

ASSEMBLY BILL

No. 757

Introduced by Assembly Member Niello

February 26, 2009

An act to add Section 17141 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 757, as introduced, Niello. Income taxes: education savings account.

The Personal Income Tax Law provides for the specified treatment of amounts deposited in an education savings account that meets specified requirements.

This bill would allow amounts to be deposited in an education savings account, as defined, established for purposes of paying for qualified education expenses, as defined. Interest earned by the account and distributions would not be subject to taxation, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17141 is added to the Revenue and
2 Taxation Code, to read:
3 17141. (a) Notwithstanding any other provision of this part
4 or Part 11 (commencing with Section 23001) to the contrary, any
5 amount deposited by a taxpayer during the taxable year in an
6 education savings account shall not be includable in the gross

1 income of the beneficiary of the account, except as otherwise
2 provided in this section.

3 (b) For purposes of this section:

4 (1) “Education savings account” means a trustee or custodial
5 account that meets both of the following requirements:

6 (A) Is established by an individual, or established jointly by an
7 individual and his or her spouse, and designated as an education
8 savings account by the trustee or custodian.

9 (B) Is established for the exclusive benefit of any individual
10 establishing the account or his or her spouse, or their dependents,
11 if the written governing instrument creating the account provides
12 for the following:

13 (i) All contributions to the account are required to be in cash.

14 (ii) The account is established to pay, pursuant to the
15 requirements and limitations of this section, for the qualified
16 education expenses of an individual establishing the account or
17 his or her spouse, or their dependents.

18 (2) “Trustee or custodian” means a bank as defined by Section
19 408(n) of the Internal Revenue Code, or any person authorized
20 pursuant to Section 409(a) of the Internal Revenue Code, to act as
21 the trustee or custodian of an individual retirement account.

22 (3) “Qualified education expenses” means education expenses
23 related to attending a school teaching kindergarten and grades 1
24 to 12, inclusive, in this state. “Education expenses” include tuition,
25 fees, books, supplies, equipment, room and board, academic
26 tutoring, the purchase of computer technology, equipment, or
27 Internet access or related services, uniforms, transportation, and
28 supplementary items and services such as extended day programs
29 as required or provided by the school.

30 (4) “Dependent” shall have the same meaning as that term is
31 defined by Section 152 of the Internal Revenue Code.

32 (c) Any amount withdrawn or distributed from an education
33 savings account shall be subject to a penalty in an amount equal
34 to 10 percent of the payment or distribution, unless the payment
35 or distribution is made to pay for the qualified education expenses
36 of an individual that established the account or his or her spouse
37 or their dependents.

38 (d) Notwithstanding any other provision of this part, the transfer
39 of an individual’s interest in an education savings account to his
40 or her former spouse under a dissolution decree or under a written

1 instrument incident to a dissolution is not to be considered a taxable
2 transfer made by that individual as long as the transferred moneys
3 are deposited into another education savings account established
4 by the former spouse.

5 (e) The trustee or custodian of an education savings account
6 shall make annual calendar year reports concerning the status of
7 the account. The report shall contain the information required in
8 paragraph (1) and be furnished or filed in the manner and time
9 specified in paragraph (2).

10 (1) The annual calendar year report shall contain the following
11 information for transactions occurring during the calendar year:

12 (A) The amount of contributions.

13 (B) The amount of distributions.

14 (C) The name and address of the trustee or custodian.

15 (D) Any other information as the Franchise Tax Board may
16 require.

17 (2) The annual report shall be furnished to the individual on
18 whose behalf the account is established. The report shall be
19 furnished on or before the first day of February following the
20 calendar year for which the report is required. The Franchise Tax
21 Board may require the annual report to be filed with the board at
22 the time the board specifies.

23 (f) The trustee or custodian of an education savings account
24 shall provide a disclosure statement to the individual for whom
25 the account is established. The disclosure statement shall contain
26 the information and shall be in a form as may be required by the
27 Franchise Tax Board.

28 (g) Notwithstanding any other law, for purposes of this part and
29 Part 11 (commencing with Section 23001), any interest earned by
30 the education savings account shall be exempt from taxation if the
31 distributions are made for purposes of paying qualified education
32 expenses.

33 SEC. 2. This act provides for a tax levy within the meaning of
34 Article IV of the Constitution and shall go into immediate effect.