

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-87 (4) I
Income Tax
June 1, 1987

STATE OF NEW YORK
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I861218A

On December 18, 1986, a Petition for Advisory Opinion was received from Clarence J. and Barbara L. Tobin, 80 Rosary Avenue, Lackwanna, New York 14218.

The issue raised is whether, for purposes of the personal income tax imposed under Article 22 of the Tax Law, amounts contained in a qualified higher education fund under section 612(k) of the Tax Law may be used to fund an alumni tuition plan for Petitioners' sons. Additionally Petitioners inquire regarding the applicability of the tuition deduction provided under section 612(c)(17) of the Tax Law to such alumni tuition plans.

Petitioner's inquiry pertains to the Canisius College Alumni Tuition Plan. Under this plan, parents or relatives are permitted to pre-pay a child's full tuition before the child enters Canisius College. This pre-payment entitles a student, subject to restrictions, to a four-year undergraduate education, or 120 credit hours of study. The pre-payment of tuition is intended to preclude potential increases in the cost of college tuition. Students planning to begin college between the years 1987 and 2004 will be eligible to enroll in the program. Petitioner's sons are eligible to enroll, if accepted, in the years 1990 and 1993.

Under this plan, students enrolled in this program will be required to meet the same admission requirements as those established for other freshman applicants. If a student enrolled in the program does not meet the College's admission requirements, the College will return the original amount paid for the tuition plan. If a student enrolled in the program chooses not to attend Canisius College, the college will return the original amount paid for the tuition plan on the date the student would have enrolled.

Issue (1)

Section 612(k) of the Tax Law provides a subtraction from federal adjusted gross income in computing New York adjusted gross income for specified amounts contributed to a qualified higher education fund before April 20, 1987. Petitioners have contributed amounts to a qualified higher education fund for their sons in previous years. They inquire whether they may use the money contained in their qualified higher education fund now for pre-payment of their sons' tuition.

A qualified higher education fund is a fund established solely for the purpose of defraying costs associated with attendance by an eligible beneficiary subsequent to graduation or separation from secondary school at an institution of higher education, such costs to include applicable tuition and fees.

Amounts distributed from a higher education fund have been subject to personal income tax, depending upon the date and manner of use of the amounts distributed. Sections 601-D, 612(1)(1) and 612(1)(2) of the Tax Law set forth the manner and timing of taxation of such funds. However, sections 601-D and 612(1)(1) of the Tax Law were repealed effective April 20, 1987. Accordingly, terminations falling within the provisions of section 601-D or section 612(1)(1) which occur on or after April 20, 1987 are no longer subject to tax.

The establishment of an alumni tuition plan as described above will not be deemed a termination of the fund for purposes of section 601-D or 612(1)(1) of the Tax Law under circumstances where such plan is established prior to April 20, 1987.

Section 612(1)(2) of the Tax Law was repealed effective April 20, 1987. Amounts required to be added to the federal adjusted gross income of eligible beneficiaries under section 612(1)(2) need not be added to federal adjusted gross income for taxable years ending on or after April 20, 1987.

Accordingly, if Petitioners have used or will use amounts contained in their higher education fund to establish an alumni tuition plan at Canisius College for an eligible beneficiary, neither Petitioners nor the eligible beneficiary will be subject to tax on such amounts unless the eligible beneficiary ceased to be a student or an incident of termination took place before the relevant effective dates of repeal as described above.

Issue (2)

Section 612(c)(17) of the Tax Law allows a deduction from federal adjusted gross income in computing New York adjusted gross income for:

The amount of tuition paid during the taxable year on behalf of each dependent for full-time attendance at an institution of higher education. . . located in this state which amount shall not exceed (i) one-half of such tuition minus tuition assistance program awards made pursuant to article fourteen of the education law; or (ii) one thousand dollars, whichever is less; the provisions of this paragraph shall not apply if such tuition is paid on behalf of any person who received a distribution during such taxable year from a qualified higher education fund as defined in paragraph three of subsection (k) of this section.

The tuition deduction allowed under section 612(c)(17) of the Tax Law is limited to amounts paid as tuition during the taxable year for full-time attendance at an institution of higher education located in this state. Payments to the Canisius College alumni tuition plan fail to qualify for this deduction since the plan does not require full time attendance at the college. In fact, under the plan it is possible that the student will not attend any institution of higher education or that the student will attend an institution of higher education outside of the state. Furthermore, no deduction is allowed in the taxable year in which a student receives a distribution from a higher education fund.

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Accordingly, it is determined that amounts contained in a qualified higher education fund may be used to establish a Canisius College alumni tuition plan, as described above, but no tuition deduction is available for amounts contributed to such a plan.

DATED: June 1, 1987

s/FRANK J. PUCCIA
Director
Technical Services Bureau

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.