

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill No: SB 515**

**49th Legislature, 1st Session, 2009**

**Short Title: Education Trust Fund Investment Recapture**

**Sponsor(s): Senator Peter Wirth**

**Analyst: Eilani Gerstner**

**Date: February 24, 2009**

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**Bill Summary:**

SB 515 amends the definition of “base income” in the *Income Tax Act* to exclude investment amounts transferred in calendar year 2009 to another qualified tuition program defined in Section 529 of the *Internal Revenue Code*.

**Fiscal Impact:**

SB 515 makes no appropriation.

According to the Taxation and Revenue Department analysis of SB 515, because the bill makes a change in the definition for base income for tax year 2009 specifically, only a small negative revenue effect would occur in FY 10.

**Issues:**

According to the Higher Education Department (HED), this provision would allow investors in one of New Mexico’s tuition programs (“529 plans”) to transfer investment monies to another state’s tuition program without the monies being subject to the recapture provisions of the state *Income Tax Act* and rolled into the investor's base income for income tax purposes.

Currently, the *Income Tax Act* includes in the definition of “base income” any amount a taxpayer deducted from income taxes in a prior tax year but transferred to another qualified tuition program, subjecting the transferred funds to taxation.

**Background:**

According to the US Securities and Exchange Commission,

- 529 plans, known as “qualified tuition plans,” are tax-advantaged savings plans designed to encourage saving for future college costs;
- 529 plans are authorized under Section 529 of the *Internal Revenue Code* and may be sponsored by states, state agencies, or educational institutions;
- there are two types of 529 plans: pre-paid tuition plans and college savings plans (college investment agreements); and
- all 50 states and the District of Columbia offer at least one type of plan.

New Mexico’s *Education Trust Act* authorizes both types of 529 plans. According to HED, New Mexico has not established a prepaid tuition plan, but has two college investment

agreements: The Education Plan (TEP) and the Scholar'sEdge Plan (SEP). As of December 31, 2008, there were a total of 27,231 TEP accounts and 176,897 SEP accounts held by New Mexico residents and non-residents.

**Related Bills:**

None as of 02-24-2009.