

§ 1.25A-2

26 CFR Ch. I (4-1-06 Edition)

(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

fee that is allocable to personal expenses is not included in qualified tuition and related expenses. The determination of what portion of the fee relates to qualified tuition and related expenses and what portion relates to personal expenses must be made by the institution using a reasonable method of allocation.

(5) *Hobby courses.* Qualified tuition and related expenses do not include expenses that relate to any course of instruction or other education that involves sports, games, or hobbies, or any noncredit course, unless the course or other education is part of the student's degree program, or in the case of the Lifetime Learning Credit, the student takes the course to acquire or improve job skills.

(6) *Examples.* The following examples illustrate the rules of this paragraph (d). In each example, assume that the institution is an eligible educational institution and that all other relevant requirements to claim an education tax credit are met. The examples are as follows:

Example 1. University V offers a degree program in dentistry. In addition to tuition, all students enrolled in the program are required to pay a fee to University V for the rental of dental equipment. Because the equipment rental fee must be paid to University V for enrollment and attendance, the tuition and the equipment rental fee are qualified tuition and related expenses.

Example 2. First-year students at College W are required to obtain books and other reading materials used in its mandatory first-year curriculum. The books and other reading materials are not required to be purchased from College W and may be borrowed from other students or purchased from off-campus bookstores, as well as from College W's bookstore. College W bills students for any books and materials purchased from College W's bookstore. The fee that College W charges for the first-year books and materials purchased at its bookstore is not a qualified tuition and related expense because the books and materials are not required to be purchased from College W for enrollment or attendance at the institution.

Example 3. All students who attend College X are required to pay a separate student activity fee in addition to their tuition. The student activity fee is used solely to fund on-campus organizations and activities run by students, such as the student newspaper and the student government (no portion of the fee covers personal expenses). Although labeled as a student activity fee, the fee is re-

quired for enrollment or attendance at College X. Therefore, the fee is a qualified tuition and related expense.

Example 4. The facts are the same as in *Example 3*, except that College X offers an optional athletic fee that students may pay to receive discounted tickets to sports events. The athletic fee is not required for enrollment or attendance at College X. Therefore, the fee is not a qualified tuition and related expense.

Example 5. College Y requires all students to live on campus. It charges a single comprehensive fee to cover tuition, required fees, and room and board. Based on College Y's reasonable allocation, sixty percent of the comprehensive fee is allocable to tuition and other required fees not allocable to personal expenses, and the remaining forty percent of the comprehensive fee is allocable to charges for room and board and other personal expenses. Therefore, only sixty percent of College Y's comprehensive fee is a qualified tuition and related expense.

Example 6. As a degree student at College Z, Student A is required to take a certain number of courses outside of her chosen major in Economics. To fulfill this requirement, Student A enrolls in a square dancing class offered by the Physical Education Department. Because Student A receives credit toward her degree program for the square dancing class, the tuition for the square dancing class is included in qualified tuition and related expenses.

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§ 1.25A-3 Hope Scholarship Credit.

(a) *Amount of the credit—(1) In general.* Subject to the phaseout of the education tax credit described in § 1.25A-1(c), the Hope Scholarship Credit amount is the total of—

(i) 100 percent of the first \$1,000 of qualified tuition and related expenses paid during the taxable year for education furnished to an eligible student (as defined in paragraph (d) of this section) who is the taxpayer, the taxpayer's spouse, or any claimed dependent during any academic period beginning in the taxable year (or treated as beginning in the taxable year, see § 1.25A-5(e)(2)); plus

(ii) 50 percent of the next \$1,000 of such expenses paid with respect to that student.

(2) *Maximum credit.* For taxable years beginning before 2002, the maximum Hope Scholarship Credit allowed for each eligible student is \$1,500. For taxable years beginning after 2001, the amounts used in paragraph (a)(1) of