



Education and Local Government Interim Committee

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60th Montana Legislature

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Montana Family Education Savings Program

FOLLOW-UP STAFF REPORT TO COMMITTEE

Friday, December 14, 2007

Introduction

At the September meeting of the Education and Local Government Interim Committee (ELG) staff presented a background report (September 25, 2007) to address complaints and concerns that had been raised by Montana residents about the Montana 529 college savings program, also known as the Montana Family Education Savings Program. That program is authorized in Montana at 15-62-101, MCA and 20-25-901, MCA, and by federal code at 26 U.S.C. 529.

Questions Addressed

At the September meeting, the committee asked for staff follow-up on three specific questions, and this report is intended to address these committee questions as follows:

- 1. Must the Montana 529 program be attached to and administered by a state government entity (rather than be offered by a private sector investment company) and, if so, why was the Montana Board of Regents selected?**

Yes, according to the federal code that authorizes the Montana 529 plan at 26 U.S.C. 529, "A qualified tuition program shall be exempt from taxation under this subtitle... 'qualified tuition program' means a program established and maintained by a State or agency or instrumentality thereof or by 1 or more eligible educational institutions..."

Therefore, when the Montana Legislature created the Family Education Savings Program in 1997 and allowed an income tax deduction up to \$3,000 per taxpayer for annual contributions to the savings plan, the federal authorizing legislation required, and still does, that the program be administered by a state agency or an instrument of state government, or by eligible educational institutions.

By designating the Montana Board of Regents as the administrative authority for this program, the legislature was complying with federal statute both in terms of a state instrumentality and in terms of eligible public educational institutions in Montana.

As to why the legislature assigned this program to the Board of Regents as opposed to another state agency, after an exhaustive search of the record, legislative staff cannot find any written record that would indicate the reason for assigning this to the Regents. According to that record, no other state agency option was discussed.

As a function of the federal statute, a private investment company would not be authorized to offer the Montana 529 plan independently.

2. How much has the Montana 529 tax deduction cost state government in tax expenditures that reduce overall income tax revenue?

According to annual data from the most recent Department of Revenue Biennial report, the Montana 529 income tax deduction reduced state revenue as follows:

- 2004 = \$646,670
- 2005 = \$454,674
- Two-year total = \$1,101,341
- Annual average = \$550,671

3. What is the tax bracket profile of those Montana taxpayers who claim this income tax deduction?

Montana Family Education Savings Program					
Cost of Income Tax Deduction by Tax Bracket (2004 & 2005)					
2004 Income Tax Bracket	2004		2005 Income Tax Bracket	2005	
	Tax Revenue Reduction	Number of Deductions		Tax Revenue Reduction	Number of Deductions
Less than \$4,046	\$ -	0	Less than \$4,364	\$ -	0
\$4,047 - \$8,433	\$ 326	5	\$4,365 - \$9,042	\$ 117	3
\$8,434 - \$13,367	\$ 45	1	\$9,043 - \$14,175	\$ 12	1
\$13,368 - \$18,628	\$ 814	12	\$14,176 - \$19,755	\$ 815	21
\$18,629 - \$25,012	\$ 1,681	26	\$19,756 - \$26,683	\$ 1,827	24
\$25,013 - \$33,470	\$ 3,970	58	\$26,684 - \$35,789	\$ 4,356	52
\$33,471 - \$44,632	\$ 11,718	89	\$35,790 - \$47,739	\$ 12,963	102
\$44,633 - \$59,387	\$ 32,859	198	\$47,740 - \$63,304	\$ 29,641	190
\$59,388 - 82,211	\$ 88,007	421	\$63,305 - \$87,980	\$ 73,158	415
\$82,212 and over	\$ 507,250	1291	\$87,981 and over	\$ 331,785	1220
TOTAL	\$ 646,670	2101	TOTAL	\$ 454,674	2028

Source: Biennial Report July 1, 2004 - June 30, 2006 (Montana Department of Revenue)

Respectfully submitted:

Alan G. Peura
Fiscal Analyst II