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**SENATE BILL NO. 867**

Offered January 10, 2001

Prefiled January 2, 2001

*A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.11, relating to individual income tax credits for certain tuition-related expenses charged by institutions of higher education.*

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Patron—Miller, Y.B.

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Referred to Committee on Finance

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.11 as follows:**

*§ 58.1-339.11. Higher education expenses tax credit.*

*A. As used in this section:*

*"Eligible educational institution" means the same as that term is defined in § 25 A of the Internal Revenue Code.*

*"Qualified tuition and related expenses" means the same as that term is defined in § 25 A of the Internal Revenue Code (for education furnished at an eligible educational institution during any academic period beginning in the taxable year). The term includes, but is not limited to, qualified tuition and related expenses paid with respect to any course of instruction at an eligible educational institution to acquire or improve job skills of the individual. The term excludes qualified tuition and related expenses to the extent paid for:*

*1. under a prepaid tuition contract as defined in § 23-38.75;*

*2. through qualified scholarships that are excludable from federal adjusted gross income under § 117 of the Internal Revenue Code; or*

*3. through a payment (other than a payment described in § 102 (a) of the Internal Revenue Code) for such individual's educational expenses, or attributable to such individual's enrollment at an eligible educational institution, which is excludable from federal adjusted gross income under any law of the United States.*

*"Total combined federal adjusted gross income" means the sum of the federal adjusted gross income for married taxpayers and, for an individual, such person's federal adjusted gross income.*

*B. For taxable years beginning on or after January 1, 2001, but before January 1, 2003, a taxpayer shall be allowed a credit against the tax imposed pursuant to § 58.1-320 in an amount equal to twenty percent of so much of the qualified tuition and related expenses paid by the taxpayer during the taxable year as does not exceed \$5,000. For taxable years beginning on or after January 1, 2003, the credit shall be in an amount equal to twenty percent of so much of the qualified tuition and related expenses paid during the taxable year as does not exceed \$10,000. Only those taxpayers with a total combined federal adjusted gross income of \$ 40,000 or less, excluding combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, may use the credit provided under this section.*

*C. A taxpayer shall not be allowed any credit for qualified tuition and related expenses paid during the taxable year if any portion of any distribution during such taxable year from an education individual retirement account is excluded from federal adjusted gross income pursuant to § 530 (d) (2) of the Internal Revenue Code.*

*D. No credit shall be allowed to a taxpayer with respect to the qualified tuition and related expenses of an individual unless such taxpayer includes the name and taxpayer identification number of such individual on the appropriate individual income tax return.*

*E. Any person who is claimed as a dependent, as defined in § 152 of the Internal Revenue Code, on another taxpayer's federal income tax return for the taxable year shall not be allowed any credit for qualified tuition and related expenses paid during such taxable year. However, the qualified tuition and related expenses paid by such dependent shall be treated for purposes of this section as having been paid by the person claiming such dependent.*

*F. If qualified tuition and related expenses are paid by the taxpayer during a taxable year for an academic period that begins during the first three months following such taxable year, such academic period shall be treated for purposes of this section as beginning during such taxable year.*

*G. In any taxable year where a husband and wife do not file a joint Virginia individual income tax return for such year, the sum of any credit taken for qualified tuition and related expenses on each of*

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59 *the individual income tax returns filed by such husband and wife shall not exceed the amount allowed*  
60 *an individual taxpayer under subsection B.*

61 *H. The amount of credit allowed pursuant to this section shall not exceed the individual income tax*  
62 *imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit*  
63 *against the individual's income taxes until either (i) the full amount of the credit is used, or (ii) the*  
64 *expiration of the fifth taxable year after the taxable year in which such qualified tuition and related*  
65 *expenses have been paid, whichever occurs first. If an individual that is subject to the tax limitation*  
66 *imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code*  
67 *of Virginia, or has a credit carryover from a preceding taxable year, such individual shall be*  
68 *considered to have first utilized any credit allowed that does not have a carryover provision, and then*  
69 *any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit*  
70 *allowed pursuant to this section.*

71 *I. To the extent that a credit is allowed for qualified tuition and related expenses under this section*  
72 *for a taxable year, such expenses shall not serve as the basis for claiming any other credit or grant*  
73 *provided under the Code of Virginia.*

74 *J. The Department of Taxation shall promulgate regulations in accordance with the Administrative*  
75 *Process Act (§ 9-6.14:1 et seq.) establishing procedures for claiming the tax credit provided under this*  
76 *section.*