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H. R. 53

To amend the Internal Revenue Code of 1986 to establish a Higher Education Accumulation Program (HEAP) under which individuals are allowed a deduction for contributions to HEAP accounts.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Ms. ESHOO (for herself, Mr. ROTHMAN, Mr. FARR of California, Mr. UNDERWOOD, Mr. HASTINGS of Florida, Mr. KENNEDY of Rhode Island, Mr. FROST, Ms. NORTON, Mr. MENENDEZ, Ms. JACKSON-LEE of Texas, and Mr. GREEN) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to establish a Higher Education Accumulation Program (HEAP) under which individuals are allowed a deduction for contributions to HEAP accounts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Higher Education Ac-
5 cumulation Program Act of 1997”.

1 **SEC. 2. DEDUCTION FOR CONTRIBUTIONS TO HEAP AC-**
2 **COUNTS.**

3 (a) IN GENERAL.—Part VII of subchapter B of chap-
4 ter 1 of the Internal Revenue Code of 1986 (relating to
5 additional itemized deductions for individuals) is amended
6 by redesignating section 221 as section 222 and by insert-
7 ing after section 220 the following new section:

8 **“SEC. 221. HIGHER EDUCATION ACCUMULATION PROGRAM**
9 **(HEAP) ACCOUNTS.**

10 “(a) DEDUCTION ALLOWED.—In the case of an indi-
11 vidual, there shall be allowed as a deduction an amount
12 equal to the amount paid in cash for the taxable year by
13 the taxpayer to a HEAP account established for the pur-
14 pose of accumulating funds to pay the educational ex-
15 penses of any child of the taxpayer.

16 “(b) LIMITATIONS.—

17 “(1) MAXIMUM DEDUCTION.—The amount al-
18 lowable as a deduction under subsection (a) to the
19 taxpayer for any taxable year shall not exceed
20 \$5,000 (\$2,500 in the case of a married individual
21 filing a separate return) for amounts paid for the
22 benefit of each child of the taxpayer. In no event
23 shall the amount allowable as a deduction under
24 subsection (a) to the taxpayer for any taxable year
25 exceed \$15,000 (\$7,500 in the case of a married in-
26 dividual filing a separate return).

1 “(2) DEDUCTION MAY NOT EXCEED COMPENSA-
2 TION.—The amount allowable as a deduction under
3 subsection (a) shall not exceed the amount of com-
4 pensation (as defined in section 219(f)) includible in
5 the taxpayer’s gross income for the taxable year.

6 “(3) ACCOUNT MAY NOT BE ESTABLISHED FOR
7 BENEFIT OF MORE THAN 1 INDIVIDUAL.—A HEAP
8 account may not be established for the benefit of
9 more than 1 individual.

10 “(4) NO DEDUCTION AFTER BENEFICIARY AT-
11 TAINS AGE 18.—No deduction shall be allowed for
12 any payment to a HEAP account established for the
13 benefit of an individual who has attained age 18 be-
14 fore the close of the calendar year in which such
15 payment is made.

16 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
17 poses of this section—

18 “(1) HEAP ACCOUNT.—The term ‘HEAP ac-
19 count’ means a trust created or organized in the
20 United States exclusively for the purpose of paying
21 the educational expenses of a child of the taxpayer,
22 but only if the written governing instrument creating
23 the trust meets the following requirements:

24 “(A) No contribution will be accepted un-
25 less it is in cash, and contributions will not be

1 accepted for the taxable year in excess of
2 \$5,000.

3 “(B) The trustee is a bank (as defined in
4 section 408(n)) or another person who dem-
5 onstrates to the satisfaction of the Secretary
6 that the manner in which that person will ad-
7 minister the trust will be consistent with the re-
8 quirements of this section.

9 “(C) No part of the trust assets will be in-
10 vested in life insurance contracts.

11 “(D) The assets of the trust shall not be
12 commingled with other property except in a
13 common trust fund or common investment
14 fund.

15 “(E) On the termination date—

16 “(i) the balance in the account shall
17 be distributed to the individual for whose
18 benefit the account is established, or

19 “(ii) at the election of such individual,
20 such account shall be treated for purposes
21 of this title as an individual retirement ac-
22 count.

23 “(2) CHILD.—The term ‘child’ has the meaning
24 given such term by section 151(c)(3).

1 “(3) TERMINATION DATE.—The term ‘termi-
2 nation date’ means—

3 “(A) the date the beneficiary attains age
4 25,

5 “(B) if the beneficiary is at least a half-
6 time student on the date referred to in subpara-
7 graph (A), the last day of the last school year
8 for which the beneficiary is at least a half-time
9 student, or

10 “(C) the date of the beneficiary’s death.

11 “(4) EDUCATIONAL EXPENSES.—The term
12 ‘educational expenses’ means—

13 “(A) tuition and fees required for the en-
14 rollment or attendance of a student at an eligi-
15 ble educational institution,

16 “(B) fees, books, supplies, and equipment
17 required for courses of instruction at an eligible
18 educational institution, and

19 “(C) a reasonable allowance for meals and
20 lodging while attending an eligible educational
21 institution.

22 “(5) ELIGIBLE EDUCATIONAL INSTITUTION.—
23 The term ‘eligible educational institution’ means—

24 “(A) an institution of higher education, or

25 “(B) a vocational school.

1 “(6) INSTITUTION OF HIGHER EDUCATION.—

2 The term ‘institution of higher education’ means the
3 institutions described in section 1201(a) or 481(a)
4 of the Higher Education Act of 1965.

5 “(7) VOCATIONAL SCHOOL.—The term ‘voca-
6 tional school’ means an area vocational education
7 school as defined in subparagraph (C) or (D) of sec-
8 tion 521(4) of the Carl D. Perkins Vocational and
9 Applied Technology Education Act to the extent
10 such school is located within any State (as defined
11 in such section).

12 “(8) TIME WHEN CONTRIBUTIONS DEEMED
13 MADE.—A taxpayer shall be deemed to have made a
14 contribution on the last day of the preceding taxable
15 year if the contribution is made on account of such
16 taxable year and is made not later than the time
17 prescribed by law for filing the return for such tax-
18 able year (including extensions thereof).

19 “(d) TAX TREATMENT OF DISTRIBUTIONS.—

20 “(1) IN GENERAL.—Except as otherwise pro-
21 vided in this subsection, any amount paid from a
22 HEAP account shall be included in the gross income
23 of the beneficiary of such account for the taxable
24 year in which the payment is received.

1 “(2) AMOUNTS USED FOR EDUCATION EX-
2 PENSES.—If any payment from a HEAP account is
3 used to pay the educational expenses of the bene-
4 ficiary of such account—

5 “(A) paragraph (1) shall not apply, but

6 “(B) $\frac{1}{10}$ th of such amount shall be in-
7 cluded in gross income of the beneficiary of
8 such account for the taxable year in which the
9 payment is received and for each of the 9 tax-
10 able years thereafter.

11 “(3) EXCESS CONTRIBUTIONS RETURNED BE-
12 FORE DUE DATE OF RETURN.—Paragraph (1) shall
13 not apply to the distribution of any contribution
14 made during a taxable year to a HEAP account to
15 the extent that such contribution exceeds the
16 amount allowable as a deduction under subsection
17 (a) if—

18 “(A) such distribution is received on or be-
19 fore the day prescribed by law (including exten-
20 sions of time) for filing such individual’s return
21 for such taxable year,

22 “(B) no deduction is allowed under sub-
23 section (a) with respect to such excess contribu-
24 tion, and

1 “(C) such distribution is accompanied by
2 the amount of net income attributable to such
3 excess contribution.

4 Any net income described in subparagraph (C) shall
5 be included in the gross income of the individual for
6 the taxable year in which such excess contribution
7 was made.

8 “(4) TREATMENT AS INDIVIDUAL RETIREMENT
9 PLAN NOT SUBJECT TO INCOME TAX INCLUSION.—
10 The treatment described in subsection (c)(1)(E)(ii)
11 shall not be treated as a distribution for purposes of
12 this subsection.

13 “(e) TAX TREATMENT OF ACCOUNTS.—

14 “(1) EXEMPTION FROM TAX.—A HEAP ac-
15 count is exempt from taxation under this subtitle
16 unless such account has ceased to be a HEAP ac-
17 count by reason of paragraph (2) or (3). Notwith-
18 standing the preceding sentence, any such account is
19 subject to the taxes imposed by section 511 (relating
20 to imposition of tax on unrelated business income of
21 charitable, etc. organizations).

22 “(2) LOSS OF EXEMPTION OF ACCOUNT WHERE
23 INDIVIDUAL ENGAGES IN PROHIBITED TRANS-
24 ACTION.—

1 “(A) IN GENERAL.—If the individual for
2 whose benefit a HEAP account is established or
3 any individual who contributes to such account
4 engages in any transaction prohibited by section
5 4975 with respect to the account, the account
6 shall cease to be a HEAP account as of the
7 first day of the taxable year (of the individual
8 so engaging in such transaction) during which
9 such transaction occurs.

10 “(B) ACCOUNT TREATED AS DISTRIBUTING
11 ALL ITS ASSETS.—In any case in which any ac-
12 count ceases to be a HEAP account by reason
13 of subparagraph (A) as of the first day of any
14 taxable year, paragraph (1) of subsection (d)
15 shall apply as if there was a distribution on
16 such first day in an amount equal to the fair
17 market value (on such first day) of all assets in
18 the account (on such first day).

19 “(3) EFFECT OF PLEDGING ACCOUNT AS SECUR-
20 RITY.—If, during any taxable year, the individual for
21 whose benefit a HEAP account is established, or any
22 individual who contributes to such account, uses the
23 account or any portion thereof as security for a loan,
24 the portion so used shall be treated as distributed to
25 the individual so using such portion.

1 “(f) ADDITIONAL TAX ON CERTAIN DISTRIBUTIONS.—

2 “(1) DISTRIBUTION NOT USED FOR EDUCATIONAL EXPENSES.—If any payment from a

3 HEAP account is used for any purpose other than

4 the payment of the education expenses of the beneficiary of such account, the tax liability under this

5 chapter of such beneficiary for the taxable year in

6 which the payment is received shall be increased by

7 an amount equal to 10 percent of such payment.

8 “(2) DISTRIBUTIONS ON TERMINATION OF ACCOUNT.—

9 “(A) IN GENERAL.—Paragraph (1) shall

10 be applied by substituting ‘5 percent’ for ‘10

11 percent’ in the case of any distribution made on

12 the termination date to the beneficiary of the

13 account.

14 “(B) ACCOUNT BECOMING AN INDIVIDUAL RETIREMENT ACCOUNT.—If—

15 “(i) the election under subsection

16 (c)(1)(E)(ii) is made with respect to any

17 account, and

18 “(ii) the termination date occurs other

19 than by reason of the death of the account

20 beneficiary,

1 the tax liability under this chapter of such ben-
2 eficiary for the taxable year which includes the
3 termination date shall be increased by an
4 amount equal to 20 percent of the balance in
5 such account on such date.

6 “(3) DISABILITY OR DEATH CASES.—Para-
7 graphs (1) and (2)(A) shall not apply if the distribu-
8 tion is made after the account beneficiary becomes
9 disabled within the meaning of section 72(m)(7) or
10 dies.

11 “(4) DISQUALIFICATION CASES.—Any amount
12 treated under paragraph (2) or (3) of subsection (e)
13 as distributed from a HEAP account shall be treat-
14 ed as a distribution to which the tax imposed by
15 paragraph (1) applies.

16 “(g) COMMUNITY PROPERTY LAWS.—This section
17 shall be applied without regard to any community property
18 laws.

19 “(h) CUSTODIAL ACCOUNTS.—For purposes of this
20 section, a custodial account shall be treated as a trust if
21 the assets of such account are held by a bank (as defined
22 in section 408(n)) or another person who demonstrates,
23 to the satisfaction of the Secretary, that the manner in
24 which he will administer the account will be consistent
25 with the requirements of this section, and if the custodial

1 account would, except for the fact that it is not a trust,
2 constitute a HEAP account described in subsection (c)(1).
3 For purposes of this title, in the case of a custodial ac-
4 count treated as a trust by reason of the preceding sen-
5 tence, the custodian of such account shall be treated as
6 the trustee thereof.

7 “(i) REPORTS.—The trustee of a HEAP account
8 shall make such reports regarding such account to the
9 Secretary and to the individual for whose benefit the ac-
10 count is maintained with respect to contributions, dis-
11 tributions, and such other matters as the Secretary may
12 require under regulations. The reports required by this
13 subsection shall be filed at such time and in such manner
14 and furnished to such individuals at such time and in such
15 manner as may be required by those regulations.”

16 (b) DEDUCTION ALLOWED IN ARRIVING AT AD-
17 JUSTED GROSS INCOME.—Subsection (a) of section 62 of
18 such Code (relating to retirement savings) is amended by
19 inserting after paragraph (16) the following new para-
20 graph:

21 “(17) EDUCATION SAVINGS.—The deduction al-
22 lowed by section 221 (relating to HEAP accounts).”.

23 (c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973
24 of such Code (relating to tax on excess contributions to

1 individual retirement accounts, certain section 403(b) con-
2 tracts, and certain individual retirement annuities) is
3 amended—

4 (1) by inserting “**HEAP ACCOUNTS,**” after
5 “**SAVINGS ACCOUNTS,**” in the heading of such sec-
6 tion,

7 (2) by striking “or” at the end of paragraph
8 (1) of subsection (a),

9 (3) by redesignating paragraph (2) of sub-
10 section (a) as paragraph (3) and by inserting after
11 paragraph (1) the following new paragraph:

12 “(2) a HEAP account (within the meaning of
13 section 221(c)(1)), or”, and

14 (4) by adding at the end the following new sub-
15 section:

16 “(e) **EXCESS CONTRIBUTIONS TO HEAP AC-**
17 **COUNTS.**—For purposes of this section, in the case of a
18 HEAP account, the term ‘excess contributions’ means the
19 amount by which the amount contributed for the taxable
20 year to the account exceeds the amount allowable as a de-
21 duction under section 221 for such taxable year. For pur-
22 poses of this subsection, any contribution which is distrib-
23 uted out of the HEAP account in a distribution to which
24 section 221(d)(3) applies shall be treated as an amount
25 not contributed.”

1 (d) TAX ON PROHIBITED TRANSACTIONS.—

2 (1) Subsection (c) of section 4975 of such Code
3 (relating to prohibited transactions) is amended by
4 adding at the end the following new paragraph:

5 “(5) SPECIAL RULE FOR HEAP ACCOUNTS.—An
6 individual for whose benefit a HEAP account is es-
7 tablished and any contributor to such account shall
8 be exempt from the tax imposed by this section with
9 respect to any transaction concerning such account
10 (which would otherwise be taxable under this sec-
11 tion) if, with respect to such transaction, the ac-
12 count ceases to be a HEAP account by reason of the
13 application of section 221(e)(2)(A) to such account.”

14 (2) Paragraph (1) of section 4975(e) of such
15 Code is amended by striking “or” at the end of sub-
16 paragraph (D), by redesignating subparagraph (E)
17 as subparagraph (F), and by inserting after sub-
18 paragraph (D) the following new subparagraph:

19 “(E) a HEAP account described in section
20 221(c)(1), or”.

21 (e) FAILURE TO PROVIDE REPORTS ON HEAP AC-
22 COUNTS.—

23 (1) Paragraph (2) of section 6693(a) of such
24 Code (relating to failure to provide reports on indi-
25 vidual retirement accounts or annuities) is amended

1 by striking “and” at the end of subparagraph (A),
 2 by striking the period at the end of subparagraph
 3 (B) and inserting “, and”, and by adding at the end
 4 the following new subparagraph:

5 “(C) section 221(i) (relating to HEAP ac-
 6 counts).”.

7 (2) The heading for section 6693 of such Code
 8 is amended to read as follows:

9 **“SEC. 6693. FAILURE TO PROVIDE REPORTS ON INDIVIDUAL**
 10 **RETIREMENT PLANS AND CERTAIN OTHER**
 11 **SAVINGS PLANS.”**

12 (f) CLERICAL AMENDMENTS.—

13 (1) The table of sections for part VII of sub-
 14 chapter B of chapter 1 of such Code is amended by
 15 striking the item relating to section 221 and insert-
 16 ing the following new items:

“Sec. 221. HEAP accounts.
 “Sec. 222. Cross reference.”

17 (2) The table of sections for chapter 43 of such
 18 Code is amended by striking the item relating to sec-
 19 tion 4973 and inserting the following new item:

“Sec. 4973. Tax on excess contributions to individual retirement
 accounts, medical savings accounts, HEAP ac-
 counts, certain 403(b) contracts, and certain indi-
 vidual retirement annuities.”

20 (3) The table of sections for subchapter B of
 21 chapter 68 of such Code is amended by striking the

1 item relating to section 6693 and inserting the fol-
2 lowing new item:

“Sec. 6693. Failure to provide reports on individual retirement
plans and certain other savings plans.”

3 (g) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply to contributions made in taxable
5 years beginning after December 31, 1997.

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