriminatory policies of schools.
> ''Sec. 74Ø9. 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.

(a) Certification Required.--The amendments made by this Act shall not take effect until the Attorney General certifies to the Secretary of the Treasury that, pursuant to--

(1) an Act or joint resolution which has been enacted, or

(2) a final decision of the United States Supreme Court,

any private educational institution maintaining a racially discriminatory policy or practice as to students is denied the exemption from taxation provided under section 5Ø1 (a) of the Internal Revenue Code of 1954.

(b) Application When Certification is Made.--If the certification described in subsection (a) is made to the Secretary of the Treasury--

(1) the amendments made by section 3 shall apply with respect to expenditures made after July 31, 1983, in taxable years beginning after December 31, 1982, and

(2) the amendments made by section 4 shall take effect on the date on which such certification is made to the Secretary of the Treasury.

The Chairman. Senator Bradley.

Senator Bradley. Before we go to the question of the Internal Revenue Service, I would at least like to address -- I think at this time, since the committee has adopted this amendment -- one further improvement that I think would be important.

Under the amendment that we have just adopted, in its broader construct, a petitioner to the Attorney General may be a student or any third party that alleges a specific incident of racial discrimination. The procedure is that the petition is registered with the Attorney General. The Attorney General then asks the affected school, do they follow a policy or practices of racial discrimination. That school then has the right to reply to the Attorney General in writing. After he receives those responses, he determines if there is good cause to pursue a declaratory judgment.

Now I think that it is absolutely central that the petitioner be allowed to see what the school has said in response to his allegations, and I think that that response should be available to the petitioner and to the public because, if not, you could very well have a situation where someone alleges racial discrimination, the Attorney General asks the school, "Has there been racial discrimination, and do you follow a practice of racial discrimination." The school says no but does not justify their decision, and then the Attorney General decides not to go forward.

I think a clear openness about this process is very important. If indeed the charge is a frivolous one, or harrassment or whatever, the response of the school will be clear in that regard and the response will be open to the public at large, and specifically to the petitioner who has alleged the act of discrimination. I would like to propose that that is how we amend the provision that we have just adopted. Otherwise, there could be that reasonable level of doubt.

The Chairman. I wonder if we might address the amendment suggested by Senator Bradley and see if there is any way we can accommodate what Senator Bradley has discussed? I want the record to indicate very clearly there is no question in anybody's mind about Senator Bradley's support for tuition tax credits. I have discussed it with him privately, I have discussed it with him publicly, and I do not think there is any doubt in anyone's mind about his strong and forthright support.

He does have a concern about the antidiscrimination provisions, as he has indicated to the administration and to others on this committee. What I would hope, if it could be done, if there is any way to accommodate some of those concerns, we are at the threshold right now of whether we are going to report out tuition tax credits. I would withhold any further comment until the administration has responded to Senator Bradley's concerns but I want to commend the administration, too -- Treasury, Justice, the White House, and others who have recommended that the antidiscrimination proposals be strengthened.

On that note, I do not know who wishes to proceed.

Mr. Chapeton. I thought Mr. Reynolds might respond to this latter point.

The Chairman. Mr. Reynolds?

Mr. Reynolds. Mr. Chairman, Senator Bradley, we agree that the process that we are talking about in the antidiscrimination provisions should be as open as we can possibly make it. There are some complications when you are involved in litigation and an investigatory kind of a procedure, in making public or agreeing in advance to make public information that is submitted by different parties or possible parties to the litigation.

The concern I would have is that if you have in the statute that anything the school gives the Attorney General is turned over to a petitioner or a group of petitioners, there is certainly legitimate legal grounds for the school to insist on subpoena process before it turns that information over. If what you are interested in -- as I believe it is -- is that the petitioner has available the full information that the Attorney General based his decision on, it seems to me that a notice provision that would allow that to be made available to the petitioner after the Attorney General had made his decision would accommodate your concerns, and I think that would be a better way to do it within the context of the litigation process. I am concerned if we trickle paper out as it trickles in because I think it would be counterproductive.

Senator Bradley. That would be acceptable to me if the notice is available to the petitioner.

The Chairman. Then can you work that out in the amendment just adopted, work out some language that says that?

Mr. Reynolds. I think that we can work that out.

The Chairman. Senator Boren?

Senator Boren. Mr. Chairman, I wonder, in reading the description of the administration amendment which we have adopted, does this imply -- it says a petition will be filed with the Attorney General, and the Attorney General will then, after taking evidence, decide whether or not to file an action for declaratory judgment -- does that mean that the individual citizen -- is that an exclusive remedy? Let's say I am alleging that my child is being discriminated against by a school, I make a complaint to the Justice Department, I file the requisite complaint with the Attorney General, he investigates and he decides he does not think

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AMENDMENT NO. ___ Calendar No. ___

Purpose: To make the tuition credit refundable.

IN THE SENATE OF THE UNITED STATES--97th Cong., 2d Sess.

S. ____

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Referred to the Committee on ______________________________ and ordered to be printed

Ordered to lie on the table and to be printed

Amendments intended to be proposed by Mr. Dole

Viz:

On page 4, strike out lines 12 through 18.

[Renumber the subparagraphs and clauses in subsection (b).]

On page 11, between lines 17 and 18, add the following new subsection:

(b) Refundability of Tuition Credit.--Subsection (b) of section 6401 of the Internal Revenue Code of 1954 (relating to amounts treated as overpayments) is amended by striking out the first sentence and inserting in lieu thereof the following: ''If the amount allowable as credits under section 31 (relating to tax withheld on wages), section 39 (relating to certain uses of gasoline, special fuels, and lubricating oil), section 43 (relating to earned income credit), and section 44H (relating to tuition credit) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1, other than the credits allowable under sections 31, 39, 43, and 44H), the amount of such excess shall be considered an overpayment.''.

(c) Conforming Amendments.--

(1) Paragraph (2) of section 55 (f) of such Code (defining regular tax) is amended by striking out ''and 43'' and inserting in lieu thereof '', 43, and 44H''.

(2) Subsection (c) of section 56 of such Code (defining regular tax deduction) is amended by striking out ''and 44G'' and inserting in lieu thereof ''44G, and 44H''.

(3) Paragraph (4) of section 6201 (a) of such Code (relating to assessment authority) is amended--

(A) by striking out ''or section 43 (relating to earned income)'' and inserting in lieu thereof '', section 43 (relating to earned income), or section 44H (relating to tuition credit)'', and

(B) by striking out the caption and inserting in lieu thereof the following:

''(4) Overstatement of certain credits.--''.

(4) Section 6513 of such Code (relating to time return deemed filed and tax considered paid) is amended by adding at the end thereof the following new subsection:

''(f) Time Tuition Credit Considered Paid.--For purposes of section 6511, the taxpayer shall be considered as paying an amount of tax on the last day prescribed by law for payment of the tax (determined without regard to any extension of time and without regard to any election to pay the tax in installments) equal to so much of the credit allowed by section 44H (relating to tuition credit) as is treated under section 6401 (b) as an overpayment of tax.''.

(5) Subsection (d) of section 6611 of such Code is amended by striking out the caption and inserting in lieu thereof the following:

''(d) Advance Payment of Tax, Payment of Estimated Tax, Credit for Income Tax Withholding, and Tuition Credit.--''.