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TAX CREDIT—CURRENT STATUS AND PROSPECTS

JAMES ROBINSON*

I am Jim Robinson, the director of the Office of Government Liaison, USCC, and along with the other staff at USCC have been working for better than a year now in an effort to secure tax credits for parents of children attending nonpublic schools. I think many of you will recall that Mr. Lynch talked about this a year ago; I am also aware that there has been a great deal of material sent out by the CREDIT organization. The CREDIT organization is a coalition of nonpublic schools. A national association, I guess, would be the best way to describe it, including the education department at USCC, the National Catholic Education Association, the Jewish Day School National Organization, the Lutheran Schools, the Christian Reform and the National Union of Christian Schools and the Episcopal School Organization. Most of the effort to secure public support for tax credit legislation has been conducted by the CREDIT organization. They have produced, I think, five million pieces of literature that have been distributed through the nonpublic schools of the country. They have carried on a very active campaign and a very fruitful campaign to this point.

Last year, the House Ways and Means Committee held hearings on tax credit bills of which there were more than a hundred introduced in the House of Representatives. In the closing days of the 92nd Congress the Committee marked up a bill and voted to report it or voted really to instruct the preparation of a clean bill and the introduction of it on behalf of the Committee. This bill was introduced as HR 1707. The vote in the Ways and Means Committee was 18 to 7 in favor of the legislation. The detailed Committee report was prepared, but the Ways and Means Committee did not further meet before adjournment in late October and, as a result, the final day of the session of the 92nd Congress, Mr. Burke of Massachusetts, who was acting as sponsor for the Ways and Means Committee of this bill, filed the Committee's prepared Committee report in the Congressional Record. I believe the bill has passed, or are going to pass around, copies of this report. It's an excellent explanation of the legislation approved by the Ways and Means Committee and I will just hit a couple of the high points.

The bill basically would grant to parents of children attending elementary and secondary nonpublic schools a credit equal to 50% of tuition paid

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for the dependent child to attend elementary and secondary schools up to a maximum credit of \$200 per child. The bill contains what we refer to as an income phase-out, in that when a family income, adjusted gross income, exceeds \$18,000 the amount of the tax credit, the total tax credit for the family, is reduced by 5%-\$1 for every \$20 of adjusted gross income in excess of \$18,000. This Committee report that is being circulated, contains a table which shows the effect of this income phase-out in a very simplified fashion and what it produces is that a family with one dependent child, for which it is eligible to receive a tax credit, the tax credit is eliminated when that family's income reaches an adjusted gross income of \$22,000. For a family with two dependent children, eligible tuition payment, the maximum tax credit is eliminated at \$26,000 adjusted gross income and for three dependents at a level of \$30,000 adjusted gross income. The bill was re-introduced at the beginning of this new Congress by Mr. Burke on the first day and is now known as HR 49. It is the identical bill approved by the Ways and Means Committee in October last year.

Since the beginning of the new Congress, the Ways and Means Committee has been engaged up until last week in hearings in the general area of tax reform. The stated intention of the chairman, Mr. Mills, has been that the tax credit proposal approved tentatively last year, but not finally acted upon, would be considered in the context of a general tax reform bill in this Congress. The hearings were concluded last week by testimony from Secretary Schultz in the general area of tax reform and he repeated the testimony given last year by Secretary Schultz and other representatives of the White House and Treasury Department and in support of the tax credit legislation.

There is one change in the administration's details of their recommendation. While last year they recommended a tax credit of 100% of tuition up to \$200 ceiling per child, this year the Treasury has decided to endorse and support the formula approved in the bill by the Ways and Means Committee last year. So, in effect, there will not be a separate administration bill, but the President is supporting HR 49. This year the Treasury repeated its recommendation to the Ways and Means Committee that it consider the possibility of what they call a fully refundable tax credit which many people refer to as a negative income tax credit which would, in effect, provide a grant of federal funds to a family that does not have sufficient taxable income to owe any federal taxes. This was considered by the Ways and Means Committee last year, but was rejected and was not included in the bill as approved by the Committee. I don't anticipate that there will be any change in the Committee's attitude on this particular aspect. Second area, which is a new one from the Treasury, was a recommendation which had been discussed but never really acted upon by the Committee last year and that is to allow a five-year carryover for unused tax credits. In other words, if your family's tax credits amount to \$200 in a year and their total federal tax obligation was \$100, then they would have \$100 of excess credit which could be carried over to the next taxable year

and added on to whatever tax credits were available to them in that year and they would carry forward for five years in this fashion. This is not unique, of course, in the tax code in the area of credits and deductions for charitable contributions and other areas. It probably, I think, will receive much more favorable consideration by the Ways and Means Committee than the fully refundable or negative aspect recommendation from the Treasury because it does not represent a new departure in federal tax policy which a fully refundable or negative tax credit would represent.

Originally this year, the Ways and Means chairman announced that it was his schedule for his Committee to produce a tax reform bill by mid-June with the intention that it would be passed through the House prior to the August recess and with the expectation that following Labor Day the Senate Finance Committee would open hearings and hopefully finish action this year on a tax reform bill. Because of developments in the international monetary situation and because of the action of some of our trading partners in Europe in saying that they would not be willing to open new GAT negotiations unless Congress had given the President sufficient authority to negotiate on behalf of the United States, the Ways and Means chairman has changed his schedule just in the last few weeks and announced that his Committee would set aside the consideration of a tax reform bill and open hearings on a major trade bill. These hearings open this week and are currently scheduled to wind up by the middle of next month with the intention now of passing a trade bill through the House prior to the August recess. This means, of course, that after the Congress returns following Labor Day, the Committee will immediately begin trying to write a tax reform bill. The result, of course, is what amounts to about a six months delay in the original intention of trying to pass a major tax bill this year. As with all such schedules, they are always subject to change and I think at this time it is clearly the intention of the Committee to write a tax bill after the August recess, but there is no assurance that this schedule will be followed. There is also no assurance that the chairman can find enough votes in his Committee or in the House to pass a tax bill. So, I think the question of the prospects for action on tax credits at this time. I would say there is not much prospect of action prior to Labor Day and there is always the threat of additional delays when you are dealing with legislation.

I might say, this year more than a hundred members of the House have introduced tax credit bills. Nearly all of them have introduced or co-sponsored bills that are identical with that approved by the Ways and Means Committee. Our current reading on the support in Congress is that there are sufficient votes in the House of Representatives to pass a tax credit bill or to include a tax credit provision in a general tax reform bill. Now, whether there are sufficient votes to pass a type of tax reform bill that the Ways and Means Committee might produce is not at all clear; however, I think there is sufficient support in the House at least that should tax reform run into such difficulty, that the Committee eventually

decides it does not have the votes for tax reform, there would be sufficient support to pass a separate tax credit bill. Although that is not the usual procedure of the House Committee nor is it the present intention of the Committee to process a separate bill in the area of tax credit. The Senate is a little different situation. It has been very difficult to get a very firm reading on the intentions of the members of the Senate. Partly because some of the Senators, I believe, consider this a controversial measure and they are not sure they are ever going to be forced to vote on it. There does appear to be sufficient support, given a reasonable vote in the House, on the Senate Finance Committee for tax credits at this time. As far as we know, at this point there are no more than half a dozen members of the Senate who are publicly committed in opposition to tax credit and even in a couple of those cases a favorable indication from the Supreme Court prior to a vote on the floor of the Senate could result in changing some of their minds.

The big question mark at this time is the Supreme Court. I am not going to go into the merits or demerits of the arguments in the rather complex case situation before the Court, except to say that the issue of tax benefits has reached the Supreme Court through the appeal of the New York State Tax Exclusion Law. Many of the Senators have indicated that they will wait to see what the Supreme Court says in the New York Tax Exclusion case before making a decision as to where they stand on tax credit. Not many members of the House have taken such positions because they have anticipated that they would be voting on tax credits prior to a Court decision. It now looks as though there will not be an action in the House until after the Court has adjourned for its summer recess and most of the lawyers involved in these cases anticipate the Court will come down with a decision in the New York case prior to the summer recess.

What the Court says, of course, will be extremely influential on Congressional action. The attitude of the majority of the Ways and Means Committee, overwhelming majority, has been that the tax credit bill would be constitutional and that it was within the power of Congress to provide such a credit to the parent based on tuition payment. This was somewhat strengthened in terms of their reading of the constitutional question by the three-judge district court decision in New York which did support the tax exclusion title of their law that is now in the Supreme Court. I would guess that a favorable decision in the New York case would result in a great increase in strength, I mean, support, in the Senate. I would hesitate at this time to say that an unfavorable decision in the New York case would result in a change in attitude on the part of the House on tax credit legislation, but it depends on what the Court says. But, I would say an unfavorable decision, even with some favorable language that might be used to distinguish a federal tax credit act from a state exclusion law, would probably cause us to end up with a little bit short of the number of votes in the Senate. But that is rather speculative since we don't have any idea what the Court might say in the event of an unfavorable ruling in the New York case.