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UNITED STATES CODE ANNOTATED

TITLE 26

Internal Revenue Code

§§ 1 to 60

Comprising All Laws of a General and Permanent Nature
Under Arrangement of the Official Code of the Laws of the United States
with
Annotations from Federal and State Courts

EXHIBIT 1
DATE 1.14.05
HB 137

WEST GROUP
A THOMSON COMPANY

Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by this section) for calendar years after 1983."

Sunset Provisions

All provisions of, and amendments made by, the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub.L. 107–16, June 7, 2001, 115 Stat. 38, not applicable to taxable, plan, or limitation years beginning after December 31, 2010, or to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2010, and the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to be applied and administered to those years, estates, gifts, and transfers as if the provisions and amendments of that Act had never been enacted, see section 901 of Pub.L. 107–16, set out as a note under 26 U.S.C.A. § 1.

Prior Provisions

A prior section 25 was renumbered section 26 of this title.

CROSS REFERENCES

Interest deduction reduced where mortgage credit taken, see 26 USCA § 163.
Volume cap on private activity bonds reduced for mortgage credit certificates, see 26 USCA § 146.

LIBRARY REFERENCES

Administrative Law

Credits allowable, see 26 CFR § 1.31–1 et seq.

American Digest System

Internal Revenue ⚷3520.
Key Number System Topic No. 220.

Corpus Juris Secundum

Internal Revenue, see C.J.S. § 55, 307, 310 to 313, 319, 444.

Encyclopedias

Federal Taxation (1996), 33 Am. Jur. 2d § 1273.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 25A. Hope and Lifetime Learning Credits

(a) Allowance of credit.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year the amount equal to the sum of—

(1) the Hope Scholarship Credit, plus

(2) the Lifetime Learning Credit.

(b) Hope Scholarship Credit.—

(1) Per student credit.—In the case of any eligible student for whom an election is in effect under this section for any taxable year, the Hope Scholarship Credit is an amount equal to the sum of—

(A) 100 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished to the eligible student during

any academic period beginning in such taxable year) as does not exceed $1,000, plus

(B) 50 percent of such expenses so paid as exceeds $1,000 but does not exceed the applicable limit.

(2) Limitations applicable to Hope Scholarship Credit.—

(A) Credit allowed only for 2 taxable years.—An election to have this section apply with respect to any eligible student for purposes of the Hope Scholarship Credit under subsection (a)(1) may not be made for any taxable year if such an election (by the taxpayer or any other individual) is in effect with respect to such student for any 2 prior taxable years.

(B) Credit allowed for year only if individual is at least ½ time student for portion of year.—The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an individual unless such individual is an eligible student for at least one academic period which begins during such year.

(C) Credit allowed only for first 2 years of post-secondary education.—The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for a taxable year with respect to the qualified tuition and related expenses of an eligible student if the student has completed (before the beginning of such taxable year) the first 2 years of postsecondary education at an eligible educational institution.

(D) Denial of credit if student convicted of a felony drug offense.—The Hope Scholarship Credit under subsection (a)(1) shall not be allowed for qualified tuition and related expenses for the enrollment or attendance of a student for any academic period if such student has been convicted of a Federal or State felony offense consisting of the possession or distribution of a controlled substance before the end of the taxable year with or within which such period ends.

(3) Eligible student.—For purposes of this subsection, the term "eligible student" means, with respect to any academic period, a student who—

(A) meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 (20 U.S.C. 1091(a)(1)), as in effect on the date of the enactment of this section, and

(B) is carrying at least ½ the normal full-time work load for the course of study the student is pursuing.

(4) Applicable limit.—For purposes of paragraph (1)(B), the applicable limit for any taxable year is an amount equal to 2

times the dollar amount in effect under paragraph (1)(A) for such taxable year.

(c) Lifetime Learning Credit.—

(1) Per taxpayer credit.—The Lifetime Learning Credit for any taxpayer for any taxable year is an amount equal to 20 percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year (for education furnished during any academic period beginning in such taxable year) as does not exceed $10,000 ($5,000 in the case of taxable years beginning before January 1, 2003).

(2) Special rules for determining expenses.—

(A) Coordination with Hope Scholarship.—The qualified tuition and related expenses with respect to an individual who is an eligible student for whom a Hope Scholarship Credit under subsection (a)(1) is allowed for the taxable year shall not be taken into account under this subsection.

(B) Expenses eligible for Lifetime Learning Credit.—For purposes of paragraph (1), qualified tuition and related expenses shall include expenses described in subsection (f)(1) with respect to any course of instruction at an eligible educational institution to acquire or improve job skills of the individual.

(d) Limitation based on modified adjusted gross income.—

(1) In general.—The amount which would (but for this subsection) be taken into account under subsection (a) for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

(2) Amount of reduction.—The amount determined under this paragraph is the amount which bears the same ratio to the amount which would be so taken into account as—

(A) the excess of—

(i) the taxpayer's modified adjusted gross income for such taxable year, over

(ii) $40,000 ($80,000 in the case of a joint return),

bears to

(B) $10,000 ($20,000 in the case of a joint return).

(3) Modified adjusted gross income.—The term "modified adjusted gross income" means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(e) Election not to have section apply.—A taxpayer may elect not to have this section apply with respect to the qualified tuition and related expenses of an individual for any taxable year.

(f) Definitions.—For purposes of this section—

(1) Qualified tuition and related expenses.—

(A) In general.—The term "qualified tuition and related expenses" means tuition and fees required for the enrollment or attendance of—

(i) the taxpayer,

(ii) the taxpayer's spouse, or

(iii) any dependent of the taxpayer with respect to whom the taxpayer is allowed a deduction under section 151,

at an eligible educational institution for courses of instruction of such individual at such institution.

(B) Exception for education involving sports, etc.—Such term does not include expenses with respect to any course or other education involving sports, games, or hobbies, unless such course or other education is part of the individual's degree program.

(C) Exception for nonacademic fees.—Such term does not include student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.

(2) Eligible educational institution.—The term "eligible educational institution" means an institution—

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this section, and

(B) which is eligible to participate in a program under title IV of such Act.

(g) Special rules.—

(1) Identification requirement.—No credit shall be allowed under subsection (a) to a taxpayer with respect to the qualified tuition and related expenses of an individual unless the taxpayer includes the name and taxpayer identification number of such individual on the return of tax for the taxable year.

(2) Adjustment for certain scholarships, etc.—The amount of qualified tuition and related expenses otherwise taken into account under subsection (a) with respect to an individual for an academic period shall be reduced (before the application of subsections (b), (c), and (d)) by the sum of any amounts paid for the benefit of such individual which are allocable to such period as—

(A) a qualified scholarship which is excludable from gross income under section 117,

(B) an educational assistance allowance under chapter 30, 31, 32, 34, or 35 of title 38, United States Code, or under chapter 1606 of title 10, United States Code, and

(C) a payment (other than a gift, bequest, devise, or inheritance within the meaning of section 102(a)) for such individual's educational expenses, or attributable to such individual's enrollment at an eligible educational institution, which is excludable from gross income under any law of the United States.

(3) Treatment of expenses paid by dependent.—If a deduction under section 151 with respect to an individual is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins—

(A) no credit shall be allowed under subsection (a) to such individual for such individual's taxable year, and

(B) qualified tuition and related expenses paid by such individual during such individual's taxable year shall be treated for purposes of this section as paid by such other taxpayer.

(4) Treatment of certain prepayments.—If qualified tuition and related expenses are paid by the taxpayer during a taxable year for an academic period which begins during the first 3 months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.

(5) Denial of double benefit.—No credit shall be allowed under this section for any expense for which a deduction is allowed under any other provision of this chapter.

(6) No credit for married individuals filing separate returns.—If the taxpayer is a married individual (within the meaning of section 7703), this section shall apply only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

(7) Nonresident aliens.—If the taxpayer is a nonresident alien individual for any portion of the taxable year, this section shall apply only if such individual is treated as a resident alien of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(h) Inflation adjustments.—

(1) Dollar limitation on amount of credit.—

(A) In general.—In the case of a taxable year beginning after 2001, each of the $1,000 amounts under subsection (b)(1) shall be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2000" for "calendar year 1992" in subparagraph (B) thereof.

(B) Rounding.—If any amount as adjusted under subparagraph (A) is not a multiple of $100, such amount shall be rounded to the next lowest multiple of $100.

(2) Income limits.—

(A) In general.—In the case of a taxable year beginning after 2001, the $40,000 and $80,000 amounts in subsection (d)(2) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2000" for "calendar year 1992" in subparagraph (B) thereof.

(B) Rounding.—If any amount as adjusted under subparagraph (A) is not a multiple of $1,000, such amount shall be rounded to the next lowest multiple of $1,000.

(i) Regulations.—The Secretary may prescribe such regulations as may be necessary or appropriate to carry out this section, including regulations providing for a recapture of the credit allowed under this section in cases where there is a refund in a subsequent taxable year of any amount which was taken into account in determining the amount of such credit.

(Added Pub.L. 105–34, Title II, § 201(a), Aug. 5, 1997, 111 Stat. 799, and amended Pub.L. 107–16, Title IV, § 401(g)(2)(A), June 7, 2001, 115 Stat. 60.)

Portions Taken into Account in Determining Amounts Under Subsecs. (b)(1) and (d)(2)(A)(ii)

For portions taken into account in determining amounts under subsecs. (b)(1) and (d)(2)(A)(ii) for tax years beginning in 2002, see section 3.04 of Revenue Procedure 2001–59, set out as a note under 26 U.S.C.A. § 1.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1997 Acts. House Report No. 105–148, Senate Report No. 105–33, House Conference Report No. 105–220, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 678.

2001 Acts. House Conference Report No. 107–84, see 2001 U.S. Code Cong. and Adm. News, p. 46.

References in Text

The Higher Education Act of 1965, referred to in subsecs. (b)(3)(A) and (f)(2)(A) and (B), is Pub.L. 89–329, Nov. 8, 1965,

79 Stat. 1219, as amended, which is classified principally to chapter 28 [section 1001 et seq.] of Title 20, Education. Sections 484(a)(1) and 481 of that Act are classified to sections 1091(a)(1) and 1088, respectively, of Title 20. Title IV of such Act is classified to subchapter IV [section 1070 et seq.] of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title of 1965 Acts note, set out under section 1001 of Title 20 and Tables.

Amendments

2001 Amendments. Subsec. (e). Pub.L. 107–16, § 401(g)(2)(A), rewrote subsec. (e), which formerly read:

"**(e) Election to have section apply.**—

"**(1) In general.**—No credit shall be allowed under subsection (a) for a taxable year with respect to the qualified tuition and related expenses of an individual unless the taxpayer elects to have this section apply with respect to such individual for such year.

"**(2) Coordination with exclusions.**—An election under this subsection shall not take effect with respect to an individual for any taxable year if any portion of any distribution during such taxable year from an education individual retirement account is excluded from gross income under section 530(d)(2).".

Effective and Applicability Provisions

2001 Acts. Pub.L. 107–16, Title IV, § 401(h), June 7, 2001, 115 Stat. 60, provided that: "The amendments made by this section [amending this section and sections 135, 530, and 4973 of this title] shall apply to taxable years beginning after December 31, 2001." [See also Sunset Provisions note set out under this section.]

1997 Acts. Section 201(f) of Pub.L. 105–34 provided that:

"**(1) In General.**—The amendments made by this section [enacting this section and section 6050S of this title and amending sections 135, 6213 and 6724 of this title] shall apply to expenses paid after December 31, 1997 (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

"**(2) Lifetime Learning Credit.**—Section 25A(a)(2) of the Internal Revenue Code of 1986 [subsec. (a)(2) of this section] shall apply to expenses paid after June 30, 1998 (in taxable years ending after such date), for education furnished in academic periods beginning after such dates."

Sunset Provisions

All provisions of, and amendments made by, the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub.L. 107–16, June 7, 2001, 115 Stat. 38, not applicable to taxable, plan, or limitation years beginning after December 31, 2010, or to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2010, and the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to be applied and administered to those years, estates, gifts, and transfers as if the provisions and amendments of that Act had never been enacted, see section 901 of Pub.L. 107–16, set out as a note under 26 U.S.C.A. § 1.

LIBRARY REFERENCES

American Digest System

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Key Number System Topic No. 220.

Corpus Juris Secundum

Internal Revenue, see C.J.S. § 55, 307, 310 to 313, 319, 444.

Encyclopedias

Federal Taxation, 33 Am. Jur. 2d § 1401 et seq.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 25B. Elective deferrals and IRA contributions by certain individuals

(a) Allowance of credit.—In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this

subtitle for the taxable year an amount equal to the applicable percentage of so much of the qualified retirement savings contributions of the eligible individual for the taxable year as do not exceed $2,000.

(b) Applicable percentage.—For purposes of this section, the applicable percentage is the percentage determined in accordance with the following table:

Adjusted Gross Income						
Joint return		Head of a household		All other cases		Applicable percentage
Over	Not over	Over	Not over	Over	Not over	
	$30,000		$22,500		$15,000	50
30,000	32,500	22,500	24,375	15,000	16,250	20
32,500	50,000	24,375	37,500	16,250	25,000	10
50,000		37,500		25,000		0

(c) Eligible individual.—For purposes of this section—

(1) In general.—The term "eligible individual" means any individual if such individual has attained the age of 18 as of the close of the taxable year.

(2) Dependents and full-time students not eligible.—The term "eligible individual" shall not include—

(A) any individual with respect to whom a deduction under section 151 is allowed to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins, and

(B) any individual who is a student (as defined in section 151(c)(4)).

(d) Qualified retirement savings contributions.—For purposes of this section—

(1) In general.—The term "qualified retirement savings contributions" means, with respect to any taxable year, the sum of—

(A) the amount of the qualified retirement contributions (as defined in section 219(e)) made by the eligible individual,

(B) the amount of—

(i) any elective deferrals (as defined in section 402(g)(3)) of such individual, and

(ii) any elective deferral of compensation by such individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer