

112TH CONGRESS
2D SESSION

S. 3267

To amend the Internal Revenue Code of 1986 to extend and modify the American Opportunity Tax Credit, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2012

Mr. SCHUMER (for himself, Mr. KERRY, and Mr. MENENDEZ) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to extend and modify the American Opportunity Tax Credit, and for other purposes.

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 Permanence and Consolidation Act of 2012”.

6 **SEC. 2. EXTENSION AND MODIFICATION OF AMERICAN OP-**
7 **PORTUNITY TAX CREDIT.**

8 (a) IN GENERAL.—Section 25A of the Internal Rev-
9 enue Code of 1986 is amended to read as follows:

1 **“SEC. 25A. AMERICAN OPPORTUNITY TAX CREDIT.**

2 “(a) ALLOWANCE OF CREDIT.—In the case of an in-
3 dividual who is an eligible student for any taxable year,
4 there shall be allowed as a credit against the tax imposed
5 by this chapter for such taxable year the amount deter-
6 mined under subsection (b) with respect to such indi-
7 vidual.

8 “(b) AMOUNT OF CREDIT.—

9 “(1) STUDENT ENROLLED AT LEAST $\frac{1}{2}$ TIME.—

10 In the case of an eligible student who is carrying at
11 least $\frac{1}{2}$ the normal full-time workload for the course
12 of study the student is pursuing, the amount deter-
13 mined under this subsection with respect to such in-
14 dividual is the sum of—

15 “(A) 100 percent of so much of the quali-
16 fied tuition and related expenses paid by the
17 taxpayer during the taxable year (for education
18 furnished to the eligible student during any
19 academic period beginning in such taxable year)
20 as does not exceed \$2,000, plus

21 “(B) 25 percent of such expenses so paid
22 as exceeds \$2,000 but does not exceed \$6,000.

23 “(2) OTHER STUDENTS.—In the case of an eli-
24 gible student not described in paragraph (1), the
25 amount determined under this subsection with re-
26 spect to such individual is 30 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 \$10,000.

“(c) DOLLAR LIMITATIONS.—

“(1) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

“(A) IN GENERAL.—The amount which would (but for this paragraph) be taken into account under this section for the taxable year shall be reduced (but not below zero) by the amount determined under paragraph (2).

“(B) 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—

“(i) the excess of—

“(I) the taxpayer’s modified adjusted gross income for such taxable year, over

“(II) \$80,000 (\$160,000 in the case of a joint return), bears to

1 “(ii) \$20,000 (\$40,000 in the case of
2 a joint return).

3 “(C) MODIFIED ADJUSTED GROSS IN-
4 COME.—For purposes of this paragraph, the
5 term ‘modified adjusted gross income’ means
6 the adjusted gross income of the taxpayer for
7 the taxable year increased by any amount ex-
8 cluded from gross income under section 911,
9 931, or 933.

10 “(2) LIMITATION BASED ON AMOUNT OF
11 TAX.—In the case of a taxable year to which section
12 26(a)(2) does not apply, the credit allowed under
13 this section shall not exceed the excess of—

14 “(A) the sum of the regular tax liability
15 (as defined in section 26(b)) plus the tax im-
16 posed by section 55, over

17 “(B) the sum of the credits allowable
18 under this subpart (other than this subsection
19 and sections 23, 25D, and 30D) and section 27
20 for the taxable year.

21 “(d) OTHER LIMITATIONS AND SPECIAL RULES.—
22 For purposes of this section:

23 “(1) LIFETIME DOLLAR LIMITATION.—In the
24 case of qualified tuition and related expenses with
25 respect to any individual, the aggregate amount of

1 the credits claimed under this section for all taxable
2 years shall not exceed \$15,000, determined without
3 regard to whether—

4 “(A) such credits are claimed on the re-
5 turn of tax filed by the individual or by another
6 taxpayer, or

7 “(B) such expenses are treated as paid by
8 the individual or by another taxpayer.

9 “(2) REPORTING.—No credit shall be allowed
10 under this section to a taxpayer with respect to the
11 qualified tuition and related expenses of an eligible
12 student unless the taxpayer includes the name and
13 taxpayer identification number of such eligible stu-
14 dent on the return of tax for the taxable year.

15 “(3) ADJUSTMENT FOR CERTAIN SCHOLAR-
16 SHIPS, ETC.—

17 “(A) IN GENERAL.—The amount of quali-
18 fied tuition and related expenses otherwise
19 taken into account under this section with re-
20 spect to an individual for an academic period
21 shall be reduced (before the application of sub-
22 sections (b) and (c)) by the sum of any
23 amounts paid for the benefit of such individual
24 which are allocable to such period as—

1 “(i) a qualified scholarship which is
 2 excludable from gross income under section
 3 117,

4 “(ii) an educational assistance allow-
 5 ance under chapter 30, 31, 32, 34, or 35
 6 of title 38, United States Code, or under
 7 chapter 1606 of title 10, United States
 8 Code, and

9 “(iii) a payment (other than a gift,
 10 bequest, devise, or inheritance within the
 11 meaning of section 102(a)) for such indi-
 12 vidual’s educational expenses, or attrib-
 13 utable to such individual’s enrollment at an
 14 eligible educational institution, which is ex-
 15 cludable from gross income under any law
 16 of the United States.

17 “(B) COORDINATION WITH PELL GRANTS
 18 NOT USED FOR QUALIFIED TUITION AND RE-
 19 LATED EXPENSES.—Any amount determined
 20 with respect to an individual under subpara-
 21 graph (A) which is attributable to a Federal
 22 Pell Grant under section 401 of the Higher
 23 Education Act of 1965 shall be reduced (but
 24 not below zero) by the amount of the expenses
 25 (other than qualified tuition and related ex-

penses) which are taken into account in determining the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, as in effect on the date of the enactment of the American Opportunity Tax Credit Permanence and Consolidation Act of 2012) of such individual at an eligible educational institution for the academic period for which the credit under this section is being determined.

“(4) 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 this section 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.

“(5) 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

1 months following such taxable year, such academic
2 period shall be treated for purposes of this section
3 as beginning during such taxable year.

4 “(6) DENIAL OF DOUBLE BENEFIT.—No credit
5 shall be allowed under this section for any expense
6 for which a deduction is allowed under any other
7 provision of this chapter.

8 “(7) NO CREDIT FOR MARRIED INDIVIDUALS
9 FILING SEPARATE RETURNS.—If the taxpayer is a
10 married individual (within the meaning of section
11 7703), this section shall apply only if the taxpayer
12 and the taxpayer’s spouse file a joint return for the
13 taxable year.

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

20 “(e) ELECTION NOT TO HAVE SECTION APPLY.—A
21 taxpayer may elect not to have this section apply with re-
22 spect to the qualified tuition and related expenses of an
23 individual for any taxable year.

24 “(f) DEFINITIONS.—For purposes of this section:

1 “(1) ELIGIBLE STUDENT.—The term ‘eligible
2 student’ means, with respect to any taxable year, an
3 individual who—

4 “(A) is enrolled for at least one academic
5 period which begins during such taxable year at
6 an eligible educational institution, and

7 “(B) meets the requirements of section
8 484(a)(1) of the Higher Education Act of 1965,
9 as in effect on the date of the enactment of the
10 American Opportunity Tax Credit Permanence
11 and Consolidation Act of 2012.

12 “(2) QUALIFIED TUITION AND RELATED EX-
13 PENSES.—

14 “(A) IN GENERAL.—The term ‘qualified
15 tuition and related expenses’ means tuition,
16 fees, and course materials required for the en-
17 rollment or attendance of—

18 “(i) the taxpayer,

19 “(ii) the taxpayer’s spouse, or

20 “(iii) any dependent of the taxpayer

21 with respect to whom the taxpayer is al-

22 lowed a deduction under section 151,

23 at an eligible educational institution for courses
24 of instruction of such individual at such institu-
25 tion.

1 “(B) EXCEPTION FOR EDUCATION INVOLV-
 2 ING SPORTS, ETC.—Such term does not include
 3 expenses with respect to any course or other
 4 education involving sports, games, or hobbies,
 5 unless such course or other education is part of
 6 the individual’s degree program.

7 “(C) EXCEPTION FOR NONACADEMIC
 8 FEES.—Such term does not include student ac-
 9 tivity fees, athletic fees, insurance expenses, or
 10 other expenses unrelated to an individual’s aca-
 11 demic course of instruction.

12 “(D) COMPUTER TECHNOLOGY AND
 13 EQUIPMENT.—Such term includes expenses for
 14 the purchase of computer technology or equip-
 15 ment (as defined in section 170(e)(6)(F)(i)), or
 16 Internet access and related services, only to the
 17 extent the purchase of such technology, equip-
 18 ment, or services is specifically required by the
 19 individual’s academic course of instruction or
 20 degree program.

21 “(3) ELIGIBLE EDUCATIONAL INSTITUTION.—
 22 The term ‘eligible educational institution’ means an
 23 institution—

24 “(A) which is described in section 481 of
 25 the Higher Education Act of 1965, as in effect

1 on the date of the enactment of the American
2 Opportunity Tax Credit Permanence and Con-
3 solidation Act of 2012, and

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

6 “(g) PORTION OF CREDIT REFUNDABLE.—Forty
7 percent of the credit allowed under this section (deter-
8 mined after application of subsections (c)(1) and (d) and
9 without regard to this subsection and section 26(a)(2) or
10 subsection (c)(2), as the case may be) shall be treated as
11 a credit allowable under subpart C (and not allowed under
12 this section). The preceding sentence shall not apply to
13 any taxpayer for any taxable year if such taxpayer is a
14 child to whom subsection (g) of section 1 applies for such
15 taxable year.

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

23 (b) CLERICAL AMENDMENT.—The item relating to
24 section 25A in the table of sections for subpart A of part

1 IV of subchapter A of chapter 1 of the Internal Revenue
 2 Code of 1986 is amended to read as follows:

“Sec. 25A. American Opportunity Tax Credit.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) Subparagraph (B) of section 24(b)(3) of the
 5 Internal Revenue Code of 1986 is amended by strik-
 6 ing “25A(i)” and inserting “25A”.

7 (2) Clause (ii) of section 25(e)(1)(C) of such
 8 Code is amended by striking “25A(i)” and inserting
 9 “25A”.

10 (3) Paragraph (2) of section 25B(g) of such
 11 Code is amended by striking “25A(i)” and inserting
 12 “25A”.

13 (4) Paragraph (1) of section 26(a) of such Code
 14 is amended by striking “25A(i)” and inserting
 15 “25A”.

16 (5) Subparagraph (B) of section 72(t)(7) of
 17 such Code is amended by striking “25A(g)(2)” and
 18 inserting “25A(d)(3)”.

19 (6) Paragraph (2) of section 221(d) of such
 20 Code is amended—

21 (A) by striking “25A(g)(2)” in subpara-
 22 graph (B) and inserting “25A(d)(3)”, and

23 (B) by striking “25A(f)(2)” and inserting
 24 “25A(f)(3)”.

1 (7) Paragraph (3) of section 221(d) of such
 2 Code is amended by striking “25A(b)(3)” and in-
 3 serting “25A(f)(1) (but only with respect to a stu-
 4 dent who is carrying at least $\frac{1}{2}$ the normal full-time
 5 workload for the course of study the student is pur-
 6 suing)”.

7 (8) Paragraph (1) of section 222(d) of such
 8 Code is amended—

9 (A) by striking “25A(f)” and inserting
 10 “25A(f)(2)”, and

11 (B) by striking “25A(g)(2)” and inserting
 12 “25A(d)(3)”.

13 (9) Clause (v) of section 529(c)(3)(B) of such
 14 Code is amended—

15 (A) by striking “25A(g)(2)” in subclause
 16 (I) and inserting “25A(d)(3)”, and

17 (B) by striking “HOPE AND LIFETIME
 18 LEARNING CREDITS” in the heading and insert-
 19 ing “AMERICAN OPPORTUNITY CREDIT”.

20 (10) Clause (i) of section 529(e)(3)(B) of such
 21 Code is amended by striking “25A(b)(3)” and in-
 22 serting “25A(f)(1) (but only with respect to a stu-
 23 dent who is carrying at least $\frac{1}{2}$ the normal full-time
 24 workload for the course of study the student is pur-
 25 suing)”.

1 (11) Subparagraph (C) of section 530(d)(2) of
2 such Code is amended—

3 (A) by striking “25A(g)(2)” in clause (i)(I)
4 and inserting “25A(d)(3)”, and

5 (B) by striking “HOPE AND LIFETIME
6 LEARNING CREDITS” in the heading and insert-
7 ing “AMERICAN OPPORTUNITY CREDIT”.

8 (12) Clause (iii) of section 530(d)(4)(B) of such
9 Code is amended by striking “25A(g)(2)” and in-
10 sserting “25A(d)(3)”.

11 (13) Subsection (i) of section 904 of such Code
12 is amended by striking “25A(i)” and inserting
13 “25A”.

14 (14) Paragraph (2) of section 1400C(d) of such
15 Code is amended by striking “25A(i)” and inserting
16 “25A”.

17 (15) Section 1400O of such Code is amended—

18 (A) by striking “25A(f)(2)” and inserting
19 “25A(f)(3)”,

20 (B) by inserting “(as in effect on the date
21 of the enactment of this section)” after
22 “25A(b)(1)” in paragraph (2), and

23 (C) by inserting “(as in effect on the date
24 of the enactment of this section)” after
25 “25A(c)(1)” in paragraph (3).

(18) Subparagraph (J) of section 6213(g)(2) of such Code is amended by striking “25A(g)(1)” and inserting “25A(d)(2)”.

13 SEC. 3. EXPANSION OF PELL GRANT EXCLUSION FROM
14 GROSS INCOME.

“(1) as a scholarship or fellowship grant to the extent the individual establishes that, in accordance with the conditions of the grant, such amount was used for qualified tuition and related expenses, or

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1 portunity Tax Credit Permanence and Consolidation
2 Act of 2012).”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to taxable years beginning after
5 December 31, 2011.

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