

§ 1.25A-1

26 CFR Ch. I (4-1-09 Edition)

§ 1.25A-5 Special Rules Relating to Characterization and Timing of Payments

- (a) Educational expenses paid by claimed dependent.
- (b) Educational expenses paid by a third party.
 - (1) In general.
 - (2) Special rule for tuition reduction included in gross income of employee.
 - (3) Examples.
- (c) Adjustment to qualified tuition and related expenses for certain excludable educational assistance.
 - (1) In general.
 - (2) No adjustment for excludable educational assistance attributable to expenses paid in a prior year.
 - (3) Scholarships and fellowship grants.
 - (4) Examples.
 - (d) No double benefit.
 - (e) Timing rules.
 - (1) In general.
 - (2) Prepayment rule.
 - (i) In general.
 - (ii) Example.
 - (3) Expenses paid with loan proceeds.
 - (4) Expenses paid through third party installment payment plans.
 - (i) In general.
 - (ii) Example.
 - (f) Refund of qualified tuition and related expenses.
 - (1) Payment and refund of qualified tuition and related expenses in the same taxable year.
 - (2) Payment of qualified tuition and related expenses in one taxable year and refund in subsequent taxable year before return filed for prior taxable year.
 - (3) Payment of qualified tuition and related expenses in one taxable year and refund in subsequent taxable year.
 - (i) In general.
 - (ii) Recapture amount.
 - (4) Refund of loan proceeds treated as refund of qualified tuition and related expenses.
 - (5) Excludable educational assistance received in a subsequent taxable year treated as a refund.
 - (6) Examples.

[T.D. 9034, 67 FR 78691, Dec. 26, 2002]

§ 1.25A-1 Calculation of education tax credit and general eligibility requirements.

(a) *Amount of education tax credit.* An individual taxpayer is allowed a non-refundable education tax credit against income tax imposed by chapter 1 of the Internal Revenue Code for the taxable year. The amount of the education tax credit is the total of the Hope Scholarship Credit (as described in § 1.25A-3) plus the Lifetime Learning Credit (as

described in § 1.25A-4). For limitations on the credits allowed by subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code, see section 26.

(b) *Coordination of Hope Scholarship Credit and Lifetime Learning Credit—(1) In general.* In the same taxable year, a taxpayer may claim a Hope Scholarship Credit for each eligible student's qualified tuition and related expenses (as defined in § 1.25A-2(d)) and a Lifetime Learning Credit for one or more other students' qualified tuition and related expenses. However, a taxpayer may not claim both a Hope Scholarship Credit and a Lifetime Learning Credit with respect to the same student in the same taxable year.

(2) *Hope Scholarship Credit.* Subject to certain limitations, a Hope Scholarship Credit may be claimed for the qualified tuition and related expenses paid during a taxable year with respect to each eligible student (as defined in § 1.25A-3(d)). Qualified tuition and related expenses paid during a taxable year with respect to one student may not be taken into account in computing the amount of the Hope Scholarship Credit with respect to any other student. In addition, qualified tuition and related expenses paid during a taxable year with respect to any student for whom a Hope Scholarship Credit is claimed may not be taken into account in computing the amount of the Lifetime Learning Credit.

(3) *Lifetime Learning Credit.* Subject to certain limitations, a Lifetime Learning Credit may be claimed for the aggregate amount of qualified tuition and related expenses paid during a taxable year with respect to students for whom no Hope Scholarship Credit is claimed.

(4) *Examples.* The following examples illustrate the rules of this paragraph (b):

Example 1. In 1999, Taxpayer A pays qualified tuition and related expenses for his dependent, B, to attend College Y during 1999. Assuming all other relevant requirements are met, Taxpayer A may claim either a Hope Scholarship Credit or a Lifetime Learning Credit with respect to dependent B, but not both. See § 1.25A-3(a) and § 1.25A-4(a).

Example 2. In 1999, Taxpayer C pays \$2,000 in qualified tuition and related expenses for her dependent, D, to attend College Z during 1999. In 1999, Taxpayer C also pays \$500 in

qualified tuition and related expenses to attend a computer course during 1999 to improve Taxpayer C's job skills. Assuming all other relevant requirements are met, Taxpayer C may claim a Hope Scholarship Credit for the \$2,000 of qualified tuition and related expenses attributable to dependent D (see §1.25A-3(a)) and a Lifetime Learning Credit (see §1.25A-4(a)) for the \$500 of qualified tuition and related expenses incurred to improve her job skills.

Example 3. The facts are the same as in *Example 2*, except that Taxpayer C pays \$3,000 in qualified tuition and related expenses for her dependent, D, to attend College Z during 1999. Although a Hope Scholarship Credit is available only with respect to the first \$2,000 of qualified tuition and related expenses paid with respect to D (see §1.25A-3(a)), Taxpayer C may not add the \$1,000 of excess expenses to her \$500 of qualified tuition and related expenses in computing the amount of the Lifetime Learning Credit.

(c) *Limitation based on modified adjusted gross income*—(1) *In general.* The education tax credit that a taxpayer may otherwise claim is phased out ratably for taxpayers with modified adjusted gross income between \$40,000 and \$50,000 (\$80,000 and \$100,000 for married individuals who file a joint return). Thus, taxpayers with modified adjusted gross income above \$50,000 (or \$100,000 for joint filers) may not claim an education tax credit.

(2) *Modified adjusted gross income defined.* The term *modified adjusted gross income* means the adjusted gross income (as defined in section 62) of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933 (relating to income earned abroad or from certain U.S. possessions or Puerto Rico).

(3) *Inflation adjustment.* For taxable years beginning after 2001, the amounts in paragraph (c)(1) of this section will be increased for inflation occurring after 2000 in accordance with section 1(f)(3). If any amount adjusted under this paragraph (c)(3) is not a multiple of \$1,000, the amount will be rounded to the next lowest multiple of \$1,000.

(d) *Election.* No education tax credit is allowed unless a taxpayer elects to claim the credit on the taxpayer's federal income tax return for the taxable year in which the credit is claimed. The election is made by attaching Form 8863, "Education Credits (Hope

and Lifetime Learning Credits)," to the federal income tax return.

(e) *Identification requirement.* No education tax credit is allowed unless a taxpayer includes on the federal income tax return claiming the credit the name and the taxpayer identification number of the student for whom the credit is claimed. For rules relating to assessment for an omission of a correct taxpayer identification number, see section 6213(b) and (g)(2)(J).

(f) *Claiming the credit in the case of a dependent*—(1) *In general.* If a student is a claimed dependent of another taxpayer, only that taxpayer may claim the education tax credit for the student's qualified tuition and related expenses. However, if another taxpayer is eligible to, but does not, claim the student as a dependent, only the student may claim the education tax credit for the student's qualified tuition and related expenses.

(2) *Examples.* The following examples illustrate the rules of this paragraph (f):

Example 1. In 1999, Taxpayer A pays qualified tuition and related expenses for his dependent, B, to attend University Y during 1999. Taxpayer A claims B as a dependent on his federal income tax return. Therefore, assuming all other relevant requirements are met, Taxpayer A is allowed an education tax credit on his federal income tax return, and B is not allowed an education tax credit on B's federal income tax return. The result would be the same if B paid the qualified tuition and related expenses. See §1.25A-5(a).

Example 2. In 1999, Taxpayer C has one dependent, D. In 1999, D pays qualified tuition and related expenses to attend University Z during 1999. Although Taxpayer C is eligible to claim D as a dependent on her federal income tax return, she does not do so. Therefore, assuming all other relevant requirements are met, D is allowed an education tax credit on D's federal income tax return, and Taxpayer C is not allowed an education tax credit on her federal income tax return, with respect to D's education expenses. The result would be the same if C paid the qualified tuition and related expenses on behalf of D. See §1.25A-5(b).

(g) *Married taxpayers.* If a taxpayer is married (within the meaning of section 7703), no education tax credit is allowed to the taxpayer unless the taxpayer and the taxpayer's spouse file a joint Federal income tax return for the taxable year.

(h) *Nonresident alien taxpayers and dependents.* If a taxpayer or the taxpayer's spouse is a nonresident alien for any portion of the taxable year, no education tax credit is allowed unless the nonresident alien is treated as a resident alien by reason of an election under section 6013(g) or (h). In addition, if a student is a nonresident alien, a taxpayer may not claim an education tax credit with respect to the qualified tuition and related expenses of the student unless the student is a claimed dependent (as defined in § 1.25A-2(a)).

[T.D. 9034, 67 FR 78691, Dec. 26, 2002]

§ 1.25A-2 Definitions.

(a) *Claimed dependent.* A *claimed dependent* means a dependent (as defined in section 152) for whom a deduction under section 151 is allowed on a taxpayer's federal income tax return for the taxable year. Among other requirements under section 152, a nonresident alien student must be a resident of a country contiguous to the United States in order to be treated as a dependent.

(b) *Eligible educational institution—(1) In general.* In general, an *eligible educational institution* means a college, university, vocational school, or other postsecondary educational institution that is—

(i) Described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on August 5, 1997, (generally all accredited public, non-profit, and proprietary postsecondary institutions); and

(ii) Participating in a Federal financial aid program under title IV of the Higher Education Act of 1965 or is certified by the Department of Education as eligible to participate in such a program but chooses not to participate.

(2) *Rules on Federal financial aid programs.* For rules governing an educational institution's eligibility to participate in Federal financial aid programs, see 20 U.S.C. 1070; 20 U.S.C. 1094; and 34 CFR 600 and 668.

(c) *Academic period.* *Academic period* means a quarter, semester, trimester, or other period of study as reasonably determined by an eligible educational institution. In the case of an eligible educational institution that uses credit hours or clock hours, and does not have

academic terms, each payment period (as defined in 34 CFR 668.4, revised as of July 1, 2002) may be treated as an academic period.

(d) *Qualified tuition and related expenses—(1) In general.* *Qualified tuition and related expenses* means tuition and fees required for the enrollment or attendance of a student for courses of instruction at an eligible educational institution.

(2) *Required fees—(i) In general.* Except as provided in paragraph (d)(3) of this section, the test for determining whether any fee is a qualified tuition and related expense is whether the fee is required to be paid to the eligible educational institution as a condition of the student's enrollment or attendance at the institution.

(ii) *Books, supplies, and equipment.* Qualified tuition and related expenses include fees for books, supplies, and equipment used in a course of study only if the fees must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(iii) *Nonacademic fees.* Except as provided in paragraph (d)(3) of this section, qualified tuition and related expenses include fees charged by an eligible educational institution that are not used directly for, or allocated to, an academic course of instruction only if the fee must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(3) *Personal expenses.* Qualified tuition and related expenses do not include the costs of room and board, insurance, medical expenses (including student health fees), transportation, and similar personal, living, or family expenses, regardless of whether the fee must be paid to the eligible educational institution for the enrollment or attendance of the student at the institution.

(4) *Treatment of a comprehensive or bundled fee.* If a student is required to pay a fee (such as a comprehensive fee or a bundled fee) to an eligible educational institution that combines charges for qualified tuition and related expenses with charges for personal expenses described in paragraph (d)(3) of this section, the portion of the