114TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
114–25

AMENDING THE INTERNAL REVENUE CODE OF 1986 TO IMPROVE 529 PLANS

FEBRUARY 20, 2015.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RYAN of Wisconsin, from the Committee on Ways and Means, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 529]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 529) to amend the Internal Revenue Code of 1986 to improve 529 plans, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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49–006

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) When the Economic Growth and Tax Relief Reconciliation Act of 2001 became law, the tax treatment of section 529 college savings plans was changed so that qualified distributions were no longer taxed as income. The favorable tax treatment of college savings plans was made permanent with the passage of the Pension Protection Act of 2006.

(2) Section 529 college savings plans empower middle-class families to accumulate savings to offset the rising costs of attending college.

(3) The latest data from the College Savings Plan Network shows that there are 11.83 million 529 accounts open throughout all 50 states, which represent $244.5 billion in total assets. The average 529 account size is $20,671.

(4) States that sponsor 529 college savings plans have taken steps to ensure these plans are a tool that all families can use to save for college, including setting minimum contributions as low as $25 per month to encourage participation by families of all income levels.

(5) The President's fiscal year 2016 Budget proposes raising taxes by taxing certain future distributions made from 529 college savings plans.

(6) The tax proposed by the President would discourage the use of 529 college savings plans, requiring families and students to take on more debt.

(7) Purchase of a computer represents a significant higher education expense and therefore should be eligible for qualified distributions under 529 college savings plans.

(b) PURPOSE.—It is the purpose of this Act to—

(1) enact policies that strengthen 529 college savings plans, and

(2) make 529 plans more modern, consumer-friendly, and responsive to the realities faced by students today.

SEC. 2. COMPUTER TECHNOLOGY AND EQUIPMENT PERMANENTLY ALLOWED AS A QUALIFIED HIGHER EDUCATION EXPENSE FOR SECTION 529 ACCOUNTS.

(a) IN GENERAL.—Section 529(e)(3)(A)(iii) of the Internal Revenue Code of 1986 is amended to read as follows:

"(iii) expenses for the purchase of computer or peripheral equipment (as defined in section 168(i)(2)(B)), computer software (as defined in section 197(e)(3)(B)), or Internet access and related services, if such equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible educational institution.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2014.

SEC. 3. ELIMINATION OF DISTRIBUTION AGGREGATION REQUIREMENTS.

(a) IN GENERAL.—Section 529(c)(3) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after December 31, 2014.

SEC. 4. RECONTRIBUTION OF REFUNDED AMOUNTS.

(a) IN GENERAL.—Section 529(c)(3) of the Internal Revenue Code of 1986, as amended by section 3, is amended by adding at the end the following new subparagraph:

"(D) SPECIAL RULE FOR CONTRIBUTIONS OF REFUNDED AMOUNTS.—In the case of a beneficiary who receives a refund of any qualified higher education expenses from an eligible educational institution, subparagraph (A) shall not apply to that portion of any distribution for the taxable year which is recontributed to a qualified tuition program of which such individual is a beneficiary, but only to the extent such recontribution is made not later than 60 days after the date of such refund and does not exceed the refunded amount.".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by this section shall apply with respect to refunds of qualified higher education expenses after December 31, 2014.

(2) TRANSITION RULE.—In the case of a refund of qualified higher education expenses received after December 31, 2014, and before the date of the enactment of this Act, section 529(c)(3)(D) of the Internal Revenue Code of 1986 (as added by this section) shall be applied by substituting "not later than 60 days after the date of the enactment of this subparagraph" for "not later than 60 days after the date of such refund".

I. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 529, reported by the Committee on Ways and Means, modernizes and improves the treatment of college savings programs under section 529 of the Internal Revenue Code of 1986 ("529 plans"). It treats computer equipment and technology expenses as qualified higher education expenses, and removes the aggregation requirement for distributions. The bill also protects from tax and penalties amounts taken as distributions, paid as tuition, and then refunded, provided such amounts are re-contributed to the 529 plan within 60 days.

B. BACKGROUND AND NEED FOR LEGISLATION

The Committee believes that 529 plans are an important vehicle for encouraging middle-income families to save for higher education, and that these plans should be modernized, improved, and simplified for such families.

C. LEGISLATIVE HISTORY

BACKGROUND

H.R. 529 was introduced on January 26, 2015, and was referred to the Committee on Ways and Means.

COMMITTEE ACTION

The Committee on Ways and Means marked up H.R. 529, a bill to amend the Internal Revenue Code of 1986 to improve 529 plans on February 12, 2015, and ordered the bill, as amended, favorably reported (with a quorum being present).

COMMITTEE HEARINGS

The tax treatment of 529 plans was discussed at a full Committee hearing on the President's Fiscal Year 2016 Budget Proposal with Secretary of the Treasury Jacob J. Lew (February 3, 2015).

II. EXPLANATION OF THE BILL

A. SECTION 529 PROGRAMS (SECS. 2, 3 AND 4 OF THE BILL AND SEC. 529 OF THE CODE)

PRESENT LAW

SECTION 529 QUALIFIED TUITION PROGRAMS

In general

A qualified tuition program is a program established and maintained by a State or agency or instrumentality thereof, or by one or more eligible educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary (a "prepaid tuition program"). Section 529[1] provides specified income tax and transfer tax rules for the treatment of accounts and contracts established under qualified tuition programs.[2] In the case of a program established and maintained by a State or agency or instrumentality thereof, a qualified tuition program also includes a program under which a person may make contributions to an account that is established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account, provided it satisfies certain specified requirements (a "savings account program"). Under both types of qualified tuition programs, a contributor establishes an account for the benefit of a particular designated beneficiary to provide for that beneficiary's higher education expenses.

In general, prepaid tuition contracts and tuition savings accounts established under a qualified tuition program involve prepayments or contributions made by one or more individuals for the benefit of a designated beneficiary. Decisions with respect to the contract or account are typically made by an individual who is not the designated beneficiary. Qualified tuition accounts or contracts generally require the designation of a person (generally referred to as an "account owner")[3] whom the program administrator (oftentimes a third party administrator retained by the State or by the educational institution that established the program) may look to for decisions, recordkeeping, and reporting with respect to the account established for a designated beneficiary. The person or persons who make the contributions to the account need not be the same person who is regarded as the account owner for purposes of administering the account. Under many qualified tuition programs, the account owner generally has control over the account or contract, including the ability to change designated beneficiaries and to withdraw funds at any time and for any purpose. Thus, in practice, qualified tuition accounts or contracts generally involve a contributor, a designated beneficiary, an account owner (who oftentimes is not the

[1] Except where otherwise specified, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

[2] For purposes of this description, the term "account" is used interchangeably to refer to a prepaid tuition benefit contract or a tuition savings account established pursuant to a qualified tuition program.

[3] Section 529 refers to contributors and designated beneficiaries, but does not define or otherwise refer to the term "account owner," which is a commonly used term among qualified tuition programs.

contributor or the designated beneficiary), and an administrator of the account or contract.

QUALIFIED HIGHER EDUCATION EXPENSES

For purposes of receiving a distribution from a qualified tuition program that qualifies for favorable tax treatment under the Code, qualified higher education expenses means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, and expenses for special needs services in the case of a special needs beneficiary that are incurred in connection with such enrollment or attendance. Qualified higher education expenses generally also include room and board for students who are enrolled at least half-time. For taxable years 2009 and 2010 only, qualified higher education expenses included the purchase of any computer technology or equipment, or Internet access or related services, if such technology or services were to be used by the beneficiary or the beneficiary's family during any of the years a beneficiary was enrolled at an eligible institution.

CONTRIBUTIONS TO QUALIFIED TUITION PROGRAMS

Contributions to a qualified tuition program must be made in cash. Section 529 does not impose a specific dollar limit on the amount of contributions, account balances, or prepaid tuition benefits relating to a qualified tuition account; however, the program is required to have adequate safeguards to prevent contributions in excess of amounts necessary to provide for the beneficiary's qualified higher education expenses. Contributions generally are treated as a completed gift eligible for the gift tax annual exclusion. Contributions are not tax deductible for Federal income tax purposes, although they may be deductible for State income tax purposes. Amounts in the account accumulate on a tax-free basis (i.e., income on accounts in the plan is not subject to current income tax).

A qualified tuition program may not permit any contributor to, or designated beneficiary under, the program to direct (directly or indirectly) the investment of any contributions (or earnings thereon) more than two times in any calendar year, and must provide separate accounting for each designated beneficiary. A qualified tuition program may not allow any interest in an account or contract (or any portion thereof) to be used as security for a loan.

DISTRIBUTIONS FROM QUALIFIED TUITION PROGRAMS

Distributions from a qualified tuition program are excludable from the distributee's gross income to the extent that the total distribution does not exceed the qualified higher education expenses incurred for the beneficiary.[4]

If distribution from a qualified tuition program exceeds the qualified higher education expenses incurred for the beneficiary, the amount includible in gross income is determined, first, by applying the annuity rules of section 72[5] to determine the amount which would be includible in gross income if none of the amount distrib-

[4] Sec. 529(c)(3)(B)(i) and (ii)(I).

[5] Under section 72, a distribution is includible in income to the extent that the distribution represents earnings on the contribution to the program, determined on a pro rata basis.

uted was for qualified higher education expenses and, then, reducing that amount by an amount which bears the same ratio to that amount as the qualified higher education expenses bear to the amount of the distribution.[6]

For example, assume a taxpayer had $5,000 in a qualified tuition program account, $4,000 of which was the amount contributed. Also assume the taxpayer withdraws $1,000 from the account and $500 is used for qualified higher education expenses. First, the taxpayer applies the annuity rules of section 72 which results in $200 being included in income under section 72 assuming none of the distribution is used for qualified higher education expenses. Then the taxpayer reduces the $200 by one-half because 50 percent of the distribution was used for qualified higher education expenses. Thus, $100 is includible in gross income. This amount is subject to an additional 10-percent tax (unless an exception applies).

The Code provides that, except as provided by the Secretary of the Treasury ("Secretary"), for purposes of this calculation, the taxpayer's account value, income, and investment amount, are generally measured as of December 31st of the taxable year in which the distribution was made. The Secretary has issued guidance providing that the earnings portion of a distribution is to be computed on the date of each distribution.[7]

In the case of an individual who is the designated beneficiary for more than one qualified tuition program, all such accounts are aggregated for purposes of calculating the earnings in the account under section 72. The Secretary has provided in guidance that this aggregation is required only in the case of accounts contained within the same 529 program, having the same account owner and the same designated beneficiary.[8]

REASONS FOR CHANGE

The Committee recognizes that computer technology is an essential part of higher education, and thus believes that funds used to purchase such technology should be considered a qualified educational expense for purposes of section 529. Additionally, the Committee believes that certain rules requiring aggregation of section 529 accounts are difficult to administer, adding a burden to 529 administrators. Finally, the Committee believes that 529 programs should be able to allow students who have received a refund of tuition that had been paid with the proceeds of a 529 account to recontribute such refund back into the account without being taxed and penalized.

EXPLANATION OF PROVISION

The provision makes three modifications to section 529.

First, the provision provides that qualified higher education expenses include the purchase of computer or peripheral equipment (as defined in section 168(i)(2)(B)), computer software (as defined in section 197(e)(3)(B)), or Internet access and related services if the equipment, software, or services are to be used primarily by the

[6] Sec. 529(c)(3)(A) and (B)(ii).
[7] Notice 2001–81, 2001–2 C.B. 617, December 10, 2001.
[8] Ibid.

beneficiary during any of the years the beneficiary is enrolled at an eligible education institution.

Second, the provision repeals the rules providing that section 529 accounts must be aggregated for purposes of calculating the amount of a distribution that is included in a taxpayer's income. Thus, in the case of a designated beneficiary who has received multiple distributions from a qualified tuition program in the taxable year, the portion of a distribution that represents earnings is now to be computed on a distribution-by-distribution basis, rather than an aggregate basis, such that the computation applies to each distribution from an account. The following example illustrates the operation of this provision: Assume that two designated savings accounts have been established by the same account owner within the same qualified tuition program for the same designated beneficiary. Account A contains $20,000, all of which consists of contributed amounts (i.e., it has no earnings). Account B contains $30,000, $20,000 of which constitutes an investment in the account, and $10,000 attributable to earnings on that investment. Assume a taxpayer were to receive a $10,000 distribution from Account A, with none of the proceeds being spent on qualified higher education expenses. Under present law, both of the designated beneficiary's accounts would be aggregated for purposes of computing earnings. Thus, $2,000 of the $10,000 distribution from Account A ($10,000 * $10,000/$50,000) would be included in the designated beneficiary's income. Under the provision, the accounts would not be aggregated for purposes of determining earnings on the account. Thus, because Account A has no earnings, no amount of the distribution would be included in the designated beneficiary's income for the taxable year.

Third, the provision creates a new rule that provides, in the case of a designated beneficiary who received a refund of any higher education expenses, any distribution that was used to pay such refunded expenses shall not be subject to tax if the designated beneficiary recontributes the refunded amount to the qualified tuition program within 60 days of receiving the refund, only to the extent that such recontribution is not in excess of the refund. A transition rule allows for recontributions of amounts refunded after December 31, 2014 and before the date of enactment to be made not later than 60 days after the enactment of this provision.

EFFECTIVE DATE

The provision allowing computer technology to be considered a higher education expense is effective for taxable years beginning after December 31, 2014. The provision removing the aggregation requirement in the case of multiple distributions is effective for distributions made after December 31, 2014. The provision allowing a recontribution of refunded tuition amounts is effective for tuition refunded after December 31, 2014.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the vote of the Committee on Ways and Means in its consideration of H.R. 529, a bill to amend the Internal Revenue Code of 1986 to improve 529 plans on February 12, 2015.

The amendment by Mr. Davis to the amendment in the nature of a substitute, in which, under the amendment, 529 programs would be required to provide certain information regarding contributions and distributions required by the Secretary to be made public in aggregate form, was not agreed to by a roll call vote of 21 nays to 13 yeas (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Ryan		✔		Mr. Levin	✔		
IMr. Johnson		✔		Mr. Rangel	✔		
Mr. Brady		✔		Mr. McDermott	✔		
Mr. Nunes		✔		Mr. Lewis	✔		
Mr. Tiberi		✔		Mr. Neal	✔		
Mr. Reichert		✔		Mr. Becerra	✔		
Mr. Boustany		✔		Mr. Doggett	✔		
Mr. Roskam		✔		Mr. Thompson	✔		
Mr. Price				Mr. Larson			
Mr. Buchanan		✔		Mr. Blumenauer	✔		
Mr. Smith (NE)		✔		Mr. Kind	✔		
Mr. Schock		✔		Mr. Pascrell	✔		
Ms. Jenkins		✔		Mr. Crowley	✔		
Mr. Paulsen		✔		Mr. Davis	✔		
Mr. Marchant				Ms. Sanchez			
Ms. Black		✔					
Mr. Reed		✔					
Mr. Young		✔					
Mr. Kelly		✔					
Mr. Renacci		✔					
Mr. Meehan							
Ms. Noem		✔					
Mr. Holding		✔					
Mr. Smith (MO)		✔					

The amendment by Mr. Davis to the amendment in the nature of a substitute, in which, under the amendment, taxpayers with adjusted gross incomes of more than $3 million would not be eligible to make contributions to 529 accounts, was not agreed to by a roll call vote of 23 nays to 14 yeas (with a quorum being present). The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Ryan		✔		Mr. Levin	✔		
Mr. Johnson		✔		Mr. Rangel	✔		
Mr. Brady		✔		Mr. McDermott	✔		
Mr. Nunes		✔		Mr. Lewis	✔		
Mr. Tiberi		✔		Mr. Neal	✔		
Mr. Reichert		✔		Mr. Becerra	✔		
Mr. Boustany		✔		Mr. Doggett	✔		
Mr. Roskam		✔		Mr. Thompson	✔		
Mr. Price				Mr. Larson	✔		
Mr. Buchanan		✔		Mr. Blumenauer	✔		
Mr. Smith (NE)		✔		Mr. Kind	✔		
Mr. Schock		✔		Mr. Pascrell	✔		
Ms. Jenkins		✔		Mr. Crowley	✔		
Mr. Paulsen		✔		Mr. Davis	✔		
Mr. Marchant		✔		Ms. Sanchez	✔		
Ms. Black		✔					
Mr. Reed		✔					
Mr. Young		✔					
Mr. Kelly		✔					
Mr. Renacci		✔					

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Meehan		✔					
Mr. Noem		✔					
Mr. Holding		✔					
Mr. Smith (MO)		✔					

The bill, H.R. 529, was ordered favorably reported as amended to the House of Representatives by a voice vote (with a quorum being present).

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the bill, H.R. 529, as reported.

The bill, as reported, is estimated to have the following effect on Federal budget receipts for fiscal years 2015–2025:

Fiscal years, in millions of dollars—												
2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–20	2015–25
−1	−2	−2	−3	−3	−4	−5	−6	−7	−8	−10	−15	−51

Pursuant to clause 8 of rule XIII of the Rules of the House of Representatives, the following statement is made by the Joint Committee on Taxation with respect to the provisions of the bill amending the Internal Revenue Code of 1986: the gross budgetary effect (before incorporating macroeconomic effects) in any fiscal year is less than 0.25 percent of the current projected gross domestic product of the United States for that fiscal year; therefore, the bill is not "major legislation" for purposes of requiring that the estimate include the budgetary effects of changes in economic output, employment, capital stock and other macroeconomic variables.

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the revenue-reducing tax provisions involve increased tax expenditures. (See amounts in table in Part IV.A., above.)

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 19, 2015.

Hon. PAUL RYAN,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 529, a bill to amend the Internal Revenue Code of 1986 to improve 529 plans.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Logan Timmerhoff.

Sincerely,

ROBERT A. SUNSHINE
(For Douglas W. Elmendorf).

Enclosure.

H.R. 529—A bill to amend the Internal Revenue Code of 1986 to improve 529 plans

H.R. 529 would modify the tax treatment of college savings plans authorized under section 529 of the Internal Revenue Code. Under current law, income earned on amounts in those accounts accumulates on a tax-free basis, and the distribution of such income is not included in the taxable income of the recipient to the extent that it is used to pay certain higher education expenses. H.R. 529 would expand the qualifying expenses to include certain computer and related expenses. The bill would also modify the computation of the taxable portion of a distribution when the contributor has established multiple accounts for the student. In addition, H.R. 529 would allow beneficiaries to pay no tax in the event that they receive a refund from the educational institution (for example, after withdrawing from enrollment) and contribute the refunded amount back to the savings plan within 60 days.

The staff of the Joint Committee on Taxation (JCT) estimates that enacting H.R. 529 would reduce revenues, thus increasing federal deficits, by $51 million over the 2015–2025 period.

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending and revenues. Enacting H.R. 529 would result in revenue losses in each year beginning in 2015. The estimated increases in the deficit are shown in the following table.

JCT has determined that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Logan Timmerhoff. The estimate was approved by David Weiner, Assistant Director for Tax Analysis.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 529, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON WAYS AND MEANS ON FEBRUARY 12, 2015

	By fiscal year, in millions of dollars—												
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2015–2020	2015–2025
	NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	1	2	2	3	3	4	5	6	7	8	10	15	51

Source: Staff of the Joint Committee on Taxation.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was as a result of the Committee's review of the provisions of H.R. 529 that the Committee concluded that it is appropriate to report the bill, as amended, favorably to the House of Representatives with the recommendation that the bill do pass.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

C. INFORMATION RELATING TO UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

D. APPLICABILITY OF HOUSE RULE XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that "A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present." The Committee has carefully reviewed the bill, and states that the bill does not involve any Federal income tax rate increases within the meaning of the rule.

E. TAX COMPLEXITY ANALYSIS

The following statement is made pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives. Section 4022(b) of the Internal Revenue Service Restructuring and Reform Act of 1998 requires the staff of the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Treasury Department) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

Pursuant to clause 3(h)(1) of rule XIII of the Rules of the House of Representatives, the staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Code and that have "widespread applicability" to individuals or small businesses, within the meaning of the rule.

F. Congressional Earmarks, Limited Tax Benefits, and Limited Tariff Benefits

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

G. Duplication of Federal Programs

In compliance with Sec. 3(g)(2) of H. Res. 5 (114th Congress), the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program, (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169).

H. Disclosure of Directed Rule Makings

In compliance with Sec. 3(i) of H. Res. 5 (114th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

*   *   *   *   *   *   *

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter F—Exempt Organizations

* * * * * * *

PART VIII—CERTAIN SAVINGS ENTITIES

SEC. 529. QUALIFIED TUITION PROGRAMS.

(a) GENERAL RULE.—A qualified tuition program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) QUALIFIED TUITION PROGRAM.—For purposes of this section—

(1) IN GENERAL.—The term "qualified tuition program" means a program established and maintained by a State or agency or instrumentality thereof or by 1 or more eligible educational institutions—

(A) under which a person—

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) in the case of a program established and maintained by a State or agency or instrumentality thereof, may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection.

Except to the extent provided in regulations, a program established and maintained by 1 or more eligible educational institutions shall not be treated as a qualified tuition program unless such program provides that amounts are held in a qualified trust and such program has received a ruling or determination that such program meets the applicable requirements for a qualified tuition program. For purposes of the preceding sentence, the term "qualified trust" means a trust which is created or organized in the United States for the exclusive benefit of designated beneficiaries and with respect to which the requirements of paragraphs (2) and (5) of section 408(a) are met.

(2) CASH CONTRIBUTIONS.—A program shall not be treated as a qualified tuition program unless it provides that purchases or contributions may only be made in cash.

(3) SEPARATE ACCOUNTING.—A program shall not be treated as a qualified tuition program unless it provides separate accounting for each designated beneficiary.

(4) LIMITED INVESTMENT DIRECTION.—A program shall not be treated as a qualified tuition program unless it provides that any contributor to, or designated beneficiary under, such program may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.

(5) NO PLEDGING OF INTEREST AS SECURITY.—A program shall not be treated as a qualified tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(6) PROHIBITION ON EXCESS CONTRIBUTIONS.—A program shall not be treated as a qualified tuition program unless it provides adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

(c) TAX TREATMENT OF DESIGNATED BENEFICIARIES AND CONTRIBUTORS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, no amount shall be includible in gross income of—

(A) a designated beneficiary under a qualified tuition program, or

(B) a contributor to such program on behalf of a designated beneficiary,

with respect to any distribution or earnings under such program.

(2) GIFT TAX TREATMENT OF CONTRIBUTIONS.—For purposes of chapters 12 and 13—

(A) IN GENERAL.—Any contribution to a qualified tuition program on behalf of any designated beneficiary—

(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) TREATMENT OF EXCESS CONTRIBUTIONS.—If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

(3) DISTRIBUTIONS.—

(A) IN GENERAL.—Any distribution under a qualified tuition program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

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

(i) IN-KIND DISTRIBUTIONS.—No amount shall be includible in gross income under subparagraph (A) by reason of a distribution which consists of providing a benefit to the distributee which, if paid for by the distributee, would constitute payment of a qualified higher education expense.

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

(I) such distributions do not exceed the qualified higher education expenses (reduced by expenses described in clause (i)), no amount shall be includible in gross income, and

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

(iii) EXCEPTION FOR INSTITUTIONAL PROGRAMS.—In the case of any taxable year beginning before January 1, 2004, clauses (i) and (ii) shall not apply with respect to any distribution during such taxable year under a qualified tuition program established and maintained by 1 or more eligible educational institutions.

(iv) TREATMENT AS DISTRIBUTIONS.—Any benefit furnished to a designated beneficiary under a qualified tuition program shall be treated as a distribution to the beneficiary for purposes of this paragraph.

(v) COORDINATION WITH HOPE AND LIFETIME LEARNING CREDITS.—The total amount of qualified higher education expenses with respect to an individual for the taxable year shall be reduced—

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

(II) by the amount of such expenses which were taken into account in determining the credit allowed to the taxpayer or any other person under section 25A.

(vi) COORDINATION WITH COVERDELL EDUCATION SAVINGS ACCOUNTS.—If, with respect to an individual for any taxable year—

(I) the aggregate distributions to which clauses (i) and (ii) and section 530(d)(2)(A) apply, exceed

(II) the total amount of qualified higher education expenses otherwise taken into account under clauses (i) and (ii) (after the application of clause (v)) for such year,

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

(C) CHANGE IN BENEFICIARIES OR PROGRAMS.—

(i) ROLLOVERS.—Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred—

(I) to another qualified tuition program for the benefit of the designated beneficiary, or

(II) to the credit of another designated beneficiary under a qualified tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made.

(ii) CHANGE IN DESIGNATED BENEFICIARIES.—Any change in the designated beneficiary of an interest in a qualified tuition program shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is a member of the family of the old beneficiary.

(iii) LIMITATION ON CERTAIN ROLLOVERS.—Clause (i)(I) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified tuition program for the benefit of the designated beneficiary.

[(D) OPERATING RULES.—For purposes of applying section 72—

[(i) to the extent provided by the Secretary, all qualified tuition programs of which an individual is a designated beneficiary shall be treated as one program,

[(ii) except to the extent provided by the Secretary, all distributions during a taxable year shall be treated as one distribution, and

[(iii) except to the extent provided by the Secretary, the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.]

(D) SPECIAL RULE FOR CONTRIBUTIONS OF REFUNDED AMOUNTS.—In the case of a beneficiary who receives a refund of any qualified higher education expenses from an eligible educational institution, subparagraph (A) shall not apply to that portion of any distribution for the taxable year which is recontributed to a qualified tuition program of which such individual is a beneficiary, but only to the extent such recontribution is made not later than 60 days after the date of such refund and does not exceed the refunded amount.

(4) ESTATE TAX TREATMENT.—

(A) IN GENERAL.—No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

(B) AMOUNTS INCLUDIBLE IN ESTATE OF DESIGNATED BENEFICIARY IN CERTAIN CASES.—Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

(C) AMOUNTS INCLUDIBLE IN ESTATE OF DONOR MAKING EXCESS CONTRIBUTIONS.—In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such contributions properly allocable to periods after the date of death of the donor.

(5) OTHER GIFT TAX RULES.—For purposes of chapters 12 and 13—

(A) TREATMENT OF DISTRIBUTIONS.—Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

(B) TREATMENT OF DESIGNATION OF NEW BENEFICIARY.—The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) unless the new beneficiary is—

(i) assigned to the same generation as (or a higher generation than) the old beneficiary (determined in accordance with section 2651), and

(ii) a member of the family of the old beneficiary.

(6) ADDITIONAL TAX.—The tax imposed by section 530(d)(4) shall apply to any payment or distribution from a qualified tuition program in the same manner as such tax applies to a payment or distribution from an Coverdell education savings account. This paragraph shall not apply to any payment or distribution in any taxable year beginning before January 1, 2004, which is includible in gross income but used for qualified higher education expenses of the designated beneficiary.

(d) REPORTS.—Each officer or employee having control of the qualified tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) DESIGNATED BENEFICIARY.—The term "designated beneficiary" means—

(A) the individual designated at the commencement of participation in the qualified tuition program as the beneficiary of amounts paid (or to be paid) to the program,

(B) in the case of a change in beneficiaries described in subsection (c)(3)(C), the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified tuition program purchased by a State or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization, the individual receiving such interest as a scholarship.

(2) MEMBER OF FAMILY.—The term "member of the family" means, with respect to any designated beneficiary—

(A) the spouse of such beneficiary;

(B) an individual who bears a relationship to such beneficiary which is described in subparagraphs (A) through (G) of section 152(d)(2);

(C) the spouse of any individual described in subparagraph (B); and

(D) any first cousin of such beneficiary.

(3) QUALIFIED HIGHER EDUCATION EXPENSES.—

(A) IN GENERAL.—The term "qualified higher education expenses" means—

(i) tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution;

(ii) expenses for special needs services in the case of a special needs beneficiary which are incurred in connection with such enrollment or attendance

[(iii) expenses paid or incurred in 2009 or 2010 for the purchase of any computer technology or equipment (as defined in section 170(e)(6)(F)(i)) or Internet access and related services, if such technology, equipment, or services are to be used by the beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled at an eligible educational institution.]

(iii) expenses for the purchase of computer or peripheral equipment (as defined in section 168(i)(2)(B)), computer software (as defined in section 197(e)(3)(B)), or Internet access and related services, if such equipment, software, or services are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible educational institution.

Clause (iii) shall not include expenses for computer software designed for sports, games, or hobbies unless the software is predominantly educational in nature.

(B) ROOM AND BOARD INCLUDED FOR STUDENTS WHO ARE AT LEAST HALF-TIME.—

(i) IN GENERAL.—In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(6), a designated beneficiary shall be treated as meeting the requirements of this clause.

(ii) LIMITATION.—The amount treated as qualified higher education expenses by reason of clause (i) shall not exceed—

(I) the allowance (applicable to the student) for room and board included in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll), as in effect on the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001) as determined by the eligible educational institution for such period, or

(II) if greater, the actual invoice amount the student residing in housing owned or operated by the eligible educational institution is charged by such institution for room and board costs for such period.

(4) APPLICATION OF SECTION 514.—An interest in a qualified tuition program shall not be treated as debt for purposes of section 514.

(5) ELIGIBLE EDUCATIONAL INSTITUTION.—The term "eligible educational institution" means an institution—

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

(B) which is eligible to participate in a program under title IV of such Act.

(f) REGULATIONS.—Notwithstanding any other provision of this section, the Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section and to prevent abuse of such purposes, including regulations under chapters 11, 12, and 13 of this title.

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VII. ADDITIONAL VIEWS

We are supportive of the technical changes made by H.R. 529 that would reinstate the technology expenses permitted in 2009 and 2010 and allow any college refunds to be reinvested back into one's account within 60 days. However, we continue to be concerned about the Committee passing bills without any offset and the lack of concrete data on 529 accounts.

The Joint Committee on Taxation estimated this bill to cost $51 million over 10 years. At the markup, we offered an amendment that would have paid for the cost of this bill. Under the amendment, 529 programs would have been available to taxpayers with adjusted gross incomes of $3 million or less. The Republicans voted against this amendment.

We also offered an amendment that would have required Treasury to provide a report on 529 plans, including contributions, distributions, and other relevant data. The Republicans voted against this amendment.

At the end of the day, we should keep in mind that, according to a December 2012 GAO report, 529 accounts are used by only three percent (3%) of American families. While this Committee does not have full jurisdiction over education, we should take seriously our responsibility to join in addressing the college affordability crisis gripping our country.

SANDER M. LEVIN,
Ranking Member.

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