

BACKGROUND

No. 3363 | NOVEMBER 15, 2018

A State-by-State Comparison of 529 College Savings Plans

Jonathan Butcher and Elizabeth Slattery

Abstract

As part of the Tax Cuts and Jobs Act enacted last year, federal lawmakers gave parents more flexibility with their own savings for their children's education. Now, families that save money for college using what are commonly known as 529 college savings plans (named after Section 529 of the Internal Revenue Code) can apply some of those savings to pay tuition at private K-12 schools before a student finishes high school. Because state policies and investment options are central components of 529 plans, policymakers should review state laws to make sure state rules do not interfere with the new options for students in federal tax law. Whether families and investors should use 529 savings plans to pay for K-12 expenses is a decision for parents and students. State policymakers should not interfere with parents who choose to use their 529 savings plans to pay for K-12 education expenses.

Introduction

As part of the Tax Cuts and Jobs Act (TCJA) enacted last year, federal lawmakers gave parents more flexibility with their own savings for their children's education.¹ Now, families that save money for college using what are commonly known as 529 college savings plans (named after Section 529 of the Internal Revenue Code) can apply some of those savings to pay tuition at private K-12 schools before a student finishes high school.²

While the tax incentives for college savings with a 529 plan are part of federal law, nearly every state offers at least one 529 investment savings plan and a prepaid college tuition plan. Generally, state treasurers operate the savings options in conjunction with private investment services. Families and students can save money in any

KEY POINTS

- Individuals and families should have the ability to make decisions about how to save and spend their hard-earned money. Investors must choose what is best for their current and future needs.
- With the Tax Cuts and Jobs Act, Washington gave families and students more options to utilize their own savings.
- Families that save money for college using 529 college savings plans can now use some of that savings to pay tuition at private K-12 schools—before a student finishes high school.
- State policymakers should not interfere with parents who choose to use their 529 savings plans to pay for K-12 education expenses.
- State lawmakers should revise statutes to make clear that 529 accounts may be used for any expenses authorized by any section of 529. State statutes should be written to automatically align with any future changes to this section of federal code.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3363>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

state's 529 savings plan and use the money to attend college anywhere in the country (although for 529 prepaid tuition plans, the savings must be used at the pre-selected college). The changes in the TCJA only apply to 529 investment plans. For example, Nevada has several 529 savings plans with investment options from Vanguard to USAA.³ As a separate option, Nevada allows families to prepay tuition at in-state colleges at today's tuition rates.

With 529 savings plans—as opposed to prepaid tuition plans—parents and students have several options for saving and then using money for college. Families can choose any state's 529 savings plan, regardless of where they live. Parents and families choose a plan, deposit money, and select an investment option, much like the process for saving for retirement in an Individual Retirement Account or 401(k). With a 529 savings plan, the earnings are not subject to federal taxes if the money is used for eligible post-secondary—and now K–12—expenses.⁴ From the perspective of federal taxes, families realize tax savings after they withdraw money from the accounts. Some states allow taxpayers to deduct 529 plan contributions from their income when they file their taxes, usually if a state resident chooses to invest in his or her state's 529 savings plan. In this way, families saving with a 529 plan in a state that offers a tax deduction can realize tax savings before they make withdrawals—while they are still putting money away for the future.⁵

The federal tax law changed 529 plans by expanding the tax benefits to include withdrawals of up to

\$10,000 per year per child made to pay for K–12 private school tuition.⁶ Families can now save money in 529 plans and use the funds, without tax penalty, for

- College tuition;
- College room and board;
- College activity fees that must be paid as a condition of enrollment;
- College books, supplies, and “equipment needed for a course of study”;
- Computer hardware and any costs related to Internet access for college classes; and
- Tuition at private K–12 schools, up to \$10,000 per year.⁷

Use of 529 plans has grown remarkably since federal lawmakers created the option in 1996. According to the Investment Company Institute, families have opened some 12 million 529 accounts around the country—with total assets topping \$293 billion.⁸ The number of accounts has doubled since 2005, and a *Wall Street Journal* headline says the “plans are even hotter after [the] tax overhaul.”⁹

Because state policies and investment options are central components of 529 plans, in many states, policymakers are reviewing state laws to evaluate whether they interfere with the new options for students

1. Lindsey M. Burke and Jonathan Butcher, “Improved and Expanded 529 College Savings Plans Create More Opportunities for Families,” Heritage Foundation Backgrounder No. 3274, December 27, 2017, <https://www.heritage.org/sites/default/files/2017-12/BG3274.pdf>.

2. Tax Cuts and Jobs Act of 2017, Public Law 115-97.

3. Nevada State Treasurer, “Nevada College Savings Plans,” http://www.nevadatreasurer.gov/CollegeSavings/CSP_Home/ (accessed November 3, 2018).

4. Internal Revenue Service, “529 Plans: Questions and Answers,” <https://www.irs.gov/newsroom/529-plans-questions-and-answers> (accessed November 3, 2018).

5. While this is reasonable state policy, it would be bad federal policy because it would subsidize college savings—an improper role for Washington.

6. 26 U.S. Code § 529(c)(7).

7. U.S. Department of the Treasury, Internal Revenue Service, “529 Plans: Questions and Answers,” <https://www.irs.gov/newsroom/529-plans-questions-and-answers> (accessed November 3, 2018), and U.S. Department of the Treasury, Internal Revenue Service, “Publication 970: Tax Benefits for Education,” <https://www.irs.gov/pub/irs-pdf/p970.pdf> (accessed November 3, 2018).

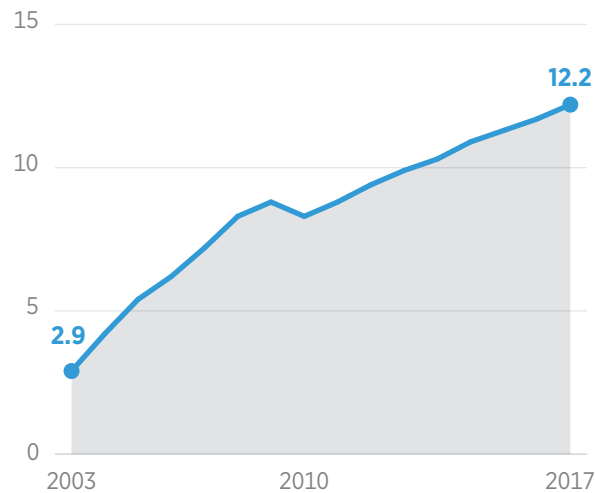
8. Investment Company Institute, “529 Plan Data: December 2017,” May 2, 2018, https://www.ici.org/research/stats/529s/529s_17_q4 (accessed November 3, 2018).

9. Laura Saunders, “529 College-Savings Plans Are Even Hotter After Tax Overhaul,” *The Wall Street Journal*, January 5, 2018, <https://www.wsj.com/articles/education-savings-plans-are-even-hotter-after-tax-overhaul-1515160800> (accessed November 3, 2018).

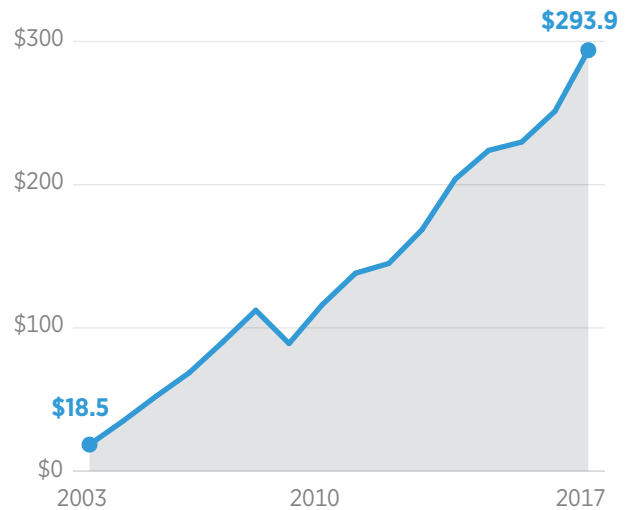
CHART 1

529 College Savings Plans

NUMBER OF 529 COLLEGE SAVINGS PLANS,
IN MILLIONS



TOTAL 529 COLLEGE SAVINGS PLAN ASSETS,
IN BILLIONS OF U.S. DOLLARS



SOURCE: Investment Company Institute, “529 Plan Data: December 2017,” May 2, 2018, https://www.ici.org/research/stats/529s/529s_17_q4 (accessed October 16, 2018).

BG3363 heritage.org

under federal tax law. In 2018, it is common to find a message on state 529 plan websites that says federal “legislation includes several new provisions related specifically to 529 plan accounts,” and the website will “provide more information as additional details about the effects of the tax bill become clear.”¹⁰

Specifically, state policymakers are reviewing state definitions for eligible 529 expenses to determine if the addition of K–12 private school tuition in federal law conflicts with state law. For example, in Rhode Island, the state law governing 529 accounts says a qualified higher education expense includes “tuition, fees, books, supplies and equipment required for enrollment or attendance at an institution of higher education, and other education costs defined by federal law.”¹¹ This language appears to allow 529 account holders in Rhode Island to use their savings for K–12 private school tuition without a state tax penalty.

However, in New York, eligible 529 expenses are defined as “any qualified higher education expense included in section 529 of the Internal Revenue Code of 1986, as amended.”¹² Because the definition specifies that the withdrawal must be for a higher education expense, this language appears to prevent account holders from using account funds for K–12 expenses. Under current law, New York could levy a financial penalty or tax the money after it is withdrawn.

Some states, then, will need to revise their laws in order to provide parents and students with the option to use their own savings to realize the full benefits of 529 savings plans under federal law.

A few states have done so already. In Louisiana, lawmakers created a new 529 savings program called START K12, which “allows families to save for tuition expenses related to attendance at any Louisiana school that provides any or all of kindergarten

10. See, for example, Arkansas 529 College Investing Plan, <https://www.arkansas529.org/home.html> (accessed November 3, 2018); Colorado’s CollegeInvest, <https://www.collegeinvest.org/> (accessed November 3, 2018); and news release, “Important News: Federal Legislation Signed by President Trump Includes Changes to Section 529 College Savings Plans,” Connecticut Higher Education Trust, January 9, 2018, <https://www.aboutchet.com/buzz/?id=983> (accessed November 3, 2018).

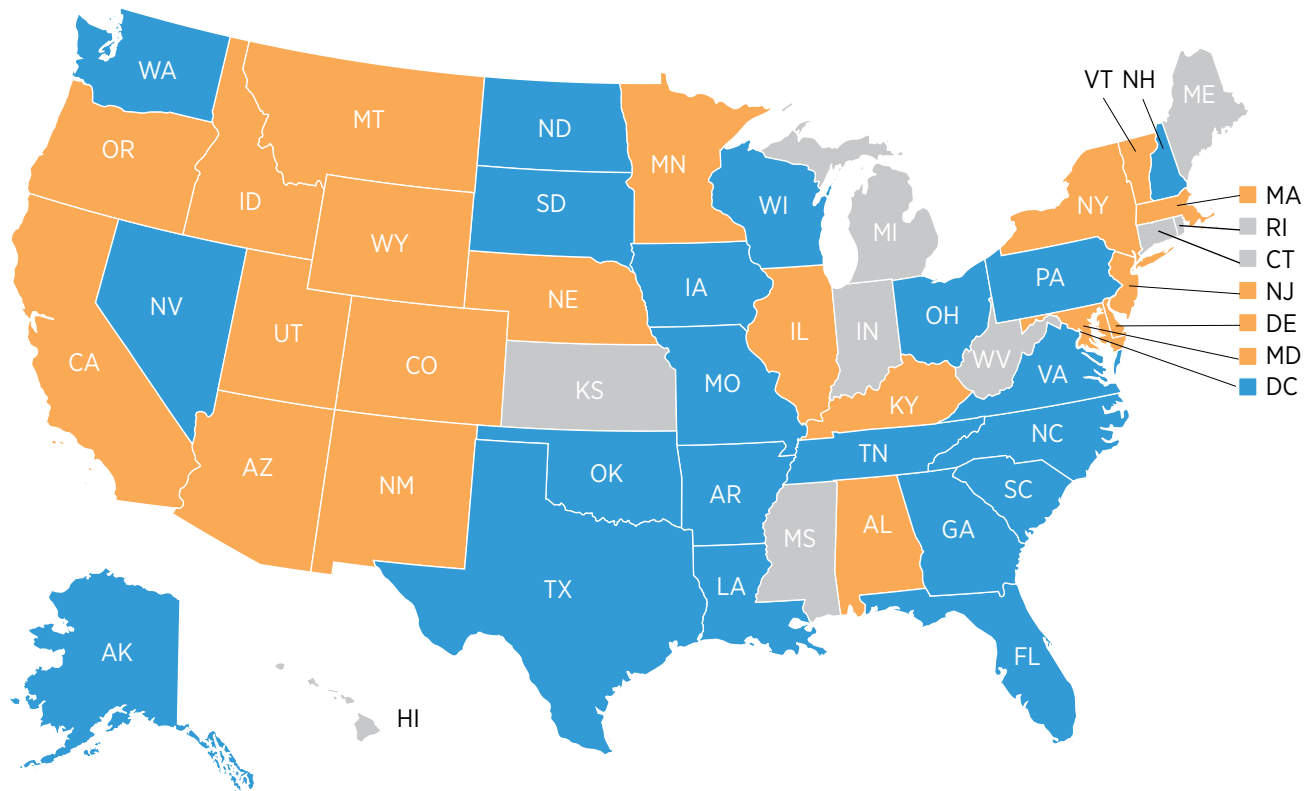
11. 16 R.I. Gen. Laws § 61-57-3, <http://webserver.rilin.state.ri.us/Statutes/TITLE16/16-57/16-57-3.HTM> (accessed November 3, 2018).

12. NY Educ L § 695-B (2017).

MAP 1

529 Accounts for K-12 by, State

Can families in your state use funds from 529 accounts for K-12 expenses without paying a penalty under state law? ■ Yes ■ No ■ Maybe



NOTE: Wyoming does not currently have a 529 plan.
SOURCE: Heritage Foundation research.

BG3363 heritage.org

through twelfth grade.”¹³ Other states are considering legislation to revise state law.¹⁴

As state lawmakers prepare for the 2019 legislative session and taxpayers consider their options before the end of this tax year, this paper provides a list of which states do and do not need to revise their laws in order to allow families and students to take advantage of the new options afforded to them in 529 savings plans. This paper will also explain the key features of what needs to change or be added to state law in order to allow for the purchase of K-12 tuition.

How to Revise State Law to Align with Current and Future Federal Changes to 529 Savings Plans

With the new federal tax relief for 529 accounts, many families are wondering if their state will extend tax relief under their laws for K-12 private school tuition expenses. The 2017 law amended 26 U.S.C. § 529(c), adding “expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school” to the definition of “qualified higher education expense.”¹⁵

13. Louisiana Office of Student Financial Assistance, “START K12,” <http://www.startsaving.la.gov/savings/index.jsp> (accessed November 3, 2018).

14. Megan Gorman, “Why You Shouldn’t Care If Your State Doesn’t Comply with the New 529 Rules,” *Forbes*, May 25, 2018, <https://www.forbes.com/sites/megangorman/2018/05/25/why-you-shouldnt-care-if-your-state-doesnt-comply-with-the-new-529-rules/#2bca84eb1c71> (accessed November 3, 2018).

15. 26 U.S. Code § 529 (c)(7).

This subsection of the statute deals with tax treatment of 529 accounts for designated beneficiaries and contributors under federal law, and the amended language makes clear that it only changes subsection (c) of the federal statute. The general definitions section of the statute, § 529(e), defines “qualified higher education expenses” and does not include K–12 private or religious schools.

Many states point to § 529(e) in their laws. Other states generally reference *any* qualified expenses found in § 529, and some states are interpreting this section to extend the federal tax break under their laws. State lawmakers should revise statutes to make clear that 529 accounts may be used for any expenses authorized by any section of 529. State statutes should be written to automatically align with any future changes to this section of federal code.

Below is a look at the status of 529 accounts in every state.

Can Families in Your State Use Funds from 529 Accounts for K–12 Expenses Without Incurring Penalties Under State Law?¹⁶

- **Alabama.** No. In January 2018, H.B. 251 was introduced in the Alabama House of Representatives and would have aligned with the amended federal language. By the time H.B. 251 passed in March, that language had been stripped from the bill. The Alabama Department of Revenue advises that “qualified higher education expenses” are those defined in section 529, while the Office of the State Treasurer indicates that funds may only be used at an “eligible educational institution” and the definition under section 529 does not include K–12 schools.¹⁷
- **Alaska.** Yes. Alaska does not have personal income tax, so there would not be a state tax penalty.
- **Arizona.** No. Arizona law states that qualified higher education expenses must meet “the definition of qualified higher education expenses in section 529 of the internal revenue code.”¹⁸
- **Arkansas.** Yes. Arkansas amended its law this year, defining qualified higher education expenses as “tuition and other permitted expenses as set forth in 26 U.S.C. § 529, as in effect on January 1, 2018.”¹⁹
- **California.** No. California law states that qualified higher education expenses are “expenses of attendance at an institution of higher education as provided in paragraph (3) of subsection (e) of Section 529 of the Internal Revenue Code of 1986, as it is amended from time to time, if, as determined by the board, the amendment is consistent with the purposes of this article.”²⁰
- **Colorado.** No, although Colorado has indicated this is under legal review. Colorado law states that qualified higher education expenses “has the same meaning as that term is defined in section 529 of the internal revenue code.”²¹
- **Connecticut.** Maybe. Connecticut law states that qualified higher education expenses include “tuition, fees, books, supplies and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, including undergraduate and graduate schools and any other higher education expenses that may be permitted by Section 529.”²²

16. This paper is for informational purposes only and is not intended to serve as tax or legal advice. You should consult a tax or legal advisor to determine the impact of the federal and state laws on your particular situation.

17. See Alabama Department of Revenue, “Alabama 529 Savings Plan FAQ,” <https://revenue.alabama.gov/individual-corporate/alabama-529-savings-plan-faq/> (accessed November 3, 2018), and Office of Alabama State Treasurer, “CollegeCounts 529,” <http://treasury.alabama.gov/collegcounts/> (accessed November 3, 2018).

18. Ariz. Rev. Stat. § 15-871, <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/15/01871.htm> (accessed November 3, 2018).

19. Ark. Code § 6-84-103(14) (2018).

20. Cal. Com. Code § 69980, http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=EDC&division=5.&title=3.&part=42.&chapter=2.&article=19 (accessed November 3, 2018).

21. Colo. Rev. Stat. § 23-3.1-302, <https://codes.findlaw.com/co/title-23-postsecondary-education/co-rev-st-sect-23-3-1-302.html> (accessed November 3, 2018).

22. Rute Pinho, “Federal Changes to 529 Plans,” Connecticut Legislature Office of Legislative Research, January 23, 2018, <https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0036.pdf> (accessed November 3, 2018).

- **Delaware.** No. Delaware law states that qualified higher education expenses include “tuition and other permitted expenses as presently set forth in 26 U.S.C. § 529(e) or as hereafter permitted by such successor or amended section for the enrollment or attendance of a designated beneficiary at a higher education institution.”²³
- **Florida.** Yes. Florida does not have personal income tax. Florida law states that qualified higher education expenses are set by the Florida Prepaid College Board, consistent with the Internal Revenue Code.²⁴
- **Georgia.** Yes. On April 3, 2018, the Georgia Path2College 529 Plan announced distributions made for K–12 tuition at public, private, or religious schools are income tax free “up to a maximum of \$10,000 of distributions” per taxable year.²⁵
- **Hawaii.** Maybe. Hawaii law states that qualified higher education expenses include “any qualified higher education expense defined in section 529 of the Internal Revenue Code.”²⁶
- **Idaho.** No. Idaho law states that qualified higher education expenses “shall have the meaning provided in 26 U.S.C. section 529(e)(3) and a “qualified withdrawal” is an expense “to pay the qualified higher education expenses of the designated beneficiary.”²⁷
- **Illinois.** No. Illinois law defines “qualified expenses” as “tuition, fees, and the costs of books, supplies, and equipment required for enrollment or attendance at an eligible educational institution.” “Eligible educational institutions” include public and private colleges, junior colleges, graduate schools, and certain vocational institutions.²⁸
- **Indiana.** Maybe. Indiana law states that qualified higher education expenses has the meaning “set forth in Section 529 of the Internal Revenue Code.”²⁹
- **Iowa.** Yes. In May 2018, the Iowa legislature amended its definition of “qualified education expenses” to include “elementary and secondary school expenses for tuition described in section 529(c)(7) of the Internal Revenue Code.”³⁰
- **Kansas.** Maybe. Kansas law states that qualified higher education expenses are any expenses included in section 529 of the Internal Revenue Code.³¹
- **Kentucky.** No. Kentucky law provides that higher education costs are “the costs specified in section 529(e)(3) of the Internal Revenue Code.”³²
- **Louisiana.** Yes. The state legislature passed a law in May 2018 creating a new program that allows families to save for public or private elementary and secondary school.³³ While that program is being set up, families that had already opened a plan with the state’s Student Tuition Assistance and Revenue Trust before December 31, 2017, are authorized to

23. Del. Code Ann. tit. § 3485, <http://delcode.delaware.gov/title14/c034/sc12/index.shtml> (accessed November 3, 2018).

24. Fla. Stat. § 1009.981, http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=florida+529+savings+plan&URL=1000-1099/1009/Sections/1009.981.html (accessed November 3, 2018).

25. News Release, Path2College, “Important News: Federal Tax Cuts and Jobs Act of 2017 Includes Changes to Section 529 College Savings Plans,” April 3, 2018, <https://www.path2college529.com/buzz/?id=1049> (accessed November 3, 2018).

26. Haw. Rev. Stat. Ann. § 256:1-7, http://files.hawaii.gov/tax/legal/hrs/hrs_256.pdf (accessed November 3, 2018).

27. Idaho Code Ann. § 33-5401, <https://legislature.idaho.gov/statutesrules/idstat/Title33/T33CH54/SECT33-5401/> (accessed November 3, 2018).

28. 15 Ill. Comp. Stat. § 505, <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=210&ChapterID=4> (accessed November 3, 2018).

29. Ind. Code Ann. § 21-9-2-19.5, <http://iga.in.gov/legislative/laws/2017/ic/titles/021#21-9-2> (accessed November 3, 2018).

30. 12D.1(2)(k), <https://www.legis.iowa.gov/docs/publications/LGR/87/SF2417.pdf> (accessed November 3, 2018).

31. K.S.A. § 75-646, http://www.kslegislature.org/li/b2017_18/statute/075_000_0000_chapter/075_006_0000_article/075_006_0046_section/075_006_0046_k/ (accessed November 3, 2018).

32. Ky. Rev. Stat. Ann. § 164A.300-380, <http://www.lrc.ky.gov/statutes/statute.aspx?id=47977> (accessed November 3, 2018).

33. Louisiana Legislature, 2018 Session, HB 650, <https://legiscan.com/LA/text/HB650/2018> (accessed November 3, 2018).

make a one-time withdrawal of \$10,000 or less to pay for elementary or secondary schools.

- **Maine.** Maybe. Maine law states that “higher education expenses” are “certified expenses for attendance at an institution of higher education as those expenses are defined by...the Internal Revenue Code.”³⁴
- **Maryland.** No. Maryland law states that “qualified higher education expenses” are limited to expenses defined in “529(e) of the Internal Revenue Code.”³⁵
- **Massachusetts.** No. Massachusetts law limits qualified higher education expenses to those defined in “26 U.S.C. 529(e)(3).”³⁶
- **Michigan.** Maybe. Michigan law says “qualified higher education expenses” are those “defined in section 529 of the Internal Revenue Code.”³⁷
- **Minnesota.** No. Minnesota law states “qualified higher education expenses” are those “defined in section 529(e)(3) of the Internal Revenue Code,” and a “qualified distribution” means “a distribution made from an account for qualified higher education expenses of the beneficiary.”³⁸
- **Mississippi.** Maybe. Mississippi defines qualified higher education expenses as “any higher education expense defined in Section 529 of the Internal Revenue Code.”³⁹
- **Missouri.** Yes. Although Missouri law states that “qualified higher education expenses” are the “qualified costs of tuition and fees and other expenses for attendance at an eligible educational institution, as defined in Section 529(e)(3) of the Internal Revenue Code,” Missouri’s 529 Savings Plan indicates that “Missouri taxpayers can use MOST 529 assets to pay for expenses for tuition in connection with enrollment or attendance for K–12 with no state tax consequences.”⁴⁰
- **Montana.** No. Montana law states that “qualified higher education expenses” are those “defined in section 529(e)(3) of the Internal Revenue Code.”⁴¹
- **Nebraska.** No. Nebraska law defines “qualified higher education expenses” as “certified costs of tuition and fees, books, supplies, and equipment required for enrollment or attendance at an eligible educational institution.”⁴² Nebraska State Treasurer Don Stenberg indicated that “withdrawals from NEST accounts to pay for K–12 tuition will be considered non-qualified withdrawals under current state law.”⁴³
- **Nevada.** Yes. Nevada does not have personal income tax.
- **New Hampshire.** Yes. New Hampshire does not have personal income tax.

34. 20-A M.R.S. § 11471(7) (2018), <http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?pid=&tab=subject5&stab=&ys=2018RS&article=ged§ion=18-1901&ext=html&session=2018RS> (accessed November 14, 2018).

35. Md. Code Ann. Education §18-1901(n), <http://mgaleg.maryland.gov/webmga/frmStatutesText.aspx?pid=&tab=subject5&stab=&ys=2018RS&article=ged§ion=18-1901&ext=html&session=2018RS> (accessed November 14, 2018).

36. Mass. Gen. Laws Chapter 62, § 3(B)(a)(19) (2018), <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleX/Chapter62/Section3> (accessed November 14, 2018).

37. MCL 390.1472, [http://www.legislature.mi.gov/\(S\(bd25lei0ex05akd4ha54nn4t\)\)/mileg.aspx?page=getobject&objectname=mcl-390-1472&query=on&highlight=section%20AND%20529](http://www.legislature.mi.gov/(S(bd25lei0ex05akd4ha54nn4t))/mileg.aspx?page=getobject&objectname=mcl-390-1472&query=on&highlight=section%20AND%20529) (accessed November 3, 2018).

38. Minn. Stat. Ann. § 136G.03, <https://www.revisor.mn.gov/statutes/cite/136G.03> (accessed November 3, 2018).

39. Miss. Code Ann. § 37-155-105, <https://codes.findlaw.com/ms/title-37-education/ms-code-sect-37-155-105.html> (accessed November 3, 2018).

40. Missouri’s 529 College Savings Plan (MOST), “MOST Tax Benefits,” <https://www.missourimost.org/home/why-choose-most/most-529-tax-benefits.html> (accessed November 3, 2018).

41. Mont. Code Ann. § 15-52-103, https://leg.mt.gov/bills/mca/title_0150/chapter_0620/part_0010/section_0030/0150-0620-0010-0030.html (accessed November 3, 2018).

42. Neb. Rev. Stat. § 85-1802, <https://nebraskalegislature.gov/laws/statutes.php?statute=85-1802> (accessed November 3, 2018).

43. Nebraska State Treasurer’s Office, “College Savings Plan: State Legislation Needed for NEST Plans to be Used for K-12,” <https://treasurer.nebraska.gov/csp/> (accessed November 3, 2018).

- **New Jersey.** No. New Jersey law states that “qualified higher education expenses” are those “described in paragraph (3) of subsection (e) of section 529 of the federal Internal Revenue Code.”⁴⁴
- **New Mexico.** No. New Mexico law references “qualified higher education expenses, as defined pursuant to Section 529 of the Internal Revenue Code.”⁴⁵ The New Mexico Education Trust Board asked the state’s taxation and revenue department to review the change in federal law and issue an advisory letter on its impact on state law. The department indicated that state law “does not provide an exemption from New Mexico State income tax” for 529 withdrawals for K–12 tuition.⁴⁶
- **New York.** No. New York law states that “qualified higher education expenses” are “any qualified higher education expense included in section 529 of the Internal Revenue Code.” The New York Department of Taxation and Finance notes that “K–12 distributions would not be considered qualified distributions under New York statutes and would require the recapture of any New York State tax benefits that accrued on contributions.”⁴⁷
- **North Carolina.** Yes. The North Carolina legislature amended its law as part of its budget bill—over the veto of Governor Roy Cooper. The law states that Parental Savings Trust Fund accounts may be used for “the costs of education expenses of eligible students in accordance with section 529 of the Code.”⁴⁸
- **North Dakota.** Yes. Although the state defines “qualified higher education expenses” as those that are “defined in section 529 of the Code,” College SAVE, the state’s 529 Plan, indicates that “North Dakota taxpayers can use College SAVE 529 assets to pay for expenses for tuition in connection with enrollment or attendance for K–12 with no state tax consequences.”⁴⁹
- **Ohio.** Yes. The state amended its law in March 2018 “to allow tax deductible contributions to Ohio 529 plans for K–12 education expenses.” It provides that “higher education expenses” are those “that meet the definition of ‘qualified higher education expenses’ under section 529 of the Internal Revenue Code.”⁵⁰
- **Oklahoma.** Yes. Oklahoma law states that “qualified higher education expenses” include “tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.”⁵¹ The state’s College Savings Plan noted: “Effective January 1, 2018, distributions for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school are Oklahoma and federal income tax free up to a maximum of \$10,000 of distributions for such tuition expenses per taxable year.”⁵²
- **Oregon.** No. The state legislature passed a law in June stating, “If a taxpayer makes a withdrawal

44. N.J.S.A. 18A:71B-36, <https://law.justia.com/codes/new-jersey/2016/title-18a/section-18a-71b-36/> (accessed November 3, 2018).

45. N.M. Stat. § 7-2-2, <http://public.nmcompcomm.us/nmpublic/gateway.dll/?f=templates&fn=default.htm> (accessed November 3, 2018).

46. Alicia Romero, Tax Information and Policy Office, State of New Mexico Taxation and Revenue Department, letter to John Monforte, April 23, 2018, <https://static1.squarespace.com/static/5702d49b2fe1312243f9bddd/t/5b325ba50e2e722aa6288e4a/1530026955716/NewMexicoTaxationRevenueDepartmentAdvisoryComment.pdf> (accessed November 3, 2018). See also The Education Trust Board of New Mexico, “The Education Plan: Recent Federal Tax Law Changes,” <https://www.theeducationplan.com/recent-federal-tax-law-changes> (accessed November 3, 2018).

47. Office of the New York State Comptroller, “NY’s 529: Federal Tax Reform Update,” <https://www.osc.state.ny.us/college/529.htm> (accessed November 3, 2018).

48. N.G. Gen. Stat. § 116-209.25(b); North Carolina General Assembly, 2017-18 Session, S.B. 99, p. 232, <https://www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S99v6.pdf> (accessed November 3, 2018).

49. Bank of North Dakota’s 529 Plan, “Tax-Deferred Growth,” <https://www.collegesave4u.com/home/features-and-benefits/tax-benefits.html> (accessed November 3, 2018).

50. 132nd Ohio General Assembly, S.B. 322, <https://legiscan.com/OH/text/SB22/id/1774556/Ohio-2017-SB22-Enrolled.pdf> (accessed November 3, 2018).

51. Okla. Stat. tit. § 70-3970.3, http://webserver1.lsb.state.ok.us/os/os_70-3970.3.rtf (accessed November 1, 2018).

52. Press Release, Oklahoma 529 College Savings Plan, “Important News: Federal Tax Cuts and Jobs Act Includes Changes to Section 529 College Savings Plans,” April 3, 2018, <https://www.ok4saving.org/buzz/?id=1047> http://webserver1.lsb.state.ok.us/os/os_70-3970.3.rtf (accessed November 3, 2018).

from a savings network account for higher education...to pay expenses in connection with enrollment or attendance at an elementary or secondary school, the amount of the withdrawal that is attributable to contributions that were subtracted from federal taxable income under ORS [Oregon Revised Statute] 316.699 and the amount of the withdrawal that is attributable to previously untaxed earnings and gains” will be added to federal taxable income.⁵³

- **Pennsylvania.** Yes. Pennsylvania defines “qualified higher education expenses” as those expenses “defined by section 529 of the Internal Revenue Code.”⁵⁴ PA 529, the state’s College Savings Program, indicates that 529 funds may be used “to pay for expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school up to \$10,000 per year, per beneficiary.”⁵⁵
- **Rhode Island.** Maybe. Rhode Island law defines “qualified higher education expenses” as “tuition, fees, books, supplies and equipment required for enrollment or attendance at an institution of higher education, and other education costs defined by federal law.”⁵⁶
- **South Carolina.** Yes. South Carolina law states that “qualified higher education expenses” are “any higher education expense defined in Section 529 of the Internal Revenue Code.” Future Scholar, South Carolina’s College 529 Savings Plan, notes, “Effective January 1, 2018, families may withdraw up to an aggregate of \$10,000 a year per beneficiary
- tax free to cover K–12 tuition at public, private, or religious elementary or secondary schools.... There is not a distinction between K–12 withdrawals and withdrawals to a college or university.”⁵⁷
- **South Dakota.** Yes. South Dakota does not have personal income tax. South Dakota defines “qualified higher education expenses” as “tuition, fees, books, supplies, and equipment required for enrollment or attendance...at an eligible education institution, and any other expenses qualifying as a qualified higher education expenses under section 529 of the Internal Revenue Code.”⁵⁸
- **Tennessee.** Yes. Tennessee does not have personal income tax.
- **Texas.** Yes. Texas does not have personal income tax.
- **Utah.** No. Utah law states that “higher education costs” are “qualified higher education expenses as defined in Section 529(e)(3).”⁵⁹
- **Vermont.** No. Vermont law defines “postsecondary education costs” as “the qualified costs of tuition and fees and other expenses for attendance at an institution of postsecondary education, as defined by the Internal Revenue Code.”⁶⁰ The Vermont Higher Education Investment Plan notes that withdrawals for K–12 tuition expenses “may be subject to a 10% [sic] recapture penalty... and tax on the gain realized with respect to the withdrawals.”⁶¹

53. Bill 4080, 79th Oregon Legislative Assembly, 2018 Regular Session, House, <https://olis.leg.state.or.us/liz/2018R1/Downloads/MeasureDocument/HB4080/Enrolled> (accessed November 1, 2018).

54. Pennsylvania General Assembly, 1992, Act 11, <http://www.legis.state.pa.us/CFDOCS/LEGIS/LI/uconsCheck.cfm?txtType=HTM&yr=1992&sessInd=0&smthLwInd=0&act=0011.&CFID=227485366&CFTOKEN=23065680> (accessed November 1, 2018).

55. PA529, “FAQs,” <https://www.pa529.com/faqs/> (accessed November 1, 2018).

56. 16 R.I. Gen. Laws § 61-57-3, <http://webserver.rilin.state.ri.us/Statutes/TITLE16/16-57/16-57-3.HTM> (accessed November 1, 2018).

57. South Carolina Future Scholar 529 College Savings Plan, “Common Questions,” <https://futurescholar.com/resources/common-questions/#withdrawing-funds> (accessed November 1, 2018).

58. SDCL 13-63-1, http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=13-63-1 (accessed November 1, 2018).

59. Utah Code Annotated § 53B-8a-114, <https://le.utah.gov/xcode/Title53B/Chapter8A/53B-8a-S201.html> (accessed November 1, 2018).

60. Vt. Stat. Ann. tit. 16 V.S.A. § 2876, <https://legislature.vermont.gov/statutes/section/16/O87/O2876> (accessed November 1, 2018).

61. Vermont Higher Education Investment Plan, “How To’s,” <https://www.vheip.org/how-tos/#make-a-withdrawal> (accessed November 1, 2018).

- **Virginia.** Yes. Virginia law states that college savings trust account funds may be used for “qualified higher education expenses at eligible educational institutions, as both such terms are defined in § 529 of the Internal Revenue Code.”⁶² Virginia 529 indicates that funds may be used for private or religious K–12 tuition.⁶³
- **Washington.** Yes. Washington does not have personal income tax.
- **West Virginia.** Maybe. West Virginia law defines “qualified higher education expenses” as those “permitted under 26 U.S.C. § 529.”⁶⁴
- **Wisconsin.** Yes. Edvest, Wisconsin’s College Savings Plan, notes that “distributions for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school are federal and Wisconsin income tax free up to a maximum of \$10,000 of distributions for such tuition expenses per taxable year per Beneficiary.”⁶⁵
- **Wyoming.** Wyoming does not currently have a 529 plan.

Conclusion

Whether families and investors should use 529 savings plans to pay for K–12 expenses is a decision for parents and students. Lawmakers and policy analysts cannot possibly know the best investment

or spending decisions for every family, but federal lawmakers gave parents more options with college savings for their children in the TCJA. State policymakers should not prevent parents from using their 529 savings plans for K–12 education expenses and should update state policy so as not to interfere with the flexibility now provided through the federal tax code for these accounts.

Individuals and families should have the ability to make decisions about how to save and spend their hard-earned money. Investors must choose what is best for their current and future needs. With the TCJA, Washington gave families and students more options to utilize their own savings. Leveraging the flexibility now available through 529s may not be the right option for every account holder, but the new opportunities are welcome nonetheless. And it is impossible for observers or policymakers to identify the specific students for whom the option is a good fit. This is all the more reason for states to make sure this new opportunity is available to everyone—so that individuals and families can make the best choices for their children.

—*Jonathan Butcher is Senior Policy Analyst in the Center for Education Policy of the Institute for Family, Community, and Opportunity at The Heritage Foundation, and Elizabeth Slattery is Legal Fellow in the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation.*

62. Va. Code Ann. § 23.1-700, <https://law.lis.virginia.gov/vacode/title23.1/chapter7/section23.1-700/> (accessed November 3, 2018).

63. Virginia 529, “Qualified Higher Education Expense,” <https://www.virginia529.com/resources/key-terms/#qualified-higher-education-expense-qhee> (accessed November 1, 2018).

64. W. Va. Code § 18-30-3, <http://www.wvlegislature.gov/legisdocs/code/18/WVC%2018%20%20-%2030%20%20-%20%20%203%20%20.htm> (accessed Nov. 1, 2018).

65. News release, Edvest (Wisconsin’s College Savings Plan), “Important News: Federal Tax Cuts and Jobs Act of 2017 Includes Changes to Section 529 College Savings Plans,” May 8, 2018, <https://www.edvest.com/buzz/?id=979> (accessed November 1, 2018).