Prop. Reg. Section 1.529-5

Estate, gift, and generation-skipping transfer tax rules relating to qualified State tuition programs

(a) Gift and generation-skipping transfer tax treatment of contributions after August 20, 1996, and before August 6, 1997. A contribution on behalf of a designated beneficiary to a QSTP (or to a program that meets the transitional rule requirements under §1.529-6(b)) after August 20, 1996, and before August 6, 1997, is not treated as a taxable gift. The subsequent waiver of qualified higher education expenses of a designated beneficiary by an educational institution (or the subsequent payment of higher education expenses of a designated beneficiary to an educational institution) under a QSTP is treated as a qualified transfer under section 2503(e) and is not treated as a transfer of property by gift for purposes of section 2501. As such, the contribution is not subject to the generation-skipping transfer tax imposed by section 2601.

(b) Gift and generation-skipping transfer tax treatment of contributions after August 5, 1997.

(1) In general. A contribution on behalf of a designated beneficiary to a QSTP (or to a program that meets the transitional rule requirements under §1.529-6(b)) after August 5, 1997, is a completed gift of a present interest in property under section 2503(b) from the person making the contribution to the designated beneficiary. As such, the contribution is eligible for the annual gift tax exclusion provided under section 2503(b). The portion of a contribution excludible from taxable gifts under section 2503(b) also satisfies the requirements of section 2642(c)(2) and, therefore, is also excludible for purposes of the generation-skipping transfer tax imposed under section 2601. A contribution to a QSTP after August 5, 1997, is not treated as a qualified transfer within the meaning of section 2503(e).

(2) Contributions that exceed the annual exclusion amount.

(i) Under section 529(c)(2)(B) a donor may elect to take certain contributions to a QSTP into account ratably over a five year period in determining the amount of gifts made during the calendar year. The provision is applicable only with respect to contributions not in excess of five times the section 2503(b) exclusion amount available in the calendar year of the contribution. Any excess may not be taken into account ratably and is treated as a taxable gift in the calendar year of the contribution.

(ii) The election under section 529(c)(2)(B) may be made by a donor and his or her spouse with respect to a gift considered to be made one-half by each spouse under section 2513.

(iii) The election is made on Form 709, Federal Gift Tax Return, for the calendar year in which the contribution is made.

(iv) If in any year after the first year of the five year period described in section 529(c)(2)(B), the amount excludible under section 2503(b) is increased as provided in section 2503(b)(2), the donor may make an additional contribution in any one or more of the four remaining years up to the difference between the exclusion amount as increased and the original exclusion amount for the year or years in which the original contribution was made.

(v) Example. The application of this paragraph (b)(2) is illustrated by the following example:
Example. In Year 1, when the annual exclusion under section 2503(b) is $10,000, P makes a contribution of $60,000 to a QSTP for the benefit of P's child, C. P elects under section 529(c)(2)(B) to account for the gift ratably over a five year period beginning with the calendar year of contribution. P is treated as making an excludible gift of $10,000 in each of Years 1 through 5 and a taxable gift of $10,000 in Year 1. In Year 3, when the annual exclusion is increased to $12,000, P makes an additional contribution for the benefit of C in the amount of $8,000. P is treated as making an excludible gift of $2,000 under section 2503(b); the remaining $6,000 is a taxable gift in Year 3.

(3)Change of designated beneficiary or rollover.

(i) A transfer which occurs by reason of a change in the designated beneficiary, or a rollover of credits or account balances from the account of one beneficiary to the account of another beneficiary, is not a taxable gift and is not subject to the generation-skipping transfer tax if the new beneficiary is a member of the family of the old beneficiary, as defined in §1.529-1(c), and is assigned to the same generation as the old beneficiary, as defined in section 2651.

(ii) A transfer which occurs by reason of a change in the designated beneficiary, or a rollover of credits or account balances from the account of one beneficiary to the account of another beneficiary, will be treated as a taxable gift by the old beneficiary to the new beneficiary if the new beneficiary is assigned to a lower generation than the old beneficiary, as defined in section 2651, regardless of whether the new beneficiary is a member of the family of the old beneficiary. The transfer will be subject to the generation-skipping transfer tax if the new beneficiary is assigned to a generation which is two or more levels lower than the generation assignment of the old beneficiary. The five year averaging rule described in paragraph (b)(2) of this section may be applied to the transfer.

(iii) Example. The application of this paragraph (b)(3) is illustrated by the following example:
Example. In Year 1, P makes a contribution to a QSTP on behalf of P's child, C. In Year 4, P directs that a distribution from the account for the benefit of C be made to an account for the benefit of P's grandchild, G. The rollover distribution is treated as a taxable gift by C to G, because, under section 2651, G is assigned to a generation below the generation assignment of C.

(c) Estate tax treatment for estates of decedents dying after August 20, 1996, and before June 9, 1997. The gross estate of a decedent dying after August 20, 1996, and before June 9, 1997,

includes the value of any interest in any QSTP which is attributable to contributions made by the decedent to such program on behalf of a designated beneficiary.

(d) Estate tax treatment for estates of decedents dying after June 8, 1997.

(1) In general. Except as provided in paragraph (d)(2) of this section, the gross estate of a decedent dying after June 8, 1997, does not include the value of any interest in a QSTP which is attributable to contributions made by the decedent to such program on behalf of any designated beneficiary.

(2) Excess contributions. In the case of a decedent who made the election under section 529(c)(2)(B) and paragraph (b)(3)(i) of this section who dies before the close of the five year period, that portion of the contribution allocable to calendar years beginning after the date of death of the decedent is includible in the decedent's gross estate.

(3) Designated beneficiary decedents. The gross estate of a designated beneficiary of a QSTP includes the value of any interest in the QSTP.