

# STATE OF NEW YORK

2186

2019-2020 Regular Sessions

## IN SENATE

January 23, 2019

Introduced by Sens. BAILEY, SEPULVEDA -- read twice and ordered printed,  
and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to establishing the New  
York college debt repayment program

The People of the State of New York, represented in Senate and Assem-  
bly, do enact as follows:

1 Section 1. The education law is amended by adding a new section 355-d  
2 to read as follows:

3 § 355-d. New York college debt repayment program. 1. A college debt  
4 repayment program may be established by any resident of this state. The  
5 earnings from the program shall grow federally and state tax-deferred  
6 and withdrawals for qualified expenses shall not be subject to state or  
7 federal income tax.

8 2. For purposes of this section:

9 (a) The term "college debt repayment program" means a program estab-  
10 lished and maintained by this state or agency or instrumentality thereof  
11 or by one or more eligible educational institutions under which a  
12 person:

13 i. may pay off debt incurred by tuition credits or certificates on  
14 behalf of a designated beneficiary which entitle the beneficiary to the  
15 waiver or payment of debt incurred from higher education expenses of the  
16 beneficiary, or

17 ii. in the case of a program established and maintained by this state  
18 or agency or instrumentality thereof, may make contributions to an  
19 account which is established for the purpose of meeting the debt  
20 incurred by qualified higher education expenses of the designated bene-  
21 ficiary of the account.

22 (b) The term "member of the family" means any spouse, child, grand-  
23 child or first degree cousin of any designated beneficiary.

24 (c) The term "designated beneficiary" means:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD05607-01-9

1 i. the individual designated at the commencement of participation in  
2 the college debt repayment program as the beneficiary of amounts paid  
3 (or to be paid) to the program; or

4 ii. in the case of a change in beneficiaries, the individual who is  
5 the new beneficiary.

6 (d) The term "qualified higher education expenses" means:

7 i. tuition, room and board, fees, books, supplies, and equipment  
8 required for the enrollment or attendance of a designated beneficiary at  
9 an eligible educational institution;

10 ii. expenses for special needs services in the case of a special needs  
11 beneficiary which are incurred in connection with such enrollment or  
12 attendance; or

13 iii. expenses paid or incurred in two thousand nine or two thousand  
14 ten for the purchase of any computer technology or Internet access and  
15 related services, if such technology, equipment, or services are to be  
16 used by the beneficiary and the beneficiary's family during any of the  
17 years the beneficiary is enrolled at an eligible educational institu-  
18 tion.

19 (e) The term "eligible educational institution" means an institution  
20 which is described in section 481 of the higher education act of 1965  
21 (20 U.S.C. 1088), as in effect on the effective date of this paragraph.

22 (f) A program shall not be treated as a college debt repayment program  
23 unless it provides that purchases or contributions may only be made in  
24 cash.

25 (g) A program shall not be treated as a college debt repayment program  
26 unless it provides separate accounting for each designated beneficiary.

27 (h) A program shall not be treated as a college debt repayment program  
28 unless it provides that any contributor to, or designated beneficiary  
29 under, such program may, directly or indirectly, direct the investment  
30 of any contributions to the program (or any earnings thereon) no more  
31 than two times in any calendar year.

32 (i) A program shall not be treated as a college debt repayment program  
33 if it allows any interest in the program or any portion thereof to be  
34 used as security for a loan.

35 (j) A program shall not be treated as a college debt repayment program  
36 unless it provides adequate safeguards to prevent contributions on  
37 behalf of a designated beneficiary in excess of those necessary to  
38 provide for the debt incurred by the qualified higher education expenses  
39 of the beneficiary.

40 3. (a) Except as otherwise provided in this subdivision, no amount  
41 shall be includible in gross income of:

42 i. a designated beneficiary under a college debt repayment program; or  
43 ii. a contributor to such program on behalf of a designated benefi-  
44 ciary, with respect to any distribution or earnings under such program.

45 (b) Any contribution to a college debt repayment program on behalf of  
46 any designated beneficiary shall:

47 i. be treated as a completed gift to such beneficiary which is not a  
48 future interest in property; and

49 ii. not be treated as a qualified transfer under section 2503(e) of  
50 the internal revenue code.

51 (c) If the aggregate amount of contributions described in paragraph  
52 (b) of this subdivision during the calendar year by a donor exceeds the  
53 limitation for such year under section 2503(b) of the internal revenue  
54 code, such aggregate amount shall, at the election of the donor, be  
55 taken into account for purposes of such section ratably over the five  
56 year period beginning with such calendar year.

1 4. (a) Any distribution under a college debt repayment program shall  
2 be includible in the gross income of the distributee in the manner as  
3 provided under section 72 of the internal revenue code.

4 (b) No amount shall be includible in gross income under paragraph (a)  
5 of this subdivision by reason of a distribution which consists of  
6 providing a benefit to the distributee which, if paid for by the distri-  
7 butee, would constitute payment of a qualified higher education expense.

8 (c) In the case of distributions not described in paragraph (b) of  
9 this subdivision, if:

10 i. such distributions do not exceed the debt incurred by the qualified  
11 higher education expenses (reduced by expenses described in paragraph  
12 (b) of this subdivision), no amount shall be includible in gross income;  
13 and

14 ii. in any other case, the amount otherwise includible in gross income  
15 shall be reduced by an amount which bears the same ratio to such amount  
16 as such expenses bear to such distributions.

17 (d) Any benefit furnished to a designated beneficiary under a college  
18 debt repayment program shall be treated as a distribution to the benefi-  
19 ciary for purposes of this subdivision.

20 (e) Paragraph (a) of this subdivision shall not apply to that portion  
21 of any distribution which, within sixty days of such distribution, is  
22 transferred:

23 i. to another college debt repayment program for the benefit of the  
24 designated beneficiary; or

25 ii. to the credit of another designated beneficiary under a college  
26 debt repayment program who is a member of the family of the designated  
27 beneficiary with respect to which the distribution was made.

28 (f) Any change in the designated beneficiary of an interest in a  
29 college debt repayment program shall not be treated as a distribution  
30 for purposes of paragraph (a) of this subdivision if the new beneficiary  
31 is a member of the family of the old beneficiary.

32 5. (a) All college debt repayment programs of which an individual is a  
33 designated beneficiary shall be treated as one program;

34 (b) all distributions during a taxable year shall be treated as one  
35 distribution; and

36 (c) the value of the contract, income on the contract, and investment  
37 in the contract shall be computed as of the close of the calendar year  
38 in which the taxable year begins.

39 6. (a) No amount shall be includible in the gross estate of any indi-  
40 vidual for purposes of chapter 11 of the internal revenue code by reason  
41 of an interest in a college debt repayment program.

42 (b) Paragraph (a) of this subdivision shall not apply to amounts  
43 distributed on account of the death of a beneficiary.

44 (c) In the case of a donor who makes the election described in para-  
45 graph (c) of subdivision three of this section and who dies before the  
46 close of the five year period referred to in such paragraph, notwith-  
47 standing paragraph (a) of this subdivision, the gross estate of the  
48 donor shall include the portion of such contributions properly allocable  
49 to periods after the date of death of the donor.

50 (d) Except as provided in paragraph (e) of this subdivision, in no  
51 event shall a distribution from a college debt repayment program be  
52 treated as a taxable gift.

53 (e) The taxes imposed by chapters 12 and 13 of the internal revenue  
54 code shall apply to a transfer by reason of a change in the designated  
55 beneficiary under the program (or a rollover to the account of a new  
56 beneficiary) unless the new beneficiary is:

1 i. assigned to the same generation as (or a higher generation than)  
2 the old beneficiary (determined in accordance with section 2651 of the  
3 internal revenue code); and

4 ii. a member of the family of the old beneficiary.

5 7. The tax imposed by section 530(d)(4) of the internal revenue code  
6 shall apply to any payment or distribution from a college debt repayment  
7 program in the same manner as such tax applies to a payment or distrib-  
8 ution from a Coverdell education savings account. This subdivision shall  
9 not apply to any payment or distribution in any taxable year beginning  
10 before January first, two thousand four, which is includible in gross  
11 income but used for qualified higher education expenses of the desig-  
12 nated beneficiary.

13 8. A contributor shall make an initial investment of at least twenty-  
14 five dollars and may contribute up to three hundred seventy-five thou-  
15 sand dollars to a college debt repayment program.

16 9. Any designated beneficiary who withdraws funds to pay for nonquali-  
17 fied expenses shall pay a ten percent penalty tax on earnings as well as  
18 federal and state income tax.

19 10. The comptroller shall be authorized to offer age-based options for  
20 participants of the program similar to those offered in this state's 529  
21 college savings program.

22 11. (a) Individual taxpayers may deduct the contributions they make to  
23 a college debt repayment program, up to five thousand dollars annually.

24 (b) Married individual taxpayers that file jointly may deduct the  
25 contributions they make to a college debt repayment program, up to ten  
26 thousand dollars annually.

27 § 2. This act shall take effect on the one hundred eightieth day after  
28 it shall have become a law.