

Form #2

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~~OFFICE OF WEST VIRGINIA
SECRETARY OF CHASE~~

RESOLUTION OF THE BOARD OF TRUSTEES
OF THE WEST VIRGINIA PREPAID TUITION TRUST FUND

The Board of Trustees of the West Virginia Prepaid Tuition Trust Fund (Board), created by Senate Bill No. 70 passed April 12, 1997, and effective ninety days from passage, is empowered to propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of the West Virginia Code.

The attached set of proposed legislative rules has been drafted and designated Title 118, Series 1, and titled "Rules for the West Virginia Prepaid Tuition Trust Fund."

Be it **RESOLVED** that the Board of Trustees of the West Virginia Prepaid Tuition Trust Fund approves the proposed legislative rules and directs the Chairman to:

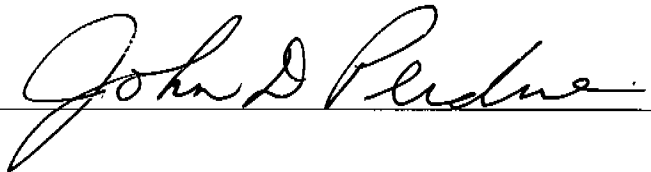
- file the proposed rules with notice of a public comment period with the Secretary of State's Office,
- provide for the public comment period between August 15, 1997, and September 15, 1997,
- compile and summarize the comments received during the comment period for presentation to the Board,
- prepare proposed rules as amended by the Board in consideration of suggestions received during the public comment period, and
- file the final set of proposed rules as amended in accordance with the provisions of article three-a, chapter twenty-nine-a of the West Virginia Code.

Introduced and passed this 8th day of August, 1997.

APPROVED BY:

THE BOARD OF TRUSTEES OF THE WEST VIRGINIA
PREPAID TUITION TRUST FUND

BY: _____



SUMMARY OF PROPOSED RULE

TITLE 118

LEGISLATIVE RULE

PREPAID TUITION TRUST FUND BOARD OF TRUSTEES

SERIES 1

RULES FOR THE WEST VIRGINIA PREPAID TUITION TRUST FUND

This rule implements the provisions of W. Va. Code §18-30-1 et seq., wherein the Office of the State Treasurer establishes the Prepaid Tuition Trust Fund which is responsible for the advancement of education in the state of West Virginia by assisting qualified students to pay in advance the tuition costs of attending fully accredited higher education institutions and encourage students to attend higher education institutions and programs in the state of West Virginia.

STATEMENT OF CIRCUMSTANCES OF PROPOSED RULE

TITLE 118

LEGISLATIVE RULE

PREPAID TUITION TRUST FUND BOARD OF TRUSTEES

SERIES 1

RULES FOR THE WEST VIRGINIA PREPAID TUITION TRUST FUND

This agency approved rule is needed to comply with provisions of W. Va. Code embodied in Senate Bill 70, passed during the 1997 Regular Legislative Session, effective ninety days from passage on April 12, 1997. Senate Bill 70 determined that the advancement and improvement of higher education in the state of West Virginia is a proper governmental function and purpose of the state.

This rule carries out the legislative intent, as stated in W. Va. Code §18-30-1, to establish a higher education prepaid tuition trust fund to assist qualified students to pay in advance the tuition costs of attending fully accredited higher education institutions and programs and thereby to encourage such qualified students to attend higher education institutions and programs in the state of West Virginia.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules for the West Virginia Prepaid Tuition Trust Fund (118CSR1)

Type of Rule: X **Legislative** **Interpretive** **Procedural**

Agency West Virginia Prepaid Tuition Trust Fund

Address 1900 Kanawha Boulevard East
Building 1, Room E122
Charleston, West Virginia 25305

Contact: Anoop K. Bhasin, General Counsel 304-558-5000

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
ESTIMATED TOTAL COST	\$ 475,000	\$	\$ 475,000	\$ 843,000	\$ 843,000
PERSONAL SERVICES	141,900		141,900	240,000	240,000
CURRENT EXPENSE	333,100		333,100	603,000	603,000
REPAIRS & ALTERNATIONS					
EQUIPMENT					
OTHER					

2. Explanation of above estimates:

For FY98-99, a general revenue appropriation will provide start-up funds for the Prepaid Tuition Trust Fund. For the second half of FY99 and beyond the Tuition Trust Fund will operate from fees and income generated by the Tuition Trust Fund.

3. Objectives of these rules:

To provide guidelines for the Treasurer's Office and the Prepaid Tuition Trust Fund Board of Trustees to follow while starting up and operating the Prepaid Tuition Trust Fund.

Rule Title: Rules for the West Virginia Prepaid Tuition Trust Fund (118CSR1)

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Appropriation totaling some \$1.0 million for startup after which the program will be self sufficient.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

Any purchase of a contract is voluntary.

C. Economic Impact on Citizens/Public at Large.

Plan purchases are voluntary.

Date: August 14, 1997

Signature of Agency Head or Authorized Representative

John D. Perdue

Aug 15 1 50 PM '97

TITLE 118
LEGISLATIVE RULE
PREPAID TUITION TRUST FUND BOARD OF TRUSTEES WEST VIRGINIA
SECRETARY OF STATE
SERIES 1
RULES FOR THE WEST VIRGINIA PREPAID TUITION TRUST FUND

§118-1-1. General.

1.1. Scope. -- The scope of these rules affects purchasers and beneficiaries of advance payment contracts for college tuition and fees offered by the West Virginia Prepaid Tuition Trust Fund Board of Trustees through its West Virginia Prepaid College Plan.

1.2. Authority. -- West Virginia Prepaid Tuition Trust Act, West Virginia Code (1997) Chapter 18, Article 30, and any additional provisions enacted by the Legislature specifically regarding the Prepaid Tuition Trust Fund.

1.3. Filing Date. --

1.4. Effective Date. --

§118-1-2. Definitions.

For the purposes of these rules the following terms, which are in compliance with the federal law, have the meanings ascribed to them, unless the context clearly indicates otherwise:

2.1. "Actuarial assessment" means an additional contract amount assessed to ensure the actuarial soundness of the Trust Fund which may be applied in cases of contract changes requested by the purchaser.

2.2. "Administrative fees" means amounts assessed to cover or to defray the administrative costs of program operation, as set by the Board.

2.3. "Application" means a request for acceptance into the Plan made on a form, or a duplicate of the form, prepared by the Plan and called the West Virginia Prepaid College Plan Application.

2.4. "Beneficiary" means an individual who meets all eligibility requirements stated in the Plan contract and who is designated by the purchaser on the Plan contract application to be the recipient of Plan contract benefits.

2.5. "Benefits" means the tuition and mandatory fees that are paid to an eligible postsecondary institution on behalf of the beneficiary as specified by the terms of the Plan contract.

2.6. "Board" means the Board of Trustees of the West Virginia Prepaid Tuition Trust Fund.

2.7. "Chairman" means the State Treasurer who serves as chairman of the Board.

2.8. "Contract" or "Plan contract" refers collectively to the application, the master covenant, the participation and payment schedule, and any additional documents not set out in the legislative rules relating to the Plan contract, issued or received by the State Treasurer, on behalf of the Board, and pursuant to the various terms and conditions described, and incorporated into the Plan contract.

2.9. "Current tuition value" means a figure determined by the Board annually which is based on the average, weighted by enrollment, of instate tuition and mandatory fees for attendance as a full-time undergraduate student at four-year public postsecondary institutions in West Virginia. For the purposes of these rules the current tuition value is the equivalent of and also substitutes for the "outside tuition fee" defined in §18-30-3(d) of the West Virginia Code.

2.10. "Independent/private instate postsecondary institution" means a fully accredited, independent or private, Associate of Arts or baccalaureate degree-granting college or university located and chartered in West Virginia and supported wholly or principally from sources other than State moneys.

2.11. "Mandatory fees" means those amounts required to be paid as a condition of enrollment for all undergraduate students attending the postsecondary institution in which the beneficiary wishes to enroll and to which the Trust Fund payments will be made on behalf of the beneficiary; however, the term "mandatory fees" as used herein does not include charges for books, supplies, room, or Board even if the postsecondary institution to be attended by the beneficiary requires all students to pay such charges.

2.12. "Master covenant" means the document which specifies the terms and conditions of the Plan.

2.13. "Maximum plan benefit" means payment, on behalf of a single individual, of tuition for not more than 132 hours on a semester basis, or its equivalent on a quarter or other academic system, and payment for not more than eight registrations on a semester basis, or its equivalent on a quarter or other academic system; provided, however, that if the individual is also the beneficiary of a supplemental fifth-year contract, should the Plan choose to offer such an option, the maximum benefit for tuition would increase by 32 semester hours and registrations would increase by two semesters, or their equivalent on a quarter or other academic system.

2.14. "Out-of-state postsecondary institution" means a fully accredited Associate of Arts or baccalaureate degree-granting college or university located outside of the State of West Virginia but within the United States of America.

2.15. "Participation and payment schedule" means the document which defines the amount, frequency, duration and due date of Plan contract payments, based on information provided by the purchaser on the Plan application.

2.16. "Plan" or "Program" means the West Virginia Prepaid College Plan operated by the State Treasurer on behalf of the Board to offer advance payment contracts for tuition and mandatory fees at West Virginia postsecondary institutions.

2.17. "Projected college entrance date" means the academic school year immediately following the designated beneficiary's projected high school graduation and is the earliest date for utilization of Plan contract benefits without written approval. The projected college entrance date is calculated, based on information provided by the purchaser in the Plan Application.

2.18. "Public postsecondary institution" means any state-owned and operated West Virginia college or university offering undergraduate courses which is recognized as a "state college," "university" or "community college" as determined by §18B-1-2 of the West Virginia Code.

2.19. "Purchaser" means the individual, corporation or other entity that is obligated to make payments in accordance with a Plan contract entered into. There is only one purchaser per Plan contract. For the purposes of this definition and pursuant to West Virginia Code §18-30-5(j), the purchaser shall be the employee in the case of a Plan contract initiated by an employer on behalf of a beneficiary selected by the employee.

2.20. "Scholarship" means grants, gifts, or other financial aid awarded to a Plan contract beneficiary in an amount sufficient to pay a portion or all of the same benefits as are guaranteed under a Plan contract. A loan is not considered a scholarship.

2.21. "State Register" means the State Register published by the West Virginia Secretary of State.

2.22. "Substitute beneficiary" means an eligible individual designated by the Plan contract purchaser to receive, in place of the originally named beneficiary, the benefits guaranteed under the Plan contract. To be eligible, the substitute beneficiary must be a member of the family of the original purchaser, be a West Virginia resident and meet other eligibility requirements such as may be stated in the Plan contract.

2.23. "Tuition" means undergraduate semester or term charges for course work imposed by a postsecondary institution as a condition for a student's enrollment.

2.24. "Trust fund" means the West Virginia Prepaid Tuition Trust Fund.

§118-1-3. Program Description.

3.1. General description -- The West Virginia Prepaid Tuition Trust Act established a mechanism for the State of West Virginia to provide a program to assist qualified students and their families to pay in advance the many costs of attending a college or university in the State of West Virginia. A trust fund was created within the State Treasurer's Office to allow many of the costs associated with attending college to be paid in advance for a child at a rate

lower than the projected corresponding cost at the time of actual college enrollment of the child. The Trust Fund is administered by a nine-member Board, which is chaired by the State Treasurer.

3.1.a. The prepayment program within the State Treasurer's Office is known as the West Virginia Prepaid College Plan ("Plan"). Through the Plan an individual, corporation or other entity may purchase prepaid tuition contracts. The Plan contract provides for the payment by the Trust Fund of instate undergraduate tuition and mandatory fees at a public postsecondary institution for a specified number of academic terms, as determined by the Plan contract, on behalf of the beneficiary for whom the Plan contract is purchased. The cost of a Plan contract is based on the average current and projected tuition and mandatory fee rates at public postsecondary institutions in West Virginia, on the number of years expected to elapse between the purchase of a contract and the exercise of the benefits to be provided for in the contract to the beneficiary, and based on the assumed rate of return. The cost of Plan contracts is established in accordance with actuarial assumptions recommended by the Plan actuary and adopted by the Board.

3.1.b. Payments by Plan contract purchasers are placed in the Trust Fund and are combined and invested on behalf of the Board, with the goal of yielding, at a minimum, sufficient income to generate the difference between the prepaid amount and the cost of instate tuition and mandatory fees at the time of actual enrollment of the beneficiary. The Plan contract purchaser receives periodic statements summarizing amounts paid into and the financial condition of the Trust Fund. The Plan contract shall set the exact plan that is purchased by the purchaser.

3.2. Location of office -- The Trust Fund and Plan headquarters are located in the Office of the State Treasurer, State Capitol Building, 1900 Kanawha Boulevard East, Building 1, Room E122, Charleston, West Virginia 25305-0860. Office hours are 8:30 A.M. through 4:30 P.M., Monday through Friday, except legal holidays. Persons may obtain forms, publications, and documents by writing to, visiting, or calling the office at (304)-558-5000 or 1-800-422-7498.

3.3. Program administration -- The West Virginia Prepaid College Plan is administered by the State Treasurer's Office under the direction of the Board. The State Treasurer's Office, on behalf of the Board and in conjunction with a qualified actuarial firm, constructs the prices of Plan contracts and develops payment schedules for Plan contract purchasers, in accordance with the actuarial assumptions recommended by the actuary and adopted by the Board.

3.3.a. The fiscal year of the Trust Fund and its programs is July 1st through June 30th. Each fiscal year, the Board will cause to be evaluated by a nationally recognized actuarial firm, the actuarial soundness of the Trust Fund and will cause to be prepared an audit of all accounts of the Board including the Trust Fund accounts, by a nationally recognized accounting firm. An annual report will be prepared setting forth an accounting of the Trust Fund and a description of the financial condition of the Trust Fund and distributed as required by the West Virginia Code.

3.3.b. The State Treasurer's Office, on behalf of the Board, develops and recommends program rules, regulations, policies and procedures for Board approval; contracts for necessary goods and services; employs necessary personnel; engages the services of private persons or firms for administrative and technical assistance; maintains accounts and administer funds; makes arrangements with colleges and universities to transfer moneys from the Trust Fund on behalf of qualified beneficiaries; solicits and accepts gifts, including those made by will, grants, and other sources for purposes of carrying out the Trust Fund programs; and encourages participation, in the Plan, of individuals, other entities and of employers on behalf of employees and their immediate families. Charges against the fees collected and interest earned on trust fund accounts may be made in order for the State Treasurer's Office to fund the administrative costs of maintaining the trust fund accounts and in accordance with the budget appropriated by the Legislature.

3.4. The administrative fund -- An administrative account, separate from the Trust Fund and known as the Prepaid Tuition Trust Fund Administrative Account, has been established within the State Treasurer's Office to provide for the administrative costs of the program. In general, administrative fees paid by contract purchasers, along with certain other payments, reimbursements and appropriations, are designated to the administrative account and are used to defray the administrative costs of the program.

3.5. The Trust fund -- The Prepaid Tuition Trust Fund account has been created within the State Treasurer's Office to accept moneys remitted by purchasers in accordance with the Plan contracts and moneys acquired from other private or governmental sources that are dedicated to the prepayment of college expenses.

3.5.a. All moneys deposited into the Trust Fund are invested in accordance with the Comprehensive Investment Policy of the Trust Fund, which shall be adopted by the Board. This investment policy may be amended from time to time as is deemed necessary by the Board. Contributors to the fund, contract purchasers, or beneficiaries may not in any way direct the investment of any contribution to the Trust Fund or the earnings.

§118-1-4. Application, Contract, Pricing and Payments.

4.1. Enrollment period and application -- The Plan enrollment period shall commence and terminate on dates set annually by the Board and published in the State Register. To purchase a Plan contract, the purchaser must submit, during an enrollment period, all required information on the Plan application and must also submit the application-processing fee. By completing the application and submitting the application-processing fee, the purchaser is making application to enter into a Plan contract.

4.2. Designating the beneficiary -- Unless specifically exempted, the purchaser must designate in the application one individual as the beneficiary of the contract. To be eligible for designation as a Plan contract beneficiary, an individual must have been born and must not have completed the ninth grade at the beginning of the enrollment period in which the application was received. The purchaser must certify that the beneficiary is a resident of the state of West Virginia. For purposes of these rules, a beneficiary may also qualify as a resident if that individual is the child of a non-custodial parent who resides in the state. The Board may require proof of residency in such form as is specified in the Plan contract.

4.2.a. An individual may be designated as the beneficiary of contracts totaling no more than the maximum plan benefit. If an individual is designated as the beneficiary of contracts totaling more than the maximum plan benefit, the Board will use the date on which the applications were received as the determining factor and will terminate the later contract(s) which place the beneficiary over the maximum benefit limit, unless a substitute beneficiary is designated by the contract purchaser.

4.3. Contract and acceptance into the Plan -- The contract shall specify the obligations, responsibilities, and liabilities of the purchaser and the Plan. The Board shall review and revise the general contract documents and cause them to be published in the State Register prior to each enrollment period.

4.3.a. The Board shall maintain the Plan contract in such form required to maintain the Plan as a "qualified state tuition program" in accordance with the provisions of U.S.C.A. §529 (1997), as amended.

4.3.b. Once a purchaser's application is accepted by the Board, other contract documents, including a participation and payment schedule and master covenant, shall be mailed to the purchaser.

4.4. Contract prices and options -- Based upon the findings of an annual actuarial and pricing study, the Board shall evaluate and set contract prices and plan options prior to each enrollment period. All contract prices and plan options shall be published in the State Register prior to each enrollment period.

4.5. Payment requirements -- Payments shall be made by the purchaser in accordance with the schedule and form described in the Plan contract. Purchasers may make payments by electronic funds transfer or cash equivalents as limited by the contract. Any public or private organizations may apply to establish payroll deduction plans. A separate accounting will be established and maintained for each contract for each beneficiary.

4.6. Default -- Pursuant to the terms of a Plan contract, failure to make timely payment of contract payments, administrative fees or actuarial assessments will result in default by the purchaser and suspension of the beneficiary's rights under the plan.

4.7. Involuntary termination -- The Board may terminate a Plan contract:

4.7.a. following a default for failure of the purchaser to reinstate a contract to good standing within the time frames established in the Plan contract, or

4.7.b. upon a finding of factual misrepresentation of information submitted to the Board on the Plan application or in any other form concerning the Plan contract, or

4.7.c. if the contract would place the beneficiary over the maximum plan benefit.

4.7.d. In the event of an involuntary termination of a Plan contract, the purchaser may be due a refund, less administrative fees, expenses and penalties.

4.8. Voluntary termination -- At any time prior to the projected college entrance date of the beneficiary, voluntary termination shall occur within thirty days of receiving written notice of a purchaser's desire to terminate a contract.

4.8.a. Following the college entrance date of the beneficiary, contracts may only be voluntarily terminated with approval.

4.8.b. Only the purchaser has the right to voluntarily terminate a contract. Requests for the voluntary termination of a Plan contract must be received from the purchaser in writing prior to the exhaustion of benefits.

4.9. Refunds -- Refunds shall be made only to the purchaser and are limited by the terms of the Plan contract. Except in cases of scholarship or the death or disability of the beneficiary, cases which are described later in this subsection, refunds shall not exceed the amount of payments made to the Trust Fund and shall be reduced by administrative fees, expenses, penalties, and actuarial assessments charged to the account and further reduced by any benefits paid by the Trust Fund on behalf of the designated beneficiary. The contract shall specify the terms of refunds in the cases of a beneficiary who dies before the contract benefits have been exhausted or of a beneficiary who becomes disabled to such an extent that the beneficiary is unable attend a postsecondary institution. The contract shall also specify the terms of refunds in the event of scholarship and of any additional categories of refunds, which may be available to purchasers. All requests for refunds must be received in writing from the purchaser prior to the exhaustion of benefits.

4.10. Contract benefits -- Plan benefits shall be specifically limited by the terms and conditions provided in the purchaser's Plan contract. In general, the Plan will pay, on the behalf of the beneficiary, the tuition and mandatory fees, at the instate student rate, for course work at a public postsecondary institution. On the behalf of any one individual the Plan will pay no more than the maximum plan benefit. Plan benefits shall be paid directly to the postsecondary institution on behalf of the beneficiary. With advance permission, a beneficiary may begin receiving benefits up to two years in advance of the projected college entrance date pursuant to the terms and conditions listed in the Plan contract.

4.11. Transferability of benefits -- The Plan is designed to be flexible in order to allow beneficiaries to attend an eligible postsecondary institution of their choice. In addition to their use at public postsecondary institutions, contract benefits may only be transferred to fully accredited independent/private instate postsecondary institutions and to fully accredited out-of-state postsecondary institutions. The Plan contract shall set the terms, conditions and methods for the transfer of benefits. The benefits transferred shall be equal to the lesser of the current tuition value or the tuition and mandatory fees at the independent/private instate or out-of-state postsecondary institution attended by the beneficiary.

4.12. Substitution of beneficiary -- The purchaser may request a transfer of Plan contract benefits to an eligible substitute beneficiary. To qualify as eligible, the substitute beneficiary must meet the following requirements:

- (1) be a resident of West Virginia, and
- (2) be a member of the family of the original beneficiary, as further defined and limited in the Plan contract.

4.12.a. Requests for transfer of the Plan contract benefits to an eligible substitute beneficiary must be submitted in writing, be signed and notarized by the purchaser, and be submitted with documentation evidencing the eligibility of the substitute beneficiary.

4.12.b. An actuarial assessment may be charged to the purchaser when the projected college entrance date of the substitute beneficiary differs from the projected college entrance date of the original beneficiary. The actuarial assessment and any associated administrative fees must be paid in full before the substitution will be made.

4.13. Benefit limitations -- The specific terms of Plan benefits, the manner in which the beneficiary may receive benefits, and the limitations on those benefits shall be determined by the contract between the Plan and the purchaser. No contract benefits will be paid on behalf of the beneficiary before the total contract payments and administrative fees and actuarial assessments due have been paid in full. No payment of benefits will be made on behalf of a beneficiary unless the beneficiary's social security number has been submitted to the Plan. No benefits will be paid on behalf of the beneficiary following the exhaustion of benefits as defined in Section 4.14 below. In no case shall the Plan pay, on behalf of any one individual, more than the maximum plan benefit.

4.13.a. The Plan shall not in any way guarantee or imply that a beneficiary will meet the instate residency requirement of a public postsecondary institution at the time of the beneficiary's matriculation. Any beneficiary matriculating at a public postsecondary institution who is determined by the institution to be ineligible for instate tuition and mandatory fees is responsible for paying the difference between the contract benefit and the non-resident rates. The Plan shall not in any way guarantee or imply that a beneficiary will qualify for admission to a public postsecondary institution. No purchaser or beneficiary may pledge any portion of his interest in a Plan contract as security for a loan.

4.13.b. In any divorce proceeding, the court should consider a Plan contract purchased by either spouse in favor of the beneficiary in making any decisions regarding the continued payment of the plan contract by the purchaser. If the plan contract for the beneficiary is paid in full, then the divorce settlement or payment plan should allow the beneficiary to retain the benefit and a court order would prevent the purchaser from terminating the plan contract. The court may decide to change the specified purchaser, to the child support paying spouse, in order to make any divorce settlement or payment plans and in order to prevent any voluntary termination of the plan contract that would be detrimental to the beneficiary, a court order would prevent the purchaser from terminating the plan contract. The court should note, that the intent in buying the Plan contract by the purchaser was to benefit the beneficiary and this benefit and responsibility should not be altered by divorce.

4.14. Exhaustion of benefits -- Plan benefits due the beneficiary are exhausted at such time as the Plan has provided the maximum Plan benefits allowed in the contract, or the beneficiary is awarded a baccalaureate degree, or ten (10) years has elapsed past the projected college entrance date, whichever comes first. Upon exhaustion of benefits, the

contract purchaser and beneficiary cease to have any beneficial interest in the Trust Fund and all contract payments and unused benefits revert to the Trust Fund.

4.15. Limitations on Plan option changes -- A contract purchaser may request from the Plan a change to the payment schedule or other Plan option delineated on the contract only during an official contract change period, such dates to be established by the Board and published in advance in the State Register. No changes in enrollment or payment options will be allowed outside this change period except that contract purchasers may make a lump sum prepayment on an installment contract at any time with no prepayment penalty. As a condition for a change in a Plan contract to be effectuated, the purchaser may be required to pay an additional actuarial assessment, in an amount determined on a case-by-case basis by the State Treasurer's Office, to ensure the actuarial soundness of the Trust Fund.

§118-1-5. Contract Purchasers.

5.1. Contract purchasers -- Any individual, corporation or other entity may purchase a Plan contract for a beneficiary. The purchaser may designate co-purchasers, who will enjoy a right of survivorship in the event of the purchaser's death, but who will have no other contractual obligations or rights during the life of the purchaser. The purchaser may, without the consent or authorization of the co-purchaser, execute all contract changes, conversions, transfers, cancellations, and refund requests. Refunds shall be made payable to the order of the purchaser only. There is only one purchaser per Plan contract. The purchaser retains all rights regarding the contract except as limited by these rules.

5.1.a. If a purchaser terminates a contract pursuant to Section 4.8, the co-purchaser must be notified in writing. The purchaser may change the co-purchaser by applying to the Plan in writing.

5.2. Change of contract purchaser -- A purchaser may apply to the Plan to transfer ownership of a Plan contract to another purchaser provided the transfer is accomplished without consideration. All applications to change the purchaser designated on a Plan contract must be submitted in writing and signed by both the current purchaser and the new purchaser and the signatures must be notarized except in the event that the contract purchaser has died or become disabled and cannot furnish a signature. In the case of the purchaser's death or disability, the Board may allow another interested party to assume the purchaser's contractual obligation upon application of the purchaser's executor or legal representative and in accordance with appropriate provisions of the West Virginia Code.

§118-1-6. Administrative Fee Schedule.

6.1. Administrative fees and actuarial assessments -- Administrative fees are assessed to cover the associated administrative costs of program operation. Administrative fees may be assessed when the purchaser submits an application for a Plan contract and upon requests for alterations in contract information or in the ordinary services provided under the Plan, and to offset other costs associated with contract administration. All applicable administrative fees shall be defined in the contract. Administrative fees are nonrefundable. With the exception of account maintenance fees, the amount of an administrative fee is subject to change during the life of any Plan contract.

6.1.a. As is further defined in these rules and in a Plan contract, an actuarial assessment to ensure the soundness of the Trust Fund may be assessed to the purchaser to effectuate certain requested contract changes or to reinstate a contract, which is in default, to good standing. The amount of an actuarial assessment shall be determined on a case-to-case basis.

6.1.b. All outstanding fees and actuarial assessments must be paid by May 1 of the year of the projected college entrance date in order for the beneficiary to receive the contract benefits that year. Outstanding fees that have not been paid in a timely manner, as defined in the Plan contract, will place the contract in default.

6.2. Administrative fee schedule -- The Board shall annually adopt a schedule of administrative fees specifying the amount of each fee and defining the conditions of its application and cause the administrative fee schedule to be published in the State Register and to be mailed to each contract purchaser.

6.3. Waiving of administrative fees -- The Board may waive or reduce any administrative fee.

§118-1-7. Grievance Petitions.

7.1. Special petition --

7.1.a. Any person desiring to petition the Board for relief from the procedures and policies within these rules may do so by filing a petition with the Chairman.

7.1.b. The petition shall contain the name and address of the person requesting relief; the specific nature of the relief requested; the name and address of any purchaser or beneficiary on any disputed contract (if applicable); the prepaid college contract account numbers of the contract in question; the rule or policy from which the petitioner is requesting relief; the date of request; and the signature of the petitioner.

7.1.c. The Chairman has the authority to respond on behalf of the Board. The response must be in writing and must be made within 90 days of receipt of the petition from the person requesting relief.

7.1.d. Any of the Chairman's decisions may be appealed to the Board, with the Board's decision to follow at the next scheduled Board meeting. All appeals must be made in writing.

7.2. Financial hardship -- In response to a demonstrated financial hardship, any contract purchaser may file a petition with the Chairman seeking to obtain the waiver of any late fees assessed against that purchaser, or seeking to avoid the involuntary termination of a contract, or seeking to avoid the imposition of other administrative fees.

7.2.a. The Board will also entertain petitions to temporarily suspend a purchaser's participation in a Plan contract due to a demonstrated financial hardship, when such a petition is filed in order to avoid default as defined in Section 4.6 of these rules. However, in no event will the Board permit any contract purchaser to suspend payments on any contract for a period of longer than 180 days. At the end of any period of suspension authorized by the Board pursuant to a demonstrated financial hardship, the contract purchaser must bring his account into good standing within a period of thirty (30) days.

7.2.b. For purposes of this Section, the term "financial hardship" shall be defined to include any loss of employment or income by a contract purchaser or the spouse of a contract purchaser which limits or otherwise impairs the ability of the contract purchaser to make timely payments on a contract. A financial hardship will also be found to exist whenever a contract purchaser can demonstrate to the Board that medical circumstances, such as hospitalization of the purchaser or the spouse of the purchaser, that limit or otherwise impair the contract purchaser's ability to make timely payments on a contract. Proof of loss of employment or income or proof of medical circumstances cited in any petition may be required by the Board.

UNITED STATES CODE ANNOTATED
TITLE 26. INTERNAL REVENUE CODE
SUBTITLE A--INCOME TAXES
CHAPTER 1--NORMAL TAXES AND SURTAXES
SUBCHAPTER F--EXEMPT ORGANIZATIONS
PART VIII--QUALIFIED STATE TUITION PROGRAMS

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Current through P.L. 105-15, approved 5-15-97

§ 529. Qualified State tuition programs

(a) **General rule.**--A qualified State 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 State tuition program.**--For purposes of this section--

(1) **In general.**--The term "qualified State tuition program" means a program established and maintained by a State or agency or instrumentality thereof--

(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) 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.

(2) **Cash contributions.**--A program shall not be treated as a qualified State tuition program unless it provides that purchases or contributions may only be made in cash.

(3) **Refunds.**--A program shall not be treated as a qualified State tuition program unless it imposes a more than de minimis penalty on any refund of earnings from the account which are not--

(A) used for qualified higher education expenses of the designated beneficiary,

(B) made on account of the death or disability of the designated beneficiary, or

(C) made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C)) received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment.

(4) **Separate accounting.**--A program shall not be treated as a qualified State tuition program unless it provides separate accounting for each designated beneficiary.

(5) **No investment direction.**--A program shall not be treated as a qualified State tuition program unless it provides that any contributor to, or designated beneficiary under, such program may not direct the investment of any contributions to the program (or any earnings thereon).

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(6) No pledging of interest as security.--A program shall not be treated as a qualified State tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(7) Prohibition on excess contributions.--A program shall not be treated as a qualified State 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 State 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) Contributions.--In no event shall a contribution to a qualified State tuition program on behalf of a designated beneficiary be treated as a taxable gift for purposes of chapter 12.

(3) Distributions.--

(A) In general.--Any distribution under a qualified State 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) In-kind distributions.--Any benefit furnished to a designated beneficiary under a qualified State tuition program shall be treated as a distribution to the beneficiary.

(C) Change in beneficiaries.--

(i) Rollovers.--Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred to the credit of another designated beneficiary under a qualified State tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made.

(ii) Change in designated beneficiaries.--Any change in the designated beneficiary of an interest in a qualified State 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.

(D) Operating rules.--For purposes of applying section 72--

(i) to the extent provided by the Secretary, all qualified State tuition programs of which an individual is a designated beneficiary shall be treated as one program,

(ii) all distributions during a taxable year shall be treated as one distribution, and

(iii) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

(4) Estate tax inclusion.--The value of any interest in any qualified State tuition program which is attributable to contributions made by an individual to such program on behalf of any designated beneficiary

shall be includible in the gross estate of the contributor for purposes of chapter 11.

(5) Special rule for applying section 2503(e).--For purposes of section 2503(e), the waiver (or payment to an educational institution) of qualified higher education expenses of a designated beneficiary under a qualified State tuition program shall be treated as a qualified transfer.

(d) Reporting requirements.--

(1) In general.--If there is a distribution to any individual with respect to an interest in a qualified State tuition program during any calendar year, each officer or employee having control of the qualified State tuition program or their designee shall make such reports as the Secretary may require regarding such distribution to the Secretary and to the designated beneficiary or the individual to whom the distribution was made. Any such report shall include such information as the Secretary may prescribe.

(2) Timing of reports.--Any report required by this subsection--

(A) shall be filed at such time and in such matter [FN1] as the Secretary prescribes, and

(B) shall be furnished to individuals not later than January 31 of the calendar year following the calendar year to which such report relates.

(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 State 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)(2)(C), the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified State tuition program purchased by a State or local government 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" has the same meaning given such term as section 2032A(e)(2).

(3) Qualified higher education expenses.--The term "qualified higher education expenses" means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution (as defined in section 135(c)(3)).

(4) Application of section 514.--An interest in a qualified State tuition program shall not be treated as debt for purposes of section 514.

CREDIT(S)

1997 Electronic Update

(Added Pub.L. 104-188, Title I, § 1806(a), Aug. 20, 1996, 110 Stat. 1895.)

[FN1] So in original.

< General Materials (GM) - References, Annotations, or Tables >

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1996 Acts. Senate Report No. 104-281 and House Conference Report No. 104-737, see 1996 U.S. Code Cong. and Adm. News, p. 1474.

Effective Dates

1996 Acts. Section 1806(c) of Pub.L. 104-188 provided that:

"(1) In general.--The amendments made by this section [enacting this section and amending section 135 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 20, 1996].

"(2) Transition rule.--If--

"(A) a State or agency or instrumentality thereof maintains, on the date of the enactment of this Act [Aug. 20, 1996], a program under which persons may purchase tuition credits or certificates on behalf of, or make contributions for education expenses of, a designated beneficiary, and

"(B) such program meets the requirements of a qualified State tuition program before the later of--

"(i) the date which is 1 year after such date of enactment [Aug. 20, 1996], or

"(ii) the first day of the first calendar quarter after the close of the first regular session of the State legislature that begins after such date of enactment [Aug. 20, 1996],

the amendments made by this section [enacting this section and amending section 135 of this title] shall apply to contributions (and earnings allocable thereto) made before the date such program meets the requirements of such amendments without regard to whether any requirements of such amendments are met with respect to such contributions and earnings.

For purposes of subparagraph (B)(ii), if a State has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature."

26 U.S.C.A. § 529

26 USCA § 529

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