

107TH CONGRESS
1ST SESSION

S. 335

To amend the Internal Revenue Code of 1986 to provide an exclusion from gross income for distributions from qualified State tuition programs which are used to pay education expenses, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2001

Mr. McCONNELL (for himself, Mr. GRAHAM, Mr. BUNNING, Mr. DEWINE, Mr. WARNER, and Mr. LUGAR) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide an exclusion from gross income for distributions from qualified State tuition programs which are used to pay education expenses, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Setting Aside for a
5 Valuable Education (SAVE) Act”.

1 **SEC. 2. EXCLUSION FROM GROSS INCOME OF EDUCATION**
 2 **DISTRIBUTIONS FROM QUALIFIED STATE**
 3 **TUITION PROGRAMS.**

4 (a) IN GENERAL.—Subparagraph (B) of section
 5 529(c)(3) of the Internal Revenue Code of 1986 (relating
 6 to distributions) is amended to read as follows:

7 “(B) DISTRIBUTIONS FOR QUALIFIED
 8 HIGHER EDUCATION EXPENSES.—For purposes
 9 of this paragraph—

10 “(i) IN-KIND DISTRIBUTIONS.—No
 11 amount shall be includible in gross income
 12 under subparagraph (A) by reason of a
 13 distribution which consists of providing a
 14 benefit to the distributee which, if paid for
 15 by the distributee, would constitute pay-
 16 ment of a qualified higher education ex-
 17 pense.

18 “(ii) CASH DISTRIBUTIONS.—In the
 19 case of distributions not described in
 20 clause (i), if—

21 “(I) such distributions do not ex-
 22 ceed the qualified higher education ex-
 23 penses (reduced by expenses described
 24 in clause (i)), no amount shall be in-
 25 cludible in gross income, and

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

7 “(iii) EXCEPTION FOR INSTITUTIONAL
 8 PROGRAMS.—In the case of any taxable
 9 year beginning before January 1, 2004,
 10 clauses (i) and (ii) shall not apply with re-
 11 spect to any distribution during such tax-
 12 able year under a qualified State tuition
 13 program established and maintained by 1
 14 or more eligible educational institutions.

15 “(iv) TREATMENT AS DISTRIBU-
 16 TIONS.—Any benefit furnished to a des-
 17 ignated beneficiary under a qualified State
 18 tuition program shall be treated as a dis-
 19 tribution to the beneficiary for purposes of
 20 this paragraph.

21 “(v) COORDINATION WITH HOPE AND
 22 LIFETIME LEARNING CREDITS.—The total
 23 amount of qualified higher education ex-
 24 penses with respect to an individual for the
 25 taxable year shall be reduced—

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

3 “(II) by the amount of such ex-
4 penses which were taken into account
5 in determining the credit allowed to
6 the taxpayer or any other person
7 under section 25A.

8 “(vi) COORDINATION WITH EDU-
9 CATION SAVINGS ACCOUNTS.—If, with re-
10 spect to an individual for any taxable
11 year—

12 “(I) the aggregate distributions
13 to which clauses (i) and (ii) and sec-
14 tion 530(d)(2)(A) apply, exceed

15 “(II) the total amount of quali-
16 fied higher education expenses other-
17 wise taken into account under clauses
18 (i) and (ii) (after the application of
19 clause (iv)) for such year,

20 the taxpayer shall allocate such expenses
21 among such distributions for purposes of
22 determining the amount of the exclusion
23 under clauses (i) and (ii) and section
24 530(d)(2)(A).”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 135(d)(2)(B) of the Internal Rev-
 2 enue Code of 1986 is amended by striking “section
 3 530(d)(2)” and inserting “sections 529(c)(3)(B)(i)
 4 and 530(d)(2)”.

5 (2) Section 221(e)(2)(A) of such Code is
 6 amended by inserting “529,” after “135,”.

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to taxable years beginning after
 9 December 31, 2000.

10 **SEC. 3. ELIGIBLE EDUCATIONAL INSTITUTIONS PER-**
 11 **MITTED TO MAINTAIN QUALIFIED TUITION**
 12 **PROGRAMS.**

13 (a) IN GENERAL.—Section 529(b)(1) of the Internal
 14 Revenue Code of 1986 (defining qualified State tuition
 15 program) is amended by inserting “or by 1 or more eligible
 16 educational institutions” after “maintained by a State or
 17 agency or instrumentality thereof”.

18 (b) PRIVATE QUALIFIED TUITION PROGRAMS LIM-
 19 ITED TO BENEFIT PLANS.—Clause (ii) of section
 20 529(b)(1)(A) of the Internal Revenue Code of 1986 is
 21 amended by inserting “in the case of a program estab-
 22 lished and maintained by a State or agency or instrumen-
 23 tality thereof,” before “may make”.

24 (c) ADDITIONAL REQUIREMENTS FOR CERTAIN PRI-
 25 VATE QUALIFIED TUITION PROGRAMS.—Section 529(b)

1 of the Internal Revenue Code of 1986 is amended by add-
2 ing at the end the following new paragraph:

3 “(8) ADDITIONAL REQUIREMENTS FOR CERTAIN
4 PRIVATE QUALIFIED TUITION PROGRAMS.—A pro-
5 gram established and maintained by 1 or more eligi-
6 ble educational institutions and described in para-
7 graph (1)(A)(ii) shall not be treated as a qualified
8 tuition program unless—

9 “(A) under such program a trust is cre-
10 ated or organized for the sole purpose of paying
11 the qualified higher education expenses of the
12 designated beneficiary of the account,

13 “(B) the written governing instrument cre-
14 ating the trust of which the account is a part
15 provides safeguards to ensure that contributions
16 made on behalf of a designated beneficiary re-
17 main available to provide for the qualified high-
18 er education expenses of the designated bene-
19 ficiary, and

20 “(C) the trust meets the following require-
21 ments:

22 “(i) Any trustee or person who may
23 under contract operate or manage the
24 trust demonstrates to the satisfaction of
25 the Secretary that the manner in which

1 that trustee or person will administer the
2 trust will be consistent with the require-
3 ments of this section.

4 “(ii) The assets of the trust are not
5 commingled with other property except in
6 a common trust fund or common invest-
7 ment fund.

8 “(iii) The trust annually prepares and
9 makes available the reports and account-
10 ings required by this section. The annual
11 report, at a minimum, includes information
12 on the financial condition of the trust and
13 the investment policy of the trust.

14 “(iv) Before entering into contracts or
15 otherwise accepting contributions on behalf
16 of a designated beneficiary, the trust ob-
17 tains an appropriate actuarial report to es-
18 tablish, maintain, and certify that the trust
19 shall have sufficient assets to defray the
20 obligations of the trust and annually
21 makes the actuarial report available to ac-
22 count contributors and designated bene-
23 ficiaries.

24 “(v) The trust secures a favorable rul-
25 ing or opinion issued by the Internal Rev-

1 enue Service that the trust is in compli-
2 ance with the requirements of this section.

3 “(vi) Before entering into contracts or
4 otherwise accepting contributions on behalf
5 of a designated beneficiary, the trust solie-
6 its answers to appropriate ruling requests
7 from the Securities and Exchange Com-
8 mission regarding the application of Fed-
9 eral securities laws to the trust.”.

10 (d) APPLICATION OF FEDERAL SECURITIES LAWS TO
11 PRIVATE QUALIFIED TUITION PROGRAMS.—Section
12 529(e) of the Internal Revenue Code of 1986 (relating to
13 other definitions and special rules) is amended by adding
14 at the end the following new paragraph:

15 “(6) APPLICATION OF FEDERAL SECURITIES
16 LAWS TO PRIVATE QUALIFIED TUITION PRO-
17 GRAMS.—Nothing in this section shall be construed
18 to exempt any qualified tuition program that is not
19 established and maintained by a State or agency or
20 instrumentality thereof from any of the requirements
21 of the Securities Act of 1933 (15 U.S.C 77a et seq.)
22 or the Investment Company Act of 1940 (15 U.S.C
23 80a–1 et seq.).”.

24 (e) CONFORMING AMENDMENTS.—

1 (1) Sections 72(e)(9), 135(c)(2)(C),
 2 135(d)(1)(D), 529, 530(b)(2)(B), 4973(e), and
 3 6693(a)(2)(C) of the Internal Revenue Code of 1986
 4 are each amended by striking “qualified State tui-
 5 tion” each place it appears and inserting “qualified
 6 tuition”.

7 (2) The headings for sections 72(e)(9) and
 8 135(c)(2)(C) of such Code are each amended by
 9 striking “QUALIFIED STATE TUITION” and inserting
 10 “QUALIFIED TUITION”.

11 (3) The headings for sections 529(b) and
 12 530(b)(2)(B) of such Code are each amended by
 13 striking “QUALIFIED STATE TUITION” and inserting
 14 “QUALIFIED TUITION”.

15 (4) The heading for section 529 of such Code
 16 is amended by striking “**STATE**”.

17 (5) The item relating to section 529 of such
 18 Code in the table of sections for part VIII of sub-
 19 chapter F of chapter 1 is amended by striking
 20 “State”.

21 (f) **EFFECTIVE DATE.**—The amendments made by
 22 this section shall apply to taxable years beginning after
 23 December 31, 2000.

1 **SEC. 4. OTHER MODIFICATIONS TO QUALIFIED TUITION**
 2 **PROGRAMS.**

3 (a) **ROLLOVER TO DIFFERENT PROGRAM FOR BEN-**
 4 **EFIT OF SAME DESIGNATED BENEFICIARY.**—Section
 5 529(e)(3)(C) of the Internal Revenue Code of 1986 (relat-
 6 ing to change in beneficiaries) is amended—

7 (1) by striking “transferred to the credit” in
 8 clause (i) and inserting “transferred—

9 “(I) to another qualified tuition
 10 program for the benefit of the des-
 11 ignated beneficiary, or

12 “(II) to the credit”,

13 (2) by adding at the end the following new
 14 clause:

15 “(iii) **LIMITATION ON CERTAIN ROLL-**
 16 **OVERS.**—Clause (i)(I) shall only apply to 1
 17 transfer with respect to a designated bene-
 18 ficiary in any year.”, and

19 (3) by inserting “**OR PROGRAMS**” after “**BENE-**
 20 **FICIARIES**” in the heading.

21 (b) **MEMBER OF FAMILY INCLUDES FIRST COUS-**
 22 **IN.**—Section 529(e)(2) of the Internal Revenue Code of
 23 1986 (defining member of family) is amended by striking
 24 “and” at the end of subparagraph (B), by striking the
 25 period at the end of subparagraph (C) and by inserting

1 “; and”, and by adding at the end the following new sub-
 2 paragraph:

3 “(D) any first cousin of such beneficiary.”.

4 (c) ADJUSTMENT OF LIMITATION ON ROOM AND
 5 BOARD DISTRIBUTIONS.—Section 529(e)(3)(B)(ii) of the
 6 Internal Revenue Code of 1986 is amended to read as fol-
 7 lows:

8 “(ii) LIMITATION.—The amount treat-
 9 ed as qualified higher education expenses
 10 by reason of clause (i) shall not exceed the
 11 greater of—

12 “(I) the amount (applicable to
 13 the student) included for room and
 14 board for such period in the cost of
 15 attendance (as defined in section 472
 16 of the Higher Education Act of 1965
 17 (20 U.S.C. 10871l), as in effect on the
 18 date of the enactment of the Setting
 19 Aside for a Valuable Education
 20 (SAVE) Act) for the eligible edu-
 21 cational institution for such period, or

22 “(II) the actual invoice amount
 23 the student residing in housing owned
 24 or operated by the eligible educational
 25 institution is charged by such institu-

1 tion for room and board costs for such
2 period.”.

3 (d) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2000.

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