

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

FILED

SEP 30 1 19 PM '97

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: WV State Treasurer's Office TITLE NUMBER: 112CSR11

CITE AUTHORITY: WV Code §18-30-1

RULE TYPE: PROCEDURAL INTERPRETIVE

EXEMPT LEGISLATIVE RULE _____
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO

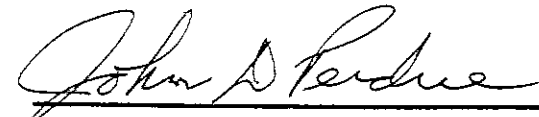
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Series 11

TITLE OF RULE BEING ADOPTED: Procedures for the West Virginia Prepaid
Tuition Trust Fund.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS October 31, 1997


Authorized Signature

\$4.20

FILED

**TITLE 112
PROCEDURAL RULE
STATE TREASURER'S OFFICE**

SEP 30 1 19 PM '97

**SERIES 11
PROCEDURES FOR THE WEST VIRGINIA
PREPAID TUITION TRUST FUND**

**OFFICE OF WEST VIRGINIA
SECRETARY OF STATE**

§112-11-1. General.

1.1. Scope. -- The scope of these procedural rules involves operations of the West Virginia Prepaid Tuition Trust Fund ("Fund"), its records and policies, and meetings of its Board of Trustees ("Board"). The Prepaid Tuition Trust Fund is established in the West Virginia State Treasurer's Office and shall operate pursuant to the provisions of Chapter 18, Article 30, of the West Virginia Code. The Prepaid Tuition Trust Fund and Prepaid Tuition Trust Fund Administrative accounts are established within the State Treasurer's office.

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 Fund.

1.3. Filing Date. -- September 30, 1997

1.4. Effective Date -- September 30, 1997

§112-11-2. Board.

2.1. Powers -- Pursuant to W. Va. Code §18-30-1 et seq. the Board is empowered to advance education in the state of West Virginia through the promulgation of the prepaid tuition trust fund which shall assist qualified students to pay in advance the tuition costs of attending fully accredited higher education institutions and programs and thereby encourage qualified students to attend accredited higher education institutions and programs in the state of West Virginia.

2.2. Board composition, number, membership and terms of office -- The Fund shall be administered by a nine-member Board of Trustees ("Board") with terms, organization and appointments pursuant to the provisions of the West Virginia Prepaid Tuition Trust Act in W. Va. Code §18-30-1 et seq.

2.3. Meetings -- The Board shall hold regular quarterly meetings which shall be called by the Board Chairman at least one month in advance. Notice shall be sent one month in advance for all regular meetings.

2.4. Special meetings -- The Board may be called at any time by the Chairman or any five members of the Board. The Chairman shall give notice to each member of the Board of each special meeting by mailing or otherwise delivering a notice at least five (5) days before the meeting.

2.5. Emergency meetings or workshops -- Emergency meetings notice may be filed any time prior to the emergency. Emergency meetings shall only be called in situations where failure for the Board to act will result in a loss to the Prepaid Tuition Trust Fund or there is a detrimental impact on the citizens who have contracted with the Prepaid Tuition Trust Fund

2.6. Quorum, actions and resolutions -- A majority of the members of the Board, physically present or present by video conference or teleconference only, at the Board meeting shall constitute a quorum for conducting business of the Prepaid Tuition Trust Fund. The affirmative vote of a majority of members present shall be necessary for any action taken by vote of the Board. Any action taken by the Board may be authorized by resolution approved by the affirmative vote of a majority of those present. The voting on all questions at meetings of the Board shall be by voice vote and the outcome shall be recorded in the minutes of such meeting.

2.7. Vacancies -- All vacancies on the Board shall be filled by the Governor or by the proper institution as indicated in W. Va Code §18-30-4.

2.8. Board's delegation of authority -- The Board may delegate its authority to manage operations of the Fund. In making any delegation of authority, the Board expressly reserves all of its statutory authority.

§112-11-3. Location and Office Hours.

The West Virginia Prepaid Tuition Trust Fund's headquarters are located at: West Virginia State Treasurer's Office, 1900 Kanawha Boulevard East, Room E-122 State Capitol Building, Charleston, West Virginia 25305-0860, phone number (304) 558-5000. Office hours are from 8:30 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. Persons may obtain forms, publications and documents by telephoning, writing or visiting the offices.

§112-11-4. Public Information and Inspection of Records.

All public records of the Fund shall be available for public inspection pursuant to W. Va. Code §29B-1-1 et seq., except those specifically exempted by W. Va. Code §29B-1-4. Personal, private or confidential information concerning the prepaid tuition contracts will not be considered public information. Any person wishing to examine public records of the Board may do so during normal business hours as provided in

Section 4 of these procedural rules, any photocopies or facsimile (faxes) made shall be charged at \$ 0.30 cents per page.

§112-11-5. Public Access to the West Virginia Prepaid Tuition Trust Fund.

All meetings and workshops held by the Board are open to the public and proper notice shall be supplied to the public of the meetings and workshops, except those required or allowed by W. Va. Code §6A-1 et seq., to be closed.

§112-11-6. Rulemaking Proceedings.

The rulemaking proceedings of the West Virginia Prepaid Tuition Trust Fund shall be conducted according to the provisions of West Virginia Code Chapter 29A, Section 3A.

§112-11-7. Board Chairman and Officers.

7.1. General authority -- As provided in §18-30-4(d), the State Treasurer shall be Board chairman ("Chairman") and presiding officer of the Board and may appoint such other employees as the Board considers advisable or necessary. The Board reserves all discretion for policy decisions concerning the prepaid tuition contracts. The Chairman or his designees shall act for the Board in the following areas and shall report to the Board at each Board meeting on his activities. The Chairman's activities shall include but are not limited to:

7.1.a. employing necessary personnel and taking final action in all personnel matters to add, transfer, reclassify or discharge employees within the limitations of the appropriated budget;

7.1.b. establishing, maintaining, and investing funds and establishing accounts and transferring funds between accounts;

7.1.c. preparing an annual budget for presentation to the Board;

7.1.d. acting as the secretary-treasurer to the Board and as custodian of the records and property of the Board;

7.1.e. acting as representative to organizations in which the Board is a member or officer and as official liaison with agencies of the State, other states, the federal government, and the public;

7.1.f. initiating all rulemaking and adopting internal operational procedures and guidelines;

7.1.g. obtaining an annual actuarial study that assesses the fiscal soundness of the Fund;

7.1.h. obtaining an annual external audit of all accounts of the Board and Fund by a nationally recognized accounting firm;

7.1.i. acting as chief administrative officer, or assigning a designee, for the West Virginia Prepaid Tuition Trust Fund and its authorized programs;

7.1.j. soliciting and accepting gifts, bequests, grants, loans and other aids;

7.1.k. acting in accordance with the West Virginia Ethics Act;

7.1.l. The Chairman shall also prevent any confidential or private information in the minutes from being disseminated;

7.1.m. negotiating and entering all contracts to run the day to day operations of the prepaid tuition trust fund which may be entered into on behalf of the Board by the Chairman;

7.1.n. entering all prepaid tuition contracts for the prepaid tuition trust fund and negotiating and having the contract forms approved for the Plan contracts; and

7.1.o. waiving any administrative fees set in the Plan contract and modifying the plan contracts.

§112-11-8. Meetings.

8.1. Public notice -- Except in the case of emergency or special meetings and workshops, public notice of any meeting or workshop, at which policy-making decisions will be made by the Board, shall be filed with the Secretary of State for publication in the State Register at least one week in advance of the meeting date.

8.2. Content of notice -- The notice of such meeting or workshop shall provide the date, time and place of the event; a brief description of the purpose of the event; a summary of any agency action which will be taken at the event and the address where interested persons may write or appear to obtain a copy of the agenda.

8.3. Emergency meetings or workshops -- Emergency meetings notice may be filed any time prior to the emergency meeting. The emergency meeting notice shall

state the time, location and purpose of the meeting and facts and circumstances of the emergency.

8.4. Open meetings -- The Board shall provide that the meeting shall be open to the public, unless specifically provided otherwise by law. The statutory authority for closing any meeting shall be noted on the agenda, pursuant to W. Va. Code §6a-1 et seq.

8.5. Meeting protocol -- The Chairman shall be responsible for maintaining the decorum of Board events. Those who wish to be heard at the meeting or workshop shall register such intention with the presiding person prior to the event. The Board may recognize other persons who wish to be heard, but failed to register this intention prior to the event or the Board may table the matter until the next scheduled Board meeting. Every effort shall be made to provide for public participation consistent with the Board's responsibility to assure the orderly conduct of public business. The Chairman shall have the power to conduct meetings as necessary.

8.6. Manner of voting -- The voting on all questions at Board meetings shall be by voice vote and the ayes and nays shall be entered into the minutes of any such meeting. However, upon request of a Board member, the vote of each member shall be recorded, by name.

8.7. Minutes -- The Chairman or his designee shall keep the minutes of all meetings of the Board; verify the accuracy of the written records of the Board; provide copies of approved minutes to the Board members; give notice of the meetings of the Board; certify, when necessary, the records, proceedings, documents and resolutions of the Board; and shall perform such other duties as shall be prescribed by the Board. The Chairman shall also prevent any confidential or private information in the minutes from being disseminated.

8.8. Journals -- All final action taken by the Board at its meetings shall be recorded in the minutes of the meeting and the minutes shall be journalized in a binder.

8.9. Use of communications media technology -- The rules of the West Virginia Prepaid Tuition Trust Fund regarding the use of communications media technology shall permit the use of teleconference or video conference voting by Board members that is subject to ratification of the vote at the following regular meeting. Board members may not vote by facsimile or proxy.

§112-11-9. Meeting Agenda.

9.1. Timing and contents -- The agenda shall be prepared by the Chairman in advance of each meeting of the Board. The agenda shall list the items in the order they

are to be considered; provided, however, that for good cause stated in the record, items on the agenda may be considered out of the listed order.

9.2. Form -- The agenda shall be specific as to the items to be considered. Matters involving the exercise of agency discretion and policy-making shall be listed on the agenda. Agenda items such as "old business," "new business," or "other business" or similar terms shall be used for consideration of solely ministerial or internal administrative matters which do not affect the interests of the public generally.

9.3. Changes to agenda -- Changes may be made to the agenda by the Chairman, after it has been made available for distribution, only for good cause as determined by the presiding officer and so stated in the record.

§112-11-10. Conflict of Interest.

The Board shall maintain constant vigilance against any conflict of interest, or the mere appearance of conflicts of interest. No member, officer, or employee of the Board shall be financially intrusted, directly or indirectly, or in any contract of any person with the Board, or in any sale of any property, real or personal, to or from the Board, provided that this provision shall not apply to contracts or purchases of property, either real or personal, commodities or services between the Board and any governmental agency. Also, members, officers, and employees are permitted to purchase the prepaid tuition contracts, if they meet all requirements and pay the specified fees.

§112-11-11. Amendments.

The Board shall have the power to make, alter, amend, suspend, and repeal these procedural rules of the Board by vote of not less than a majority of its members present at any meeting of the Board without previous notice of such purpose.

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

END OF DOCUMENT

1997 and 105th Congress and Public Law 105-34.

Subtitle B--Expanded Education Investment Savings Opportunities

PART I--QUALIFIED TUITION PROGRAMS

SEC. 211. MODIFICATIONS OF QUALIFIED STATE TUITION PROGRAMS.

(a) Qualified Higher Education Expenses To Include Room and Board.--Paragraph (3) of section 529(e) (defining qualified higher education expenses) is amended to read as follows:

“(3) Qualified higher education expenses.--

“(A) In general.--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.

“(B) Room and board included for students under guaranteed plans 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 State tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(7), 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 the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 108711, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period.”.

(b) Additional Modifications.--

(1) Member of family.--Paragraph (2) of section 529(e) (relating to other definitions and special rules) is amended to read as follows:

“(2) Member of family.--The term ‘member of the family’ means--

“(A) an individual who bears a relationship to another individual which is a relationship described in paragraphs (1) through (8) of section 152(a), and

“(B) the spouse of any individual described in subparagraph (A).”.

(2) Eligible educational institution.--Section 529(e) is amended by adding at the end the following:

“(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 of this paragraph, and

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

(3) Estate and gift tax treatment.--

(A) Gift tax treatment.--

(i) Paragraph (2) of section 529(c) is amended to read as follows:

“(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.”.

(ii) Paragraph (5) of section 529(c) is amended to read as follows:

“(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) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651).”.

(B) Estate tax treatment.--Paragraph (4) of section 529(c) is amended to read as follows:

“(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."

(3) Prohibition against investment direction.--Section 529(b)(5) is amended by inserting "directly or indirectly" after "may not".

(b) Coordination With Education Savings Bond.--Section 135(c)(2) (defining qualified higher education expenses) is amended by adding at the end the following:

"(C) Contributions to qualified state tuition program.--Such term shall include any contribution to a qualified State tuition program (as defined in section 529) on behalf of a designated beneficiary (as defined in such section) who is an individual described in subparagraph (A); but there shall be no increase in the investment in the contract for purposes of applying section 529(c)(3)(A) by reason of any portion of such contribution which is not includible in gross income by reason of this subparagraph."

(d) Clarification of Taxation of Distributions.--Subparagraph (A) of section 529(c)(3) is amended by striking "section 72" and inserting "section 72(b)".

(e) Technical Amendments.--

(1)(A) The heading for part VIII of subchapter F of chapter 1 is amended to read as follows:

"PART VIII--HIGHER EDUCATION SAVINGS ENTITIES".

(B) The table of parts for subchapter F of chapter 1 is amended by striking the item relating to part VIII and inserting:

"Part VIII. Higher education savings entities."

(2)(A) Section 529(d) is amended to read as follows:

"(d) Reports.--Each officer or employee having control of the qualified State tuition program and 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 subsection 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."

(B) Paragraph (2) of section 6693(a) (relating to failure to provide reports on individual retirement accounts or annuities) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by adding at the end the following new subparagraph: "(C) Section 529(d) (relating to qualified State tuition programs)."

(C) The section heading for section 6693 is amended by striking "individual retirement" and inserting "certain tax-favored".

(D) The item relating to section 6693 in the table of sections for part I of subchapter B of chapter 68 is amended by striking "individual retirement" and inserting "certain tax-favored".

(f) <<NOTE: 26 USC 529 note.>> Effective Dates.--

(1) In general.--Except as otherwise provided in this subsection, the amendments made by this section shall take effect on January 1, 1998.

(2) Expenses to include room and board.--The amendment made by subsection (a) shall take effect as if included in the amendments made by section 1806 of the Small Business Job Protection Act of 1996.

(3) Eligible educational institution.--The amendment made by subsection (b)(2) shall apply to distributions after December 31, 1997, with respect to expenses paid after such date (in taxable years ending after such date), for education furnished in academic periods beginning after such date.

(4) Coordination with education savings bonds.--The amendment made by subsection (c) shall apply to taxable years beginning after December 31, 1997.

(5) Estate and gift tax changes.--

(A) Gift tax changes.--Paragraphs (2) and (5) of section 529(c) of the Internal Revenue Code of 1986, as amended by this section, shall apply to transfers (including designations of new beneficiaries) made after the date of the enactment of this Act.

(B) Estate tax changes.--Paragraph (4) of such section 529(c) shall apply to estates of decedents dying after June 8, 1997.

(5) Transition rule for pre-august 20, 1996 contracts.--In the case of any contract issued prior to August 20, 1996, section 529(c)(3)(C) of the Internal Revenue Code of 1986 shall be applied for taxable years ending after August 20, 1996, without regard to the requirement that a distribution be transferred to a member of the family or the requirement that a change in beneficiaries may be made only to a member of the family

**MINUTES
WEST VIRGINIA PREPAID TUITION TRUST FUND
BOARD MEETING
SEPTEMBER 18, 1997**

The West Virginia Prepaid Tuition Trust Fund Board of Trustees met Thursday, September 18, 1997, at 9:00 a.m. in the Auditor's Office Conference Room, Capitol Complex; Charleston, West Virginia. Ms. Thais Blatnik, Mr. Marty Gargano, Ms. Peggy Hawse, Ms. Twila Kirkpatrick, Mr. David Ice, Mr. William McLaughlin, members of the Board, and Treasurer John Perdue, Chairman were present. The following observers were present:

Charles Bockway, State Treasurer's Office
Brenda Jones, State Treasurer's Office
Anoop Bhasin, State Treasurer's Office
Nelson Sorah, State Treasurer's Office
Jonathan Adler, State Treasurer's Office
Steve Wilkerson, House Education Committee
John Thralls, Higher Education
Rick Kaye, Coopers & Lybrand

The agenda for the meeting consisted of the following:

Call to Order

Introductions

Approval of Minutes

Staff Reports

Nelson Sorah, Deputy Treasurer over Communications –
Public Information Activities
Anoop Bhasin, General Counsel – Patent Issue
Charles Bockway, Deputy Treasurer, over Prepaid College Plan –
Public Involvement, Federal Tax Issue, General Operational Issues

Consideration of Proposed Legislative Rule

Review public comment and act on final approval of proposed Legislative rule.

Consideration of Proposed Procedural Rule

Review public comment and act on final approval of procedural rule.

Other Business

Adjournment

Treasurer Perdue, Chairman, called the meeting to order at 9:10 a.m.

Mr. Gargano moved that the minutes of the August 8, 1997, Board of Trustees meeting be approved. Ms. Hawse seconded the motion. The motion was passed unanimously. A copy of the minutes are made a part of these minutes as Attachment No. 1.

Staff Reports

Nelson Sorah, Deputy Treasurer over Communications, reported on the upcoming locations of the Treasurer's Office display, which includes information on the Prepaid College Plan. Those who are interested in the Plan may pick up a postcard from the display and mail it to the Treasurer's Office for additional information. Mr. Sorah also distributed newspaper articles from around the state to the Board of Trustees to show the wide spread interest that the Prepaid College Plan has generated. A copy these articles are made a part of these minutes as Attachment No. 2.

Anoop Bhasin, General Counsel at the Treasurer's Office, updated the Board on the court case between College Savings Bank and the state of Florida. Mr. Bhasin reported that the case has been put on hold pending appeals. A copy of the Florida case update is made a part of these minutes as Attachment No. 3.

Charles Bockway, Deputy Treasurer over the Prepaid College Plan, reported on his public information trips, meeting with the Legislative rulemaking committee, marketing research and planning, College Savings Plan Network and other miscellaneous information. Mr. Bockway reported that he had traveled to various counties to meet with some news media and a few school superintendent offices to talk about the Prepaid College Plan. On September 14, 1997, Mr. Bockway met with the Legislative Oversight Commission On Education Accountability (LOCEA) and on September 16, 1997, he met with a marketing research consultant regarding the marketing of the Prepaid College Plan. Mr. Bockway has accepted an invitation to speak at the Public Accountants Association Conference in Charleston on October 21, 1997, and a table will be set up at the State Library Conference in Flatwoods, October 16-18, 1997. The College Savings Plan Network is following federal Legislative proposals that may

impact the tax status of prepaid college plans and is working on a position statement regarding the IRS rules and regulations. A copy of the *Director's Report* is made a part of these minutes as Attachment No. 4.

Consideration of Proposed Legislative Rule

A copy of the proposed Legislative rule, public comments and staff responses are made a part of these minutes as Attachment No. 5. Responses and actions to the comments are listed below.

Oral Comment No. 1 – Mr. McLaughlin moved to amend the Legislative rule to state in section 4.2 the following: “For the 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 or is the designated beneficiary of a purchaser who is a resident of the state at the time of contract purchase.” Ms. Blatnik seconded the motion. The motion passed unanimously.

Oral Comment No. 2 – The Board acknowledges this comment. No action is necessary.

Oral Comment No. 3 – The Board acknowledges this comment. No action is necessary.

Oral Comment No. 4 – This comment is addressed in the response to *Written Comment No. 3*. No action is necessary.

Oral Comment No. 5 – The Board acknowledges this comment. The language of the Legislative rule already protects the beneficiary. Without objection the Board decided no action is necessary.

Oral Comment No. 6 – The Board acknowledges this comment. No action is necessary.

Written Comment No. 1 – The Board acknowledges this comment. The issue addressed in this comment will be reconsidered once the Fund is established. Without objection the Board decided no action is necessary.

Written Comment No. 2 – The Board acknowledges this comment. Investment activity is adequately discussed in section 3.1.b. and 3.5.a. Without objection the Board decided no action is necessary.

Written Comment No. 3 – Mr. McLaughlin moved to amend the Legislative rule to state in section 4.10 the following: “Any difference between the actual tuition and mandatory fees of the institution at which the beneficiary enrolls and the Plan benefits paid to the institution by the Trust Fund is the responsibility of the beneficiary and is due and payable to that institution upon enrollment.” Also, add section 4.13.c. to state the following: “The contractual obligations of the Trust Fund are backed only by the assets of the Trust Fund, and they in no way obligate the general funds of the State of West Virginia nor do they in any way obligate postsecondary institutions.” Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comment No. 4 – The Board acknowledges this comment. Payments to colleges will need to be worked out at a later date. The Board will work with the colleges in developing a payment system that is fair and equitable to both parties and will have this system in place prior to the time benefit payments must begin. Without objection, the Board agreed that no action is necessary.

Written Comment No. 5 – Mr. Gargano moved that the Board's response to this comment state that the Board is aware of the concern for part-time students and that the Board's intent is to research this issue. No change to the proposed rule is warranted at this time. Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Written Comment No. 6 – Mr. McLaughlin moved that the “only one purchaser” rule is adequately dealt with in section 4.13.b. No change will be made. Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Written Comment No. 7 – Ms. Hawse moved that no change is necessary to exclude “work-study employment” in the definition of “scholarship” in section 2.20. Mr. McLaughlin seconded the motion. The motion passed unanimously. (See reconsideration of this issue below.)

Written Comment No. 8 – Mr. Gargano moved that no change is necessary. Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Written Comment No. 9 – Mr. Gargano moved that the answer to this question is “Yes,” the rule take into account common market situations, and that the price is actuarially determined. No change is necessary. Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comment No. 10 – A purchaser may apply to the Board for an appeal from the rules, but it is not the Board’s practice to pay benefits before fees and assessments are paid in full. Ms. Kirkpatrick moved that no change is necessary. Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comment No. 11 – It should be the responsibility of the purchaser, not of the Plan, to remind the beneficiary of the availability of the benefits. Ms. Hawse moved that no change is necessary. Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comment No. 12 – Ms. Kirkpatrick moved that no change is necessary. Ms. Blatnik seconded the motion. The motion passed unanimously.

Written Comments Nos. 13 – 16 – Ms. Kirkpatrick moved that the Board heard and acknowledged all miscellaneous questions and that the questions are adequately explained in the rule. Mr. Gargano seconded the motion. The motion passed unanimously.

Mr. Gargano moved that the Board reconsider its action on *Written Comment No. 7*. Mr. Ice seconded the motion. The motion passed unanimously.

With regard to *Written Comment No. 7*, Mr. Gargano moved to amend the rule in section 2.20 to state “A loan or work-study employment is not considered a scholarship.” Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Written Comment No. 17 – Ms. Kirkpatrick moved that the response to this comment is the same as the response to *Written Comment No. 3*. Mr. McLaughlin seconded the motion. The motion passed unanimously.

Written Comment No. 18 – Ms. Kirkpatrick moved that no change is necessary. Mr. McLaughlin seconded the motion. The motion passed unanimously.

Written Comment No. 19 – The Board acknowledges this comment. Ms. Kirkpatrick moved that no change is necessary. Mr. Ice seconded the motion. The motion passed unanimously.

Ms. Kirkpatrick expressed the Board's appreciation for the public comments and concerns. Mr. Gargano moved that the proposed Legislative rule be amended as discussed and agreed upon and submitted to LOCEA. Ms. Kirkpatrick seconded the motion. The motion passed unanimously.

Consideration of Proposed Procedural Rule

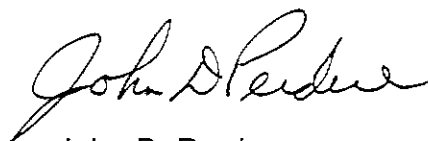
There were no public comments submitted regarding the proposed procedural rule. Mr. Gargano moved that the procedural rule be filed as proposed and that the rule be effective upon filing. Mr. Ice seconded the motion. The motion passed unanimously. A copy of the proposed procedural rule are made a part of these minutes as Attachment No. 6.

Other Business

A resolution was presented to the Board for approval regarding the investment policy of the Board in the event of the failure of Amendment 1. Ms. Blatnik moved the adoption of the resolution. Ms. Hawse seconded the motion. The motion passed unanimously. The resolution is made a part of these minutes as Attachment No. 7.

Mr. McLaughlin moved that the meeting be adjourned. Mr. Ice seconded the motion. The motion passed unanimously.

There being no further business, the meeting was adjourned at 11:50 a.m.



John D. Perdue
Chairman
WV Prepaid Tuition Trust Fund

**STATEMENT CONCERNING THE PUBLIC COMMENT PERIOD
CONDUCTED AUGUST 15, 1997 THROUGH SEPTEMBER 15, 1997
CONCERNING PROPOSED PROCEDURAL RULE
DESIGNATED TITLE 112, SERIES 11
FOR THE STATE TREASURER'S OFFICE**

This statement addresses the following topics concerning the above titled public comment period:

- 1. Copy of approved minutes of the Board of Trustees meeting held on September 18, 1997.**
- 2. Oral comments received and responses to oral comments.**
- 3. Written comments received and responses to written comments.**
- 4. Amendments made/recorded and reasons.**

1. A copy of the approved minutes of the Board of Trustees meeting held on September 18, 1997, is attached.

2. Oral comments received and responses to oral comments.

Action: No change.

Reason: There were no oral comments received.

3. Written comments received and responses to written comments.

Action: No change.

Reason: There were no oral comments received.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

JAN CASTO
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

PENNEY BARKER
Supervisor, Corporations

(Plus all the volunteer
p we can get)
OCT 14 10 17 AM '97
FILED
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TO: ANOOP K BHASIN

AGENCY: STATE TREASURER

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 8, 1997

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 11 TITLE: 112 STATE TREASURER

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. ^{see page 3} THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Anoop K. Bhasin

TITLE OF PERSON SIGNING: General Counsel

DATE: 10/9/97

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.