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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**53rd Legislature, 2nd Session, 2018**

<b>Bill Number</b>	<u>SB209</u>	<b>Sponsor</b>	<u>Kernan</u>
<b>Tracking Number</b>	<u>.209863.1</u>	<b>Committee Referrals</b>	<u>SEC/SCORC</u>
<b>Short Title</b>	<u>Conform 529 Programs to IRS Code</u>		
<b>Analyst</b>	<u>Simon</u>	<b>Original Date</b>	<u>2/1/2018</u>
		<b>Last Updated</b>	<u></u>

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**BILL SUMMARY**

Synopsis of Bill

Senate Bill 209 (SB209) amends the Income Tax Act to expand the income tax deduction for contributions to qualified tuition plans authorized by Section 529 of the federal Internal Revenue Code. The bill conforms to amendments to the Internal Revenue Code made as part of Public Law 115-97, also known as the Tax Cuts and Job Act, which expanded the definition of “qualified higher education expense” to include expenses for tuition at public or private elementary or secondary schools.

SB209 makes additional change involving Achieving a Better Life Experience (ABLE) accounts for individuals with disabilities and their families. This analysis is limited to the effect of SB209 related to elementary and secondary education.

SB209 does not carry an effective date and would be effective 90 days after the end of the legislative session.

**FISCAL IMPACT**

SB209 would provide taxpayers with elementary or secondary school tuition payments to make additional contributions to a 529 plan and claim a tax deduction for those contributions. The value of those contributions are not currently known, however the Higher Education Department (HED) noted one website estimated the number of private school students in New Mexico at 25 thousand, with average tuition of about \$8,510.

The Taxation and Revenue Department (TRD) notes 4,200 New Mexico taxpayers currently claim a deduction for contributions to 529 plans, with current tax benefits totaling \$1.1 million. Expanding the scope of the deduction could increase the number of taxpayers seeking the deduction. TRD estimated the increase could be about 50 percent.

According to the Legislative Finance Committee (LFC), SB209 could have a negative impact on general fund revenue collections of \$10.4 million. LFC estimates SB209 could cause a moderate administrative impact on TRD due to audit and compliance concerns.

## **SUBSTANTIVE ISSUES**

SB209 provides New Mexico taxpayers with tuition expenses at an elementary or secondary school with a deduction for those expenses. Current law provides New Mexico taxpayers who make payments into an education trust fund with a tax deduction for up to the aggregate cost of attendance at institutions of higher education. SB209 will allow taxpayers to deduct:

*“the aggregate cost of attendance at educational institutions eligible to receive payment for qualified higher education expenses in accordance with Section 529 of the Internal Revenue Code.”*

In December 2017, Section 529 of the Internal Revenue Code was amended to include the following:

*“the term ‘qualified higher education expense’ shall include a reference to expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school.”*

Because current law limits the New Mexico tax deduction to the aggregate cost of attendance at postsecondary educational institutions, it is unlikely New Mexico taxpayers could claim the state deduction for elementary and secondary tuition payments from 529 plans, although they may be able to claim a federal tax benefit. According to HED, up to \$10 thousand can be distributed annually from a 529 plan for tuition payments.

## **OTHER SUBSTANTIVE ISSUES**

According to the National Conference of State Legislatures, as of 2015, 24 states and the District of Columbia have enacted legislation to support private school choice. Those programs include school vouchers, scholarship tax credits, and tax credits or deductions for individuals. At least eight states have provided tax credits or deductions for private school expenses. Some states place limits on the availability of the tax benefit. For example, Alabama only allows a tax credit for private school tuition if the student is transferring from a failing public school. Minnesota limits its tax deduction to families with annual incomes below \$37,500.

In the last year, private school choice initiatives were promoted at the federal level. The president’s FY18 budget for the U.S. Department of Education included \$250 million in grants for states to offer scholarships to students from low-income families to attend private schools. In December, an amendment to the Tax Cuts and Jobs Act allowed families with 529 college savings accounts to use those contributions to pay for private school tuition. SB209 would align state law with this federal policy choice. While federal tax law only provides tax benefits for the investment earnings of 529 plans and not the contributions, 33 states including New Mexico have state-level deductions or tax credits for 529 plans.

Overall, private school choice initiatives have demonstrated mixed student outcomes. Studies in Florida have found modest academic improvements for students who attended private schools through the use of tax credit scholarships. However, researchers examining voucher programs in

Indiana and Louisiana found that students who switched to private schools experienced significant losses in academic achievement, especially in math. Numerous studies of tax credit scholarship programs highlight small but consistent positive effects on public schools geographically near private schools, likely due to increased competition.

**RELATED BILLS**

SB209 is a duplicate of HB240, Conform Income Tax Act to Federal Changes, and is a companion bill to SB210 and HB241, Conform Education Trust Act to Federal Change, which amends other sections of statutes related to 529 programs.

**SOURCES OF INFORMATION**

- LESC Files
- Legislative Finance Committee

**JWS/rab**