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Internal Revenue Code Section 529(c)(3)(E)(ii)(II)

Qualified tuition programs

(a) General rule.

A qualified tuition program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Qualified tuition program.

For purposes of this section -

(1) In general.

The term "qualified tuition program" means a program established and maintained by a State or agency or instrumentality thereof or by 1 or more eligible educational institutions-

(A) under which a person-

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection .

Except to the extent provided in regulations, a program established and maintained by 1 or more eligible educational institutions shall not be treated as a qualified tuition program unless such program provides that amounts are held in a qualified trust and such program has received a ruling or determination that such program meets the applicable requirements for a qualified tuition program. For purposes of the preceding sentence, the term "qualified trust" means a trust which is created or organized in the United States for the exclusive benefit of designated beneficiaries and with respect to which the requirements of paragraphs (2) and (5) of section 408(a) are met.

(2) Cash contributions.

A program shall not be treated as a qualified tuition program unless it provides that purchases or contributions may only be made in cash.

(3) Separate accounting.

A program shall not be treated as a qualified tuition program unless it provides separate accounting for each designated beneficiary.

(4) Limited investment direction.

A program shall not be treated as a qualified tuition program unless it provides that any contributor to, or designated beneficiary under, such program may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.

(5) No pledging of interest as security.

A program shall not be treated as a qualified tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(6) Prohibition on excess contributions.

A program shall not be treated as a qualified tuition program unless it provides adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

(c) Tax treatment of designated beneficiaries and contributors.

(1) In general.

Except as otherwise provided in this subsection, no amount shall be includible in gross income of-

(A) a designated beneficiary under a qualified tuition program, or

(B) a contributor to such program on behalf of a designated beneficiary,

with respect to any distribution or earnings under such program.

(2) Gift tax treatment of contributions.

For purposes of chapters 12 and 13-

(A) In general. Any contribution to a qualified tuition program on behalf of any designated beneficiary-

(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) Treatment of excess contributions. If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

(3) Distributions.

(A) In general. Any distribution under a qualified tuition program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) Distributions for qualified higher education expenses. For purposes of this paragraph -

(i) In-kind distributions. No amount shall be includible in gross income under subparagraph (A) by reason of a distribution which consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute payment of a qualified higher education expense.

(ii) Cash distributions. In the case of distributions not described in clause (i) , if-

(I) such distributions do not exceed the qualified higher education expenses (reduced by expenses described in clause (i)), no amount shall be includible in gross income, and

(II) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

(iii) Exception for institutional programs. In the case of any taxable year beginning before January 1, 2004, clauses (i) and (ii) shall not apply with respect to any distribution during such taxable year under a qualified tuition program established and maintained by 1 or more eligible educational institutions.

(iv) Treatment as distributions. Any benefit furnished to a designated beneficiary under a qualified tuition program shall be treated as a distribution to the beneficiary for purposes of this paragraph .

(v) Coordination with American opportunity and lifetime learning credits. The total amount of qualified higher education expenses with respect to an individual for the taxable year shall be reduced-

(I) as provided in section 25A(g)(2) , and

(II) by the amount of such expenses which were taken into account in determining the credit allowed to the taxpayer or any other person under section 25A .

(vi) Coordination with Coverdell education savings accounts. If, with respect to an individual for any taxable year-

(I) the aggregate distributions to which clauses (i) and (ii) and section 530(d)(2)(A) apply, exceed

(II) the total amount of qualified higher education expenses otherwise taken into account under clauses (i) and (ii) (after the application of clause (v)) for such year,

the taxpayer shall allocate such expenses among such distributions for purposes of determining the amount of the exclusion under clauses (i) and (ii) and section 530(d)(2)(A) .

(C) Change in beneficiaries or programs.

(i) Rollovers. Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred-

(I) to another qualified tuition program for the benefit of the designated beneficiary,

(II) to the credit of another designated beneficiary under a qualified tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made , or

(III) before January 1, 2026, to an ABLÉ account (as defined in section 529A(e)(6)) of the designated beneficiary or a member of the family of the designated beneficiary.

Subclause (III) shall not apply to so much of a distribution which, when added to all other contributions made to the ABLÉ account for the taxable year, exceeds the limitation under section 529A(b)(2)(B)(i) .

(ii) Change in designated beneficiaries. Any change in the designated beneficiary of an interest in a qualified tuition program shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is a member of the family of the old beneficiary.

(iii) Limitation on certain rollovers. Clause (i)(I) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified tuition program for the benefit of the designated beneficiary.

(D) Special rule for contributions of refunded amounts. In the case of a beneficiary who receives a refund of any qualified higher education expenses from an eligible educational institution, subparagraph (A) shall not apply to that portion of any distribution for the taxable year which is recontributed to a qualified tuition program of which such individual is a beneficiary, but only to the extent such recontribution is made not later than 60 days after the date of such refund and does not exceed the refunded amount.

(E) Special rollover to Roth IRAs from long-term qualified tuition programs.

(i) In general. In the case of a distribution from a qualified tuition program of a designated beneficiary which has been maintained for the 15-year period ending on the date of such distribution, subparagraph (A) shall not apply to so much the portion of such distribution which-

(I) does not exceed the aggregate amount contributed to the program (and earnings attributable thereto) before the 5-year period ending on the date of the distribution, and

(II) is paid in a direct trustee to-trustee transfer to a Roth IRA maintained for the benefit of such designated beneficiary.

(ii) Limitations.

(I) Annual limitation. Clause (i) shall only apply to so much of any distribution as does not exceed the amount applicable to the designated beneficiary under section 408A(c)(2) for the taxable year (reduced by the amount of aggregate contributions made during the taxable year to all individual retirement plans maintained for the benefit of the designated beneficiary).

(II) Aggregate limitation. This subparagraph shall not apply to any distribution described in clause (i) to the extent that the aggregate amount of such distributions with respect to the designated beneficiary for such taxable year and all prior taxable years exceeds \$35,000.

(4) Estate tax treatment.

(A) In general. No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

(B) Amounts includible in estate of designated beneficiary in certain cases. Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

(C) Amounts includible in estate of donor making excess contributions. In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such contributions properly allocable to periods after the date of death of the donor.

(5) Other gift tax rules.

For purposes of chapters 12 and 13-

(A) Treatment of distributions. Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

(B) Treatment of designation of new beneficiary. The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) unless the new beneficiary is-

(i) assigned to the same generation as (or a higher generation than) the old beneficiary (determined in accordance with section 2651), and

(ii) a member of the family of the old beneficiary.

(6) Additional tax.

The tax imposed by section 530(d)(4) shall apply to any payment or distribution from a qualified tuition program in the same manner as such tax applies to a payment or distribution from a Coverdell education savings account. This paragraph shall not apply to any payment or distribution in any taxable year beginning before January 1, 2004,

which is includible in gross income but used for qualified higher education expenses of the designated beneficiary.

(7) Treatment of elementary and secondary tuition.

Any reference in this subsection to the term "qualified higher education expense" shall include a reference to expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school.

(8) Treatment of certain expenses associated with registered apprenticeship programs.

Any reference in this subsection to the term "qualified higher education expense" shall include a reference to expenses for fees, books, supplies, and equipment required for the participation of a designated beneficiary in an apprenticeship program registered and certified with the Secretary of Labor under section 1 of the National Apprenticeship Act (29 U.S.C. 50).

(9) Treatment of qualified education loan repayments.

(A) In general. Any reference in this subsection to the term "qualified higher education expense" shall include a reference to amounts paid as principal or interest on any qualified education loan (as defined in section 221(d)) of the designated beneficiary or a sibling of the designated beneficiary.

(B) Limitation. The amount of distributions treated as a qualified higher education expense under this paragraph with respect to the loans of any individual shall not exceed \$10,000 (reduced by the amount of distributions so treated for all prior taxable years).

(C) Special rules for siblings of the designated beneficiary.

(i) Separate accounting. For purposes of subparagraph (B) and subsection (d) , amounts treated as a qualified higher education expense with respect to the loans of a sibling of the designated beneficiary shall be taken into account with respect to such sibling and not with respect to such designated beneficiary.

(ii) Sibling defined. For purposes of this paragraph, the term "sibling" means an individual who bears a relationship to the designated beneficiary which is described in section 152(d)(2)(B) .

(d) Reports.

(1) In general. Each officer or employee having control of the qualified tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this paragraph shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(2) Rollover distributions.

In the case of any distribution described in subsection (c)(3)(E) , the officer or employee having control of the qualified tuition program (or their designee) shall provide a report to the trustee of the Roth IRA to which the distribution is made. Such report shall be filed

at such time and in such manner as the Secretary may require and shall include information with respect to the contributions, distributions, and earnings of the qualified tuition program as of the date of the distribution described in subsection (c)(3)(A) , together with such other matters as the Secretary may require.

(e) Other definitions and special rules.

For purposes of this section -

(1) Designated beneficiary.

The term "designated beneficiary" means-

(A) the individual designated at the commencement of participation in the qualified tuition program as the beneficiary of amounts paid (or to be paid) to the program,

(B) in the case of a change in beneficiaries described in subsection (c)(3)(C) , the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified tuition program purchased by a State or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization, the individual receiving such interest as a scholarship.

(2) Member of family.

The term "member of the family" means, with respect to any designated beneficiary-

(A) the spouse of such beneficiary;

(B) an individual who bears a relationship to such beneficiary which is described in subparagraphs (A) through (G) of section 152(d)(2) ;

(C) the spouse of any individual described in subparagraph (B) ; and

(D) any first cousin of such beneficiary.

(3) Qualified higher education expenses.

(A) In general. The term "qualified higher education expenses" means-

(i) tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution,

(ii) expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with such enrollment or attendance, and

(iii) expenses for the purchase of computer or peripheral equipment (as defined in section 168(i)(2)(B)), computer software (as defined in section 197(e)(3)(B)), or Internet access and related services, if such equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible educational institution.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature. The amount of cash distributions from all qualified tuition programs described in subsection (b)(1)(A)(ii) with respect to a beneficiary during any taxable year shall, in the aggregate, include not more than \$10,000 in expenses described in subsection (c)(7) incurred during the taxable year.

(B) Room and board included for students who are at least half-time.

(i) In general. In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(6) , a designated beneficiary shall be treated as meeting the requirements of this clause .

(ii) Limitation. The amount treated as qualified higher education expenses by reason of clause (i) shall not exceed-

(I) the allowance (applicable to the student) for room and board included in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 10871l) , as in effect on the date of the enactment [6/7/2001] of the Economic Growth and Tax Relief Reconciliation Act of 2001) as determined by the eligible educational institution for such period, or

(II) if greater, the actual invoice amount the student residing in housing owned or operated by the eligible educational institution is charged by such institution for room and board costs for such period.

(4) Application of section 514 .

An interest in a qualified tuition program shall not be treated as debt for purposes of section 514 .

(5) Eligible educational institution.

The term "eligible educational institution" means an institution-

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) , as in effect on the date of the enactment [6/7/2001] of this paragraph , and

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

(f) Regulations.

Notwithstanding any other provision of this section , the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and to prevent abuse of such purposes, including regulations under chapters 11, 12, and 13 of this title.

