

CHAPTER 241

TAXATION

HOUSE BILL 22-1320

BY REPRESENTATIVE(S) Kipp and Larson, Amabile, Bacon, Benavidez, Bernett, Bird, Boesenecker, Daugherty, Exum, Gonzales-Gutierrez, Herod, Hooton, Jodeh, Lontine, McCluskie, McCormick, Michaelson Jenet, Mullica, Ortiz, Pico, Ricks, Snyder, Tipper, Titone, Valdez A., Valdez D., Weissman, Will, Woodrow, Young;
also SENATOR(S) Zenzinger and Woodward, Bridges, Buckner, Ginal, Hisey, Jaquez Lewis, Kirkmeyer, Kolker, Lee, Moreno, Pettersen, Priola, Smallwood, Story, Winter.

AN ACT

CONCERNING THE ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) SAVINGS PROGRAM FOR INDIVIDUALS WITH DISABILITIES, AND, IN CONNECTION THEREWITH, MODIFYING WHO MAY CREATE AND CONTROL AN ABLE PROGRAM ACCOUNT, PREVENTING THE STATE FROM FILING CERTAIN CLAIMS AGAINST AN ABLE PROGRAM ACCOUNT UPON THE DEATH OF THE DESIGNATED BENEFICIARY, AND ALLOWING CONTRIBUTIONS TO AN ABLE PROGRAM ACCOUNT THAT ARE WITHDRAWN FOR QUALIFIED DISABILITY EXPENSES TO BE DEDUCTED FROM A TAXPAYER'S FEDERAL TAXABLE INCOME FOR PURPOSES OF DETERMINING THE TAXPAYER'S STATE TAXABLE INCOME, AND MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 23-3.1-306, **add** (18) as follows:

23-3.1-306. Accounts - contributions - withdrawals - penalties - statements.

(18) (a) IN THE CASE OF AN ABLE SAVINGS PROGRAM ACCOUNT, A PERSON OTHER THAN THE ACCOUNT OWNER MAY ESTABLISH AN ACCOUNT AND HAVE SIGNATURE AUTHORITY OVER AN ACCOUNT ON BEHALF OF THE ACCOUNT OWNER IN ACCORDANCE WITH SECTION 529A OF THE INTERNAL REVENUE CODE AND THE REGULATIONS PROMULGATED UNDER THAT SECTION.

(b) THE AUTHORITY SHALL ADOPT ANY GUIDELINES AND PROCEDURES THAT ARE NECESSARY TO ALLOW A PERSON OTHER THAN THE ACCOUNT OWNER TO ESTABLISH AN ABLE SAVINGS PROGRAM ACCOUNT AND HAVE SIGNATURE AUTHORITY OVER SUCH AN ACCOUNT IN ACCORDANCE WITH THIS SUBSECTION (18).

SECTION 2. In Colorado Revised Statutes, 23-3.1-311, **add** (5) as follows:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

23-3.1-311. Achieving a better life experience (ABLE) savings program - establishment - authority - powers - duties. (5) UPON THE DEATH OF AN ABLE SAVINGS PROGRAM DESIGNATED BENEFICIARY, THE STATE SHALL NOT FILE A CLAIM AGAINST THE DECEASED DESIGNATED BENEFICIARY'S ABLE SAVINGS PROGRAM ACCOUNT AS AUTHORIZED IN SECTION 529A (f) OF THE INTERNAL REVENUE CODE, UNLESS THE FILING OF SUCH A CLAIM IS REQUIRED TO MAINTAIN QUALIFIED ABLE SAVINGS PROGRAM STATUS UNDER SECTION 529A OF THE INTERNAL REVENUE CODE.

SECTION 3. In Colorado Revised Statutes, 39-22-104, **amend** (4)(i)(I), (4)(i)(II)(B), and (4)(i)(IV); and **add** (4)(i)(III.5) and (4)(i)(IV.5) as follows:

39-22-104. Income tax imposed on individuals, estates, and trusts - single rate - report - legislative declaration - definitions - repeal. (4) There shall be subtracted from federal taxable income:

(i) (I) (A) For income tax years commencing on or after January 1, 1998, an amount equal to the portion attributable to interest and other income of a distribution under a qualified state tuition program that is distributed for the purpose of meeting qualified higher education expenses of a designated beneficiary, to the extent such amount is included in federal taxable income;

(B) BEFORE JANUARY 1, 2026, AN AMOUNT EQUAL TO THE PORTION ATTRIBUTABLE TO INTEREST AND OTHER INCOME OF A DISTRIBUTION UNDER A QUALIFIED ABLE PROGRAM THAT IS DISTRIBUTED FOR THE PURPOSE OF MEETING QUALIFIED DISABILITY EXPENSES OF A DESIGNATED BENEFICIARY, TO THE EXTENT SUCH AMOUNT IS INCLUDED IN FEDERAL TAXABLE INCOME;

(C) SUBSECTION (4)(i)(I)(B) IS REPEALED JANUARY 1, 2030.

(II) (B) Except as provided in subsection (4)(i)(II)(C) of this section, for income tax years commencing on or after January 1, 2022, an amount equal to all payments or contributions, not to exceed twenty thousand dollars per taxpayer per beneficiary for a taxpayer who files a single return, or thirty thousand dollars per taxpayer per beneficiary for taxpayers who file a joint return, made during the taxable year under an advance payment contract, to a savings trust account, or otherwise in connection with a qualified state tuition program established by collegeinvest created in section 23-3.1-203, or to a qualified state tuition program that is affiliated with an educational institution in the state and that is established and maintained pursuant to section 529 of the internal revenue code or any successor section, OR, BEFORE JANUARY 1, 2026, IN CONNECTION WITH A QUALIFIED ABLE PROGRAM. Notwithstanding subsection (4)(i)(III)(D) of this section, collegeinvest may treat a change in beneficiary as a nonqualifying distribution if the change was made for the purpose of evading the limit in this subsection (4)(i)(II)(B).

(III.5) NO SUBTRACTION IS ALLOWED PURSUANT TO THIS SUBSECTION (4)(i) TO THE EXTENT THAT SUCH PAYMENTS OR CONTRIBUTIONS ARE EXCLUDED FROM THE TAXPAYER'S FEDERAL TAXABLE INCOME FOR THE TAXABLE YEAR. BEFORE JANUARY 1, 2026, ANY SUBTRACTION TAKEN UNDER THIS SUBSECTION (4)(i) IS ADDED TO THE ACCOUNT HOLDER'S TAXABLE INCOME 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 ABLE PROGRAM FOR ANY REASON OTHER THAN:

(A) TO PAY QUALIFIED DISABILITY EXPENSES;

(B) AS A RESULT OF THE BENEFICIARY'S DEATH OR DISABILITY; OR

(C) AS A RESULT OF A CHANGE IN DESIGNATED BENEFICIARY, IF THE CHANGE COMPLIES WITH SECTION 529A (c)(1)(C)(ii) OF THE INTERNAL REVENUE CODE.

(D) THIS SUBSECTION (4)(i)(III.5) IS REPEALED, EFFECTIVE JANUARY 1, 2030.

(IV) As used in this paragraph (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 defined in section 529 (e)(3) of the internal revenue code~~ SUBSECTION (4)(i), UNLESS THE CONTEXT OTHERWISE REQUIRES:

(A) "DESIGNATED BENEFICIARY" HAS THE SAME MEANING AS DEFINED IN SECTION 529 (e)(1) OF THE INTERNAL REVENUE CODE.

(B) "QUALIFIED ABLE PROGRAM", BEFORE JANUARY 1, 2026, MEANS A QUALIFIED ABLE PROGRAM AS DEFINED IN SECTION 529A (b) OF THE INTERNAL REVENUE CODE.

(C) "QUALIFIED DISABILITY EXPENSE", BEFORE JANUARY 1, 2026, HAS THE SAME MEANING AS DEFINED IN SECTION 529A (e)(5) OF THE INTERNAL REVENUE CODE.

(D) "QUALIFIED HIGHER EDUCATION EXPENSE" HAS THE SAME MEANING AS DEFINED IN SECTION 529 (e)(3) OF THE INTERNAL REVENUE CODE.

(E) "QUALIFIED STATE TUITION PROGRAM" MEANS A QUALIFIED TUITION PROGRAM AS DEFINED IN SECTION 529 (b) OF THE INTERNAL REVENUE CODE.

(IV.5) SUBSECTIONS (4)(i)(IV)(B) AND (4)(i)(IV)(C) OF THIS SECTION AND THIS SUBSECTION (4)(i)(IV.5) ARE REPEALED, EFFECTIVE JANUARY 1, 2030.

SECTION 4. Appropriation. (1) For the 2022-23 state fiscal year, \$44,517 is appropriated to the department of revenue. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

- (a) \$27,400 for use by the executive director's office for personal services;
- (b) \$9,000 for tax administration IT system (GenTax) support;
- (c) \$7,560 for use by taxation services for personal services; and
- (d) \$557 for use by taxation services for IDS print production.

SECTION 5. Act subject to petition - effective date. This act takes effect January 1, 2023; 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 the ninety-day period after final adjournment of the general assembly, 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 2022 and, in such case, will take effect January 1, 2023, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: May 26, 2022