

111TH CONGRESS
1ST SESSION

H. R. 106

To amend the Internal Revenue Code of 1986 to allow individuals a refundable credit for higher education expenses.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. FATAH introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow individuals a refundable credit for higher education expenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “American Opportunity
5 Tax Credit Act of 2009”.

6 **SEC. 2. REFUNDABLE CREDIT FOR HIGHER EDUCATION EX-**
7 **PENSES.**

8 (a) IN GENERAL.—Subpart C of part IV of sub-
9 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to refundable credits) is amended by insert-
2 ing after section 36 the following new section:

3 **“SEC. 36A. HIGHER EDUCATION EXPENSES.**

4 “(a) ALLOWANCE OF CREDIT.—In the case of any
5 eligible student for whom an election is in effect under
6 this section for any taxable year, there shall be allowed
7 as a credit against the tax imposed by this subtitle for
8 the taxable year an amount equal to 100 percent of so
9 much of the higher education expenses paid by the tax-
10 payer during the taxable year (with respect to attendance
11 of the eligible student at an eligible educational institution
12 during any academic period beginning in such taxable
13 year) as does not exceed \$4,000.

14 “(b) LIMITATIONS.—

15 “(1) HIGHER EDUCATION EXPENSE LIMITA-
16 TION.—The amount of higher education expenses
17 taken into account under subsection (a) with respect
18 to an individual for an academic period shall not ex-
19 ceed the individual’s cost of attendance (as defined
20 in section 472 of the Higher Education Act of 1965,
21 as in effect on the date of the enactment of this sec-
22 tion) for such period at the eligible educational insti-
23 tution with respect to which such higher education
24 expenses were paid.

1 “(2) LIFETIME CREDIT LIMITATION.—The
2 amount of the credit allowed under subsection (a)
3 for any taxable year with respect to any eligible stu-
4 dent shall not exceed the excess of—

5 “(A) \$28,000, over

6 “(B) the aggregate credit allowed under
7 subsection (a) with respect to such eligible stu-
8 dent for all prior taxable years.

9 “(c) DEFINITIONS.—For purposes of this sub-
10 section—

11 “(1) ELIGIBLE STUDENT.—The term ‘eligible
12 student’ means, with respect to any academic period,
13 any individual who meets the requirements of section
14 484(a)(1) of the Higher Education Act of 1965 (20
15 U.S.C. 1091(a)(1)), as in effect on the date of the
16 enactment of the Taxpayer Relief Act of 1997.

17 “(2) HIGHER EDUCATION EXPENSE.—The term
18 ‘higher education expense’ means any expense of a
19 type which is taken into account in determining the
20 cost of attendance (as defined in section 472 of the
21 Higher Education Act of 1965, as in effect on the
22 date of the enactment of this section) of—

23 “(A) the taxpayer,

24 “(B) the taxpayer’s spouse, or

1 “(C) any dependent of the taxpayer with
2 respect to whom the taxpayer is allowed a de-
3 duction under section 151,
4 at an eligible educational institution with respect to
5 the attendance of such individual at such institution
6 for the academic period for which the credit under
7 this section is being determined.

8 “(3) ELIGIBLE EDUCATIONAL INSTITUTION.—
9 The term ‘eligible educational institution’ means an
10 institution—

11 “(A) which is described in section 481 of
12 the Higher Education Act of 1965, as in effect
13 on the date of the enactment of the Taxpayer
14 Relief Act of 1997, and

15 “(B) which is eligible to participate in a
16 program under title IV of the Higher Education
17 Act of 1965.

18 “(d) SPECIAL RULES.—

19 “(1) IDENTIFICATION REQUIREMENT.—No
20 credit shall be allowed under subsection (a) to a tax-
21 payer with respect to an eligible student unless the
22 taxpayer includes the name and taxpayer identifica-
23 tion number of such student on the return of tax for
24 the taxable year.

1 “(2) ADJUSTMENT FOR CERTAIN SCHOLAR-
2 SHIPS.—The amount of higher education expenses
3 otherwise taken into account under subsection (a)
4 with respect to an individual for an academic period
5 shall be reduced (before the application of sub-
6 sections (a) and (b)) by the sum of any amounts
7 paid for the benefit of such individual which are allo-
8 cable to such period as—

9 “(A) a qualified scholarship which is ex-
10 cludable from gross income under section 117,

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

15 “(C) a payment (other than a gift, be-
16 quest, devise, or inheritance within the meaning
17 of section 102(a)) for such student’s edu-
18 cational expenses, or attributable to such indi-
19 vidual’s enrollment at an eligible educational in-
20 stitution, which is excludable from gross income
21 under any law of the United States.

22 “(3) COORDINATION WITH SECTION 25A.—The
23 amount of higher education expenses otherwise
24 taken into account under subsection (a) with respect
25 to an individual for an academic period shall be re-

1 duced (before the application of subsections (a) and
2 (b)) by the amount of such expenses which are taken
3 into account in determining the credit under section
4 25A.

5 “(4) TREATMENT OF EXPENSES PAID BY DE-
6 PENDENT.—If a deduction under section 151 with
7 respect to an individual is allowed to another tax-
8 payer for a taxable year beginning in the calendar
9 year in which such individual’s taxable year begins—

10 “(A) no credit shall be allowed under sub-
11 section (a) to such individual for such individ-
12 ual’s taxable year, and

13 “(B) higher education expenses paid by
14 such individual during such individual’s taxable
15 year shall be treated for purposes of this section
16 as paid by such other taxpayer.

17 “(5) TREATMENT OF CERTAIN PREPAY-
18 MENTS.—If higher education expense is paid by the
19 taxpayer during a taxable year for an academic pe-
20 riod which begins during the first 3 months fol-
21 lowing such taxable year, such academic period shall
22 be treated for purposes of this section as beginning
23 during such taxable year.

24 “(6) DENIAL OF DOUBLE BENEFIT.—No credit
25 shall be allowed under this section for any expense

1 for which deduction is allowed under any other pro-
2 vision of this chapter.

3 “(7) NO CREDIT FOR MARRIED INDIVIDUALS
4 FILING SEPARATE RETURNS.—If the taxpayer is a
5 married individual (within the meaning of section
6 7703), this section shall apply only if the taxpayer
7 and the taxpayer’s spouse file a joint return for the
8 taxable year.

9 “(8) NONRESIDENT ALIENS.—If the taxpayer is
10 a nonresident alien individual for any portion of the
11 taxable year, this section shall apply only if such in-
12 dividual is treated as a resident alien of the United
13 States for purposes of this chapter by reason of an
14 election under subsection (g) or (h) of section 6013.

15 “(e) COMMUNITY SERVICE REQUIREMENT.—

16 “(1) IN GENERAL.—No credit shall be allowed
17 under this section for any taxable year with respect
18 to the higher education expenses of a student unless
19 the student satisfies the community service require-
20 ment of paragraph (2) for such year. The commu-
21 nity service requirement of paragraph (2) shall be
22 treated as satisfied only if such service is verified
23 under regulations prescribed by the Secretary of
24 Education.

1 “(2) REQUIREMENT.—The community service
2 requirement of this paragraph is satisfied for any
3 taxable year only if the student completes at least
4 100 hours of volunteer service during such year
5 for—

6 “(A) a governmental unit,

7 “(B) a hospital, or

8 “(C) an organization described in section
9 501(c)(3) and exempt from tax under section
10 501(a).

11 For purposes of the preceding sentence, service shall
12 not fail to be treated as volunteer service by reason
13 of receiving a stipend for living expenses, but only
14 if the aggregate stipends for the year does not ex-
15 ceed \$600.

16 “(3) EXCEPTION FOR DEATH OR DISABILITY.—
17 Paragraph (1) shall not apply if the failure to meet
18 the community service requirement of paragraph (2)
19 is by reason of the death or disability of the student.

20 “(f) CREDIT PAID DIRECTLY TO EDUCATIONAL IN-
21 STITUTION.—The Secretary of Education shall prescribe
22 regulations under which—

23 “(1) a taxpayer may certify, before making pay-
24 ment of a higher education expense to an eligible
25 educational institution, that the taxpayer reasonably

1 believes that credit would be allowed under this sec-
2 tion for such payment were it made,

3 “(2) the amount of credit, were such payment
4 made, shall be paid to such institution and treated
5 as payment of such expense, and

6 “(3) amounts paid under this subsection in ex-
7 cess of the proper amount of credit are recaptured
8 from the taxpayer.

9 “(g) ELECTION NOT TO HAVE SECTION APPLY.—
10 A taxpayer may elect not to have this section apply with
11 respect to the higher education expenses of an individual
12 for any taxable year.

13 “(h) REGULATIONS.—The Secretary may prescribe
14 such regulations as may be necessary or appropriate to
15 carry out this section, including regulations providing for
16 a recapture of the credit allowed under this section in
17 cases where there is a refund in a subsequent taxable year
18 of any expense which was taken into account in deter-
19 mining the amount of such credit.”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Paragraph (2) of section 1324(b) of title
22 31, United States Code, is amended by inserting
23 “36A,” after “36,”.

24 (2) The table of sections for subpart C of part
25 IV of subchapter A of chapter 1 of such Code is

1 amended by inserting after the item relating to sec-
2 tion 36 the following new item:

“Sec. 36A. Higher education expenses.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to expenses paid after December
5 31, 2009, for education furnished in academic periods be-
6 ginning after such date.

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