

108TH CONGRESS  
2D SESSION

# S. 2972

To amend the Internal Revenue Code of 1986 to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts, and to provide for a deduction for contributions to education savings accounts.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 9, 2004

Ms. CANTWELL introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts, and to provide for a deduction for contributions to education savings accounts.

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 “The College Savings  
5       Act of 2004”.

1 **SEC. 2. INCREASE IN MAXIMUM ANNUAL CONTRIBUTION**  
 2 **FOR COVERDELL EDUCATION SAVINGS AC-**  
 3 **COUNTS.**

4 (a) IN GENERAL.—Section 530(b)(1)(A)(iii) of the  
 5 Internal Revenue Code of 1986 (defining Coverdell edu-  
 6 cation savings account) is amended by striking “\$2,000”  
 7 and inserting “\$5,000”.

8 (b) CONFORMING AMENDMENT.—Section  
 9 4973(e)(1)(A) of the Internal Revenue Code of 1986 is  
 10 amended by striking “\$2,000” and inserting “\$5,000”.

11 (c) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to taxable years beginning after  
 13 December 31, 2004.

14 **SEC. 3. EDUCATION SAVINGS ACCOUNTS.**

15 (a) DEDUCTION FOR CONTRIBUTIONS.—Part VII of  
 16 subchapter B of chapter 1 of the Internal Revenue Code  
 17 of 1986 (relating to additional itemized deductions for in-  
 18 dividuals) is amended by redesignating section 224 as sec-  
 19 tion 225 and inserting after section 223 the following new  
 20 section:

21 **“SEC. 224. EDUCATION SAVINGS.**

22 “(a) DEDUCTION ALLOWED.—In the case of an indi-  
 23 vidual, there shall be allowed as a deduction an amount  
 24 equal to the amount of contributions made by such indi-  
 25 vidual to an education savings account during the taxable  
 26 year.

1 “(b) DEFINITIONS.—

2 “(1) EDUCATION SAVINGS ACCOUNT.—The  
3 term ‘education savings account’ means a trust cre-  
4 ated or organized in the United States exclusively  
5 for the purpose of paying the qualified education ex-  
6 penses of an individual who is the designated bene-  
7 ficiary of the trust (and designated as an education  
8 savings account at the time created or organized),  
9 but only if the written governing instrument creating  
10 the trust meets the following requirements:

11 “(A) No contribution will be accepted—

12 “(i) unless it is in cash,

13 “(ii) after the date on which such ben-  
14 eficiary attains age 18, or

15 “(iii) except in the case of rollover  
16 contributions, if such contribution would  
17 result in aggregate contributions for the  
18 taxable year exceeding \$5,000.

19 “(B) The trustee is a bank (as defined in  
20 section 408(n)) or another person who dem-  
21 onstrates to the satisfaction of the Secretary  
22 that the manner in which that person will ad-  
23 minister the trust will be consistent with the re-  
24 quirements of this section or who has so dem-  
25 onstrated with respect to any individual retire-

1           ment plan or any Coverdell education savings  
2           account.

3           “(C) No part of the trust assets will be in-  
4           vested in life insurance contracts.

5           “(D) The assets of the trust shall not be  
6           commingled with other property except in a  
7           common trust fund or common investment  
8           fund.

9           “(E) Except as provided in subsection  
10          (e)(6), any balance to the credit of the des-  
11          ignated beneficiary on the date on which the  
12          beneficiary attains age 30 shall be distributed  
13          within 30 days after such date to the bene-  
14          ficiary or, if the beneficiary dies before attain-  
15          ing age 30, shall be distributed within 30 days  
16          after the date of death of such beneficiary.

17          “(F) The age limitations in subparagraphs  
18          (A)(ii) and (E), and paragraphs (4) and (5) of  
19          subsection (e), shall not apply to any designated  
20          beneficiary with special needs (as determined  
21          under regulations prescribed by the Secretary).

22          “(2) QUALIFIED EDUCATION EXPENSES.—The  
23          term ‘qualified education expenses’ has the meaning  
24          given such term in section 530(b)(2) .

1           “(3) CERTAIN RULES TO APPLY.—Rules similar  
2           to the following rules shall apply for purposes of this  
3           section:

4                   “(A) Section 219(d)(2) (relating to no de-  
5                   duction for rollovers),

6                   “(B) Section 530(b)(5) (relating to time  
7                   when contributions deemed made),

8                   “(C) Section 530(f) (relating to community  
9                   property laws),

10                  “(D) Section 530(g) (relating to custodial  
11                  accounts), and

12                  “(E) Section 530(h) (relating to reports).

13           “(c) REDUCTION IN PERMITTED CONTRIBUTION  
14           BASED ON ADJUSTED GROSS INCOME.—

15                   “(1) IN GENERAL.—The maximum amount  
16                   which a contributor could otherwise make to an ac-  
17                   count under this section shall be reduced by an  
18                   amount which bears the same ratio to such max-  
19                   imum amount as—

20                           “(A) the excess of—

21                                   “(i) the contributor’s modified ad-  
22                                   justed gross income for such taxable year,  
23                                   over

24                                   “(ii) \$95,000 (\$190,000 in the case of  
25                                   a joint return), bears to

1           “(B) \$15,000 (\$30,000 in the case of a  
2           joint return).

3           “(2) MODIFIED ADJUSTED GROSS INCOME.—  
4           For purposes of paragraph (1), the term ‘modified  
5           adjusted gross income’ means the adjusted gross in-  
6           come of the taxpayer for the taxable year increased  
7           by any amount excluded from gross income under  
8           section 911, 931, or 933.

9           “(d) TAX TREATMENT OF ACCOUNTS.—

10           “(1) IN GENERAL.—An education savings ac-  
11           count is exempt from taxation under this subtitle  
12           unless such account has ceased to be an education  
13           savings account. Notwithstanding the preceding sen-  
14           tence, any such account is subject to the taxes im-  
15           posed by section 511 (relating to imposition of tax  
16           on unrelated business income of charitable, etc. or-  
17           ganizations).

18           “(2) ACCOUNT TERMINATIONS.—Rules similar  
19           to the rules of paragraphs (2) and (4) of section  
20           408(e) shall apply to education savings accounts,  
21           and any amount treated as distributed under such  
22           rules shall be treated as not used to pay qualified  
23           education expenses.

24           “(e) TREATMENT OF DISTRIBUTIONS.—

1           “(1) IN GENERAL.—Any distribution shall be  
2           includible in the gross income of the distributee in  
3           the manner as provided in section 72.

4           “(2) SPECIAL RULES FOR APPLYING ESTATE  
5           AND GIFT TAXES WITH RESPECT TO ACCOUNT.—  
6           Rules similar to the rules of paragraphs (2), (4),  
7           and (5) of section 529(c) shall apply for purposes of  
8           this section.

9           “(3) ADDITIONAL TAX FOR DISTRIBUTIONS NOT  
10          USED FOR EDUCATIONAL EXPENSES.—

11           “(A) IN GENERAL.—The tax imposed by  
12           this chapter for any taxable year on any tax-  
13           payer who receives a payment or distribution  
14           from an education individual retirement account  
15           which is in excess of the qualified education ex-  
16           penses of the designated beneficiary during the  
17           taxable year shall be increased by 10 percent of  
18           the amount of such excess.

19           “(B) EXCEPTIONS.—Subparagraph (A)  
20           shall not apply if the payment or distribution  
21           is—

22           “(i) made to a beneficiary (or to the  
23           estate of the designated beneficiary) on or  
24           after the death of the designated bene-  
25           ficiary,

1           “(ii) attributable to the designated  
2           beneficiary’s being disabled (within the  
3           meaning of section 72(m)(7)),

4           “(iii) made on account of a scholar-  
5           ship, allowance, or payment described in  
6           section 25A(g)(2) received by the account  
7           holder to the extent the amount of the pay-  
8           ment or distribution does not exceed the  
9           amount of the scholarship, allowance, or  
10          payment, or

11          “(iv) made on account of the attend-  
12          ance of the designated beneficiary at the  
13          United States Military Academy, the  
14          United States Naval Academy, the United  
15          States Air Force Academy, the United  
16          States Coast Guard Academy, or the  
17          United States Merchant Marine Academy,  
18          to the extent that the amount of the pay-  
19          ment or distribution does not exceed the  
20          costs of advanced education (as defined by  
21          section 2005(e)(3) of title 10, United  
22          States Code, as in effect on the date of the  
23          enactment of this section) attributable to  
24          such attendance.



“(C) CONTRIBUTIONS RETURNED BEFORE  
CERTAIN DATE.—Subparagraph (A) shall not  
apply to the distribution of any contribution  
made during a taxable year on behalf of the  
designated beneficiary if—

“(i) such distribution is made before  
the first day of the sixth month of the tax-  
able year following the taxable year, and

“(ii) such distribution is accompanied  
by the amount of net income attributable  
to such excess contribution.

Any net income described in clause (ii) shall be  
included in gross income for the taxable year in  
which such excess contribution was made.

“(4) ROLLOVER CONTRIBUTIONS.—Paragraph  
(1) shall not apply to any amount paid or distrib-  
uted from an education savings account to the ex-  
tent that the amount received is paid, not later than  
the 60th day after the date of such payment or dis-  
tribution, into another education savings account for  
the benefit of the same beneficiary or a member of  
the family (within the meaning of section 529(e)(2))  
of such beneficiary who has not attained age 30 as  
of such date. The preceding sentence shall not apply  
to any payment or distribution if it applied to any

1 prior payment or distribution during the 12-month  
2 period ending on the date of the payment or dis-  
3 tribution.

4 “(5) CHANGE IN BENEFICIARY.—Any change in  
5 the beneficiary of an education savings account shall  
6 not be treated as a distribution for purposes of para-  
7 graph (1) if the new beneficiary is a member of the  
8 family (as so defined) of the old beneficiary and has  
9 not attained age 30 as of the date of such change.

10 “(6) SPECIAL RULES FOR DEATH AND DI-  
11 VORCE.—Rules similar to the rules of paragraphs  
12 (7) and (8) of section 220(f) shall apply. In applying  
13 the preceding sentence, members of the family (as so  
14 defined) of the designated beneficiary shall be treat-  
15 ed in the same manner as the spouse under such  
16 paragraph (8).

17 “(7) DEEMED DISTRIBUTION ON REQUIRED  
18 DISTRIBUTION DATE.—In any case in which a dis-  
19 tribution is required under subsection (b)(1)(E), any  
20 balance to the credit of a designated beneficiary as  
21 of the close of the 30-day period referred to in such  
22 subsection for making such distribution shall be  
23 deemed distributed at the close of such period.”.

24 (b) TAX ON EXCESS CONTRIBUTIONS.—

1           (1) IN GENERAL.—Subsection (a) of section  
 2           4973 of the Internal Revenue Code of 1986 (relating  
 3           to tax on excess contributions to certain tax-favored  
 4           accounts and annuities) is amended by striking “or”  
 5           at the end of paragraph (4), by inserting “or” at the  
 6           end of paragraph (5), and by inserting after para-  
 7           graph (5) the following new paragraph:

8           “(6) an education savings account (as defined  
 9           in section 224),”.

10          (2) EXCESS CONTRIBUTION.—Section 4973 of  
 11          such Code is amended by adding at the end the fol-  
 12          lowing new subsection:

13          “(h) EXCESS CONTRIBUTIONS TO EDUCATION SAV-  
 14          INGS ACCOUNTS.—For purposes of this section—

15               “(1) IN GENERAL.—In the case of education  
 16               savings accounts maintained for the benefit of any  
 17               one beneficiary, the term ‘excess contributions’  
 18               means the sum of—

19                       “(A) the amount by which the amount con-  
 20                       tributed for the taxable year to such accounts  
 21                       exceeds \$5,000 (or, if less, the sum of the max-  
 22                       imum amounts permitted to be contributed  
 23                       under section 224(c) by the contributors to  
 24                       such accounts for such year); and

1 “(B) the amount determined under this  
 2 subsection for the preceding taxable year, re-  
 3 duced by the sum of—

4 “(i) the distributions out of the ac-  
 5 counts for the taxable year (other than  
 6 rollover distributions); and

7 “(ii) the excess (if any) of the max-  
 8 imum amount which may be contributed to  
 9 the accounts for the taxable year over the  
 10 amount contributed to the accounts for the  
 11 taxable year.

12 “(2) SPECIAL RULES.—For purposes of para-  
 13 graph (1), the following contributions shall not be  
 14 taken into account:

15 “(A) Any contribution which is distributed  
 16 out of the education savings account in a dis-  
 17 tribution to which section 224(e)(3)(C) applies.

18 “(B) Any rollover contribution.”.

19 (c) FAILURE TO PROVIDE REPORTS ON EDUCATION  
 20 SAVINGS ACCOUNTS.—Paragraph (2) of section 6693(a)  
 21 of the Internal Revenue Code of 1986 (relating to failure  
 22 to provide reports on individual retirement accounts or an-  
 23 nnuities) is amended by striking “and” at the end of sub-  
 24 paragraph (D), by striking the period at the end of sub-

1 paragraph (E) and inserting “, and”, and by adding at  
 2 the end the following new subparagraph:

3 “(F) section 224(b)(3)(E) (relating to edu-  
 4 cation savings accounts).”.

5 (d) CLERICAL AMENDMENT.—The table of section  
 6 for part VII of subchapter B of chapter 1 of the Internal  
 7 Revenue Code of 1986 is amended by striking the item  
 8 relating to section 224 and inserting the following new  
 9 items:

“Sec. 224. Education savings.  
 “Sec. 225. Cross reference.”.

10 (e) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to contributions made in taxable  
 12 years beginning after December 31, 2004.

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