

103D CONGRESS
1ST SESSION

H. R. 3449

To amend the Internal Revenue Code of 1986 to provide for the establishment of, and the deduction of contributions to, education savings accounts.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 1993

Mr. GILLMOR (for himself, Mr. BAKER of Louisiana, Mr. BILBRAY, Mr. ROHRABACHER, Mr. BEREUTER, Mr. BILIRAKIS, Mr. BOEHNER, Mr. COX, Mr. DOOLITTLE, Mr. DUNCAN, Mr. GOSS, Mr. HOBSON, Ms. ROSLEHTINEN, Mrs. MEYERS of Kansas, Mr. SOLOMON, Mr. SWIFT, Mrs. VUCANOVICH, Mr. GILCHREST, Mr. LIPINSKI, Mr. MACTLEY, Mr. LIGHTFOOT, Mr. PAXON, Mr. LEVY, Mr. SCHAEFFER, Mr. FROST, Mr. QUINN, Mr. HOEKSTRA, Mr. HANCOCK, and Mr. WALSH) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to provide for the establishment of, and the deduction of 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. EDUCATION SAVINGS ACCOUNTS.**

4 (a) IN GENERAL.—Part VII of subchapter B of chap-
5 ter 1 of the Internal Revenue Code of 1986 (relating to
6 additional itemized deductions for individuals) is amended

1 by redesignating section 220 as section 221 and by insert-
2 ing after section 219 the following new section:

3 **“SEC. 220. EDUCATION SAVINGS ACCOUNTS.**

4 “(a) DEDUCTION ALLOWED.—In the case of an indi-
5 vidual, there shall be allowed as a deduction the sum of—

6 “(1) amounts paid in cash, and

7 “(2) the fair market value at time of transfer
8 of stocks, bonds, or other securities, which are read-
9 ily tradable on an established securities market,
10 transferred,

11 during the calendar year which ends with or within the
12 taxable year by such individual to an education savings
13 account established for the purpose of accumulating funds
14 to pay the educational expenses of an eligible individual.

15 “(b) LIMITATIONS.—

16 “(1) ACCOUNT MAY NOT BE ESTABLISHED FOR
17 BENEFIT OF MORE THAN 1 INDIVIDUAL.—An edu-
18 cation savings account may not be established for
19 the benefit of more than 1 individual.

20 “(2) ELIGIBLE INDIVIDUAL TREATED AS ELIGI-
21 BLE INDIVIDUAL ONLY WITH RESPECT TO 1 AC-
22 COUNT.—If, at any time during a calendar year, 2
23 or more education savings accounts are maintained
24 for the benefit of an eligible individual, such individ-
25 ual shall be treated as an eligible individual for the

1 calendar year only with respect to the first of such
2 accounts.

3 “(3) MAXIMUM DEDUCTION PER ACCOUNT.—
4 The amount allowable as a deduction under sub-
5 section (a) to an individual for amounts paid or
6 transferred to an education savings account for any
7 taxable year shall not exceed \$1,500.

8 “(4) NO DEDUCTION AFTER BENEFICIARY AT-
9 TAINS AGE 19.—No deduction shall be allowed for
10 any contribution to an education savings account es-
11 tablished for the benefit of an eligible individual who
12 has attained age 19 before the close of the calendar
13 year in which such contribution is made.

14 “(5) ADJUSTMENT OF DOLLAR AMOUNT LIM-
15 TATIONS FOR INFLATION.—

16 “(A) IN GENERAL.—Not later than
17 October 1 of 1994 and each succeeding cal-
18 endar year, the Secretary shall determine, and
19 publish in the Federal Register, the amount
20 which shall apply in lieu of the amount of the
21 limitation contained in paragraph (3) and sub-
22 section (c)(2)(A) with respect to taxable years
23 beginning in the next succeeding calendar year.

24 “(B) METHOD OF DETERMINING
25 AMOUNT.—The amount of the limitation which

1 shall apply in lieu of the amount of the limita-
2 tion contained in paragraph (3) and subsection
3 (c)(2)(A) with respect to taxable years begin-
4 ning in any calendar year shall be determined
5 by multiplying the amount contained in such
6 subparagraph and such subsection by the infla-
7 tion adjustment factor.

8 “(C) INFLATION ADJUSTMENT FACTOR.—
9 For purposes of subparagraph (B), the inflation
10 adjustment factor for any calendar year is a
11 fraction the numerator of which is the average
12 of the Consumer Price Index as of the close of
13 the 12-month period ending on July 31 of the
14 preceding calendar year and the denominator of
15 which is the average of the Consumer Price
16 Index as of the close of the 12-month period
17 ending on July 31, 1993.

18 “(D) CONSUMER PRICE INDEX.—For pur-
19 poses of subparagraph (C), the term ‘Consumer
20 Price Index’ has the meaning given such term
21 by section 1(f)(5).

22 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
23 poses of this section—

24 “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible
25 individual’ means an individual who is—

1 “(A) a child (within the meaning of section
2 153(e)(3)) of the taxpayer or of a brother, sis-
3 ter, stepbrother, or stepsister of the taxpayer,

4 “(B) an individual with respect to whom
5 the taxpayer has been appointed guardian by a
6 court of competent jurisdiction, or

7 “(C) a descendant of a child of the tax-
8 payer.

9 “(2) EDUCATION SAVINGS ACCOUNT.—The
10 term ‘education savings account’ means a trust cre-
11 ated or organized in the United States exclusively
12 for the purpose of paying the educational expenses
13 of an eligible individual, but only if the written gov-
14 erning instrument creating the trust meets the fol-
15 lowing requirements:

16 “(A) No contribution will be accepted un-
17 less it is in cash, stocks, bonds, or other securi-
18 ties which are readily tradable on an established
19 securities market, and, except in the case of
20 contributions from another education savings
21 account or an individual retirement plan, con-
22 tributions will not be accepted for the taxable
23 year in excess of \$1,500.

24 “(B) The trustee is a bank (as defined in
25 section 408(n)) or another person who dem-

1 onstrates to the satisfaction of the Secretary
2 that the manner in which that person will ad-
3 minister the trust will be consistent with the re-
4 quirements of this section.

5 “(C) No part of the trust assets will be in-
6 vested in life insurance contracts (other than
7 contracts the beneficiary of which is the trust
8 and the face amount of which does not exceed
9 the amount by which the maximum amount
10 which can be contributed to the account exceeds
11 the sum of the amounts contributed to the ac-
12 count for all taxable years).

13 “(D) The assets of the account may be in-
14 vested in accordance with the direction of the
15 individual contributing to the account, but, if
16 more than one individual has made contribu-
17 tions to the account, the consent of all such in-
18 dividuals shall be required for any such direc-
19 tion.

20 “(E) The assets of the trust shall not be
21 commingled with other property except in a
22 common trust fund or common investment
23 fund.

24 “(F) Any balance in the account on the
25 day after the date on which the individual for

1 whose benefit the trust is established attains
2 age 30 (or, if earlier, the date on which such
3 individual dies) shall be distributed within 30
4 days of such date—

5 “(i) in accordance with paragraph (5)
6 to each of the individuals who have con-
7 tributed to the trust, or

8 “(ii) as directed by such individuals,
9 to another education savings account es-
10 tablished for the benefit of an eligible indi-
11 vidual who has not attained age 30 or to
12 an eligible educational institution.

13 “(3) TIME WHEN CONTRIBUTIONS DEEMED
14 MADE.—A taxpayer shall be deemed to have made a
15 contribution on the last day of the preceding taxable
16 year if the contribution is made on account of such
17 taxable year and is made not later than the time
18 prescribed by law for filing the return for such tax-
19 able year (including extensions thereof).

20 “(4) STOCK, ETC., TO BE VALUED AS OF
21 TRANSFER DATE.—The fair market value of stocks,
22 bonds, and other securities shall be determined as of
23 the date on which they are transferred to the ac-
24 count. If the date of transfer falls on a Saturday,
25 Sunday, or public legal holiday, then the fair market

1 value shall be determined by reference to the last
2 preceding day on which they could have been traded
3 on an established securities market.

4 “(5) DISTRIBUTION OF BALANCE IN ACCOUNT
5 TO CONTRIBUTORS.—The Secretary shall prescribe
6 regulations describing the manner in which any bal-
7 ance in the educational savings account shall be dis-
8 tributed under paragraph (2)(F)(i) among the con-
9 tributors to the account. Any division of the balance
10 in the account shall reflect—

11 “(A) the amount of net income of the ac-
12 count which is attributable to the contributions
13 of each such individual, and

14 “(B) a proper allocation of any amounts
15 previously distributed from the account for edu-
16 cational expenses among the contributions
17 which were made before any such distribution
18 (including the net income of the account which
19 was attributable to such contributions and
20 earned before any such distribution).

21 “(6) EDUCATIONAL EXPENSES.—The term
22 ‘educational expenses’ means—

23 “(A) tuition and fees required for the en-
24 rollment or attendance of a student at an eligi-
25 ble educational institution,

1 “(B) fees, books, supplies, and equipment
2 required for courses of instruction at an eligible
3 educational institution, and

4 “(C) a reasonable allowance for meals and
5 lodging while attending an eligible educational
6 institution.

7 “(7) ELIGIBLE EDUCATIONAL INSTITUTION.—

8 The term ‘eligible educational institution’ means—

9 “(A) an institution of higher education, or

10 “(B) a vocational school.

11 “(8) INSTITUTION OF HIGHER EDUCATION.—

12 The term ‘institution of higher education’ means the
13 institutions described in section 1201(a) or 481(a)
14 of the Higher Education Act of 1965.

15 “(9) VOCATIONAL SCHOOL.—The term ‘voca-
16 tional school’ means an area vocational education
17 school as defined in subparagraph (C) or (D) of sec-
18 tion 521(4) of the Carl D. Perkins Vocational and
19 Applied Technology Education Act to the extent
20 such school is located within any State (as defined
21 in section 521(33) of such Act).

22 “(d) TAX TREATMENT OF DISTRIBUTIONS.—

23 “(1) IN GENERAL.—Except as otherwise pro-
24 vided in this subsection, any amount paid or distrib-
25 uted out of an education savings account shall be in-

1 cluded in gross income of the payee or distributee
2 for the taxable year in which the payment or dis-
3 tribution is received to the extent such amount is
4 not the return of a contribution for which no deduc-
5 tion was allowed under subsection (a).

6 “(2) DISTRIBUTION USED TO PAY EDU-
7 CATIONAL EXPENSES.—Paragraph (1) shall not
8 apply to any payment or distribution out of an edu-
9 cation savings account to the extent such payment
10 or distribution is used exclusively to pay the edu-
11 cational expenses incurred by the individual for
12 whose benefit the account is established.

13 “(3) DISTRIBUTIONS TO ANOTHER ACCOUNT OR
14 TO ELIGIBLE EDUCATIONAL INSTITUTION.—Para-
15 graph (1) shall not apply to any distribution under
16 subsection (c)(2)(F)(ii).

17 “(4) EXCESS CONTRIBUTIONS RETURNED BE-
18 FORE DUE DATE OF RETURN.—Paragraph (1) does
19 not apply to the distribution of any contribution paid
20 during a taxable year to an education savings ac-
21 count to the extent that such contribution exceeds
22 the amount allowable as a deduction under sub-
23 section (a) if—

24 “(A) such distribution is received on or be-
25 fore the day prescribed by law (including exten-

1 sions of time) for filing such individual's return
2 for such taxable year,

3 “(B) no deduction is allowed under sub-
4 section (a) with respect to such excess contribu-
5 tion, and

6 “(C) such distribution is accompanied by
7 the amount of net income attributable to such
8 excess contribution.

9 Any net income described in subparagraph (C) shall
10 be included in the gross income of the individual for
11 the taxable year in which such excess contribution
12 was made.

13 “(5) DISTRIBUTIONS TO INDIVIDUAL RETIRE-
14 MENT PLANS.—Paragraph (1) shall not apply to any
15 payment or distribution out of an education savings
16 account if—

17 “(A) before the close of the 60th day after
18 the day on which the payment or distribution is
19 received, the payment or distribution is contrib-
20 uted into an individual retirement plan of an in-
21 dividual who contributed to the education sav-
22 ings account, and

23 “(B) the amount of such payment or dis-
24 tribution (when added to all prior payments or
25 distributions excluded from the gross income of

1 such individual by reason of this paragraph)
2 does not exceed the aggregate amount contrib-
3 uted to the education savings account by the in-
4 ividual from amounts paid or distributed out
5 of an individual retirement plan in accordance
6 with section 408(d)(8).

7 “(e) TAX TREATMENT OF ACCOUNTS.—

8 “(1) EXEMPTION FROM TAX.—An education
9 savings account is exempt from taxation under this
10 subtitle unless such account has ceased to be an
11 education savings account by reason of paragraph
12 (2) or (3). Notwithstanding the preceding sentence,
13 any such account is subject to the taxes imposed by
14 section 511 (relating to imposition of tax on unre-
15 lated business income of charitable, etc. organiza-
16 tions).

17 “(2) LOSS OF EXEMPTION OF ACCOUNT WHERE
18 INDIVIDUAL ENGAGES IN PROHIBITED TRANS-
19 ACTION.—

20 “(A) IN GENERAL.—If the individual for
21 whose benefit an education savings account is
22 established or any individual who contributes to
23 such account engages in any transaction prohib-
24 ited by section 4975 with respect to the ac-
25 count, the account shall cease to be an edu-

1 cation savings account as of the first day of the
2 taxable year (of the individual so engaging in
3 such transaction) during which such transaction
4 occurs.

5 “(B) ACCOUNT TREATED AS DISTRIBUTING
6 ALL ITS ASSETS.—In any case in which any ac-
7 count ceases to be an education savings account
8 by reason of subparagraph (A) as of the first
9 day of any taxable year, paragraph (1) of sub-
10 section (d) shall apply as if there was a dis-
11 tribution on such first day in an amount equal
12 to the fair market value (on such first day) of
13 all assets in the account (on such first day).

14 “(3) EFFECT OF PLEDGING ACCOUNT AS SECUR-
15 RITY.—If, during any taxable year, the individual for
16 whose benefit an education savings account is estab-
17 lished, or any individual who contributes to such ac-
18 count, uses the account or any portion thereof as se-
19 curity for a loan, the portion so used shall be treated
20 as distributed to the individual so using such por-
21 tion.

22 “(f) ADDITIONAL TAX ON CERTAIN AMOUNTS IN-
23 CLUDED IN GROSS INCOME.—

24 “(1) DISTRIBUTION NOT USED FOR EDU-
25 CATIONAL EXPENSES.—In the case of any payment

1 or distribution to which subsection (d)(1) applies,
2 the tax liability of each payee or distributee under
3 this chapter for the taxable year in which the pay-
4 ment or distribution is received shall be increased by
5 an amount equal to 10 percent of the amount of the
6 distribution which is includible in the gross income
7 of such payee or distributee for such taxable year.

8 “(2) DISQUALIFICATION CASES.—If an amount
9 is includible in the gross income of an individual for
10 a taxable year because such amount is required to
11 be treated as a distribution under paragraph (2) or
12 (3) of subsection (e), such individual’s tax liability
13 under this chapter for such taxable year shall be in-
14 creased by an amount equal to 10 percent of such
15 amount required to be treated as a distribution and
16 included in his gross income.

17 “(3) DISABILITY OR DEATH CASES.—Para-
18 graphs (1) and (2) shall not apply if the payment
19 or distribution is made after the individual for whose
20 benefit the education savings account becomes dis-
21 abled within the meaning of section 72(m)(7) or
22 dies.

23 “(g) COMMUNITY PROPERTY LAWS.—This section
24 shall be applied without regard to any community property
25 laws.

1 “(h) CUSTODIAL ACCOUNTS.—For purposes of this
2 section, a custodial account shall be treated as a trust if
3 the assets of such account are held by a bank (as defined
4 in section 408(n)) or another person who demonstrates,
5 to the satisfaction of the Secretary, that the manner in
6 which he will administer the account will be consistent
7 with the requirements of this section, and if the custodial
8 account would, except for the fact that it is not a trust,
9 constitute an education savings account described in sub-
10 section (c)(2). For purposes of this title, in the case of
11 a custodial account treated as a trust by reason of the
12 preceding sentence, the custodian of such account shall be
13 treated as the trustee thereof.

14 “(i) REPORTS.—The trustee of an education savings
15 account shall make such reports regarding such account
16 to the Secretary and to the individual for whose benefit
17 the account is maintained with respect to contributions,
18 distributions, and such other matters as the Secretary
19 may require under regulations. The reports required by
20 this subsection shall be filed at such time and in such
21 manner and furnished to such individuals at such time and
22 in such manner as may be required by those regulations.”

23 (b) DEDUCTION ALLOWED IN ARRIVING AT AD-
24 JUSTED GROSS INCOME.—Paragraph (7) of section 62(a)

1 of such Code (relating to retirement savings) is amend-
2 ed—

3 (1) by inserting “OR EDUCATION” after “RE-
4 TIREMENT” in the heading of such paragraph, and

5 (2) by inserting before the period at the end the
6 following: “and the deduction allowed by section 220
7 (relating to education savings accounts)”.

8 (c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973
9 of such Code (relating to tax on excess contributions to
10 individual retirement accounts, certain section 403(b) con-
11 tracts, and certain individual retirement annuities) is
12 amended—

13 (1) by inserting “**EDUCATION SAVINGS AC-**
14 **COUNTS,**” after “**ACCOUNTS,**” in the heading of
15 such section,

16 (2) by striking “or” at the end of paragraph
17 (1) of subsection (a),

18 (3) by redesignating paragraph (2) of sub-
19 section (a) as paragraph (3) and by inserting after
20 paragraph (1) the following new paragraph:

21 “(2) an education savings account (within the
22 meaning of section 220(c)(2)), or”, and

23 (4) by adding at the end the following new sub-
24 section:

1 “(d) EXCESS CONTRIBUTIONS TO EDUCATION SAV-
2 INGS ACCOUNTS.—For purposes of this section, in the
3 case of an education savings account, the term ‘excess con-
4 tributions’ means the amount by which the amount con-
5 tributed for the taxable year to the account exceeds the
6 amount allowable as a deduction under section 220 for
7 such taxable year. For purposes of this subsection, any
8 contribution which is distributed out of the education sav-
9 ings account in a distribution to which section 220(d)(4)
10 applies shall be treated as an amount not contributed.”

11 (d) CONTRIBUTION NOT SUBJECT TO GIFT TAX.—
12 Section 2503 of such Code (relating to taxable gifts) is
13 amended by adding at the end the following new sub-
14 section:

15 “(h) EDUCATION SAVINGS ACCOUNTS.—Any con-
16 tribution made by an individual to an education savings
17 account described in section 220(c)(2) which is allowable
18 as a deduction under section 220 shall not be treated as
19 a transfer of property by gift for purposes of this chap-
20 ter.”

21 (e) TAX ON PROHIBITED TRANSACTIONS.—Section
22 4975 of such Code (relating to prohibited transactions)
23 is amended—

24 (1) by adding at the end of subsection (c) the
25 following new paragraph:

1 “(4) SPECIAL RULE FOR EDUCATION SAVINGS
2 ACCOUNTS.—An individual for whose benefit an edu-
3 cation savings account is established and any con-
4 tributor to such account shall be exempt from the
5 tax imposed by this section with respect to any
6 transaction concerning such account (which would
7 otherwise be taxable under this section) if, with re-
8 spect to such transaction, the account ceases to be
9 an education savings account by reason of the appli-
10 cation of section 220(e)(2)(A) to such account.”,
11 and

12 (2) by inserting “, an education savings account
13 described in section 220(c)(2),” in subsection (e)(1)
14 after “described in section 408(a)”.

15 (f) FAILURE TO PROVIDE REPORTS ON EDUCATION
16 SAVINGS ACCOUNTS.—Section 6693 of such Code (relat-
17 ing to failure to provide reports on individual retirement
18 accounts or annuities) is amended—

19 (1) by inserting “**OR ON EDUCATION SAV-**
20 **INGS ACCOUNTS**” after “**ANNUITIES**” in the
21 heading of such section, and

22 (2) by adding at the end of subsection (a) the
23 following new sentence: “The person required by sec-
24 tion 220(i) to file a report regarding an education
25 savings account at the time and in the manner re-

1 quired by such section shall pay a penalty of \$50 for
2 each failure, unless it is shown that such failure is
3 due to reasonable cause.”

4 (g) SPECIAL RULE FOR DETERMINING AMOUNTS OF
5 SUPPORT FOR DEPENDENT.—Subsection (b) of section
6 152 of such Code (relating to definition of dependent) is
7 amended by adding at the end the following new para-
8 graph:

9 “(6) A distribution from an education savings
10 account described in section 220(c)(2) to the individ-
11 ual for whose benefit such account has been estab-
12 lished shall not be taken into account in determining
13 support for purposes of this section to the extent
14 such distribution is excluded from gross income of
15 such individual under section 220(d)(2).”

16 (h) CLERICAL AMENDMENTS.—

17 (1) The table of sections for part VII of sub-
18 chapter B of chapter 1 of such Code is amended by
19 striking the item relating to section 220 and insert-
20 ing the following new items:

 “Sec. 220. Education savings accounts.
 “Sec. 221. Cross reference.”

21 (2) The table of sections for chapter 43 of such
22 Code is amended by striking the item relating to sec-
23 tion 4973 and inserting the following new item:

“Sec. 4973. Tax on excess contributions to individual retirement accounts, education savings accounts, certain 403(b) contracts, and certain individual retirement annuities.”

1 (3) The table of sections for subchapter B of
2 chapter 68 of such Code is amended by striking the
3 item relating to section 6693 and inserting the fol-
4 lowing new item:

“Sec. 6693. Failure to provide reports on individual retirement accounts or annuities or on education savings accounts.”

5 **SEC. 2. TRANSFERS BETWEEN INDIVIDUAL RETIREMENT**
6 **PLANS AND EDUCATION SAVINGS ACCOUNTS.**

7 (a) EXEMPTION FROM ANNUAL CONTRIBUTION LIM-
8 ITATION FOR DISTRIBUTIONS FROM EDUCATION SAVINGS
9 ACCOUNTS INTO IRA’S.—Paragraph (1) of section 408(a)
10 of the Internal Revenue Code of 1986 (relating to defini-
11 tion of individual retirement account) is amended by in-
12 serting after “403(b)(8),” the following: “or in the case
13 of a contribution from an education savings account in ac-
14 cordance with section 220(d)(5),”.

15 (b) EXCLUSION FROM GROSS INCOME FOR DIS-
16 TRIBUTIONS FROM IRA’S INTO EDUCATION SAVINGS AC-
17 COUNTS.—Subsection (d) of section 408 of such Code (re-
18 lating to tax treatment of distributions from individual re-
19 tirement plans) is amended by adding at the end the fol-
20 lowing new paragraph:

1 “(8) DISTRIBUTIONS USED TO MAKE CON-
2 TRIBUTION TO EDUCATION SAVINGS ACCOUNT.—
3 Paragraph (1) shall not apply to any amount paid
4 or distributed out of an individual retirement plan if,
5 before the close of the 60th day after the day on
6 which the payment or distribution is received, the
7 payment or distribution is contributed into an edu-
8 cation savings account (as defined in section
9 220(c)(2)).

10 **SEC. 3. EFFECTIVE DATE.**

11 The amendments made by this Act shall apply to tax-
12 able years beginning after December 31, 1992.

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