

February 21, 1978

TUITION TAX CREDIT PROPOSALS

STATUS

On January 18, 19, and 20, the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance held hearings on S. 2142, the Tuition Tax Credit Act of 1977, sponsored by Senators Packwood (R-Ore.) and Moynihan (D-N.Y.) and forty-eight fellow Senators. In the House, hearings before the full Ways and Means Committee are scheduled for February 14, 15, 16, 17 and 21 on H.R. 9332, a bill identical to S. 2142, sponsored by Congressmen Frenzel (R-Minn.), Railsback (R-Ill.), and James Burke (D-Mass.); and H.R. 9492 by Congressman Delaney (D-N.Y.).

PROVISIONS OF THE BILLS: S. 2142 AND H.R. 9332

These bills provide a tax credit, subtracted directly from the amount of taxes owed, for tuition expenses paid by an individual for himself, his spouse, or his dependents. The amount of this credit will be 50 percent of his tuition payments up to a total credit of \$500 per student. If a taxpayer is entitled to a credit greater than the amount of his tax liability, the difference will be refunded to him in cash. Thus, if a taxpayer paid \$800 in tuition expenses during the year but is liable for only \$250 in income taxes, he would receive a refund of \$150 (since \$400 is 50 percent of \$800).

A credit could be claimed for any part-time or full-time student who attends an eligible elementary or secondary school, a vocational school, or college or university. Eligible elementary and secondary schools are those defined under section 801 (c) and (h) of the Elementary and Secondary Education Act of 1965 and which fulfill state accreditation requirements and are exempt from taxation under section 501 (c) (3) of the Internal Revenue Code. The last requirement assures that such private schools are non-profit and non-discriminatory,

and thus excludes proprietary schools. Eligible institutions of higher education would be those operated by any level of government or those private institutions that are non-profit, tax exempt, and non-discriminatory.

Unlike the numerous bills designed to aid private education that have passed state legislatures, the Tuition Tax Credit Act would aid parents themselves -- not private schools, would aid parents whose children attend public and private schools, and is directed to education at all levels -- elementary through graduate school.

COSTS

The Joint Committee on Taxation estimates that the proposed legislation will result in a 1980 calendar year revenue loss to the Treasury of \$4.7 billion. This figure represents less than one percent of the projected 1980 budget of \$550 billion and is 4 percent of what the nation's taxpayers currently spend every year for education at the local, state, and federal levels. The Committee further estimates that if the 7.7 million students now enrolled in private elementary and secondary schools or institutions of higher education were enrolled in tax supported schools, the education bill to the taxpayer would be an additional \$17 billion every year.

H.R. 9492

The Delaney bill provides for the same tax credit as the two bills already discussed except that it allows the taxpayer an alternative of declaring a maximum \$1,000 tax deduction per student for tuition expenses. Tuition expenses below \$1,000 could be declared dollar for dollar as a deduction. Thus, a taxpayer who spends \$1,300 for tuition expenses for himself or one of his dependents could declare \$1,000 as a deduction from his gross taxable income. A taxpayer who spends \$750 for the same expenses could declare that amount as a deduction. The Delaney bill includes no refundable credit for lower income taxpayers whose tuition expenses are greater than their tax liability. Requirements for eligible institutions are the same as for S. 2142 and H.R. 9332 except that no eligibility requirements are given for elementary and secondary institutions, and thus the bill would include proprietary schools and non-accredited schools.

GOVERNMENT AID TO PRIVATE EDUCATION BACKGROUND

Present law provides no tax credit or tax deduction for personal educational expenses. However, educational expenses which qualify as trade or business expenses may be deducted. In addition, individuals generally may exclude from income scholarships, fellowships, and educational benefits provided through the G.I. Bill and Social Security. Charitable contributions to exempt educational institutions are deductible for income tax purposes on a preferred basis.

Generally, a taxpayer may claim a \$750 personal exemption deduction (and a \$35 credit) for each dependent but only if that dependent has less than \$750 gross income for the taxable year. However, the gross income limitation does not apply if the dependent is the taxpayer's child and either (1) the child is younger than nineteen or (2) the child is a student. The scholarship exclusion, personal exemption for students, and deductibility of gifts to schools, under present law, are expected to produce fiscal 1978 tax expenditures of \$285 million, \$770 million, and \$805 million, respectively (estimates of the Senate Committee on Finance).

In the 1950's, tax deductions against adjusted gross income for some portion of college expenses and an additional personal exemption for each student were the most common legislative proposals for tax relief for education expenses. In the 1960's, tax credit proposals became popular. From 1967 to 1977, six education tax proposals passed the Senate, but none was ever approved by the House of Representatives. Senator Ribicoff sponsored amendments for non-refundable tax credits for college expenses which passed the Senate in 1967 and 1969. Senator Hollings successfully sponsored a nearly identical bill through the Senate in 1971, except that in his bill the tax credits were refundable.

For the last two years, Senator Roth has been sponsoring a tax credit bill for higher education expenses. The amendment has been attached to different bills and has always been deleted in House-Senate conferences, most recently in December of 1977 when the amendment was attached to the Social Security Financing Amendments. In the House, Congressmen Delaney and Frenzel have been championing the cause of tax relief for parents whose children attend private schools. The House had its first opportunity to vote on education tax credits last September when the body passed an amendment to the 1978 Second Concurrent Budget Resolution which set aside \$175 million as start-up funds for higher education tax credits.

The constitutionality of aid to private education, whether through tax relief or direct grants, has been debated for several decades. The Supreme Court has upheld the constitutionality of laws financing transportation to religious schools and the purchase of secular textbooks which are loaned to religious school pupils for use in their school studies. However, the Court has struck down numerous state laws designed to aid private education. In testing the constitutionality of a statute under the establishment clause of the First Amendment, the Court has come to apply three tests:

- (1) the statute must have a secular purpose;
- (2) the primary effect of the statute must neither advance nor inhibit religion;
- (3) the statute must not foster excessive government entanglement with religion.

ON TAX CREDITS

Personal deductions and exemptions from individual income tax are subtracted from adjusted gross income to establish taxable income, to which the rates of the tax scale are applied to compute the tax. Tax credits may be subtracted directly from the computed tax to arrive at the final tax liability. Tax credits are commonly granted as a percentage of a particular item of expenditure or income and may go up to 100 percent. Both the federal and state governments allow tax credits to individual taxpayers as a means of promoting certain activities or as a sign of a particular government interest in certain groups of people. The major examples for 1978 tax returns are the child care credit, credit for the elderly, credit for taxes paid to foreign governments, the gasoline tax credit, tax credit for investment in tangible personal property, credit for political contributions, and credit for a businessman who hires employees under the Work Incentive Program (WIN). The expenses on which a taxpayer bases his credit must have been paid during the tax year he is reporting.

Tax benefits now available to schools, public or non-public, consist of the exemption of their income and property from income and property taxes, exemption of certain transactions from sales or excise taxes in some jurisdictions, and deductibility to donors of their contributions. The last benefit, allowing personal deductions for donations, both for donations to education institutions and for other charities, has long been criticized because, with the progressive income tax scale, higher income taxpayers receive a better tax break for deductible donations than lower income taxpayers. The main effect of this system is a lopsided concentration of gift-giving in the top income brackets and heavy dependence of educational and other institutions on a small number of wealthy individuals and families.

Exemption from taxation of their own income and property is, of course, very helpful to the benefited schools. It reduces their expenses. But it does not help them increase their income, which is what they urgently need. This cannot be done from government sources directly. But government can provide incentives which could substantially boost the schools' revenues from their major private sources: gifts and tuitions.

The Internal Revenue Service reports the following breakdown of all tax credits reported in 1974:

Income Tax Before Credits	
Number of returns	67,707,832
Amount	\$125,079,394,000
Tax Credits	
Number of returns	5,158,184
Amount	\$ 1,614,871,000
Individual Credits (Amounts)	
Retirement Income	\$ 124,307,000
Investment	1,174,372,000
Foreign Tax	291,730,000
Political Contributions	21,975,000
Work Incentive Program	1,092,000
Other Tax Credits	1,388,000
Income Tax After Credits	\$123,464,526,000

At \$4.7 billion per year, the tuition tax credit would be the largest tax credit allowed under law, surpassing all other tax credits combined.

TRENDS IN ENROLLMENT

PUBLIC

The National Center for Educational Statistics (NCES) gives the following trends:

(In Thousands)	1965	1975	1985 (Projected)
K-8	30,563	30,545	28,830
9-12	11,610	14,294	11,928
Higher	3,970	8,835	11,070
Total	46,143	53,674	51,828

HIGHLIGHTS

Enrollment in grades kindergarten-eighth remained the same from 1965-1975, but is projected to drop 6 percent from 1975 to 1985.

Enrollment in grades ninth-twelfth rose 23 percent from 1975-1985, but is projected to drop 16 percent from 1975-1985.

Enrollment in higher education rose 123 percent from 1965-1975 and is projected to rise another 25 percent from 1975-1985.

Total enrollment in public education rose 16 percent from 1965-1975, but is projected to drop 3 percent from 1975 to 1985.

NON-PUBLIC

NCES has periodically surveyed non-public schools to collect statistics that would broadly describe non-public education. But a scientifically complete report on non-public education is not available, and is not likely to be available in the future because of the great varieties of institutional organization of non-public education and because some non-public schools resist any government inquiries for information. NCES conducted a major survey of non-public education in 1970 and again in 1976. What follows is a compilation of statistics from the NCES advance report on Non-public School Statistics 1976-1977 (to which the Council on Private Education was a major contributor) and its Projections of Educational Statistics to 1985-1986. All statistics on non-public education are based on compiled data plus estimates.

Statistics on non-public higher education can be considered accurate. Projections on future enrollment in elementary and secondary schools are at best educated guesswork, and such projections fluctuate yearly. By way of illustration, the NCES Projections on Educational Statistics to 1984-1985, published two years ago, had projected a decline in elementary and secondary enrollment through 1984. But those projections have been contradicted by the subsequent report Projections of Educational Statistics to 1985-1986. All estimates and projections have been thrown in disarray because it has become apparent that the decline in Catholic enrollment has not been as drastic as had been assumed.

(In Thousands)	1965	1975	1985
K-8	4,900	3,900	3,900
9-12	1,400	1,400	1,400
Higher	1,951	2,350	2,290
Total	8,251	7,650	7,590

HIGHLIGHTS

Enrollment in grades kindergarten-eighth declined 20 percent from 1965-1975.

Enrollment in higher education increased 20 percent from 1965-1975, but is projected to decline 3 percent from 1975-1985.

Total non-public enrollment declined 7 percent from 1965-1975 and is projected to decline one percent from 1975-1985.

CHARACTERISTICS OF NON-PUBLIC ELEMENTARY AND SECONDARY EDUCATION

The NCES advance report, Non-Public School Statistics 1976-1977, mentioned above, estimates that 4,804,000 children attended non-public elementary and secondary schools in 1976 -- that is, 9.8 percent of the total elementary and secondary enrollment in the country. Of the total 106,547 elementary and secondary schools in the country, 17,950, or 16.8 percent, are non-public. An obvious conclusion is that non-public schools, with 16.8 percent of total schools but only 9.8 percent of total enrollment, generally have smaller enrollments per school than public schools. The following table is a summary of reported data and, therefore, is based only on those schools responding to the survey. Data were reported by 14,757 (82.2 percent) of the estimated 17,950 schools believed to be in operation in 1976-1977.

Affiliation	Schools	Students
All Schools	14,757	4,234,170
Not affiliated	2,210	475,901
Affiliated	12,547	3,759,269
Baptist	310	87,917
Calvinist	182	47,129
Catholic	8,986	3,110,972
Episcopal	304	73,774
Jewish	264	59,810
Lutheran	1,366	201,257
Seventh Day Adventist	517	46,998
Other	618	130,412

(Roman Catholic not including Eastern Orthodox)

HIGHLIGHTS

85.0 percent of the non-public schools are church related.

60.9 percent of the schools are Catholic and 9.3 percent are Lutheran.

78.3 percent of the pupils are enrolled in Catholic and Lutheran schools, 11.2 percent in non-affiliated schools, and the remaining 10.5 percent distributed among the other religious affiliations.

BREAKDOWN OF ELEMENTARY AND SECONDARY ENROLLMENT BY FAMILY INCOME

ELEMENTARY

Percentage Distribution

Year and Control of School	Enrollment by Family Income, in 1967 Dollars					
	Total Enrolled	Under \$5,000	\$5,000 to \$7,499	\$7,500 to \$9,999	\$10,000 to \$14,999	\$15,000 and over
1975						
Total	100.0	30.6	23.5	18.8	18.1	9.0
Public	100.0	32.9	23.7	18.4	17.1	8.0
Private	100.0	12.4	22.0	21.8	26.3	17.5

SECONDARY

Percentage Distribution

Year and Institutional Control	Enrollment, by Family Income, in Constant 1975 Dollars				
	Under \$5,000	\$5,000 to \$7,499	\$7,500 to \$9,999	\$10,000 to \$14,999	\$15,000 and over
1975					
Total	12.5	10.8	9.5	26.4	40.2
Public	13.2	11.4	9.6	27.2	38.5
Private	4.0	4.0	8.1	22.2	61.7

HIGHLIGHTS

83.9 percent of the children enrolled in private secondary schools and 43.8 percent of the children enrolled in private elementary schools come from the two highest income brackets.

34.4 percent of the children enrolled in private elementary schools but only 8.0 percent of the children enrolled in private secondary schools come from the two lowest income brackets.

Over 50 percent of the children in the nation's private schools come from families with incomes under \$15,000.

The above tables and highlights can be considered to be misleading in that no distinctions of income are given after the level of \$15,000 per year. By any standards, an income of \$15,000 per year is not indicative of "wealth." And one of the prevailing misconceptions about private schools is that their students come almost exclusively from families whose income would be classed as upper middle class. A more realistic picture is shown in the Census Bureau's Current Population Reports, October, 1974, which reveals that there are more children in those schools from families in the \$5,000-\$10,000 bracket than from those in either the \$20,000-\$25,000 or the over-\$25,000 brackets.

CHARACTERISTICS OF HIGHER EDUCATION -- PUBLIC AND NON-PUBLIC SCHOOLS

PUBLIC

The number of public schools of higher education has grown considerably in recent years. These institutions increased from 570 in 1955 to a total of 1,219 in 1975. But the latter figure increases to 1,442 when all separate branch campuses of each university system are counted.

PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN 1975

	<u>Total</u>	<u>Percent</u>
Federal	9	.6
State	836	57.9
Local (city, county, district)	233	16.1
State & Local	334	23.1
State Related	30	2
	<hr/> 1,442	

	<u>Universities</u>	<u>All other four-year</u>	<u>2-year</u>
Number	95	450	897
Enrollment	2,124,221	2,873,921	3,836,366

PRIVATE

From 1955 to 1975, the number of private institutions of higher education rose from 346 to 1,584. Currently:

	<u>Universities</u>	<u>All other four-year</u>	<u>2-year</u>
Number	65	1,288	231
Enrollment	714,045	1,502,553	133,753

AFFILIATION OF PRIVATE COLLEGES IN 1975

	<u>Number</u>	<u>Percent</u>
Independent	802	50.6
Protestant	501	31.6
Catholic	244	15.4
Other Religion	27	2.3
	<hr/> 1,584	

EDUCATION FINANCE

PUBLIC AND NON-PUBLIC

Educational institutions at all levels are estimated to have spent \$131.1 billion in school year 1976-1977, an increase of 86.2 percent from the \$70.4 billion of 1969-1970. These institutions received 10.5 percent of their expended funds from the federal government; 35 percent from state governments; 28.5 percent from local governments; and 26 percent from other sources. (Loans from any source are included in this category. About \$33 million in federal loans to institutions of higher education in 1976 are included. Loans to individual students are also included in "other sources.")

In 1976, 45 percent of local government expenditures were devoted to education. This is more than six times the amount of local funds spent on welfare, health, hospitals, or police and fire protection. In 1976, about 39 percent of state government expenditures were devoted to education, far surpassing expenditures for public welfare, highways, and health. In 1976, federal government expenditures were about 7.8 percent of the total federal budget.

PUBLIC EDUCATION

Public schools at all levels spent \$106.4 billion on education in school year 1976-1977, an increase of 87.3 percent from 1968-1970. Amounts of expenditures by source were \$11.1 billion (10.4 percent) from the federal government; \$45.5 billion (42.8 percent) from state governments; and \$37.3 billion (35.1 percent) from local governments. In addition, public schools received \$12.5 billion from other sources, a statistic concerning higher education almost exclusively.

Elementary and secondary schools consumed \$72.9 billion of the \$106.4 billion spent for public education. These schools received only one-tenth of one percent of their operating funds from sources other than governments. Local governments are the major funders of elementary and secondary schools with \$35.4 billion (48.6 percent) of school expenditures coming from local governments; \$31 billion (42.5 percent) from state governments. Expenditures by elementary and secondary schools increased 77.8 percent from the \$41 billion in 1969-1970.

Of the \$33.5 billion spent by public institutions of higher education in school year 1976-1977 (an increase of 112 percent from 1969-1970), \$14.5 billion (or 43.3 percent) came from state governments; \$4.7 billion (14 percent) from the federal government; and \$1.9 billion (5.8 percent) from local governments. The second largest source of funds, after state governments, for institutions of higher education, \$12.4 billion, or 36.9 percent, came from student tuitions and other fees and from donations.

NON-PUBLIC EDUCATION

In 1976-1977, expenditures by non-public schools at all levels were \$24.7 billion, or 18.8 percent of all money spent by schools, public and non-public combined, in the country. Slightly more than 87 percent (\$21.5 billion) of these expenditures came from fees paid by parents and from private donations. Other sources of these expenditures were: the federal government -- \$2.7 billion (10.0 percent); state governments -- \$.4 billion (1.6 percent); and local governments -- \$.1 billion (.4 percent). Total expenditures of non-public schools increased 81.6 percent from the \$13.6 billion of 1969-1970. In that year, the percentage of expenditures derived from private sources was almost exactly the 1976-1977 percentage: 86.1 percent.

It is impossible to give any total amount of dollars that non-public elementary and secondary schools receive from governments at any level for participation in government education programs. Some local statutes permit the use of publicly-owned school buses to transport children to non-public schools, and other statutes permit loans of some textbooks. But the benefits derived do not show up as expenditures of non-public schools. Results from non-public schools responding to a NCES survey about participation in federal educational assistance programs show that a sizable majority enroll some students

who participate in programs under the Elementary and Secondary School Act (ESEA), 75.6 percent of those responding, and the federal Food and Milk program, 58 percent of those responding. No specifics about the number of students per school participating in those programs or dollar amounts are possible.

Overall, NCES reports that non-public elementary and secondary schools are going it alone by deriving their estimated \$9 billion in expenditures (1976-1977) entirely from private sources.

Rulings of the Supreme Court have been interpreted as allowing some government aid to private colleges that are church-related on the idea that certain of these colleges, though church-affiliated, are not theological seminaries, perform essentially secular educational functions, do not require participation or attendance in religious courses, and do not discriminate on the basis of religion.

Yet, direct government (total federal, state, and local) grants to institutions of higher education were only 20.1 percent of their sources of expenditures in 1976-1977, nearly unchanged from 1969-1970. The federal government contributed \$2.7 billion (17 percent) of the total \$15.7 billion spent by private colleges and graduate schools in 1976-1977, with state and local governments contributing \$.5 billion combined. Tuition fees and other fees, and donations from individuals, totaled \$12.5 billion or 79.9 percent of all expenditures.

A CLOSER LOOK AT COLLEGE EXPENSES

The College Board gives expenses for college students living in residential housing for schools year 1977-1978 as follows:

Institution	Books & Supplies	Room & Board	Personal	Transportation	Tuition & Fees	Total
Public 2-year	\$ 190	\$1,264	\$ 443	\$ 264	\$ 389	\$2,550
Private 2-year	204	1,346	421	232	1,812	4,015
Public 4-year	201	1,383	497	204	621	2,906
Private 4-year	215	1,430	446	244	2,476	4,811

Expenses for resident students living in private housing average about \$200 more and for commuting students about \$500 less.

The total costs of a post-secondary education continue to go up. Viewed over the last six-year period, the mean increase in tuition and fees at public four-year institutions has been 57.2 percent (\$226). Tuition and fees at private four-year institutions show the greatest percentage increase -- 6.3 percent over last year and 63.2 percent since 1970-1971. Tuition and fees at two-year private institutions increased 4.1 percent since last year and 58.4 percent since 1970-1971.

Increase in Mean Tuition and Fees by Institutional
Type and Control

	Increase from 1976-77 to 1977-78 Mean Percentage		Increase from 1970-71 to 1977-78 Mean Percentage	
Public 2-year	\$ 2	0.5%	\$221	131.6%
Private 2-year	72	4.1	668	58.4
Public 4-year	0	-	226	57.2
Private 4-year	147	6.3	959	63.2

(Source: College Board)

EDUCATION AND THE TAX BITE

As mentioned before, education is by far the largest single expenditure of state and local governments. Inevitably accompanying increased spending is a rise in taxes to pay for the increased spending. Per-capita revenues from various tax sources have increased at all levels of government. Most state revenues are obtained from taxes on income, sales, and special items (e.g., gas, tobacco) and intergovernmental aid. Only one percent of state revenues is obtained from property taxes. Although the state share of state-local revenues for public education varies widely from state to state, the average share for 1975-1976 was about 48 percent. New Hampshire provided the smallest share of state-local funding -- 10 percent, while Hawaii provided the largest -- virtually 100 percent. Hawaii is the only state with full state funding of public education.

In 1974-1975, thirty of the fifty states spent over \$1,000 per pupil in public schools. Alaska led all states by spending \$2,345 per pupil; New York spent \$1,650 per pupil; the District of Columbia

\$1,552; and Wyoming \$1,383. Alabama spent the least per pupil: \$663.

It is on the state level that the most dramatic per-capita revenue increases are found, mainly due to increased tax rates on sales and income. State tax receipts from 1965 to 1975 increased more than 160 percent, corporate income tax receipts more than 200 percent, and receipts from personal income taxes by nearly 400 percent.

Local school districts receive about 50 percent of their total tax revenues from local taxes. Although the property tax continues to be a major income source for local governments, and despite a steady increase in the absolute amounts of revenue raised from that source, the proportion of all local governmental revenue derived from the property tax has declined in the last decade, from 42 percent in fiscal year 1976 to an estimated 33 percent in fiscal year 1975. Local government property tax revenue increased over 100 percent in the period from 1962 to 1973. Most strikingly illustrative of increased taxing for school is the rising tax bill for single family urban home owners. For example, the tax paid by a typical home owner in Hartford, Connecticut, increased 116 percent between 1966 and 1972, from \$548 to \$1,182. The tax paid by a typical home owner in Boston during that period rose 113 percent, from \$547 to \$1,164; in Des Moines, Iowa, there was a 45 percent increase, from \$649 to \$944.

Nationwide, combined state and local taxes were 11.9 percent of individual personal income in 1975, an increase of 56.9 percent from 1953 when combined state and local taxes were 7.6 percent of personal income. Total expenditures for education (public and private) for all levels was \$120.1 billion in 1975 or 7.9 percent of the gross national product. In 1959, the year of passage of the first major federal educational act, the National Defense Education Act, total expenditures were \$24.7 billion or 5.1 percent of the gross national product.

SCHOOL BONDS

An additional measure of the effect of public expenditures for education is provided by the results of school bond elections. Both the number of election and the percent of elections where bond sales were approved have dropped considerably. In 1964-1965, the approval rate was 74.4 percent for a total par value of all school bonds of \$2.5 billion; in 1974-1975, it was 46.3 percent for a total par value of all school bonds of \$1.2 billion.

DISCUSSION OF THE ISSUES

THE PROBLEM

Enrollments are declining in public elementary and secondary schools, but costs to the taxpayers continue to skyrocket.

Costs for four-year public colleges have risen 57.2 percent in the last six years; for private four-year colleges, 63.2 percent in the same period.

At least part of the reason for the estimated decrease of one million students in private elementary and secondary schools since 1965 and the mere 20 percent increase in private college enrollment (while public college enrollment increased 123 percent) since 1965 can be attributed to prohibitive costs.

Parents of students in private schools pay 10 percent of their federal tax dollar, 39 percent of their state tax dollar, and 45 percent of their local tax dollar for education, but receive almost nothing in return.

Because of high costs, poor parents have little freedom of choice in the selection of schools for their children.

CONSTITUTIONALITY

Many church-related schools would benefit from the tuition tax credit bills pending in Congress, so some critics say that they violate the First Amendment's establishment clause. Since World War II, the Supreme Court has overturned a number of state laws that established too much government entanglement with church-related schools. Generally, in cases of this kind, the Court has not found fault with the legislative intent leading to enactment. Rather, it has concentrated on the effect of such laws, finding frequently that the effect was impermissible -- that the effect of such legislation was to advance the mission of sectarian schools since most of the recipients of the benefits of such legislation were the Catholic schools of this country.

There is, however, one important difference between these cases and the tuition tax credit bills in Congress, namely, that those cases arose out of state action, while the current bills would emerge from a co-equal branch of the U.S. government. To treat action emerging from the U.S. Congress with anything less than the presumption of constitutionality would require extraordinary considerations of the Supreme Court.

There were those who argued that the National Defense Education Act of 1959 was unconstitutional since the word "education" appears

nowhere in the Constitution. But the judiciary deferred to the Congress, the body of elected representatives, as the branch of government that appropriately determines broad directions of national policy. With the ESEA and Higher Education Acts of 1965, Congress again decided to give government approval and support to education as national policy. The Tuition Tax Credit Act is the most important piece of federal education legislation since 1965. A majority vote of both federal houses would have great weight before the Court.

Several witnesses during the Senate hearings maintained that the establishment clause was originally intended to be a safeguard against the establishment of any particular religious sect, but was never intended to mean that government could not give encouragement to religion in general. Thus, an interpretation of the First Amendment that absolutely excludes religion from the political life of the nation contradicts the important point made by George Washington in his Farewell Address:

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness.

Edwin S. Corwin, one of the most distinguished constitutional scholars, notes:

The historical record shows beyond peradventure that the core idea of an "establishment of religion" comprises the idea of preference; and that any act of public authority favorable to religion in general cannot, without manifest falsification of history, be brought under the ban of that phrase.

In addition, the testimony of E. G. West, Professor of Economics at Carleton University, Ottawa, Canada, before the Senate subcommittee, included an economist's interpretation of the establishment argument.¹ Dr. West argued that the establishment clause of the First Amendment must be considered in conjunction with the free exercise clause of the same amendment:

The free exercise clause states that Congress, in its attitude to religion, shall make no law "prohibiting the free exercise thereof." The fact is

1. Dr. West has also written an article, "Tuition Tax Credit Proposals: An Economic Analysis of the 1978 Packwood/Moynihan Bill," for the Winter 1978 issue of Policy Review. (To be published in late February 1978.)

that a system that taxes everybody to support a public school system prohibits in degree the ability of those parents who normally patronize a parochial school. Under such a system, whenever the parent chooses a parochial school he forgoes the opportunity of receiving a "free" education in the government sector. The forgoing of this opportunity, to the economist at least, is the very essence of the term "cost." In other words a public sector, so financed, automatically imposes costs on the private and parochial sector. As such it cannot be denied that the result is some degree of prohibition of religious education and therefore of religion. (author's emphasis)

EDUCATIONAL FREEDOM AND COSTS

The decline in the approval of school bonds, a national phenomenon, is an indication of the rising parental revolt against increased educational costs which are not accompanied by increased levels of student attainment. Indeed, numerous surveys and studies have shown that student achievement is getting worse and worse. Parents are arguing that they are losing on two counts -- increased costs and poorly educated children. As shown before, the poor are virtually confined to public education because of the costs of alternative private education. Many low-income parents might choose private education if they could afford it. Thus, costs are restricting their freedom of choice in an area of ultimate concern for a parent -- the education of his children.

In the absence of tax credit legislation, or some alternative scheme, many people agree that in the long run the last vestiges of education in the private sector will virtually disappear. In this event, the present near monopoly (90 percent) of publicly provided education will become a full monopoly. Since monopolies always mean uncontrollable costs for the consumer, we can expect further increases in the costs of public education. And, in addition, as has already been pointed out, estimates are that it would cost the public \$17 billion per year to educate all the students now in private schools, if they moved into public schools. The monopoly would begin only after those increased costs are figured in.

Conversely, insofar as the tax credits promote free choice and competition, there will be a new downward trend on costs -- not only in the private sector, but in the public sector also. This will mean that even though the Treasury may lose a revenue of \$4.7 billion, its need for expenditure on education up to, and even beyond, this figure may be less.

Public education is not noted for its cost-efficiency. Many examples of this were brought out at the Senate hearings. For example, it was stated that the Catholic school system in Chicago educates a quarter of a million students with only thirty-seven administrators while the public school system enrolls 1.2 million students with 4,000 administrators. Further, it was pointed out that the public school system in New York City spends \$2,600 per student per year while private schools, excluding the most expensive prep schools, spend \$462 per student per year. And tests of educational achievement show that private school students in New York City outperform public school students. Similarly, the Philadelphia public school system spends \$1,900 per student per year while private schools spend \$400.

Tom Ascik
Policy Analyst