

Families May Now Use Section 529 Account Plans to Pay for Public, Private or Religious Elementary or Secondary School Expenses

by

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The Tax Cuts and Jobs Act has many provisions of interest to the independent school sector, but one stands out and it modifies section 529 plans to allow such plans to distribute not more than \$10,000 in expenses for tuition incurred during the taxable year in connection with the enrollment or attendance of the designated beneficiary at a public, private or religious elementary or secondary school. *This limitation (\$10,000 dollars) applies on a per-student basis, rather than a per-account basis.* Thus, under the provision, although an individual may be the designated beneficiary of multiple accounts, that individual may receive a maximum of \$10,000 in distributions free of tax, regardless of whether the funds are distributed from multiple accounts. Any excess distributions received by the individual would be treated as a distribution subject to tax under the general rules of section 529.

The provision applies to distributions made after December 31, 2017.

The new provision also is silent related to whether or not funding for 2018 distributions must occur after December 31, 2017, as such, and until such time, it appears that existing balances in section 529 plans may be used as qualifying distributions in 2018, it is just that the distributions are addressed for these kinds of expenses.

The following is the legislative language associated with the updates made to section 529 in the Tax Cuts and Jobs Act:

(7) TREATMENT OF ELEMENTARY AND SECONDARY TUITION.—Any reference in this subsection to the term ‘qualified higher education expense’ shall include a reference to—

(A) expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school, and

(B) expenses for—

(i) curriculum and curricular materials,

(ii) books or other instructional materials,

(iii) online educational materials,

(iv) tuition for tutoring or educational classes outside of the home (but only if the tutor or instructor is not related (within the meaning of section 152(d)(2)) to the student),

(v) dual enrollment in an institution of higher education, and

(vi) educational therapies for students with disabilities, in connection with a homeschool (whether treated as a homeschool or a private school for purposes of applicable State law).

(2) LIMITATION.—Section 529(e)(3)(A) is amended by adding at the end the following:

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.