

HOUSE BILL No. 1096

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3; IC 21-9.

Synopsis: 529 college savings distributions. Excludes from Indiana adjusted gross income distributions made from a 529 college choice education savings plan (529 account) that are not used to pay qualified higher education expenses but that satisfy each of the requirements under Section 126 of the SECURE 2.0 Act of 2022. Provides that such distributions are not subject to the: (1) penalty provisions established by the board of directors of the Indiana education savings authority; or (2) repayment provisions for the income tax credit for contributions to an individual's 529 account.

Effective: January 1, 2024 (retroactive).

Prescott, Rowray, DeLaney

January 8, 2024, read first time and referred to Committee on Ways and Means.



Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

HOUSE BILL No. 1096



A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3-2-19 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JANUARY 1, 2024 (RETROACTIVE)]: Sec. 19. (a) As
3 used in this section, "account beneficiary" has the meaning set forth in
4 IC 21-9-2-3.
5 (b) As used in this section, "account owner" has the meaning set
6 forth in IC 21-9-2-4.
7 (c) As used in this section, "individual account" has the meaning set
8 forth in IC 21-9-2-2.
9 (d) As used in this section, "qualified higher education expenses"
10 has the meaning set forth in IC 21-9-2-19.5.
11 (e) Distributions from an individual account used to pay qualified
12 higher education expenses are exempt from the adjusted gross income
13 tax imposed by IC 6-3-1 through IC 6-3-7 as income of an account
14 beneficiary or an account owner.
15 **(f) This subsection applies only to a distribution from an**
16 **individual account not used to pay qualified higher education**
17 **expenses but that satisfies each of the requirements under Section**



1 **126 of the SECURE 2.0 Act of 2022 (Public Law 117-328). A**
 2 **distribution to which this subsection applies is exempt from the**
 3 **adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 as**
 4 **income of an account owner or account beneficiary.**

5 SECTION 2. IC 6-3-3-12, AS AMENDED BY P.L.236-2023,
 6 SECTION 65, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 7 JANUARY 1, 2024 (RETROACTIVE)]: Sec. 12. (a) As used in this
 8 section, "account" has the meaning set forth in IC 21-9-2-2.

9 (b) As used in this section, "account beneficiary" has the meaning
 10 set forth in IC 21-9-2-3.

11 (c) As used in this section, "account owner" has the meaning set
 12 forth in IC 21-9-2-4.

13 (d) As used in this section, "college choice 529 education savings
 14 plan" refers to a college choice 529 plan established under IC 21-9.

15 (e) As used in this section, "contribution" means the amount of
 16 money directly provided to a college choice 529 education savings plan
 17 account by a taxpayer. A contribution does not include any of the
 18 following:

19 (1) Money credited to an account as a result of bonus points or
 20 other forms of consideration earned by the taxpayer that result in
 21 a transfer of money to the account.

22 (2) Money transferred from any other qualified tuition program
 23 under Section 529 of the Internal Revenue Code or from any other
 24 similar plan.

25 (3) Money transferred from any qualified ABLE program under
 26 Section 529A of the Internal Revenue Code or any other similar
 27 plan.

28 (f) As used in this section, "nonqualified withdrawal" means a
 29 withdrawal or distribution from a college choice 529 education savings
 30 plan that is not a qualified withdrawal, **except that the term does not**
 31 **include a withdrawal or distribution that satisfies each of the**
 32 **requirements under Section 126 of the SECURE 2.0 Act of 2022**
 33 **(Public Law 117-328).**

34 (g) As used in this section, "qualified higher education expenses"
 35 has the meaning set forth in IC 21-9-2-19.5, except that the term does
 36 not include qualified education loan repayments under Section
 37 529(c)(9) of the Internal Revenue Code.

38 (h) As used in this section, "qualified K-12 education expenses"
 39 means expenses that are for tuition in connection with enrollment or
 40 attendance at an elementary or secondary public, private, or religious
 41 school located in Indiana and are permitted under Section 529 of the
 42 Internal Revenue Code.



1 (i) As used in this section, "qualified withdrawal" means a
 2 withdrawal or distribution from a college choice 529 education savings
 3 plan that is made:

4 (1) to pay for qualified higher education expenses, excluding any
 5 withdrawals or distributions used to pay for qualified higher
 6 education expenses, if the withdrawals or distributions are made
 7 from an account of a college choice 529 education savings plan
 8 that is terminated within twelve (12) months after the account is
 9 opened;

10 (2) as a result of the death or disability of an account beneficiary;

11 (3) because an account beneficiary received a scholarship that
 12 paid for all or part of the qualified higher education expenses of
 13 the account beneficiary, to the extent that the withdrawal or
 14 distribution does not exceed the amount of the scholarship; or

15 (4) by a college choice 529 education savings plan as the result of
 16 a transfer of funds by a college choice 529 education savings plan
 17 from one (1) third party custodian to another.

18 However, a qualified withdrawal does not include a withdrawal or
 19 distribution that will be used for expenses that are for tuition in
 20 connection with enrollment or attendance at an elementary or
 21 secondary public, private, or religious school unless the school is
 22 located in Indiana. A qualified withdrawal does not include a rollover
 23 distribution or transfer of assets from a college choice 529 education
 24 savings plan to any other qualified tuition program under Section 529
 25 of the Internal Revenue Code, to any qualified ABLE program under
 26 Section 529A other than an Indiana ABLE 529A savings plan adopted
 27 by the state under IC 12-11, or to any other similar plan.

28 (j) As used in this section, "taxpayer" means:

29 (1) an individual filing a single return;

30 (2) a married couple filing a joint return; or

31 (3) for taxable years beginning after December 31, 2019, a
 32 married individual filing a separate return.

33 (k) A taxpayer is entitled to a credit against the taxpayer's adjusted
 34 gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable
 35 year equal to the least of the following:

36 (1) The following amount:

37 (A) For taxable years beginning before January 1, 2019, the
 38 sum of twenty percent (20%) multiplied by the amount of the
 39 total contributions that are made by the taxpayer to an account
 40 or accounts of a college choice 529 education savings plan
 41 during the taxable year and that will be used to pay for
 42 qualified higher education expenses that are not qualified K-12



1 education expenses, plus the lesser of:

2 (i) five hundred dollars (\$500); or

3 (ii) ten percent (10%) multiplied by the amount of the total
4 contributions that are made by the taxpayer to an account or
5 accounts of a college choice 529 education savings plan
6 during the taxable year and that will be used to pay for
7 qualified K-12 education expenses.

8 (B) For taxable years beginning after December 31, 2018, the
9 sum of:

10 (i) twenty percent (20%) multiplied by the amount of the
11 total contributions that are made by the taxpayer to an
12 account or accounts of a college choice 529 education
13 savings plan during the taxable year and that are designated
14 to pay for qualified higher education expenses that are not
15 qualified K-12 education expenses; plus

16 (ii) twenty percent (20%) multiplied by the amount of the
17 total contributions that are made by the taxpayer to an
18 account or accounts of a college choice 529 education
19 savings plan during the taxable year and that are designated
20 to pay for qualified K-12 education expenses.

21 (2) One thousand five hundred dollars (\$1,500), or seven hundred
22 fifty dollars (\$750) in the case of a married individual filing a
23 separate return.

24 (3) The amount of the taxpayer's adjusted gross income tax
25 imposed by IC 6-3-1 through IC 6-3-7 for the taxable year,
26 reduced by the sum of all credits (as determined without regard to
27 this section) allowed by IC 6-3-1 through IC 6-3-7.

28 (l) This subsection applies after December 31, 2018. At the time a
29 contribution is made to or a withdrawal is made from an account or
30 accounts of a college choice 529 education savings plan, the person
31 making the contribution or withdrawal shall designate whether the
32 contribution is made for or the withdrawal will be used for:

33 (1) qualified higher education expenses that are not qualified
34 K-12 education expenses; or

35 (2) qualified K-12 education expenses.

36 The Indiana education savings authority (IC 21-9-3) shall use
37 subaccounting to track the designations.

38 (m) A taxpayer who makes a contribution to a college choice 529
39 education savings plan is considered to have made the contribution on
40 the date that:

41 (1) the taxpayer's contribution is postmarked or accepted by a
42 delivery service, for contributions that are submitted to a college



- 1 choice 529 education savings plan by mail or delivery service; or
 2 (2) the taxpayer's electronic funds transfer is initiated, for
 3 contributions that are submitted to a college choice 529 education
 4 savings plan by electronic funds transfer.
- 5 (n) A taxpayer is not entitled to a carryback, carryover, or refund of
 6 an unused credit.
- 7 (o) A taxpayer may not sell, assign, convey, or otherwise transfer the
 8 tax credit provided by this section.
- 9 (p) To receive the credit provided by this section, a taxpayer must
 10 claim the credit on the taxpayer's annual state tax return or returns in
 11 the manner prescribed by the department. The taxpayer shall submit to
 12 the department all information that the department determines is
 13 necessary for the calculation of the credit provided by this section.
- 14 (q) An account owner of an account of a college choice 529
 15 education savings plan must repay all or a part of the credit in a taxable
 16 year in which any nonqualified withdrawal is made from the account.
 17 The amount the taxpayer must repay is equal to the lesser of:
- 18 (1) twenty percent (20%) of the total amount of nonqualified
 19 withdrawals made during the taxable year from the account; or
 20 (2) the excess of:
- 21 (A) the cumulative amount of all credits provided by this
 22 section that are claimed by any taxpayer with respect to the
 23 taxpayer's contributions to the account for all prior taxable
 24 years beginning on or after January 1, 2007; over
 25 (B) the cumulative amount of repayments paid by the account
 26 owner under this subsection for all prior taxable years
 27 beginning on or after January 1, 2008.
- 28 **The repayment requirement under this subsection does not apply**
 29 **to a withdrawal or distribution for an account beneficiary that**
 30 **satisfies each of the requirements under Section 126 of the**
 31 **SECURE 2.0 Act of 2022 (Public Law 117-328).**
- 32 (r) Any required repayment under subsection (q) shall be reported
 33 by the account owner on the account owner's annual state income tax
 34 return for any taxable year in which a nonqualified withdrawal is made.
- 35 (s) A nonresident account owner who is not required to file an
 36 annual income tax return for a taxable year in which a nonqualified
 37 withdrawal is made shall make any required repayment on the form
 38 required under IC 6-3-4-1(2). If the nonresident account owner does
 39 not make the required repayment, the department shall issue a demand
 40 notice in accordance with IC 6-8.1-5-1.
- 41 (t) The executive director of the Indiana education savings authority
 42 shall submit or cause to be submitted to the department a copy of all



1 information returns or statements issued to account owners, account
2 beneficiaries, and other taxpayers for each taxable year with respect to:

- 3 (1) nonqualified withdrawals made from accounts, including
4 subaccounts of a college choice 529 education savings plan for
5 the taxable year; or
6 (2) account closings for the taxable year.

7 (u) The following apply to contributions made after December 31,
8 2023:

9 (1) For purposes of this section, all or part of a contribution made
10 after the end of a taxable year, and not later than the due date of
11 the taxpayer's adjusted gross income tax return for the taxable
12 year under this article (as determined without regard to any
13 allowable extensions), shall be considered as having been made
14 during the taxable year preceding the contribution if:

15 (A) the taxpayer elects to treat all or part of a contribution as
16 occurring in the taxable year preceding the contribution;

17 (B) the taxpayer designates the amounts of the contribution to
18 be treated as occurring in each taxable year, in the case of a
19 single contribution that is to be allowable under this section in
20 two (2) separate years; and

21 (C) the taxpayer irrevocably waives the right to claim the
22 contribution claimed in the taxable year preceding the
23 contribution as occurring in the taxable year of the
24 contribution.

25 (2) The Indiana education savings authority may prescribe any
26 forms necessary for purposes of this subsection.

27 SECTION 3. IC 21-9-7-1 IS AMENDED TO READ AS FOLLOWS
28 [EFFECTIVE JANUARY 1, 2024 (RETROACTIVE)]: Sec. 1. In
29 addition to any other powers granted by this article, the board has all
30 powers necessary or convenient to carry out and effectuate the purposes
31 and objectives of this chapter and IC 21-9-8, the purposes and
32 objectives of an education savings program that may be established
33 under this article, and the powers delegated by other laws or executive
34 orders, including the following:

35 (1) To establish policies and procedures to govern distributions
36 from accounts that are not:

37 (A) made on account of the death or disability of an account
38 beneficiary;

39 (B) made on account of the receipt of a scholarship (or
40 allowance or payment described in Section 135(d)(1)(B) or (C)
41 of the Internal Revenue Code) by the account beneficiary to
42 the extent the amount of the distribution does not exceed the



- 1 amount of the scholarship, allowance, or payment; or
 2 (C) rollovers, **including distributions that satisfy each of the**
 3 **requirements under Section 126 of the SECURE 2.0 Act of**
 4 **2022 (Public Law 117-328).**
- 5 (2) To establish penalties for withdrawals of money from accounts
 6 that are not used exclusively for the qualified higher education
 7 expenses of an account beneficiary unless a circumstance
 8 described in subdivision (1) applies.
- 9 (3) To establish policies and procedures regarding the transfer of
 10 individual accounts and the designation of substitute account
 11 beneficiaries.
- 12 (4) To establish policies and procedures for withdrawal of money
 13 from accounts for, or in reimbursement of, qualified higher
 14 education expenses.
- 15 (5) To enter into agreements with account owners, account
 16 beneficiaries, and contributors, with the agreements naming:
 17 (A) the account owner; and
 18 (B) the account beneficiary.
- 19 (6) To establish accounts for account beneficiaries. However:
 20 (A) the authority shall establish a separate account for each
 21 account beneficiary; and
 22 (B) an individual may be the beneficiary of more than one (1)
 23 account.
- 24 (7) To enter into agreements with financial institutions relating to
 25 accounts as well as deposits, withdrawals, penalties, allocation of
 26 benefits or incentives, and transfers of accounts, account owners,
 27 and account beneficiaries.
- 28 (8) To conform the education savings program to federal tax
 29 advantages or incentives, as the advantages or incentives may
 30 exist periodically, to the extent consistent with the purposes and
 31 objectives of this article.
- 32 (9) To interpret, in rules, policies, guidelines, and procedures, the
 33 provisions of this article broadly considering the purposes and
 34 objectives of this article.
- 35 SECTION 4. IC 21-9-10-2 IS AMENDED TO READ AS
 36 FOLLOWS [EFFECTIVE JANUARY 1, 2024 (RETROACTIVE)]:
 37 Sec. 2. (a) Accounts and all earnings or interest on accounts are exempt
 38 from taxation in Indiana to the extent that those accounts, earnings, and
 39 interest are exempt from federal taxation under the Internal Revenue
 40 Code, subject to any penalties that are established for education savings
 41 programs under this article.
 42 (b) Distributions under IC 6-3-2-19 from an account used to pay



1 qualified higher education expenses are exempt from the adjusted gross
2 income tax imposed by IC 6-3-1 through IC 6-3-7.

3 **(c) Distributions under IC 6-3-2-19(f) from an account that are**
4 **not used to pay qualified higher education expenses but that satisfy**
5 **each of the requirements under Section 126 of the SECURE 2.0 Act**
6 **of 2022 (Public Law 117-328) are exempt from the adjusted gross**
7 **income tax imposed by IC 6-3-1 through IC 6-3-7.**

8 SECTION 5. [EFFECTIVE JANUARY 1, 2024 (RETROACTIVE)]
9 **(a) IC 6-3-2-19, IC 6-3-3-12, IC 21-9-7-1, and IC 21-9-10-2, all as**
10 **amended by this act, apply to taxable years beginning after**
11 **December 31, 2023.**

12 **(b) This SECTION expires January 1, 2027.**

13 SECTION 6. An emergency is declared for this act.

