



UNIVERSAL TUITION
TAX CREDITS

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BACKGROUND

In 1925, in the case of *Pierce vs. the Society of Sisters*, the U.S. Supreme Court ruled unanimously that parents have the right to decide where their children will be educated. The issue arose a few years earlier when the people of Oregon approved an initiative, backed by the Ku Klux Klan, that school-age children could only attend public schools, thus forcing the closing of all nonpublic schools, of whatever type. A military school and a parochial school successfully challenged the new law and no attempt has since been made to overturn the Supreme Court's decision, which is still the law of the land.

Since the issue was not before the Court, the decision did not say anything about how it might be possible for everyone to exercise this constitutional right, including providing public funding where necessary for low-income families. Such government assistance has a very long history and was regularly done in the 19th century in such states as New York and Pennsylvania. In the colonial period educated citizens, not least of all the Founding Fathers, were generally products of religious schools, tutors, homeschooling or were self-taught.

Primarily because of anti-Catholic sentiment in the mid-19th century, arising from the rapid growth of immigrants coming from Catholic areas of Europe, and the self-defense creation of parochial schools, such aid was not only discontinued but many states enshrined bigotry in their constitutions by adopting what are termed "Blaine Amendments." The name comes from James G. Blaine, a native Pennsylvanian who taught briefly in Kentucky, and subsequently moved to Maine and began a political career. In the 1870s, as Speaker of the House in Congress, Blaine cooperated with President Ulysses S. Grant in an unsuccessful attempt to establish a national prohibition of such aid. Beginning in the last quarter of the 19th century, however, many states subsequently have achieved this goal.

This has led to an ongoing debate about aiding all students not just those in the public schools, a debate that has become much more prominent in recent years. It occurs under the general heading of school choice, which public opinion surveys show is increasingly supported by a majority of the general public in one form or another. The specific idea of such funding has largely centered around the proposal for vouchers, either by that term or its equivalents, such as scholarships, student grants, or educational opportunity grants.

These, of course, have been common in higher education for generations, in the form of scholarships or grants from institutions themselves, from many private sources and from federal and state government programs, the best known of which are perhaps the various G.I. Bills beginning with the first one in 1944. Such aid is provided for other areas of education as well, such as for preschoolers and for special education students, as well as for non-educational purposes, such as food stamps and housing vouchers.

One of the oldest proposals to aid parents who wish to have their children educated in nonpublic school settings is to provide them with tax credits. This was advocated, for example, by President Ronald Reagan's administration but it was neither strongly promoted nor seriously attempted and nothing happened. Besides the usual political opposition for such proposals from the public school establishment, the basic idea presents some problems by itself.

DEFINITIONS

Before exploring these, it might be helpful to provide some definition of terms.

A voucher, by whatever name, is a grant of funds to a parent or student in the form of a credit, paper or other authorization, which is redeemable at an educational institution. The purpose is to provide financial assistance for the acquisition of an education without giving individuals actual dollars in cash or checks which could be lost or used improperly.

An income credit permits an individual to deduct an expense, in this instance one for educational costs, from his or her income prior to computing the taxes owed.

An income tax credit allows the individual to first compute the tax owed and then deduct the authorized educational expenses directly from the tax.

Both of the above credits are available only to the person(s) incurring the educational costs.

A recent variation of the above approaches is sometimes termed a universal tuition tax credit, the expression being used herein. With this type of credit any individuals, or organizations and corporations, can make donations to an agency, such as a nonprofit corporation which provides financial aid to students to assist them in acquiring an education of their choice, and receive a credit against their taxes.

Let's look at a theoretical example and see the results of these various approaches.

Assume a family has an annual income of \$35,000, pays an income tax of \$3,500 per year, a tax rate of 10%, and pays \$1,000 for a child's tuition. Frequently they will pay more, or much more, than \$1,000, but proposed credits for tuition are often limited to this amount.

An income credit would permit this family to deduct the \$1,000 tuition from their income, reducing it to \$34,000. Assuming the 10% tax still applied, they would now pay a tax of \$3,400, saving only \$100 of the tuition amount.

With a tuition, or income, tax credit, the family would compute their tax first, arriving at the \$3,500 figure, then deduct the \$1,000 tuition directly from the tax, reducing it to \$2,500, thus, in effect, making the tuition free, or at least \$1,000 of it..

Under either of these approaches benefits would only be available to those paying the tuition, which, as indicated, presents some problems.

The more recent proposal for a universal tuition tax credit would permit individuals and/or groups to make contributions to nonprofit corporations providing student aid, contributions which would then be deductible from their tax bill. This has a number of advantages. First, it broadens the numbers of those who could make such donations, and claim

such credits. This, in turn, could make far more money available for such purposes. A further result could be that, even though there might be a limit on the amount that each individual or group could contribute, there might be no limit on how much might be awarded in individual scholarships.

The result might be that, even with contributions limited to \$1,000 or less, as with the personal tuition tax credits parents might receive, so many more could make such a contribution it might be possible for individual scholarships to be more than \$1,000.

Since, as with higher education scholarships, parents perhaps could add funds of their own, even expensive schools could become affordable for many more parents. At typical nonpublic schools the scholarship might cover the entire tuition thereby making them affordable to virtually anybody.

K-12 STUDENT AID PROPOSALS AND PROGRAMS

Experience with the scores of privately funded scholarship programs created in recent years demonstrates the effort low-income parents will make to give their children better educational opportunities. These programs typically offer to pay only part of the tuition, partially because the money aids more students but they also do so intentionally because they believe parents should have to show their commitment and “buy into” the program themselves.

The classic example of this came in April of 1999 when the newly-created Children’s Scholarship Fund, offered 40,000 partial scholarships specifically geared at low-income families. Not only those in the CSF, but virtually everyone else was astounded when 1,250,000 students applied for that aid. This clearly demonstrated the potential need, and number of participants, for a properly structured student financial aid program.

Of the publicly funded options defined above, the income credit never advanced very far because the actual assistance is so low that it is of very limited help to the average citizen, and virtually useless to those with low incomes.

The basic direct tuition tax credit has received much more attention over the years. As it has been given more detailed examination, however, it has demonstrated weaknesses of its own which have prevented it from being generally adopted.

While it would certainly help some people, and to a greater degree than a simple income credit, it proves to be of little or no use to the majority of citizens or, in some instances, even to those with high incomes who may also be paying high tuition rates for their children.

One problem is the basically political one of setting the tax credit at a high enough level to apply to most if not all school tuition fees. Contrary to public opinion, most nonpublic schools in the nation do not charge high tuition fees. Typically not just the tuition but the actual per pupil cost at nonpublic schools is one-third to one-half of what is being spent in the public

school system, that is, in the range of \$2,500-3,500 rather than the average of more than \$7,000 currently being spent nationally for each public school pupil.

There are, of course, exceptions to this rule, but the high cost schools tend to be relatively few in number, they are particularly to be found in the prestigious prep schools in New England, and, even then, part of that high cost is because many of these schools are residential institutions, like colleges, so the costs include room and board, not to mention transportation. What few people realize is that the most expensive K-12 schools in the nation are public schools in affluent suburban communities. At the extreme upper end are several in New York State where costs exceed \$30,000 a year; one is now approximately \$40,000 annually, and these are not even residential schools.

In any event, it is politically unacceptable to provide tuition tax credits of \$10-15,000 or more which would of necessity be available to relatively high income families. Similar objections have even applied to the more common tuition levels of \$2-3,000. As a result, proposals to institute such programs rarely reach the stage of being introduced as legislation much less be actually adopted as government programs.

Therefore, discussions of such tax credits often focus on a figure of about \$1,000, or actual tuition, whichever is lower. And the “whichever is lower”, is a real consideration. Even today, many parochial elementary schools charge less than \$1,000 for tuition. Where they are higher, as at the secondary level, many charge one tuition fee for the first child from a family, a reduced rate for a second from the same family, and much less, or even free tuition, for a third or more children. So, theoretically, many could be helped by such a credit.

So, what’s the problem?

For one thing, such assistance is of limited or no value to those whose incomes are so low that they pay little or no income tax to which the credit could be applied.

To meet this problem, a modified proposal was suggested for what was sometimes termed a “negative tuition tax credit.” Under this plan, if a student attended a school and was qualified for this assistance, the reimbursement would be provided upon the satisfactory completion of most or all of the school year. Reflection demonstrated that this would prove to be impractical for low-income parents because of a cash-flow problem. Such parents, living from paycheck to paycheck, if not day to day, are unable to pay the tuition in the fall and wait to be reimbursed in the spring. Nor, since most of the nonpublic schools have no endowments or other ready supply of surplus cash, are these institutions able to absorb the cost of the tuition until the reimbursement arrived at the close of the school year.

Not only that, it is a common occurrence, as public schools themselves well know, for low-income parents to be very mobile and have their children attend more than one school in a single school year. The children of migrant workers are the most obvious example of this phenomena but it occurs more generally than most realize. It was reported a few years ago, for example, that at least one public school in Milwaukee had a 100% turnover of its student population during the school year.

So if a nonpublic school could absorb the initial expense for educating at least some of its students, assuming a reimbursement later, the effort would be a total financial loss to the school for students who, for whatever reason, did not complete the school year and for whom they would therefore receive no payment.

Finally, there is the failure of such a credit to be of any help, even to families with high incomes, in states such as New Hampshire, that do not have an income tax. And it would be of limited help, except to those with high incomes, in states with a low income tax rate, such as Pennsylvania, with its rate of 2.8%. In the Keystone State a tuition tax credit of \$1,000 would have a double disadvantage. An individual or family would require a taxable income of nearly \$36,000 in order to be eligible for the full tax credit, and that's more than most of them earn. And, of course, the taxable income would have to be even higher if the eligible credit were raised - nearly \$72,000 for a \$2,000 tax credit, for example.

The other disadvantage, from the state's point of view, is that a tax credit for such an individual or family could totally eliminate the amount of state income taxes they would pay.

Of course this latter problem does not apply to the same degree at the federal level where the income tax is sufficiently high that a \$1,000 tax credit would be available to a great many citizens. The problems there include the one that it still is of little or no benefit to those with low incomes who pay little or no income taxes. Another is that time after time over the years the Congress has had such proposals before it and has failed to enact them.

In addition to the strong opposition from "the usual suspects" in the educational establishment to any form of support for nonpublic schools, there is also concern among some members of Congress, and others outside of their chambers, about any program that would put the federal government in a position of permanently providing some underwriting of the basic funding for elementary and secondary education. For one thing, the word "education" does not appear in the U.S. Constitution so it can be argued that the federal government has no authority to establish such a permanent program for what is a constitutional responsibility of the states.

Which is not to say that some programs do not exist to provide reimbursements or credits for educational expenses that might be incurred.

MINNESOTA, ARIZONA and ILLINOIS

Speaking generally, as a nation we have a long history of deductions against income, rather than taxes, probably the most common of which is the deduction of property taxes from income under both state and federal laws. Related to this program but on an even larger scale is the deduction of mortgage interest. Although each of these saves the taxpayer only part of the dollars paid for property taxes and mortgage interest respectively, an estimate some years ago was that the first amounted to \$9 billion in tax savings granted by the federal government and the latter in \$23 billion more, or a total of some \$32 billion. If governments can continue such programs for the avowed purpose of encouraging home ownership why could they not do the same for the far more important purpose of encouraging an educated citizenry?

In education, one form of this at the state level has been on the books in Minnesota since 1955, and was upheld by the U.S. Supreme Court in a 1983 decision. For years this permitted the deduction of \$650 per child in grades K-6 and up to \$1,000 per child in grades 7-12 in either a public or nonpublic school. After its constitutionality was upheld, 137,000 Minnesotans claimed the deduction on their 1985 tax returns, the majority of whom were parents of 93,000 students in private schools.

This, in fact, was the basis of the original suit against the program. The argument was that, since most of the deductions applied to expenses in nonpublic schools, it was in fact primarily an aid to these schools and, as such, it was a violation of the First Amendment provision for “a separation of church and state.” Although not commonly used, quotation marks are appropriate because there is no such expression in the First Amendment, or anywhere else in the U.S. Constitution. It occurred years later, in 1801, in a letter by then-President Thomas Jefferson to a congregation in Connecticut. Even then his intent was to show a concern for a protection of religion from the state rather than the state from the influence of religion. It is of further relevance to note that Jefferson not only did not take part in the Constitutional Convention of 1787 but he wasn’t even in the country at the time, being on diplomatic service in France.

The 1983 U.S. Supreme Court rejected this constitutional allegation, saying that as long as the law was facially neutral, which it was, being available to all, the Court was not about to enter the morass of attempting to determine who used what, and where, how or why every dollar flowed in the program. It might also be observed that, while this program was costing the state millions of dollars each year, at least some of which were credits given for expenditures related to public school students, the public was paying billions of dollars a year to support the public schools. It is this absence of any tuition charges at such schools, and thus no need for public school parents to pay such a fee and claim a credit, that results in a higher proportion of the credit being used at nonpublic schools.

In 1997 Minnesota amended their law, expanding the benefits.

More recently, an idea has emerged that seems much more politically acceptable, practical, and therefore much more useful and effective. It is a universal tax credit, that is, a tax credit given not just to parents paying school tuition or other educational expenses but to an individual or corporation contributing to a nonprofit agency that then provides the scholarships. The best example, having met the court test, is in Arizona, a state which is in the forefront of education reform in many ways, including charter schools, of which they have more than any other state, schools which now enroll more than 6% of the state’s K-12 students.

On April 7, 1997 Arizona’s then Gov. Fife Symington signed into law a state income tax credit of up to \$500 for donations to private schools and up to \$200 to support extracurricular activities in public schools that require a fee. The credit is available to every taxpayer who donates the money to nonprofit groups that will use the funds to give scholarships to students in private schools, including religious ones. Among the restrictions are that full or partial scholarships must be awarded on a first-come, first-served basis and donations cannot be used to

provide tuition for a child of the donor. Taken to court by opponents, as expected, the plan was upheld by the Arizona Supreme Court in January of 1999 and the U.S. Supreme Court has declined to review it.

As an aside, even as this program was being enacted into law, the Arizona Education Code already contained the word “vouchers” and they were being used to educate some 2,000 students with emotional or physical problems at public expense in private schools. Several hundred more students who had been disruptive in public schools were being similarly educated.

The same is true in Milwaukee, where the district for years has paid for many more students with problems, or who were themselves problems, to be in private institutions than were eligible for the voucher program enacted by the state at the beginning of the 1990s. Nor are these the only places to do so. It’s common across the nation, with an estimate of at least 100,000 public school students reassigned by their local district to nonpublic facilities, accompanied by public funds to pay for their program.

What makes all of these programs acceptable is that it is the district which selects the students to be so reassigned. They clearly have no problem with students leaving their program, accompanied by the necessary public funds, as long as they are the ones to make the selections. They are only concerned about losing students, or decry the loss of public funds from their budget, when the students themselves are able to make the choice.

The Arizona plan went into effect for the private schools in January of 1998. In the first school year, 1998-99, more than 500 students received tuition assistance from 18 tuition organizations. While this is a tiny fraction of the students who might be aided, this was the first year, and the Arizona Supreme Court had not issued its ruling. The number of students who benefit is expected to increase greatly in future years.

The emotional and, dare we say it, even irrational opposition the public school establishment and its most devoted defenders exhibit towards any program that attempts to make possible the ability of those of limited income to exercise their constitutional right for school choice is perhaps nowhere better expressed than in this lawsuit.

First, if they could win it, might they not jeopardize all privately funded scholarship programs?

Second, they introduced the lawsuit without even waiting to see what effects the law might have. That is, they had no interest in waiting to see if it might prove to be beneficial to the public schools as, in fact, it has. This is consistent with their often stated question as to what is the evidence from research, which they ignore even where it does exist, coupled with their equally often stated opposition to any pilot or limited program which might produce the evidence they claim to want to see.

Third, even now that benefits to the public school have not only been proven but they exceed those to the nonpublic schools, the opposition continues, as in Illinois and elsewhere where such programs are being enacted or considered.

Perhaps superficial thought was given to the credit of \$500 for donations to private school scholarship groups being 2.5 times the \$200 tax credit for specific donations to the public schools. While that is true it ignores the fact that there are far more students in the public schools, by about a 9-1 ratio nationally. Thus if proportional contributions are made among the two sectors, there will be nine \$200 donations to public schools for every \$500 donation to a nonpublic school, or a total dollar ratio of \$1,800 to \$500, better than 3-1.

The Scottsdale School District alone had received \$654,000 in 1998 and more than \$1 million in 1999. Public school districts have begun public relations efforts to acquaint the public with the tax credit program and how they can designate the use of their gifts.

In 1998, the program's first year, even while it was still under the cloud of a legal suit, the public schools received a total of about \$9 million while the scholarship groups received a bit more than \$1.8 million. That's a ratio of 5-1 in favor of the public schools.

Thus opponents, consciously or not, and despite their arguments that public schools need more money, have demonstrated their willingness to have the public schools lose \$5 dollars as long as they can cost the nonpublic schools a fraction of that amount.

The further irrationality, or at least inconsistency, of this opposition was demonstrated recently by President Bill Clinton. A staunch opponent of aid to students in nonpublic schools, he has more than once vetoed such legislation when it passed the Congress, even programs limited to only the District of Columbia. Yet he is equally a staunch supporter of federal student aid programs for higher education, such as Pell Grants and the G.I. Bill. Earlier this year he announced a plan to offer a \$3,000 annual tax credit for expenses by college students, credits that could be used by students at any institution of higher education, including religious.

Illinois: A 1999 education tax credit law provides credit for up to 25% of education-related expenses in excess of \$250, such as tuition, book fees and lab fees, with a maximum of \$500 per family. It promptly faced two court challenges although, as in Arizona, the main benefits seem to go to students in public schools. So far, the courts have upheld the program. In December 1999 a Judge in the Franklin County Circuit Court dismissed a suit filed by the Illinois Federation of Teachers, holding that the credit is full constitutional. Then, on April 21, of this year in another jurisdiction, the Sangamon County Circuit Court dismissed a separate suit filed by the Illinois Education Association. In this case the IEA claimed the program violated four provisions of the state constitution two of which concern the establishment of religion. The court rejected all four claims, labeling one of them as "absurd." The ruling judge also said the program did not involve the spending of any government money since it allowed individuals to spend their own money to educate children. As these are lower court decisions they are subject to appeal and the legal struggle in Illinois may not yet be over.

Note that the two cases were filed by the teachers' unions. One wonders why they are so adamant about preventing parents and their children from exercising their constitutional right to educational choice, and display such animosity to private schools. And I say that as one who was not only a career public educator but who spent more than a dozen years as a top officer or

staff member of major affiliates of both the National Education Association and the American Federation of Teachers, as well as the American Association of University Professors.

Union officers and staff frequently say teachers should be treated as professionals like doctors. Imagine for a moment the public reaction if doctors not only were just concerned about patients in public hospitals but went further and did everything they could to prevent medical attention from being provided to patients in private hospitals.

President Clinton might wish to consider universal tax credits, such as are being successfully implemented in Arizona and Illinois, or the broader version being suggested in Michigan. This plan would provide much greater levels of tax credits so, for example, a major corporation might receive credit for a \$2,000,000 donation to a scholarship group that could then provide \$1,000 scholarships to as many as 2,000 students. The downside is that opponents of school choice proposals generally have the organizational strength and funding to defeat ballot initiatives with the use of scare tactics to frighten voters with the alleged negative consequences of such a plan. Since ballot initiatives are yes or no votes negative tactics too often carry the day.

In Michigan more than the required 302,711 signatures have been obtained to place a constitutional amendment on the ballot which would repeal a prohibition against vouchers and tax credits in basic education while continuing a ban against direct aid to non-public schools.

OTHER ACTIVITY

Legislatures in at least 20 states are currently considering measures which would provide for either vouchers or tax credits. A summary of some current activity with tax credits includes:

Connecticut: where Governor John G. Rowland is recommending a state income tax credit of up to \$500 for tuition at private or religious K-12 schools.

Kentucky: proposed legislation would provide a \$500 tax credit for private school tuition paid by families with adjusted gross incomes of \$75,000 a year or less;

Missouri: a senate bill would allow an income tax deduction for education expenses, including tuition;

New York: a \$500 tax credit with bipartisan support has been proposed for contributions to public schools, private school tuition scholarship organizations, or for home-school expenses;

Pennsylvania: It shouldn't be surprising that Pennsylvania is among the states where interest has been expressed in universal tuition tax credits. As long ago as November 1991 a voucher plan passed the state Senate by a 28-22 margin but fell 14 votes short of full consideration in the House. A June 1995 try in the House fell only about a half dozen votes short of passage. A third try in June of 1999 again fell short of the mark in the House. The margin was so close that any number of factors could have reversed it, one of which would have been

support from conservative legislators who are for reforming the system, and favor school choice, but fear that vouchers will lead to increased government regulation of independent schools as well. While no legislation has been introduced at this writing, a meeting with a number of them earlier this year disclosed considerable support for this alternate approach, and action is anticipated.

South Carolina: a House bill would establish tax credits similar to Arizona;

Utah: A House bill would give tax credits for donations by both individuals and corporations to private-school scholarship foundations; with emphasis on low-income families;

Vermont: (where “tuitioning” has applied from the beginning, and more than 90 towns lack either an elementary or secondary school, or both, and pay the tuition for their students to go elsewhere, including secular nonpublic schools; some have gone to school as far away as Ketchum, Idaho, as well as to schools in Canada, France, and Finland.) A bill has been introduced to permit the creation of Educational Freedom Districts which could allow options from open enrollment all the way to full-scale vouchers;

West Virginia: A public hearing has been held on a bill to allow a \$500 tax credit for homeschoolers, and a \$1,000 tax credit for students in private schools

SUMMARY

Successful school choice proposals to date have come legislatively, as in Minnesota, Arizona and Illinois. As legislation, despite powerful opposition, they can be debated at length and legitimate concerns can be addressed with amendments. By contrast, initiatives require a yes or no vote and amendments are not possible, so wording is crucial to success. Otherwise, as noted earlier, powerful groups may succeed with scare tactics.

Tax credits also play to the concern of those, as has happened in Pennsylvania, who favor school choice but hesitate to vote for student grant proposals because of their fear that government regulations will follow the money. This is not necessarily the case but so many are convinced that it is true that it is a factor that must be considered.

Tax credits apply to money that never went to the government in the first place thus government has little need or authority to regulate their use. The property tax and deductions for mortgage interest are prime examples. As noted, taxpayers save more than \$30 billion in taxes with these deductions but neither federal, state nor local governments attempt to interfere in how the funds are subsequently spent.

In brief, this is an approach which, properly drafted, can work. In Pennsylvania it might win the necessary 26 votes in the Senate, which have even been there for vouchers, and the needed 102 in the House that have not quite been there for student grants in the House.

This is also a program that could supplement student grants, not prohibit them. It is perfectly possible that ultimately both, and other options as well, such as charter schools, will make it possible for everyone to exercise their constitutional right of democracy in education,

something that does not exist in this nation, placing us virtually alone in this regard among the developed nations of the world.

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SAMPLE LEGISLATION

As no two of the 50 states have the same educational code, and none of the three dozen states, plus the District of Columbia and Puerto Rico, have exactly the same charter school law, so, too, it is possible for all of the states to have a functional universal tuition tax credit law even though no two are exactly the same.

There are numerous examples from which to draw, both actual and potential, particularly the Michigan proposal which would be much more extensive than the Arizona law, both as to the ability of individuals and corporations to make donations, and the much high numbers of permissible donations under that proposal. However, the following is taken from Arizona because it has been enacted into law, is functioning, and has met a challenge in court as to its constitutionality. Titles, sections, etc., will obviously vary according to the sequences in each state's legislative codes.

A. For taxable years beginning from and after December 31, 1997, a credit is allowed against the taxes imposed by this title for the amount of voluntary cash contributions made by the taxpayer during the taxable year to a school tuition organization, but not exceeding five hundred dollars in any taxable year. The five hundred dollar limitation also applies to taxpayers who elect to file a joint return for the taxable year, a husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.

B. If the allowable tax credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are no taxes due under this title, the taxpayer may carry the amount of the claim not used to offset the taxes under this title forward for not more than five consecutive taxable years' income tax liability.

C. *The credit allowed by this section is in lieu of any deduction pursuant to Section 170 of the Internal Revenue Code and taken for state tax purposes.*

D. *The tax credit is not allowed if the taxpayer designates the taxpayer's donation to the school tuition organization for the direct benefit of any dependent of the taxpayer.*

E. *For the purposes of this section:*

1. *"Qualified school" means a nongovernmental primary or secondary school in this state that does not discriminate on the basis of race, color, sex, handicap, familial status or national origin and that satisfies the requirements prescribed for private schools in this state on January 1, 1997.*

2. *"School tuition organization" means a charitable organization in this state that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code and that allocates at least ninety percent of its annual revenue for educational scholarships or tuition grants to children to allow them to attend any qualified school of their parents' choice. In addition, to qualify as a school tuition organization the charitable organization shall provide educational scholarships or tuition grants to students without limiting availability to only students of one school.*

(New section)

A. *For taxable years beginning from and after December 31, 1997, a credit is allowed against the taxes imposed by this title for the amount of any fees paid by a taxpayer during the taxable year to a public school located in this state for the support of extra curricular activities of the public school, but not exceeding two hundred dollars.*

B. *The two hundred dollar limitation also applies to taxpayers who elect to file a joint return for the taxable year. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit that would have been allowed for a joint return.*

C. *The credit allowed by this section is in lieu of any deduction pursuant to section 170 of the Internal Revenue Code and taken for state tax purposes.*

D. *If the allowable tax credit exceeds the taxes otherwise due under this title on the claimant's income, or if there are not taxes due under this title, the taxpayer may carry the amount of the claim not used to offset the taxes under this title forward for not more than five consecutive taxable years' income tax liability.*

E. For purposes of this section, “extra curricular activities” means school sponsored activities that require enrolled students to pay a fee in order to participate including fees for:

- 1. Band uniforms.*
- 2. Equipment or uniforms for varsity athletic activities.*
- 3. Scientific laboratory materials.*

(New section) Department of revenue: report of fiscal impact

The director of the department of revenue shall submit a report to the governor, the president of the senate and the speaker of the house of representatives regarding the fiscal impact of the tax credit provided for donations to school tuition organizations on July 1, 1999.

Signed by Governor Fife Symington, 7 April 1997
