From the desk of
Peter S. Muffoletto, C.P.A.

New IRS guidance on 529 plan Recontributions, Rollovers and Qualified Expenses

The Internal Revenue Service has issued guidance regarding the following aspects of Internal Revenue Code Section (IRC) 529 relating to Qualified Tuition Programs (529 plans).

a. Recontribution of refunded qualified higher education expenses (QHEEs);
b. Rollover from a 529 plan to an ABLE account; and
c. Elementary and secondary education tuition expenses as QHEEs.

Under IRC 529 a State or its agency or instrumentality may establish or maintain a program that permits a person to prepay or contribute to an account for a designated beneficiary's QHEEs.

In addition an eligible educational institution may establish or maintain a program that permits a person to prepay a designated beneficiary's QHEEs.

These programs are collectively referred to as 529 plans.

IRC 529(c)(3) provides that distributions (including any attributable earnings) from a 529 plan are not included in gross income if such distributions do not exceed the designated beneficiary's QHEEs.

To the extent distributions exceed the designated beneficiary's QHEEs a portion of the distribution is included in gross income.

A 10% additional tax generally applies to amounts subject to tax under this rule.

IRC 529(e)(3)(A) defines QHEEs to include tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.

QHEEs also include reasonable costs for room and board for eligible students, generally, those who are enrolled at least half-time.

The Tax Cuts and Jobs Act (TCJA) expanded the definition of QHEEs to include tuition in connection with the designated beneficiary's enrollment or attendance at an elementary or secondary public, private, or religious school.

The TCJA also amended the IRC to limit the total amount of these tuition distributions for each designated beneficiary to $10,000 per year from all 529 plans of the designated beneficiary.

Both amendments apply to distributions made after December 31, 2017.

Tax-free rollovers of a distribution from a 529 plan made within 60 days of the distribution to another 529 plan for the benefit of either the same designated beneficiary or another designated beneficiary who is a member of the family of the original designated beneficiary.

The is a catch however in that the distributing 529 plan must provide a breakdown of the earnings portion of the rollover amount to the recipient 529 plan and, until the recipient 529 plan receives appropriate documentation showing the earnings portion, the entire rollover amount is treated as earnings.

This applies as well in relationship to a direct transfer (i.e., a trustee-to-trustee transfer) from a 529 plan to another 529 plan.

Where plan funds are distributed for a beneficiary's QHEEs but some portion of those expenses is refunded to the beneficiary by the eligible educational institution can be excluded from being taxable. This could occur if the beneficiary were to drop a class mid-semester.

Code Sec. 529(c)(3)(D) provides that the portion of such a distribution refunded to an individual who is the beneficiary of a 529 plan by an eligible educational institution is not subject to income tax to the extent that the refund:

a. If the amount is recontributed to a 529 plan of which that individual is the beneficiary not later than 60 days after the date of such refund; and
b. Does not exceed the refunded amount.
