

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1300
Appropriations

(Delegate Smith)

**Income Tax - 529 College Investment Plans - Elementary and Secondary
Education Expenses**

This bill prohibits an individual from claiming the subtraction modification for contributions made to the Maryland College Investment Plan and Maryland Broker-Dealer College Investment Plan if the funds are used for elementary or secondary school education expenses. The bill also requires an individual to add back to their income a distribution from the college investment plan or any 529 education plan, if the distribution is used for elementary or secondary school education expenses. The bill also establishes reporting requirements for an individual who receives and the entity that makes distributions from the college investment savings plan and Maryland Broker-Dealer College Investment Plan. The Comptroller must adopt regulations implementing an electronic process for the submission of these statements. **The bill takes effect July 1, 2021, and applies to tax year 2021 and beyond.**

Fiscal Summary

State Effect: General fund revenues may increase beginning in FY 2022 due to the add-back provision of the bill and from a reduction in subtraction modifications claimed. General fund expenditures increase by \$60,000 in FY 2022 due to one-time implementation costs at the Comptroller's Office.

Local Effect: Local income tax revenues may increase beginning in FY 2022. Local expenditures are not affected.

Small Business Effect: None.

Analysis

Bill Summary: Any year in which an individual receives a distribution from the Maryland College Investment Plan and Maryland Broker-Dealer College Investment Plan or a qualified tuition plan (529 plan), the account holder must report to the Comptroller whether the distribution was used for elementary or secondary education expenses.

An entity that makes a distribution under the Maryland College Investment Plan and Maryland Broker-Dealer College Investment Plan must by January 31 of each year submit a statement to the Comptroller and account holder showing (1) the name of the account holder and qualified beneficiary; (2) the date and amount of each distribution; and (3) any other information required by the Comptroller. The entity must electronically submit these statements to the Comptroller.

The Comptroller must adopt regulations establishing (1) the electronic format required for these statements and (2) a process for any entity to request a waiver from this requirement. The Comptroller may waive the electronic format requirement if it is determined that the requirement will result in undue hardship.

Current Law: Qualified tuition plans, also known as 529 plans, are State programs that allow an individual to either prepay or contribute to an account established for paying a student's qualified higher education expenses. Accounts and plans must satisfy the income tax and transfer rules established under Section 529 of the Internal Revenue Code.

The federal Tax Cuts and Jobs Act of 2017 (Public Law 115-97) was signed into law on December 22, 2017, and expands the permissible use of 529 plans by amending "qualified higher education expense" to include expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school. An account holder can withdraw up to \$10,000 in each year for expenses associated with enrollment at these schools. The federal Act applies to distributions made after December 31, 2017.

Under the federal income tax, a distribution from a qualified tuition plan that is used for certain elementary or secondary education expenses is not taxable. The State conforms to the federal tax treatment of these distributions; a qualified distribution is not taxable for State income tax purposes.

The College Savings Plans of Maryland Board currently operates two qualified tuition plans: the Maryland Prepaid College Trust and the Maryland College Investment Plan. Chapter 548 of 2008 authorized the board to establish a third plan, the Maryland Broker-Dealer College Investment Plan, but the board has yet to do so.

In addition to the federal tax benefits available to 529 plans, the State allows a person to claim a subtraction modification for the advanced amount of tuition payments made to the Maryland Prepaid College Trust or amount contributed to the Maryland College Investment Plan. The subtraction modification claimed by a taxpayer may not exceed \$2,500 for each contract purchased (Maryland Prepaid College Trust) or \$2,500 per beneficiary (Maryland College Investment Plan). This limitation is increased to \$5,000 for married individuals who file jointly if each spouse contributes to a plan.

Any unused amount of the subtraction modification can be carried forward to future tax years until the full amount of the excess is used under the Maryland Prepaid College Trust and up to 10 tax years for contributions to the Maryland College Investment Plan.

An investment plan account holder is not eligible for the subtraction modification for contributions to an investment account in any year in which the account holder receives funds under the State Contribution Program.

The State also allows a person to exclude, to the extent included in federal adjusted gross income, a qualified distribution from the college investment plans. Given these qualified distributions are not currently taxable under the federal income tax, this provision does not generally impact taxpayers.

State Revenues: Beginning in tax year 2021, the bill will prohibit an individual from claiming the subtraction modification for contributions made to the Maryland College Investment Plan if the funds are used for elementary or secondary school education expenses. The bill also requires an individual to add back to their income the amount of money distributed from the plan or any 529 education plan if the distribution is used for elementary or secondary school education expenses. As a result, general fund revenues may increase beginning in fiscal 2022.

The bill will also tax a distribution that is made from a 529 plan and is used for elementary and secondary school education expenses. Accordingly, additional revenue gains may be generated from this provision to the extent individuals continue to contribute to the plans for these purposes.

The bill's provisions related to the Maryland Broker-Dealer College Investment Plan will not impact State revenues as the plan has not been implemented.

State Expenditures: General fund expenditures for the Comptroller's Office increase by \$60,000 in fiscal 2022 for one-time programming costs to add the addition modifications to the personal income tax return.

Local Revenues: Local revenues will increase beginning in fiscal 2022 due to a reduction in subtraction modifications claimed and from individuals adding back college investment plan distributions as required by the bill.

Additional Information

Prior Introductions: SB 761 of 2020 received a hearing in the Senate Budget and Taxation Committee, but no further action was taken. Its cross file, HB 1066, received a hearing in the House Ways and Means Committee, but no further action was taken.

Designated Cross File: None.

Information Source(s): Comptroller's Office; Department of Legislative Services

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