

INTERNAL REVENUE SERVICE

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June 14, 2001

The Honorable Phil Gramm
United States Senator
2323 Bryan Street, No.: 2150
Dallas, TX 75201

Attention: Michael FitzGerald

Dear Senator Gramm:

This letter is in response to your inquiry dated May 5, 2001, on behalf of a constituent, Mr. [REDACTED]. Mr. [REDACTED] is concerned that proposed regulations under § 25A of the Internal Revenue Code may prevent his daughter and other students from claiming an education tax credit at [REDACTED] College.

Mr. [REDACTED] also notes that the instructions on IRS Form 8863 (Education Credits) state that the tax credit is available if the educational institution is "eligible to participate in a student aid program administered by the Department of Education." [REDACTED] College, however, is financially independent of the government. Mr. [REDACTED] wishes assurance that the federal government is not trying to coerce "educational conformity by selective allowance of the education tax credit" by withholding the credit from families of students at [REDACTED] College.

The Congress added § 25A by § 201 of the Taxpayer Relief Act of 1997, 1997-4 (Vol. 1) C.B. 13. In general, § 25A allows taxpayers to claim a nonrefundable credit against their federal income tax for the qualified tuition and related expenses of a taxpayer, spouse, or certain dependents. The Committee on Finance of the United States Senate stated that the purpose of the credit is to "assist low- and middle-income families and students in paying for the costs of post-secondary education" S. Rep. No. 105-33, 105th Cong., 1st Sess. 9 (1997), 1997-4 (Vol. 2) C.B. 1089.

Under § 25A(b) the taxpayer may claim a Hope Scholarship Credit for the qualified tuition and related expenses paid during a taxable year for each eligible student. The amount of the credit is the total of 100 percent of the first \$1,000 of qualified tuition and related expenses plus 50 percent of the next \$1,000 of such expenses paid with respect to the same student. Under § 25A(c) the taxpayer may also claim a Lifetime Learning Credit for the qualified tuition and related expenses paid during a taxable year

for students for whom no Hope Scholarship Credit is claimed. The amount of the credit is 20 percent of the first \$5,000 of qualified tuition and related expenses paid by the taxpayer during the taxable year, for education furnished during any academic period beginning in that taxable year (increased to \$10,000 after 2002).

In enacting § 25A the Congress imposed a number of eligibility requirements (such as income ceilings). Section 25A(f)(1)(A) defines the term “qualified tuition and related expenses” to mean tuition and fees required for the enrollment or attendance of the student at an eligible educational institution for courses of instruction. Section 25A(f)(2) defines an “eligible educational institution” to mean an institution that is described in § 481 of the Higher Education Act of 1965 (20 U.S.C. § 1088), and therefore eligible to participate in the student aid programs administered by the Department of Education under title IV of such Act.

In 1999 the Department of Treasury issued proposed Income Tax Regulations under § 25A (64 Fed. Reg. 794 (1999)). The proposed regulations define an “eligible educational institution” to mean a college, university, vocational school, or other postsecondary educational institution that is described in § 481 of the Higher Education Act of 1965. This generally includes all accredited public, nonprofit, and proprietary (privately owned, profit making) postsecondary institutions. The educational institution must either participate in a federal financial aid program under title IV of the Higher Education Act of 1965 (20 U.S.C. § 1070) or be certified by the Department of Education as *eligible* to participate in such a program.

The proposed regulations, therefore, do not alter the statutory mandate of the Congress: Taxpayers may claim the education tax credit under § 25A as long as the educational institution is eligible to participate in a federal financial aid program under title IV of the Higher Education Act of 1965.

I hope this information is helpful. Please call G. Channing Horton, Identification Number 50-03418, at (202) 622-4920, if you have any questions.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By: _____
Robert A. Berkovsky
Chief, Branch 2