

Document: Final Rule

Source: November 1, 2000, Indiana Register, Volume 24, Number 2

Disclaimer: These documents were created from the files used to produce the official (printed) Indiana Register, however, these documents are unofficial.

TITLE 540 INDIANA EDUCATION SAVINGS

AUTHORITY

LSA Document #00-62(F)

DIGEST

Amends 540 IAC 1-4-3 to update language as a result of the repeal of 540 IAC 1-8-3. Amends 540 IAC 1-8-4 to clarify the maximum aggregate of all account balances in favor of a single program beneficiary. Amends 540 IAC 1-8-5 to update language as a result of the repeal of 540 IAC 1-8-3. Adds 540 IAC 1-10-1.5 to require annual certifications by program beneficiaries that distributions were utilized for qualified educational expenses. Adds 540 IAC 1-10-1.6 regarding withholding provisions to cover potential penalties for nonqualified distributions. Repeals 540 IAC 1-8-3. Effective 30 days after filing with the secretary of state.

540 IAC 1-4-3

540 IAC 1-8-5

540 IAC 1-8-3

540 IAC 1-10-1.5

540 IAC 1-8-4

540 IAC 1-10-1.6

SECTION 1. 540 IAC 1-4-3 IS AMENDED TO READ AS FOLLOWS:

540 IAC 1-4-3 Number of accounts

Authority: IC 21-9-4-7

Affected: IC 21-9

Sec. 3. There is no limit on the number of accounts that may be opened for one (1) beneficiary by different account owners; however, the sum total of ~~yearly~~ contributions in all accounts for the same beneficiary may not exceed ~~the maximum yearly amount permitted for a beneficiary provided in 540 IAC 1-8-3; and~~ the maximum cumulative amount permitted for a beneficiary provided in 540 IAC 1-8-4. (*Indiana Education Savings Authority; 540 IAC 1-4-3; filed Sep 9, 1997, 4:45 p.m.: 21 IR 87; filed Oct 10, 2000, 3:06 p.m.: 24 IR 375*)

SECTION 2. 540 IAC 1-8-4 IS AMENDED TO READ AS FOLLOWS:

540 IAC 1-8-4 Maximum account contributions

Authority: IC 21-9-4-7

Affected: IC 21-9

Sec. 4. ~~Contributions cannot be made to any account which would result in the total of all contributions to all accounts made~~ **account balances held** on behalf of one (1) beneficiary ~~may not to exceed one hundred fourteen thousand five hundred forty-eight dollars (\$100,000): (\$114,548), including accrued earnings up through the date of such contribution. This maximum account balance shall be adjusted annually pursuant to a formula or other methodology adopted by the board from time to time. In the event that total account balances for a single beneficiary exceed the maximum account balance due to new contributions, the excess amount shall be refunded to the account owner or owners, pro rata, without penalty. Notwithstanding the foregoing, it shall be permissible for the maximum account balance to be exceeded if such excess is caused solely by the accrual of earnings to one (1) or more accounts held on behalf of a single beneficiary.~~ (*Indiana Education Savings Authority; 540 IAC 1-8-4; filed Sep 9, 1997, 4:45 p.m.: 21 IR 88; filed Oct 10, 2000, 3:06 p.m.: 24 IR 375*)

SECTION 3. 540 IAC 1-8-5 IS AMENDED TO READ AS FOLLOWS:

540 IAC 1-8-5 Premature cancellation

Authority: IC 21-9-4-7

Affected: IC 21-9

Sec. 5. An account may be terminated prematurely (with proceeds refunded to the account owner, subject to any applicable penalty) by the program administrator at the direction of the board if the account has a balance of less than seven hundred fifty dollars (\$750) and no contributions have been made within the preceding two (2) calendar years. ~~However, no account shall be terminated if the account owner cannot make a contribution because of the yearly limitations on contributions appearing in section 3 of this rule.~~ Notwithstanding the foregoing, if distributions of at least five hundred dollars (\$500) are paid from the account for qualified higher education expenses during any year, the account shall not be subject to cancellation. The board shall instruct the program administrator as to such cancellations from time to time. (*Indiana Education Savings Authority; 540 IAC 1-8-5; filed Sep 9, 1997, 4:45 p.m.: 21 IR 88; errata filed Nov 20, 1997, 3:15 p.m.: 21 IR 1350; filed Oct 10, 2000, 3:06 p.m.: 24 IR 376*)

SECTION 4. 540 IAC 1-10-1.5 IS ADDED TO READ AS FOLLOWS:

540 IAC 1-10-1.5 Substantiation requirements

Authority: IC 21-9-4-7

Affected: IC 21-9

Sec. 1.5. Before the end of each calendar year during which the use of account savings was requested, the beneficiary shall certify to the authority that:

- (1) the beneficiary was duly enrolled and attended an eligible educational institution during the current calendar year;**
- (2) the full amount of the benefits distributed either directly to or on behalf of the beneficiary were utilized exclusively for qualified higher education expenses during the current calendar year; and**
- (3) the beneficiary has not received a refund from any person or entity who received benefits on behalf of the beneficiary unless such refund was subsequently utilized exclusively for qualified higher education expenses during that calendar year.**

If the certification required by this section is not supplied in the time or manner in which the board shall from time to time specify, then the authority shall consider the distributions for that calendar year to be nonqualified and shall levy the penalty for the nonqualified distribution or distributions against the remaining balance in the beneficiary's account. (*Indiana Education Savings Authority; 540 IAC 1-10-1.5; filed Oct 10, 2000, 3:06 p.m.: 24 IR 376*)

SECTION 5. 540 IAC 1-10-1.6 IS ADDED TO READ AS FOLLOWS:

540 IAC 1-10-1.6 Exhaustion of account

Authority: IC 21-9-4-7

Affected: IC 21-9

Sec. 1.6. If a requested distribution would reduce an account balance to a level that is less than the penalty should such distribution subsequently be determined to be a nonqualified distribution, then the authority shall withhold such amount as would be necessary to pay such potential penalty. On presentation of the certification required pursuant to section 1.5 of this rule, the authority shall promptly distribute the withheld amount in accordance with the requested distribution. (*Indiana Education Savings Authority; 540 IAC 1-10-1.6; filed Oct 10, 2000, 3:06 p.m.: 24 IR 376*)

SECTION 6. 540 IAC 1-8-3 IS REPEALED.

LSA Document #00-62(F)

Notice of Intent Published: 23 IR 1674

Proposed Rule Published: June 1, 2000; 23 IR 2316

Hearing Held: July 12, 2000

Approved by Attorney General: September 5, 2000

Approved by Governor: October 5, 2000

Filed with Secretary of State: October 10, 2000, 3:06 p.m.

Incorporated Documents Filed with Secretary of State: None