

SENATE, No. 842

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator NELLIE POU

District 35 (Bergen and Passaic)

Senator TROY SINGLETON

District 7 (Burlington)

SYNOPSIS

Allows gross income tax deductions for contributions to NJBEST program and provides distributions from qualified State tuition programs for K-12 expenses are not qualified withdrawals under gross income tax.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the NJBEST program, supplementing Title 54A
2 of the New Jersey Statutes, and amending N.J.S.18A:71B-36 and
3 P.L.1997, c.237.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. A taxpayer shall be allowed a deduction, not to exceed
9 \$5,000, \$2,500 for a married person filing separately, from the
10 taxpayer's gross income for the taxable year in the amount of the
11 taxpayer's contribution for the taxable year to an account
12 established pursuant to the "New Jersey Better Educational Savings
13 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.).

14
15 2. N.J.S.18A:71B-36 is amended to read as follows:
16 18A:71B-36. As used in this article:

17 "Account" means an individual trust account or savings account
18 established in accordance with this article;

19 "Authority" means the Higher Education Student Assistance
20 Authority;

21 "Contributor" means the person or organization contributing to
22 and maintaining an account and having the right to withdraw funds
23 from the account before the account is disbursed to or for the
24 benefit of the designated beneficiary;

25 "Designated beneficiary" means: a. the individual designated at
26 the time the account is opened as the individual whose higher
27 education expenses are expected to be paid from the account; b. the
28 replacement beneficiary if the change in designated beneficiary
29 would not result in a distribution that is included in federal gross
30 income under section 529 of the federal Internal Revenue Code of
31 1986, 26 U.S.C.s.529; and c. in the case of an interest in the
32 program purchased by a state or local government or an
33 organization described in paragraph (3) of subsection (c) of section
34 501 of the federal Internal Revenue Code of 1986, 26 U.S.C.s.501
35 and exempt from taxation under subsection (a) of section 501 of the
36 federal Internal Revenue Code of 1986, 26 U.S.C.s.501, as a part of
37 a scholarship program operated by the government or organization,
38 the individual receiving the interest as a scholarship;

39 "Higher education institution" means an eligible educational
40 institution as defined in or for purposes of section 529 of the federal
41 Internal Revenue Code of 1986, 26 U.S.C.s.529. Higher education
42 institution shall include a proprietary institution if expenses for
43 tuition at the institution would be considered qualified higher
44 education expenses under section 529 of the federal Internal
45 Revenue Code of 1986, 26 U.S.C.s.529, but only for degree

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 granting programs licensed or approved by the Commission on
2 Higher Education or for other proprietary institutions as determined
3 by the authority;

4 "Investment Manager" means the Division of Investment in the
5 Department of the Treasury or the private entities authorized to do
6 business in this State that may be designated by the authority to
7 invest the funds of the trust pursuant to the terms of this article;

8 "Member of the family" means a member of the family as
9 defined in or for purposes of section 529 of the federal Internal
10 Revenue Code of 1986, 26 U.S.C.s.529;

11 "Nonqualified withdrawal" means a withdrawal from an account
12 other than: a. a qualified withdrawal; b. a withdrawal made as the
13 result of the death or disability of the designated beneficiary of an
14 account; c. a withdrawal made on account of a scholarship (or
15 allowance or payment described in subparagraph (B) or (C) of
16 paragraph (1) of subsection (d) of section 135 of the federal Internal
17 Revenue Code of 1986, 26 U.S.C.s.135) received by the designated
18 beneficiary, but only to the extent of the amount of that scholarship,
19 allowance or payment; d. a rollover or change in designated
20 beneficiary which would not result in a distribution includible in
21 federal gross income under section 529 of the federal Internal
22 Revenue Code of 1986, 26 U.S.C.s.529; or e. any other withdrawal
23 if the failure of the program to impose a more than de minimis
24 penalty on the withdrawal would cause the program not to be a
25 qualified State tuition program under section 529 of the federal
26 Internal Revenue Code of 1986, 26 U.S.C.s.529;

27 "Program" means the "New Jersey Better Educational Savings
28 Trust (NJBEST) Program" established pursuant to this article;

29 "Qualified higher education expenses" means expenses described
30 in paragraph (3) of subsection (e) of section 529 of the federal
31 Internal Revenue Code of 1986, 26 U.S.C.s.529, excluding
32 expenses for tuition in connection with enrollment or attendance at
33 an elementary or secondary public, private, or religious school
34 pursuant to paragraph (7) of subsection (c) of that provision,
35 incurred in connection with the enrollment of a designated
36 beneficiary at a higher education institution;

37 "Qualified withdrawal" means a withdrawal from an account to
38 pay the qualified higher education expenses of the designated
39 beneficiary of the account; but a withdrawal shall not be considered
40 a qualified withdrawal if the failure of the program to impose a
41 more than de minimis penalty on the withdrawal would cause the
42 program not to qualify as a qualified State tuition program under
43 section 529 of the federal Internal Revenue Code of 1986,
44 U.S.C.s.529;

45 "Trust" means the "New Jersey Better Educational Savings
46 Trust" established pursuant to N.J.S.18A:71B-37.
47 (cf: N.J.S.18A:71B-36)

1 3. Section 13 of P.L.1997, c.237 (C.54A:6-25) is amended to
2 read as follows:

3 13. a. Gross income shall not include earnings on a Coverdell
4 education savings account, a qualified State tuition program
5 account, or a qualified ABLE account until the earnings are
6 distributed from the account, at which time they shall be includible
7 in the gross income of the distributee except as provided in this
8 section.

9 b. Gross income shall not include qualified distributions as
10 defined in paragraph (3) of subsection c. of this section.

11 c. For purposes of this section:

12 (1) "Coverdell education savings account" means a Coverdell
13 education savings account as defined pursuant to paragraph (1) of
14 subsection (b) of section 530 of the federal Internal Revenue Code
15 of 1986, 26 U.S.C. s.530.

16 (2) "Qualified State tuition program account" means an account
17 established pursuant to the "New Jersey Better Educational Savings
18 Trust (NJBEST) Program," (N.J.S.18A:71B-35 et seq.) or an
19 account established pursuant to any qualified State tuition program,
20 as defined pursuant to subsection (b) of section 529 of the federal
21 Internal Revenue Code of 1986, 26 U.S.C. s.529 or a tuition credit
22 or certificate purchased pursuant to any such program.

23 (3) "Qualified distribution" means any of the following:

24 (a) a distribution from a qualified State tuition program account
25 that is used for qualified higher education expenses as defined
26 pursuant to paragraph (3) of subsection (e) of section 529,
27 excluding expenses for tuition in connection with enrollment or
28 attendance at an elementary or secondary public, private, or
29 religious school pursuant to paragraph (7) of subsection (c) of that
30 provision, or a distribution from a qualified ABLE account that is
31 used for qualified disability expenses as defined pursuant to
32 paragraph (5) of subsection (e) of section 529A of the federal
33 Internal Revenue Code of 1986, 26 U.S.C. s.529 or 529A;

34 (b) a rollover from one account to another account as described
35 in clause (i) of subparagraph (C) of paragraph (3) of subsection (c)
36 of section 529, clause (i) of subparagraph (C) of paragraph (1) of
37 subsection (c) of section 529A, or paragraph (5) of subsection (d) of
38 section 530 of the federal Internal Revenue Code of 1986, 26
39 U.S.C. s.529, 529A, or 530; or

40 (c) a change in designated beneficiaries of an account as
41 described in clause (ii) of subparagraph (C) of paragraph (3) of
42 subsection (c) of section 529, clause (ii) of subparagraph (C) of
43 paragraph (1) of subsection (c) of section 529A, or paragraph (6) of
44 subsection (d) of section 530 of the federal Internal Revenue Code
45 of 1986, 26 U.S.C. s.529, 529A, or 530; and

46 (d) any other transfer involving a qualified ABLE account
47 which is a qualified distribution for the purposes of section 529A of
48 the federal Internal Revenue Code, 26 U.S.C. s.529A.

1 (4) "Qualified ABLE account" means an account established
2 pursuant to P.L.2015, c.185 (C.52:18A-250 et al.) or an account
3 established pursuant to any qualified State ABLE Program
4 established pursuant to section 529A of the federal Internal
5 Revenue Code of 1986, 26 U.S.C. s.529A.

6 d. The portion of a distribution from a Coverdell education
7 savings account, a qualified ABLE account, or a qualified State
8 tuition program account that is attributable to earnings shall be
9 determined in accordance with the principles of section 72 of the
10 federal Internal Revenue Code of 1986, 26 U.S.C. s.72, as applied
11 for purposes of sections 529, 529A, and 530 of the federal Internal
12 Revenue Code of 1986, 26 U.S.C. ss.529, 529A, and 530.
13 (cf: P.L.2015, c.185, s.1)

14
15 4. This act shall be retroactive to January 1, 2018 and shall
16 apply to contributions and withdrawals made in taxable years
17 beginning on or after January 1, 2018.

20 STATEMENT

21
22 This bill allows a taxpayer to deduct the amount of the
23 taxpayer's contribution to an account created under the New Jersey
24 Better Educational Savings Trust (NJBEST) Program, New Jersey's
25 "529 plan," from the taxpayer's gross income for the taxable year in
26 which the contribution is made. The maximum deduction per
27 taxpayer allowed under the bill for a taxable year is \$5,000 (\$2,500
28 for a married taxpayer filing separately). The deduction provided
29 by the bill will serve as an incentive for participation in the
30 NJBEST Program and will help taxpayers meet the ever-increasing
31 costs of higher education.

32 The bill also provides that distributions from a NJBEST account
33 for tuition expenses in connection with enrollment or attendance at
34 an elementary or secondary public, private, or religious school are
35 not qualified withdrawals under New Jersey gross income tax. Both
36 investment earnings and withdrawals from a NJBEST account for
37 this purpose would, therefore, be subject to New Jersey State gross
38 income tax.

39 This bill will provide that the original intent of the NJBEST
40 program, to incentivize long-term savings for future college costs,
41 is retained, notwithstanding recent changes to the federal Internal
42 Revenue Code in regard to college savings accounts. Under the
43 federal "Tax Cuts and Jobs Act " (Pub.L.115-97), enacted late in
44 2017, the federal Internal Revenue Code at 26 U.S.C. s.529, was
45 amended to allow taxpayers to make tax-exempt withdrawals from
46 college savings accounts, such as NJBEST, to pay for K-12 private
47 school tuition. While federal tax-free withdrawals from a NJBEST
48 account for K-12 private school tuition will continue to be available

S842 POU, SINGLETON

6

- 1 to a taxpayer pursuant to the recent changes in federal law, this bill
- 2 will ensure that these types of withdrawals will not be eligible for
- 3 any State income tax benefits.