



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE

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P.O. Box 125, Columbia, South Carolina 29214-0575

SC INFORMATION LETTER #20-14

SUBJECT: Future Scholar, South Carolina's 529 College Savings Plan – Qualifying Expenses for Tuition in Kindergarten through Grade 12 Public, Private, or Religious Schools
(Income Tax)

DATE: June 11, 2020

AUTHORITY: S.C. Code Ann. Section 12-4-320 (2014)
S.C. Code Ann. Section 1-23-10(4) (2005)
SC Revenue Procedure #09-3

SCOPE: An Information Letter is a written statement issued to the public to announce general information useful in complying with the laws administered by the Department. An Information Letter has no precedential value.

INTRODUCTION

Internal Revenue Code Section 529, "Qualified Tuition Programs," allows state sponsored education savings programs. The South Carolina College Investment Program is South Carolina's 529 plan. South Carolina's plan is administered by the State Treasurer's Office as provided for in Title 59, Chapter 2, and is commonly known as "Future Scholar, South Carolina's 529 College Savings Plan."

In general, the funds in a 529 plan grow tax deferred and are not taxable when withdrawn provided the funds are used to pay qualified education expenses. Code Section 59-2-80 provides South Carolina income tax treatment of earnings and withdrawals from the South Carolina College Investment Program.

As a result of amendments to Internal Revenue Code Section 529 in 2017, the State Treasurer's Office and the Department have received questions regarding the tax treatment of withdrawals from the South Carolina College Investment Program used to pay tuition for enrollment in kindergarten through grade 12 (K-12) public, private, or religious schools.

INTERNAL REVENUE CODE AMENDMENTS

Prior to the 2017 Internal Revenue Code amendments, a withdrawal from a 529 plan was a qualified withdrawal only if it was used to pay for qualified higher education expenses. Internal Revenue Code Section 529(e)(3) defines a “qualified higher education expense” as “tuition, fees, books, supplies and equipment required for enrollment or attendance at an eligible education institution.” Internal Revenue Code Section 529(e)(5) generally defines an eligible education institution as higher education institutions.

As part of the “Tax Cuts and Jobs Act of 2017,” Internal Revenue Code Section 529(c)(7) was added, effective tax year 2018, to provide that:

any reference in this subsection [subsection c] to the term “qualified higher education expense” shall include a reference to expenses for tuition in connection with enrollment or attendance at an elementary¹ or secondary public, private, or religious school.

Internal Revenue Code Section 529(e)(3)(A) further provides that qualified withdrawals for K-12 tuition are limited to \$10,000 per year per beneficiary regardless of the number of contributing plans.

SOUTH CAROLINA’S 529 COLLEGE SAVINGS PLAN – WITHDRAWALS FOR K-12 TUITION

The South Carolina College Investment Program defines a “qualified withdrawal” as a withdrawal by an account owner or beneficiary for qualified higher education expenses or as otherwise permitted under Section 529 of the Internal Revenue Code, as amended, without a penalty required by Internal Revenue Code Section 529(c)(6). See Code Section 59-2-30(12).

The State Treasurer’s Office has confirmed that based upon the Internal Revenue Code, as amended, the South Carolina College Investment Program allows qualified withdrawals to include up to \$10,000 of tuition per year per beneficiary (regardless of the number of contributing plans) for K-12 public, private, or religious schools during any taxable year beginning in tax year 2018.²

SOUTH CAROLINA INCOME TAX IMPLICATIONS

Code Section 59-2-80 provides the South Carolina income tax implications of participating in the South Carolina College Investment Plan (“SCCIP”).

¹ The Internal Revenue Service has interpreted this provision to include tuition for kindergarten as determined under State law. See IRS Notice 2018-58 and IRS Tax Topic No. 313, Qualified Tuition Programs. For South Carolina purposes, a child must be age 5 on or before September 1 of the school year to enroll in kindergarten.

² Confirmation provided to the Department by the South Carolina State Treasurer’s Office via e-mail January 21, 2020.

Code Sections 12-6-1140(11) and 59-2-80(D) provide a South Carolina income tax deduction for eligible contributions to the South Carolina College Investment Program by a resident or a nonresident, up to the maximum contributions allowed, including funds transferred from another qualified 529 plan to the South Carolina College Investment Program.³

Code Section 59-2-80(B) provides for the exclusion from gross income of the earnings on investments and reads, in part:

Any interest, dividends, gains, or income accruing on the payments made pursuant to an investment trust agreement under the terms of this chapter or on any account in the SCCIP Trust Fund shall be excluded from the gross income of any such account owner, contributor, or beneficiary for purposes of South Carolina income taxes, to the extent such amounts remain on deposit in the SCCIP Trust Fund or are withdrawn pursuant to a Qualified Withdrawal.

Based upon Internal Revenue Code Section 529, as amended, South Carolina Code Title 59, Chapter 2, and confirmation from the administrator of South Carolina's 529 plan, qualified withdrawals from the South Carolina College Investment Program include withdrawals up to \$10,000 per year per beneficiary to pay for tuition at a K-12 public, private, or religious school. These qualified withdrawals are not taxed for South Carolina income tax purposes beginning tax year 2018.

Note: Code Section 59-2-80(C) provides for the taxation of withdrawals that are not qualified withdrawals and the recapture of those contributions that were deducted from South Carolina income, and reads:

The earnings portion of any withdrawals from an account that are not qualified withdrawals shall be included in the gross income of the resident recipient of the withdrawal for purposes of South Carolina income taxes in the year of the withdrawal. Withdrawals of the principal amount of contributions that are not qualified withdrawals must be recaptured into South Carolina income subject to tax to the extent the contributions were previously deducted from South Carolina taxable income.

Accordingly, taxpayers should be aware that withdrawals that are not qualified withdrawals, such as withdrawals exceeding \$10,000 per year per beneficiary used to pay for tuition at a K-12 public, private, or religious school, are taxable in the year of withdrawal to the extent they are attributable to tax free earnings in the 529 plan. Additionally, withdrawals of the principal amount of contributions that are not qualified withdrawals are taxable to the extent the contributions were deducted from South Carolina taxable income pursuant to Code Section 59-2-80(D).

³ The income tax deduction may be taken in any tax year for contributions and rollovers made during the tax year, and up to April 15th of the following year, or the due date of the taxpayer's state income tax return excluding extensions, whichever is longer.

QUESTION ABOUT SOUTH CAROLINA'S 529 COLLEGE SAVINGS PLAN

For more information about Future Scholar, South Carolina's 529 College Savings Plan, call 1-888-244-5674 or visit futurescholar.com.