



529 Plan Expansion Under the Tax Cuts and Jobs Act of 2017

Next Steps Needed in the States: A Look Ahead for Catholic Superintendents and State Catholic Conferences

PROACTIVE STRATEGIES FOR YOUR STATE LEGISLATIVE SESSION

In some states legislation will be needed to ensure the full benefit of this expansion is seen by parents wishing to send their children to private schools. Separately, state plans rules and limitations might need to be modified to reflect the use of funds at the K12 level.

Does your state currently offer a state 529 plan?

- ✓ Advocate to create one.

STATE PLAN RULES: What is the definition of education expenses in your state's 529 plan? Is legislation needed to allow for funds to be used for K12 tuition?

- ✓ Several states first need to update their own tax codes in order to let account holders keep all the existing benefits of saving in a 529 account while using the money for K-12 education. In certain states, if families withdraw funds before that happens, they may risk having to repay a state tax deduction they've already received—or face state tax on the investment gains in the account.
- ✓ Advocate that your state embraces the new, broader federal definition of 529s expanded to include K-12 tuition.

STATE TAX CODE: Does your state have a state income tax? If yes, does it offer a deduction for plan contributions?

- ✓ Advocate to raise annual state deduction limits.
- ✓ Evaluate contribution limitations in your state, which were initially created for the more narrow purpose of college savings.
- ✓ Evaluate deduction restrictions coming from Blaine amendments.

STATE LEADERS: How are they responding to the new federal law?

- ✓ Does the state need to clarify whether investment gains might become taxable in the event of a discrepancy between state and federal law?
- ✓ Does the Treasurer or Governor anticipate legislative action is needed for the expansion?
- ✓ Is the current state language amenable with the new federal language?
- ✓ What are the state plan administrators advising parents?
- ✓ Has a state official suggested the K12 expansion to be “on hold?”

IN CONCLUSION

This list of suggested action items generally applies to all states. After reviewing and conferring with your legal counsel please consider drafting a state specific action plan based on your state's constitution, laws, regulations and political realities.

As all advocates for Catholic Education are learning more daily, please share with state Catholic conference colleagues and the USCCB Secretariat for Catholic Education concerns you have as your state implements this K12 expansion.

POTENTIAL OPPOSITION TACTICS THAT NEED A RESPONSE

The opposition plans to impede current 529 state plan rules or even enact new state laws to limit the expansion of 529s to K12 tuition. Plan your response to these moves this legislative session.

- ✓ Protect 529s expansion at the state level from current efforts to limit its applicability.
 - **IA**—Michael Fitzgerald, the state treasurer in Iowa, for example, has already warned families not to use their accounts for K-12 expenses until the law is amended. If they do, the state could recapture any deduction they received in previous years for contributing to the account. Currently, the definition of a qualified withdrawal within Iowa law does not include K-12 tuition, Fitzgerald said. The consequence of a non-qualified withdrawal is a recapture of the deduction.
 - **NY**—The New York State Department of Taxation and Finance released this preliminary report. “It appears that distributions for K-12 tuition expenses would not be considered qualified distributions under the New York statutes implementing 529 accounts and would trigger the recapture of any tax benefits that had accrued on contributions. We will continue to review the federal law's provisions on 529 plans on New York residents, and welcome discussion for possible solutions and alternatives.”
- ✓ Contest published unsubstantiated claims in your state claiming this expansion will hurt state revenues. Here are three examples as a reference.
 - **NY**—*Time Magazine* reported the change could reduce New York state's tax base by up to \$3 billion, according to Nat Malkus, deputy director of education policy at the American Enterprise Institute. That would cost the state, which allows a \$10,000 deduction per couple, as much as \$200 million in tax revenue.
 - **IA**—The *Des Moines Register* reported that determination will need to be made by Reynolds and the Iowa Legislature and the costs could be between \$3.7 million and \$4.5 million for the current state fiscal year.
 - **NE**—The *Omaha World-Herald* reported that Nebraska State Treasure Don Sternberg may seek to postpone changing that state's law until 2020, because of the effects on the state budget.