A BILL FOR AN ACT

CONCERNING THE ALIGNMENT OF THE STATE INCOME TAX DEDUCTION
FOR CONTRIBUTIONS TO A 529 ACCOUNT WITH THE CHANGES IN
THE FEDERAL "TAX CUTS AND JOBS ACT" OF 2017 THAT ALLOW
TAX-FREE DISTRIBUTIONS FOR ELEMENTARY AND SECONDARY
TUITION EXPENSES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

Current law allows contributions to a qualified state tuition program, also known as a 529 account, so long as the distributions are
used for qualified higher education expenses, with some exceptions, but not for elementary and secondary tuition expenses. The federal "Tax Cuts and Jobs Act", which became law in December 2017, qualified distributions for elementary or secondary public, private, or religious school tuition expenses. On the federal level, this allowed income tax-free distributions for certain elementary and secondary education expenses in addition to already authorized income tax-free distributions for higher education expenses.

The bill makes similar changes to Colorado law to allow a deduction for contributions to qualified state tuition programs for elementary or secondary public, private, or religious school tuition expenses. Designating such expenses as qualified distributions ensures that a taxpayer does not encounter tax recapture of any claimed deductions when such contributions are distributed for elementary or secondary public, private, or religious school tuition expenses.

1 Be it enacted by the General Assembly of the State of Colorado:

 SECTION 1. In Colorado Revised Statutes, 39-22-104, amend

 (4)(i)(III) and (4)(i)(IV) as follows:

  39-22-104. Income tax imposed on individuals, estates, and
  trusts - single rate - legislative declaration - definitions - repeal.
  (4) There shall be subtracted from federal taxable income:
  (i) (III) No exclusion shall be allowed pursuant to this paragraph
  (i) SUBSECTION (4)(i) to the extent that such payments or contributions are
  excluded from the taxpayer's federal taxable income for the taxable year.
  Any exclusion taken under this paragraph (i) SUBSECTION (4)(i) shall be
  subject to recapture in the taxable year or years in which any distribution,
  refund, or any other withdrawal is made pursuant to an advance payment
  contract, from a savings trust account, or otherwise in connection with a
  qualified state tuition program for any reason other than:
  (A) To pay qualified higher education expenses;
  (B) As a result of the beneficiary's death or disability; or
  (C) As a result of receiving a scholarship and as long as the
aggregate amount of distributions, refunds, or withdrawals made pursuant to this sub-subparagraph (C) do not exceed the amount of the scholarship provided during such tax year; OR

(D) TO PAY FOR QUALIFIED ELEMENTARY AND SECONDARY TUITION EXPENSES IN AN AMOUNT NOT TO EXCEED THE DOLLAR AMOUNT LIMITATION SET FORTH IN SECTION 529 (e)(3)(A)(iii) OF THE INTERNAL REVENUE CODE, AS AMENDED.

(IV) As used in this paragraph (i) SUBSECTION (4)(i), "designated beneficiary", means a designated beneficiary as defined in section 529 (e)(1) of the internal revenue code; "qualified state tuition program", means a qualified state tuition program as defined in section 529 (b) of the internal revenue code; and "qualified higher education expenses" means qualified higher education expenses as have the same meaning as defined in section 529 (e)(3) of the internal revenue code, as amended, and "QUALIFIED ELEMENTARY AND SECONDARY TUITION EXPENSES" MEANS EXPENSES RELATED TO ENROLLMENT OR ATTENDANCE AT AN ELEMENTARY OR SECONDARY PUBLIC, PRIVATE, OR RELIGIOUS SCHOOL AS DESCRIBED IN SECTION 529 (c)(7) OF THE INTERNAL REVENUE CODE, AS AMENDED.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 5, 2020, if adjournment sine die is on May 6, 2020); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in
November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.