Income 44: State Tuition Program Contribution Subtraction

Individuals, estates, and trusts can claim a subtraction on their Colorado income tax returns for payments or contributions made to 529 college savings plans administered by CollegeInvest. Information about 529 college savings plans can be found online at *www.collegeinvest.org*. The subtraction is allowed irrespective of whether the individual making the payment or contribution is or is related to either the account owner or beneficiary. The subtraction is generally subject to the same requirements as qualified tuition programs described in IRS Publication 970, but the subtraction is not allowed for K-12 education expenses.

The subtraction is also allowed for payments or contributions made to any qualified state tuition program established by an educational institution in Colorado in accordance with section 529 of the Internal Revenue Code, but as of 2019, no educational institution in Colorado has established such a program.

NON-QUALIFYING PAYMENTS AND CONTRIBUTIONS

Several types of payments and contributions related to higher education do not qualify for the subtraction. The subtraction is not allowed for:

- payments or contributions made to 529 savings plans established and maintained by other states;
- rollovers made from one 529 savings plan to another;
- payments or contributions made to Coverdell educational savings accounts (ESA); or
- tuition payments.

Additionally, any distribution or withdrawal made from a 529 savings account to pay K-12 education expenses is subject to recapture, as discussed below. In order to avoid recapture, taxpayers should not claim a subtraction for any payment or contribution made to a 529 savings account that is expected to be used to pay K-12 education expenses.

RECAPTURE FOR NON-QUALIFYING DISTRIBUTIONS, REFUNDS, AND WITHDRAWALS

Any subtraction claimed for payment or contribution made to a 529 college savings plan is subject to recapture at the time of distribution, refund, or withdrawal unless it is made for a qualifying purpose. Qualifying distributions, refunds, and withdrawals are those made:

- to pay qualified higher education expenses (see below) for the designated beneficiary of the account;
- as a result of the beneficiary's death or disability; or
- as a result of receiving a scholarship during the tax year in an amount equal to or greater than the distribution, refunds, or withdrawals made.

The amount of any distribution, refund, or withdrawal made for any reason other than the three listed above must be recaptured. Any required recapture must be entered on the "other additions" line of the taxpayer's Colorado income tax return for the tax year in which the distribution, refund, or withdrawal is made. A taxpayer is not required to make an addition if the taxpayer did not claim a subtraction in a prior tax year for contribution of the funds that were distributed, refunded, or withdrawn.

Qualified higher education expenses

Qualified higher education expenses are expenses, listed below, incurred by the designated beneficiary of the 529 savings account in connection with enrollment or attendance at an eligible educational institution:

- tuition, fees, books, supplies, and equipment;
- certain limited costs of room and board for students enrolled at least half time;
- computer or peripheral equipment, computer software, or Internet access and related services; or
- expenses for special needs services.

Qualified higher education expenses are more fully described in Chapter 8 of IRS Publication 970.

Eligible educational institutions

An eligible educational institution is any college, university, vocational school, or other postsecondary educational institution eligible to participate in a student aid program administered by the U.S. Department of Education. Virtually all accredited public, nonprofit, and proprietary (privately owned profit-making) postsecondary institutions are eligible educational institutions.

Rollovers and changes to designated beneficiaries

Section 529 of the Internal Revenue Code establishes specific provisions applicable to rollovers and changes to the designated beneficiary of an account. The rules governing rollovers and beneficiary changes are described in Chapter 8 of IRS Publication 970. Rollovers between 529 accounts and changes to beneficiaries made in accordance with federal law will not be considered a distribution, refund, or withdrawal subject to recapture for the purposes of the subtraction. However, the recapture rules described in this publication apply to any subsequent distribution, refund, or withdrawal. The recapture rules apply even if the rollover was made to a 529 college savings account administered by another state.

Federal law also permits rollovers to ABLE accounts established under Section 529A of the Internal Revenue Code. Any rollover from a 529 college savings account to an ABLE account is considered a distribution, refund, or withdrawal subject to recapture for the purposes of the Colorado subtraction.

K-12 education expenses

Any amount distributed, refunded, or withdrawn to pay educational expenses for a student in a grade between kindergarten and 12th grade is subject to recapture. Any taxpayer who claims a subtraction for a payment or contribution made to a 529 college savings account in order to pay K-12 education expenses must recapture the subtraction, as described above, in the tax year of the distribution, refund, or withdrawal. The Tax Cuts and Jobs Act of 2017 amended federal law to permit the use of funds from a 529 college savings account for K-12 education expenses, but no similar amendment was made to Colorado law.

ADDITIONAL RESOURCES

- *Colorado statutes and regulations*
    - § 39-22-104(4)(i), C.R.S.
- *Colorado forms, publications, and guidance*
    - Form 104 – Colorado Individual Income Tax Return
- *Federal laws*
    - 26 U.S.C. § 529. Qualified tuition programs
- *IRS forms, publications, and guidance*
    - Publication 970 – Tax Benefits for Education, Chapter 8. Qualified Tuition Program (QTP)
