

Dear Maryland State Senators,

In an effort to clear up the confusion I heard when I attended the joint committee hearing on January 24, I would like to take this opportunity to address some of the confusion regarding the Prepaid College Trust and the federal laws that apply to it.

As you all most likely know, state law and voluntary state boards cannot contradict federal law according to the Supremacy Clause of the US Constitution. For example, the Voting Rights Act of 1965 overwrote state laws that restricted voting rights prior to its passage.

In a similar way, neither the Maryland state government nor the board of Maryland 529 can overwrite Section 529 of the Internal Revenue Code of 1986 (as amended), which governs the existence of all 529 plans, of which the Maryland Prepaid College Trust is but one of many. This section of the code has been amended multiple times since its creation in 1996.

Several members of the legislature have referred to the Maryland Prepaid College Trust as a defined benefit plan. Defined benefit plans are also addressed by federal tax code, but under retirement. 529 plans, on the other hand, are also addressed by federal tax law, but under Section 529, not under any federal statutes that address retirement. The Maryland Prepaid College Trust is a QTP as defined by the IRS, not a defined benefit plan.

As such, there is no federally legal valid argument to be made for withholding earnings or interest generated from contributions made to a QTP such as Maryland Prepaid College Trust from beneficiaries. These earnings and/or interest are the property of the beneficiary alone. Furthermore, Section 529 addresses the governance of rollovers from one QTP to another. See Page 53 of Publication 970, Department of the Treasury, IRS.

After submitting two rollover forms to the Maryland College Investment Plan regarding a federally legal rollover from one QTP (Maryland Prepaid College Trust) to another QTP (Maryland College Investment Plan) and having those forms disregarded by the Maryland529 agency, our family is concerned that we must compel the agency to comply with federal law through the courts in order to ensure that our beneficiary's funds are treated in accordance with current Internal Revenue Code. It is our hope that the legislators looking into this issue as well as the Maryland Treasurer's office will research these federal laws and align the bills currently before the Maryland State Senate (SB0959) and House (HB1290) with Section 529 of the US Internal Revenue Code.

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Secure Act 2.0 Title 1: Section 126 does provide a provision for some portion of 529 funds to be rolled over to beneficiaries' IRAs, but this is the first time that 529 plans have had any intersection with retirement accounts of any kind. It does not go into effect until after December 31, 2023.

As you can see, these publicly available federal regulations are fairly easy to understand and directly apply to the situation currently facing the troubled Maryland529 agency and the Prepaid College Trust specifically.

Respectfully,

Kimberly and Ryan Lepine (account holder)
Parents of two Maryland 529 beneficiaries, Blaise and Stephen Lepine