

105TH CONGRESS  
1ST SESSION

# H. R. 82

To amend the Internal Revenue Code of 1986 to make higher education more affordable by providing tax benefits to individuals who save for, or pay for, higher education.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. SCHUMER (for himself and Ms. SLAUGHTER) introduced the following bill;  
which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to make higher education more affordable by providing tax benefits to individuals who save for, or pay for, higher education.

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 “Family Affordable Col-  
5       lege Tuition Act of 1997”.

1 **SEC. 2. DEDUCTION FOR HIGHER EDUCATION EXPENSES.**

2 (a) DEDUCTION ALLOWED.— Part VII of subchapter  
3 B of chapter 1 of the Internal Revenue Code of 1986 (re-  
4 lating to additional itemized deductions for individuals) is  
5 amended by redesignating section 221 as section 222 and  
6 by inserting after section 220 the following new section:

7 **“SEC. 221. HIGHER EDUCATION EXPENSES.**

8 “(a) ALLOWANCE OF DEDUCTION.—In the case of an  
9 individual, there shall be allowed as a deduction an  
10 amount equal to—

11 “(1) the qualified higher education expenses,  
12 and

13 “(2) interest on qualified higher education  
14 loans,  
15 paid by the taxpayer during the taxable year.

16 “(b) LIMITATION BASED ON MODIFIED ADJUSTED  
17 GROSS INCOME.—

18 “(1) IN GENERAL.—The amount which would  
19 (but for this subsection) be taken into account under  
20 subsection (a) shall be reduced (but not below zero)  
21 by the amount determined under paragraph (2).

22 “(2) AMOUNT OF REDUCTION.—The amount  
23 determined under this paragraph equals the amount  
24 which bears the same ratio to the amount which  
25 would be so taken into account as—

26 “(A) the excess of—

1                   “(i) the taxpayer’s modified adjusted  
2                   gross income for such taxable year, over

3                   “(ii) \$140,000 (\$200,000 in the case  
4                   of a joint return), bears to

5                   “(B) \$20,000.

6                   “(3) MODIFIED ADJUSTED GROSS INCOME.—

7                   For purposes of this subsection, the term ‘modified  
8                   adjusted gross income’ means the adjusted gross in-  
9                   come of the taxpayer for the taxable year deter-  
10                  mined—

11                  “(A) without regard to this section and  
12                  sections 911, 931, and 933, and

13                  “(B) after the application of sections 86,  
14                  135, 219, 220, and 469.

15                  For purposes of the sections referred to in subpara-  
16                  graph (B), adjusted gross income shall be deter-  
17                  mined without regard to the deduction allowed under  
18                  this section.

19                  “(4) INFLATION ADJUSTMENTS.—

20                  “(A) IN GENERAL.—In the case of a tax-  
21                  able year beginning after 1999, the \$140,000  
22                  and \$200,000 amounts described in paragraph  
23                  (2) shall each be increased by an amount equal  
24                  to—

1                   “(i) such dollar amounts, multiplied  
2                   by

3                   “(ii) the cost-of-living adjustment de-  
4                   termined under section 1(f)(3) for the cal-  
5                   endar year in which the taxable year be-  
6                   gins, determined by substituting ‘calendar  
7                   year 1998’ for ‘calendar year 1992’ in sub-  
8                   paragraph (B) thereof.

9                   “(B) ROUNDING.—If any amount as ad-  
10                  justed under subparagraph (A) is not a multiple  
11                  of \$5,000, such amount shall be rounded to the  
12                  next lowest multiple of \$5,000.

13                  “(c) QUALIFIED HIGHER EDUCATION EXPENSES.—  
14                  For purposes of this section—

15                         “(1) QUALIFIED HIGHER EDUCATION EX-  
16                         PENSES.—

17                                 “(A) IN GENERAL.—The term ‘qualified  
18                                 higher education expenses’ means—

19   “(i) tuition and fees charged by an  
20   educational institution and required for the  
21   enrollment or attendance of—

22   “(I) the taxpayer,

23   “(II) the taxpayer’s spouse,

1                   “(III) any dependent of the tax-  
2                   payer with respect to whom the tax-  
3                   payer is allowed a deduction under  
4                   section 151, or

5                   “(IV) any grandchild of the tax-  
6                   payer,

7                   as an eligible student at an institution of  
8                   higher education, and

9                   “(ii) reasonable living expenses for  
10                  such an individual while away from home  
11                  and attending such institution.

12                  “(B) ELIGIBLE COURSES.—Amounts paid  
13                  for qualified higher education expenses of any  
14                  individual shall be taken into account under  
15                  subsection (a) only to the extent such ex-  
16                  penses—

17                  “(i) are attributable to courses of in-  
18                  struction for which credit is allowed toward  
19                  a baccalaureate degree by an institution of  
20                  higher education or toward a certificate of  
21                  required course work at a vocational  
22                  school, and

23                  “(ii) are not attributable to any grad-  
24                  uate program of such individual.

1           “(C) EXCEPTION FOR NONACADEMIC  
2 FEES.—Such term does not include any student  
3 activity fees, athletic fees, insurance expenses,  
4 or other expenses unrelated to a student’s aca-  
5 demic course of instruction.

6           “(D) ELIGIBLE STUDENT.—For purposes  
7 of subparagraph (A), the term ‘eligible student’  
8 means a student who—

9                   “(i) meets the requirements of section  
10 484(a)(1) of the Higher Education Act of  
11 1965 (20 U.S.C. 1091(a)(1)), as in effect  
12 on the date of the enactment of this sec-  
13 tion, and

14                   “(ii) is carrying at least one-half the  
15 normal full-time work load for the course  
16 of study the student is pursuing, as deter-  
17 mined by the institution of higher edu-  
18 cation.

19           “(E) IDENTIFICATION REQUIREMENT.—No  
20 deduction shall be allowed under subsection (a)  
21 to a taxpayer with respect to an eligible student  
22 unless the taxpayer includes the name, age, and  
23 taxpayer identification number of such eligible  
24 student on the return of tax for the taxable  
25 year.

1           “(2) INSTITUTION OF HIGHER EDUCATION.—

2           The term ‘institution of higher education’ means an  
3           institution which—

4                   “(A) is described in section 481 of the  
5                   Higher Education Act of 1965 (20 U.S.C.  
6                   1088), as in effect on the date of the enactment  
7                   of this section, and

8                   “(B) is eligible to participate in programs  
9                   under title IV of such Act.

10          “(d) QUALIFIED HIGHER EDUCATION LOAN.—For  
11          purposes of this section—

12                   “(1) IN GENERAL.—The term ‘qualified higher  
13                   education loan’ means a loan which is—

14                           “(A) made, insured, or guaranteed by the  
15                           Federal Government,

16                           “(B) made by a State or a political sub-  
17                           division of a State,

18                           “(C) made from the proceeds of a qualified  
19                           student loan bond under section 144(b), or

20                           “(D) made by an institution of higher edu-  
21                           cation (as defined in section 1201(a) of the  
22                           Higher Education Act of 1965 (20 U.S.C.  
23                           1141(a))).

24                   “(2) LIMITATION.—The amount of interest on  
25                   a qualified higher education loan which is taken into

1 account under subsection (a)(2) shall not exceed the  
2 amount which bears the same ratio to such amount  
3 of interest as—

4 “(A) the proceeds from such loan used for  
5 qualified higher education expenses, bears to

6 “(B) the total proceeds from such loan.

7 For purposes of the preceding sentence, the term  
8 ‘qualified higher education expenses’ shall be deter-  
9 mined without regard to subsection (c)(1)(A)(i)(IV).

10 “(e) SPECIAL RULES.—

11 “(1) NO DOUBLE BENEFIT.—

12 “(A) IN GENERAL.—No deduction shall be  
13 allowed under subsection (a) for any expense  
14 for which a deduction is allowable to the tax-  
15 payer under any other provision of this chapter  
16 unless the taxpayer irrevocably waives his right  
17 to the deduction of such expense under such  
18 other provision.

19 “(B) DEPENDENTS.—No deduction shall  
20 be allowed under subsection (a) to any individ-  
21 ual with respect to whom a deduction under  
22 section 151 is allowable to another taxpayer for  
23 a taxable year beginning in the calendar year in  
24 which such individual’s taxable year begins.

1           “(C) SAVINGS BOND EXCLUSION.—A de-  
2           duction shall be allowed under subsection (a)  
3           for qualified higher education expenses only to  
4           the extent the amount of such expenses exceeds  
5           the amount excludable under section 135 for  
6           the taxable year.

7           “(2) LIMITATION ON TAXABLE YEAR OF DE-  
8           DUCTION.—

9           “(A) IN GENERAL.—A deduction shall be  
10          allowed under subsection (a) for qualified high-  
11          er education expenses for any taxable year only  
12          to the extent such expenses are in connection  
13          with enrollment at an institution of higher edu-  
14          cation during the taxable year.

15          “(B) CERTAIN PREPAYMENTS ALLOWED.—  
16          Subparagraph (A) shall not apply to qualified  
17          higher education expenses paid during a taxable  
18          year if such expenses are in connection with an  
19          academic term beginning during such taxable  
20          year or during the first 3 months of the next  
21          taxable year.

22          “(3) ADJUSTMENT FOR CERTAIN SCHOLAR-  
23          SHIPS AND VETERANS BENEFITS.—The amount of  
24          qualified higher education expenses otherwise taken

1 into account under subsection (a) or (d)(2) with re-  
2 spect to the education of an individual shall be re-  
3 duced (before the application of subsection (b)) by  
4 the sum of the amounts received with respect to  
5 such individual for the taxable year as—

6 “(A) a qualified scholarship which under  
7 section 117 is not includable in gross income,

8 “(B) an educational assistance allowance  
9 under chapter 30, 31, 32, 34, or 35 of title 38,  
10 United States Code, or

11 “(C) a payment (other than a gift, be-  
12 quest, devise, or inheritance within the meaning  
13 of section 102(a)) for educational expenses, or  
14 attributable to enrollment at an eligible edu-  
15 cational institution, which is exempt from in-  
16 come taxation by any law of the United States.

17 “(4) NO DEDUCTION FOR MARRIED INDIVID-  
18 UALS FILING SEPARATE RETURNS.—If the taxpayer  
19 is a married individual (within the meaning of sec-  
20 tion 7703), this section shall apply only if the tax-  
21 payer and the taxpayer’s spouse file a joint return  
22 for the taxable year.

23 “(5) NONRESIDENT ALIENS.—If the taxpayer is  
24 a nonresident alien individual for any portion of the

1 taxable year, this section shall apply only if such in-  
2 dividual is treated as a resident alien of the United  
3 States for purposes of this chapter by reason of an  
4 election under subsection (g) or (h) of section 6013.

5 “(6) REGULATIONS.—The Secretary may pre-  
6 scribe such regulations as may be necessary or ap-  
7 propriate to carry out this section, including regula-  
8 tions requiring recordkeeping and information re-  
9 porting.”

10 (b) DEDUCTION ALLOWED IN COMPUTING AD-  
11 JUSTED GROSS INCOME.—Section 62(a) of such Code is  
12 amended by inserting after paragraph (16) the following  
13 new paragraph:

14 “(17) HIGHER EDUCATION EXPENSES.—The  
15 deduction allowed by section 221.”

16 (c) CONFORMING AMENDMENT.—The table of sec-  
17 tions for part VII of subchapter B of chapter 1 of such  
18 Code is amended by striking the item relating to section  
19 221 and inserting:

“Sec. 221. Higher education expenses.  
“Sec. 222. Cross reference.”

20 (d) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to payments made after December  
22 31, 1996.

1 **SEC. 3. EDUCATION SAVINGS PLANS.**

2 (a) IN GENERAL.—Part VII of subchapter B of chap-  
3 ter 1 of the Internal Revenue Code of 1986 (relating to  
4 additional itemized deductions for individuals) is amended  
5 by redesignating section 222 as section 223 and by insert-  
6 ing after section 221 the following new section:

7 **“SEC. 222. EDUCATION SAVINGS PLANS.**

8 “(a) DEDUCTION ALLOWED.—In the case of an indi-  
9 vidual, there shall be allowed as a deduction the amount  
10 paid in cash during the taxable year by such individual  
11 to an education savings plan established for the purpose  
12 of accumulating funds to pay the qualified higher edu-  
13 cation expenses of individual who is an eligible individual  
14 with respect to the taxpayer.

15 “(b) LIMITATIONS.—

16 “(1) IN GENERAL.—The amount allowable as a  
17 deduction under subsection (a) to the taxpayer for  
18 any taxable year with respect to amounts paid to the  
19 education savings plan of each eligible individual  
20 shall not exceed \$4,000.

21 “(2) LIMITATION BASED ON MODIFIED AD-  
22 JUSTED GROSS INCOME.—The \$4,000 amount in  
23 paragraph (1) shall be reduced (but not below zero)  
24 by the amount which bears the same ratio to \$4,000  
25 as—

26 “(A) the excess of—

1           “(i) the taxpayer’s modified adjusted  
2           gross income for such taxable year, over

3           “(ii) the dollar amount applicable to  
4           the taxpayer for such taxable year under  
5           section 221(b)(2)(A)(ii), bears to

6           “(B) \$20,000.

7           “(3) MODIFIED ADJUSTED GROSS INCOME.—  
8           For purposes of this subsection, the term ‘modified  
9           adjusted gross income’ means the adjusted gross in-  
10          come of the taxpayer for the taxable year deter-  
11          mined—

12           “(A) without regard to this section and  
13           sections 911, 931, and 933, and

14           “(B) after the application of sections 86,  
15           135, 219, 220, 221, and 469.

16          For purposes of the sections referred to in subpara-  
17          graph (B), adjusted gross income shall be deter-  
18          mined without regard to the deduction allowed under  
19          this section.

20           “(3) PLAN MAY NOT BE ESTABLISHED FOR  
21          BENEFIT OF MORE THAN 1 INDIVIDUAL.—An edu-  
22          cation savings plan may not be established for the  
23          benefit of more than 1 individual.

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

1           “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
2 individual’ means an individual who is—

3                   “(A) the taxpayer,

4                   “(B) the taxpayer’s spouse,

5                   “(C) any dependent of the taxpayer with  
6 respect to whom the taxpayer is allowed a de-  
7 duction under section 151, or

8                   “(D) any grandchild of the taxpayer.

9           “(2) EDUCATION SAVINGS PLAN.—The term  
10 ‘education savings plan’ means a trust created or or-  
11 ganized in the United States exclusively for the pur-  
12 pose of paying the qualified higher education ex-  
13 penses of an eligible individual, but only if the writ-  
14 ten governing instrument creating the trust meets  
15 the following requirements:

16                   “(A) No contribution will be accepted un-  
17 less it is in cash, and contributions will not be  
18 accepted for any taxable year in excess of  
19 \$4,000.

20                   “(B) The trustee is a bank (as defined in  
21 section 408(n)) or another person who dem-  
22 onstrates to the satisfaction of the Secretary  
23 that the manner in which that person will ad-  
24 minister the trust will be consistent with the re-  
25 quirements of this section.

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

3           “(D) The assets of the trust shall not be  
4           commingled with other property except in a  
5           common trust fund or common investment  
6           fund.

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

14          “(4) QUALIFIED HIGHER EDUCATION EX-  
15          PENSES.—The term ‘qualified higher education ex-  
16          penses’ has the meaning given such term by section  
17          221(c).

18          “(5) INSTITUTION OF HIGHER EDUCATION.—  
19          The term ‘institution of higher education’ has the  
20          meaning given such term by section 221(c).

21          “(d) TAX TREATMENT OF DISTRIBUTIONS.—

22                 “(1) IN GENERAL.—Except as otherwise pro-  
23                 vided in this subsection, any amount paid or distrib-  
24                 uted out of an education savings plan shall be in-  
25                 cluded in gross income of the payee or distributee

1 for the taxable year in which the payment or dis-  
2 tribution is received to the extent such amount is  
3 not the return of a contribution for which no deduc-  
4 tion was allowed under subsection (a).

5 “(2) DISTRIBUTION USED TO PAY QUALIFIED  
6 HIGHER EDUCATION EXPENSES.—Paragraph (1)  
7 shall not apply to any payment or distribution out  
8 of an education savings plan to the extent such pay-  
9 ment or distribution is used exclusively to pay the  
10 qualified higher education expenses incurred by the  
11 individual for whose benefit the plan is established  
12 while such individual is an eligible student (as de-  
13 fined in section 221).

14 “(3) DISTRIBUTIONS TO ANOTHER PLAN OR TO  
15 INSTITUTION OF HIGHER EDUCATION.—Paragraph  
16 (1) shall not apply to any distribution under sub-  
17 section (c)(2)(E)(ii).

18 “(4) EXCESS CONTRIBUTIONS RETURNED BE-  
19 FORE DUE DATE OF RETURN.—Paragraph (1) does  
20 not apply to the distribution of any contribution paid  
21 during a taxable year to an education savings plan  
22 to the extent that such contribution exceeds the  
23 amount allowable as a deduction under subsection  
24 (a) for contributions to such plan if—

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

5           “(B) no deduction is allowed under sub-  
6           section (a) with respect to such excess contribu-  
7           tion, and

8           “(C) such distribution is accompanied by  
9           the amount of net income attributable to such  
10          excess contribution.

11          Any net income described in subparagraph (C) shall  
12          be included in the gross income of the individual for  
13          the taxable year in which such excess contribution  
14          was made.

15          “(e) TAX TREATMENT OF PLANS.—

16                 “(1) EXEMPTION FROM TAX.—An education  
17                 savings plan is exempt from taxation under this sub-  
18                 title unless such plan has ceased to be an education  
19                 savings plan by reason of paragraph (3). Notwith-  
20                 standing the preceding sentence, any such plan is  
21                 subject to the taxes imposed by section 511 (relating  
22                 to imposition of tax on unrelated business income of  
23                 charitable, etc. organizations).

24                 “(2) AMOUNT IN PLAN NOT TO AFFECT ELIGI-  
25                 BILITY FOR OTHER FEDERAL ASSISTANCE.—

1 Amounts held in any education savings plan shall  
2 not be taken into account in determining the eligi-  
3 bility for, or the amount of, any grant under any  
4 Federal student assistance program.

5 “(3) LOSS OF EXEMPTION OF PLAN WHERE IN-  
6 DIVIDUAL ENGAGES IN PROHIBITED TRANS-  
7 ACTION.—

8 “(A) IN GENERAL.—If the individual for  
9 whose benefit an education savings plan is es-  
10 tablished or any individual who contributes to  
11 such plan engages in any transaction prohibited  
12 by section 4975 with respect to the plan, the  
13 plan shall cease to be an education savings plan  
14 as of the first day of the taxable year (of the  
15 individual so engaging in such transaction) dur-  
16 ing which such transaction occurs.

17 “(B) PLAN TREATED AS DISTRIBUTING  
18 ALL ITS ASSETS.—In any case in which any  
19 plan ceases to be an education savings plan by  
20 reason of subparagraph (A) as of the first day  
21 of any taxable year, paragraph (1) of subsection  
22 (d) shall apply as if there was a distribution on  
23 such first day in an amount equal to the fair  
24 market value (on such first day) of all assets in  
25 the plan (on such first day).

1           “(4) EFFECT OF PLEDGING PLAN AS SECUR-  
2           RITY.—If, during any taxable year, the individual for  
3           whose benefit an education savings plan is estab-  
4           lished, or any individual who contributes to such  
5           plan, uses the plan or any portion thereof as security  
6           for a loan, the portion so used shall be treated as  
7           distributed to the individual so using such portion.

8           “(f) ADDITIONAL TAX ON CERTAIN AMOUNTS IN-  
9           CLUDED IN GROSS INCOME.—

10           “(1) DISTRIBUTION NOT USED FOR QUALIFIED  
11           HIGHER EDUCATION EXPENSES.—In the case of any  
12           payment or distribution to which subsection (d)(1)  
13           applies, the tax liability of each payee or distributee  
14           under this chapter for the taxable year in which the  
15           payment or distribution is received shall be increased  
16           by an amount equal to 10 percent of the amount of  
17           the distribution which is includible in the gross in-  
18           come of such payee or distributee for such taxable  
19           year.

20           “(2) DISQUALIFICATION CASES.—If an amount  
21           is includible in the gross income of an individual for  
22           a taxable year because such amount is required to  
23           be treated as a distribution under paragraph (2) or  
24           (3) of subsection (e), such individual’s tax liability

1 under this chapter for such taxable year shall be in-  
2 creased by an amount equal to 10 percent of such  
3 amount required to be treated as a distribution and  
4 included in his gross income.

5 “(3) DISABILITY OR DEATH CASES.—Para-  
6 graphs (1) and (2) shall not apply if the payment  
7 or distribution is made after the individual for whose  
8 benefit the education savings plan becomes disabled  
9 within the meaning of section 72(m)(7) or dies.

10 “(g) COMMUNITY PROPERTY LAWS.—This section  
11 shall be applied without regard to any community property  
12 laws.

13 “(h) CUSTODIAL PLANS.—For purposes of this sec-  
14 tion, a custodial plan shall be treated as a trust if the  
15 assets of such plan are held by a bank (as defined in sec-  
16 tion 408(n)) or another person who demonstrates, to the  
17 satisfaction of the Secretary, that the manner in which  
18 he will administer the plan will be consistent with the re-  
19 quirements of this section, and if the custodial plan would,  
20 except for the fact that it is not a trust, constitute an  
21 education savings plan described in subsection (c)(2). For  
22 purposes of this title, in the case of a custodial plan treat-  
23 ed as a trust by reason of the preceding sentence, the cus-  
24 todian of such plan shall be treated as the trustee thereof.

1       “(i) REPORTS.—The trustee of an education savings  
2 plan shall make such reports regarding such plan to the  
3 Secretary and to the individual for whose benefit the plan  
4 is maintained with respect to contributions, distributions,  
5 and such other matters as the Secretary may require  
6 under regulations. The reports required by this subsection  
7 shall be filed at such time and in such manner and fur-  
8 nished to such individuals at such time and in such man-  
9 ner as may be required by those regulations.”

10       (b) DEDUCTION ALLOWED IN ARRIVING AT AD-  
11 JUSTED GROSS INCOME.—Paragraph (7) of section 62(a)  
12 of such Code (relating to retirement savings) is amend-  
13 ed—

14             (1) by inserting “OR EDUCATION” after “RE-  
15 TIREMENT” in the heading of such paragraph, and

16             (2) by inserting before the period at the end the  
17 following: “and the deduction allowed by section 222  
18 (relating to education savings plans)”.

19       (c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973  
20 of such Code (relating to tax on excess contributions to  
21 individual retirement plans, certain section 403(b) con-  
22 tracts, and certain individual retirement annuities) is  
23 amended—

1           (1) by inserting “EDUCATION SAVINGS PLANS,”  
2           after “MEDICAL SAVINGS ACCOUNTS,” in the heading  
3           of such section,

4           (2) by striking “or” at the end of paragraph  
5           (2) of subsection (a),

6           (3) by redesignating paragraph (3) of sub-  
7           section (a) as paragraph (4) and by inserting after  
8           paragraph (2) the following new paragraph:

9           “(3) an education savings plan (within the  
10          meaning of section 222(c)(2)), or”, and

11          (4) by adding at the end the following new sub-  
12          section:

13          “(e) EXCESS CONTRIBUTIONS TO EDUCATION SAV-  
14          INGS PLANS.—For purposes of this section, in the case  
15          of an education savings plan, the term ‘excess contribu-  
16          tions’ means the amount by which the amount contributed  
17          for the taxable year to the plan exceeds the amount allow-  
18          able as a deduction under section 222 for such taxable  
19          year. For purposes of this subsection, any contribution  
20          which is distributed out of the education savings plan in  
21          a distribution to which section 222(d)(4) applies shall be  
22          treated as an amount not contributed.”

23          (d) CONTRIBUTION NOT SUBJECT TO GIFT TAX.—  
24          Section 2503 of such Code (relating to taxable gifts) is

1 amended by adding at the end the following new sub-  
2 section:

3 “(h) EDUCATION SAVINGS PLANS.—Any contribution  
4 made by an individual to an education savings plan de-  
5 scribed in section 222(c)(2) which is allowable as a deduc-  
6 tion under section 222 shall not be treated as a transfer  
7 of property by gift for purposes of this chapter.”

8 (e) TAX ON PROHIBITED TRANSACTIONS.—

9 (1) Section 4975 of such Code (relating to pro-  
10 hibited transactions) is amended by adding at the  
11 end of subsection (c) the following new paragraph:

12 “(5) SPECIAL RULE FOR EDUCATION SAVINGS  
13 PLANS.—An individual for whose benefit an edu-  
14 cation savings plan is established and any contribu-  
15 tor to such plan shall be exempt from the tax im-  
16 posed by this section with respect to any transaction  
17 concerning such plan (which would otherwise be tax-  
18 able under this section) if, with respect to such  
19 transaction, the plan ceases to be an education sav-  
20 ings plan by reason of the application of section  
21 222(e)(2)(A) to such plan.”

22 (2) Paragraph (1) of section 4975(e) is amend-  
23 ed by striking “or” at the end of subparagraph (D),  
24 by redesignating subparagraph (E) as subparagraph

1 (F), and by inserting after subparagraph (D) the  
2 following new subparagraph:

3 “(E) an education savings plan described  
4 in section 222(c)(2), or”.

5 (f) FAILURE TO PROVIDE REPORTS ON EDUCATION  
6 SAVINGS PLANS.—

7 (1) Paragraph (2) of section 6693(a) of such  
8 Code (relating to failure to provide reports on indi-  
9 vidual retirement plans or annuities) is amended by  
10 striking “and” at the end of subparagraph (A), by  
11 striking the period at the end of subparagraph (B)  
12 and inserting “, and”, and by adding at the end the  
13 following new subparagraph:

14 “(C) section 222(i) (relating to education  
15 savings plans).”

16 (2) The section heading for section 6693 of  
17 such Code is amended by inserting “or on education  
18 savings plans” after “annuities”.

19 (g) SPECIAL RULE FOR DETERMINING AMOUNTS OF  
20 SUPPORT FOR DEPENDENT.—Subsection (b) of section  
21 152 of such Code (relating to definition of dependent) is  
22 amended by adding at the end the following new para-  
23 graph:

24 “(6) A distribution from an education savings  
25 plan described in section 222(c)(2) to the individual

1 for whose benefit such plan has been established  
2 shall not be taken into plan in determining support  
3 for purposes of this section to the extent such dis-  
4 tribution is excluded from gross income of such indi-  
5 vidual under section 222(d)(2).”

6 (h) CLERICAL AMENDMENTS.—

7 (1) The table of sections for part VII of sub-  
8 chapter B of chapter 1 of such Code is amended by  
9 striking the item relating to section 222 and insert-  
10 ing the following new items:

“Sec. 222. Education savings plans.  
“Sec. 223. Cross references.”

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

“Sec. 4973. Tax on excess contributions to individual retirement  
accounts, medical savings accounts, education sav-  
ings plans, certain 403(b) contracts, and certain in-  
dividual retirement annuities.”

14 (3) The table of sections for subchapter B of  
15 chapter 68 of such Code is amended by striking the  
16 item relating to section 6693 and inserting the fol-  
17 lowing new item:

“Sec. 6693. Failure to provide reports on individual retirement  
accounts or annuities or on education savings  
plans.”

1           (i) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to contributions made in taxable  
3 years beginning after December 31, 1996.

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