

Qualified State Tuition Programs

Notice 96-58

This notice provides guidance regarding certain reporting requirements and the transition rules applicable to “qualified State tuition programs” described in § 529 of the Internal Revenue Code, recently enacted by section 1806 of the Small Business Job Protection Act, Pub. L. 104-188 (the “Act”). The notice also solicits comments from the public on section 529.

Section 529 provides tax-exempt status to “qualified State tuition programs,” meaning programs established and maintained by a State (or agency or instrumentality thereof) under which persons may (1) purchase tuition credits or certificates on behalf of a designated beneficiary entitling the beneficiary to a waiver or payment of qualified higher education expenses of the beneficiary, or (2) contribute to an account established for the sole purpose of meeting qualified higher education expenses of the designated beneficiary of the account.

Under § 529, qualified State tuition programs also must meet requirements relating to contributions, refunds, and maintenance of separate accounts for each designated beneficiary of the program. In addition, the program must prohibit investment direction by contributors or beneficiaries, the pledge or assignment of any interest in the program as security for a loan, and excess contributions.

In general, § 529 is effective for taxable years ending after August 20, 1996, the date of enactment. However, the Act includes a transition rule providing that if

(1) a State maintains (on the date of enactment) a program under which persons may purchase tuition credits on behalf of, or make contributions for educational expenses of, a designated beneficiary, and (2) such program meets the requirements of a qualified State tuition program before the later of (a) one year after the date of enactment, or (b) the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after the date of enactment, then the provisions of the...[Act] will apply to contributions (and earnings allocable thereto) made before the date the program meets the requirements of a

qualified State tuition program, without regard to whether the requirements of a qualified State tuition program are satisfied with respect to such contributions and earnings. . . . H.R. Conf. Rep. No. 737, 104th Cong., 2d Sess. 282 (1996). (Conference Report). The Internal Revenue Service will not assert income tax liability against a State tuition program for any period before the program meets the requirements of § 529 if the program qualifies for the transition rule.

Section 529(c)(3)(A) and (B) provides that any distribution made by or benefit furnished in-kind under a qualified State tuition program shall be includible in the gross income of the distributee in the manner as provided under § 72, to the extent not excluded from gross income under any other provision.

Section 529(d) authorizes the Internal Revenue Service to require qualified State tuition programs to file information reports for education furnished to beneficiaries or distributions made to individuals during any calendar year. Any reporting requirements promulgated under § 529(d) would apply in lieu of any other reporting requirement for a program that may apply with respect to information returns or payee statements on distributions.

The Internal Revenue Service is currently developing reporting requirements under § 529(d). However, because this legislation was enacted late in the year and because States are expected to need time to implement appropriate record-keeping, reporting will not be required for any distribution made by, or benefit furnished in-kind under, a qualified State tuition program prior to 1998. In addition, the Internal Revenue Service will not assess penalties against plan administrators who do not file information returns or provide payee statements on distributions made during 1997 and prior years.

Comments on Future Guidance Invited

The Internal Revenue Service invites comments on § 529, including the requirements for reporting distributions made by qualified State tuition programs, the requirements for qualification and operation of these programs, and the treatment for federal tax purposes of distributions made by these programs. These comments will be considered in drafting future guidance. Please send

written comments by December 31, 1996, to: CC:DOM:CORP:R (Notice 96-58), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Notice 96-58), Courier’s Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

For further information concerning this notice contact Monice Rosenbaum of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-6070 (not a toll free call).