

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1863

To amend the Internal Revenue Code of 1986 to allow a deduction for contributions to education savings accounts and to provide that amounts paid from such an account for educational expenses shall never be subject to income tax.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 1993

Mr. ARMEY (for himself, Mr. COX, Mr. KYL, Mr. GALLO, and Mr. BOUCHER) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to allow a deduction for contributions to education savings accounts and to provide that amounts paid from such an account for educational expenses shall never be subject to income tax.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Education As-  
5 sistance Act of 1993”.

1 **SEC. 2. EDUCATION SAVINGS ACCOUNTS.**

2 (a) IN GENERAL.—Part VII of subchapter B of chap-  
3 ter 1 of the Internal Revenue Code of 1986 (relating to  
4 additional itemized deductions for individuals) is amended  
5 by redesignating section 220 as section 221 and by insert-  
6 ing after section 219 the following new section:

7 **“SEC. 220. EDUCATION SAVINGS ACCOUNTS.**

8 “(a) DEDUCTION ALLOWED.—In the case of an indi-  
9 vidual, there shall be allowed as a deduction the sum of—

10 “(1) amounts paid in cash, and

11 “(2) the fair market value at time of transfer  
12 of stocks, bonds, or other securities, which are read-  
13 ily tradable on an established securities market,  
14 transferred,

15 during the calendar year which ends with or within the  
16 taxable year by such individual to an education savings  
17 account established for the purpose of accumulating funds  
18 to pay the educational expenses of an eligible individual.

19 “(b) LIMITATIONS.—

20 “(1) ACCOUNT MAY NOT BE ESTABLISHED FOR  
21 BENEFIT OF MORE THAN 1 INDIVIDUAL.—An edu-  
22 cation savings account may not be established for  
23 the benefit of more than 1 individual.

24 “(2) ELIGIBLE INDIVIDUAL TREATED AS ELIGI-  
25 BLE INDIVIDUAL ONLY WITH RESPECT TO 1 AC-  
26 COUNT.—If, at any time during a calendar year, 2

1 or more education savings accounts are maintained  
2 for the benefit of an eligible individual, such individ-  
3 ual shall be treated as an eligible individual for the  
4 calendar year only with respect to the first of such  
5 accounts.

6 “(3) MAXIMUM DEDUCTION PER ACCOUNT.—  
7 The amount allowable as a deduction under sub-  
8 section (a) to an individual for amounts paid or  
9 transferred to an education savings account for any  
10 taxable year shall not exceed \$1,500.

11 “(4) NO DEDUCTION AFTER BENEFICIARY AT-  
12 TAINS AGE 19.—No deduction shall be allowed for  
13 any contribution to an education savings account es-  
14 tablished for the benefit of an eligible individual who  
15 has attained age 19 before the close of the calendar  
16 year in which such contribution is made.

17 “(5) ADJUSTMENT OF DOLLAR AMOUNT LIM-  
18 TATIONS FOR INFLATION.—

19 “(A) IN GENERAL.—Not later than Octo-  
20 ber 1 of 1994 and each succeeding calendar  
21 year, the Secretary shall determine, and publish  
22 in the Federal Register, the amount which shall  
23 apply in lieu of the amount of the limitation  
24 contained in paragraph (3) and subsection

1 (c)(2)(A) with respect to taxable years begin-  
2 ning in the next succeeding calendar year.

3 “(B) METHOD OF DETERMINING  
4 AMOUNT.—The amount of the limitation which  
5 shall apply in lieu of the amount of the limita-  
6 tion contained in paragraph (3) and subsection  
7 (c)(2)(A) with respect to taxable years begin-  
8 ning in any calendar year shall be determined  
9 by multiplying the amount contained in such  
10 subparagraph and such subsection by the infla-  
11 tion adjustment factor.

12 “(C) INFLATION ADJUSTMENT FACTOR.—  
13 For purposes of subparagraph (B), the inflation  
14 adjustment factor for any calendar year is a  
15 fraction the numerator of which is the average  
16 of the Consumer Price Index as of the close of  
17 the 12-month period ending on July 31 of the  
18 preceding calendar year and the denominator of  
19 which is the average of the Consumer Price  
20 Index as of the close of the 12-month period  
21 ending on July 31, 1993.

22 “(D) CONSUMER PRICE INDEX.—For pur-  
23 poses of subparagraph (C), the term ‘Consumer  
24 Price Index’ has the meaning given such term  
25 by section 1(f)(5).

1       “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
2 poses of this section—

3           “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible  
4 individual’ means an individual who is—

5               “(A) a child (within the meaning of section  
6 151(c)(3)) of the taxpayer or of a brother, sis-  
7 ter, stepbrother, or stepsister of the taxpayer,

8               “(B) an individual with respect to whom  
9 the taxpayer has been appointed guardian by a  
10 court of competent jurisdiction, or

11              “(C) a descendant of a child of the tax-  
12 payer.

13           “(2) EDUCATION SAVINGS ACCOUNT.—The  
14 term ‘education savings account’ means a trust cre-  
15 ated or organized in the United States exclusively  
16 for the purpose of paying the educational expenses  
17 of an eligible individual, but only if the written gov-  
18 erning instrument creating the trust meets the fol-  
19 lowing requirements:

20               “(A) No contribution will be accepted un-  
21 less it is in cash, stocks, bonds, or other securi-  
22 ties which are readily tradable on an established  
23 securities market, and, except in the case of  
24 contributions from another education savings

1 account, contributions will not be accepted for  
2 the taxable year in excess of \$1,500.

3 “(B) The trustee is a bank (as defined in  
4 section 408(n)) or another person who dem-  
5 onstrates to the satisfaction of the Secretary  
6 that the manner in which that person will ad-  
7 minister the trust will be consistent with the re-  
8 quirements of this section.

9 “(C) No part of the trust assets will be in-  
10 vested in life insurance contracts (other than  
11 contracts the beneficiary of which is the trust  
12 and the face amount of which does not exceed  
13 the amount by which the maximum amount  
14 which can be contributed to the account exceeds  
15 the sum of the amounts contributed to the ac-  
16 count for all taxable years).

17 “(D) The assets of the account may be in-  
18 vested in accordance with the direction of the  
19 individual contributing to the account, but, if  
20 more than one individual has made contribu-  
21 tions to the account, the consent of all such in-  
22 dividuals shall be required for any such direc-  
23 tion.

24 “(E) The assets of the trust shall not be  
25 commingled with other property except in a

1 common trust fund or common investment  
2 fund.

3 “(F) Any balance in the account on the  
4 day after the date on which the individual for  
5 whose benefit the trust is established attains  
6 age 30 (or, if earlier, the date on which such  
7 individual dies) shall be distributed within 30  
8 days of such date—

9 “(i) in accordance with paragraph (5)  
10 to each of the individuals who have con-  
11 tributed to the trust, or

12 “(ii) as directed by such individuals,  
13 to another education savings account es-  
14 tablished for the benefit of an eligible indi-  
15 vidual who has not attained age 30 or to  
16 an eligible educational institution.

17 “(3) TIME WHEN CONTRIBUTIONS DEEMED  
18 MADE.—A taxpayer shall be deemed to have made a  
19 contribution on the last day of the preceding taxable  
20 year if the contribution is made on account of such  
21 taxable year and is made not later than the time  
22 prescribed by law for filing the return for such tax-  
23 able year (including extensions thereof).

24 “(4) STOCK, ETC., TO BE VALUED AS OF  
25 TRANSFER DATE.—The fair market value of stocks,

1 bonds, and other securities shall be determined as of  
2 the date on which they are transferred to the ac-  
3 count. If the date of transfer falls on a Saturday,  
4 Sunday, or public legal holiday, then the fair market  
5 value shall be determined by reference to the last  
6 preceding day on which they could have been traded  
7 on an established securities market.

8 “(5) DISTRIBUTION OF BALANCE IN ACCOUNT  
9 TO CONTRIBUTORS.—The Secretary shall prescribe  
10 regulations describing the manner in which any bal-  
11 ance in the educational savings account shall be dis-  
12 tributed under paragraph (2)(F)(i) among the con-  
13 tributors to the account. Any division of the balance  
14 in the account shall reflect—

15 “(A) the amount of net income of the ac-  
16 count which is attributable to the contributions  
17 of each such individual, and

18 “(B) a proper allocation of any amounts  
19 previously distributed from the account for edu-  
20 cational expenses among the contributions  
21 which were made before any such distribution  
22 (including the net income of the account which  
23 was attributable to such contributions and  
24 earned before any such distribution).

1           “(6) EDUCATIONAL EXPENSES.—The term  
2           ‘educational expenses’ means—

3                   “(A) tuition and fees required for the en-  
4                   rollment or attendance of a student at an eligi-  
5                   ble educational institution,

6                   “(B) fees, books, supplies, and equipment  
7                   required for courses of instruction at an eligible  
8                   educational institution, and

9                   “(C) a reasonable allowance for meals and  
10                  lodging while attending an eligible educational  
11                  institution.

12           “(7) ELIGIBLE EDUCATIONAL INSTITUTION.—  
13           The term ‘eligible educational institution’ means—

14                   “(A) an institution of higher education, or

15                   “(B) a vocational school.

16           “(8) INSTITUTION OF HIGHER EDUCATION.—

17           The term ‘institution of higher education’ means the  
18           institutions described in section 1201(a) or 481(a)  
19           of the Higher Education Act of 1965.

20           “(9) VOCATIONAL SCHOOL.—The term ‘voca-  
21           tional school’ means an area vocational education  
22           school as defined in subparagraph (C) or (D) of sec-  
23           tion 195(2) of the Vocational Education Act of 1963  
24           to the extent such school is located within any State  
25           (as defined in section 195(8) of such Act).

1 “(d) TAX TREATMENT OF DISTRIBUTIONS.—

2 “(1) IN GENERAL.—Except as otherwise pro-  
3 vided in this subsection, any amount paid or distrib-  
4 uted out of an education savings account shall be in-  
5 cluded in gross income of the payee or distributee  
6 for the taxable year in which the payment or dis-  
7 tribution is received to the extent such amount is  
8 not the return of a contribution for which no deduc-  
9 tion was allowed under subsection (a).

10 “(2) DISTRIBUTION USED TO PAY EDU-  
11 CATIONAL EXPENSES.—Paragraph (1) shall not  
12 apply to any payment or distribution out of an edu-  
13 cation savings account to the extent such payment  
14 or distribution is used exclusively to pay the edu-  
15 cational expenses incurred by the individual for  
16 whose benefit the account is established.

17 “(3) DISTRIBUTIONS TO ANOTHER ACCOUNT OR  
18 TO ELIGIBLE EDUCATIONAL INSTITUTION.—Para-  
19 graph (1) shall not apply to any distribution under  
20 subsection (c)(2)(F)(ii).

21 “(4) EXCESS CONTRIBUTIONS RETURNED BE-  
22 FORE DUE DATE OF RETURN.—Paragraph (1) does  
23 not apply to the distribution of any contribution paid  
24 during a taxable year to an education savings ac-  
25 count to the extent that such contribution exceeds

1 the amount allowable as a deduction under sub-  
2 section (a) if—

3 “(A) such distribution is received on or be-  
4 fore the day prescribed by law (including exten-  
5 sions of time) for filing such individual’s return  
6 for such taxable year,

7 “(B) no deduction is allowed under sub-  
8 section (a) with respect to such excess contribu-  
9 tion, and

10 “(C) such distribution is accompanied by  
11 the amount of net income attributable to such  
12 excess contribution.

13 Any net income described in subparagraph (C) shall  
14 be included in the gross income of the individual for  
15 the taxable year in which such excess contribution  
16 was made.

17 “(e) TAX TREATMENT OF ACCOUNTS.—

18 “(1) EXEMPTION FROM TAX.—An education  
19 savings account is exempt from taxation under this  
20 subtitle unless such account has ceased to be an  
21 education savings account by reason of paragraph  
22 (2) or (3). Notwithstanding the preceding sentence,  
23 any such account is subject to the taxes imposed by  
24 section 511 (relating to imposition of tax on unre-

1       lated business income of charitable, etc. organiza-  
2       tions).

3               “(2) LOSS OF EXEMPTION OF ACCOUNT WHERE  
4       INDIVIDUAL ENGAGES IN PROHIBITED TRANS-  
5       ACTION.—

6               “(A) IN GENERAL.—If the individual for  
7       whose benefit an education savings account is  
8       established or any individual who contributes to  
9       such account engages in any transaction prohib-  
10      ited by section 4975 with respect to the ac-  
11      count, the account shall cease to be an edu-  
12      cation savings account as of the first day of the  
13      taxable year (of the individual so engaging in  
14      such transaction) during which such transaction  
15      occurs.

16              “(B) ACCOUNT TREATED AS DISTRIBUTING  
17      ALL ITS ASSETS.—In any case in which any ac-  
18      count ceases to be an education savings account  
19      by reason of subparagraph (A) as of the first  
20      day of any taxable year, paragraph (1) of sub-  
21      section (d) shall apply as if there was a dis-  
22      tribution on such first day in an amount equal  
23      to the fair market value (on such first day) of  
24      all assets in the account (on such first day).

1           “(3) EFFECT OF PLEDGING ACCOUNT AS SECUR-  
2           RITY.—If, during any taxable year, the individual for  
3           whose benefit an education savings account is estab-  
4           lished, or any individual who contributes to such ac-  
5           count, uses the account or any portion thereof as se-  
6           curity for a loan, the portion so used shall be treated  
7           as distributed to the individual so using such por-  
8           tion.

9           “(f) ADDITIONAL TAX ON CERTAIN AMOUNTS IN-  
10          CLUDED IN GROSS INCOME.—

11           “(1) DISTRIBUTION NOT USED FOR EDU-  
12          CATIONAL EXPENSES.—In the case of any payment  
13          or distribution to which subsection (d)(1) applies,  
14          the tax liability of each payee or distributee under  
15          this chapter for the taxable year in which the pay-  
16          ment or distribution is received shall be increased by  
17          an amount equal to 10 percent of the amount of the  
18          distribution which is includible in the gross income  
19          of such payee or distributee for such taxable year.

20           “(2) DISQUALIFICATION CASES.—If an amount  
21          is includible in the gross income of an individual for  
22          a taxable year because such amount is required to  
23          be treated as a distribution under paragraph (2) or  
24          (3) of subsection (e), such individual’s tax liability  
25          under this chapter for such taxable year shall be in-

1        creased by an amount equal to 10 percent of such  
2        amount required to be treated as a distribution and  
3        included in his gross income.

4            “(3) DISABILITY OR DEATH CASES.—Para-  
5        graphs (1) and (2) shall not apply if the payment  
6        or distribution is made after the individual for whose  
7        benefit the education savings account becomes dis-  
8        abled within the meaning of section 72(m)(7) or  
9        dies.

10          “(g) COMMUNITY PROPERTY LAWS.—This section  
11        shall be applied without regard to any community property  
12        laws.

13          “(h) CUSTODIAL ACCOUNTS.—For purposes of this  
14        section, a custodial account shall be treated as a trust if  
15        the assets of such account are held by a bank (as defined  
16        in section 408(n)) or another person who demonstrates,  
17        to the satisfaction of the Secretary, that the manner in  
18        which he will administer the account will be consistent  
19        with the requirements of this section, and if the custodial  
20        account would, except for the fact that it is not a trust,  
21        constitute an education savings account described in sub-  
22        section (c)(2). For purposes of this title, in the case of  
23        a custodial account treated as a trust by reason of the  
24        preceding sentence, the custodian of such account shall be  
25        treated as the trustee thereof.

1       “(i) REPORTS.—The trustee of an education savings  
2 account shall make such reports regarding such account  
3 to the Secretary and to the individual for whose benefit  
4 the account is maintained with respect to contributions,  
5 distributions, and such other matters as the Secretary  
6 may require under regulations. The reports required by  
7 this subsection shall be filed at such time and in such  
8 manner and furnished to such individuals at such time and  
9 in such manner as may be required by those regulations.”

10       (b) DEDUCTION ALLOWED IN ARRIVING AT AD-  
11 JUSTED GROSS INCOME.—Paragraph (7) of section 62(a)  
12 of such Code (relating to retirement savings) is amend-  
13 ed—

14             (1) by inserting “OR EDUCATION” after “RE-  
15 TIREMENT” in the heading of such paragraph, and

16             (2) by inserting before the period at the end  
17 thereof the following: “and the deduction allowed by  
18 section 220 (relating to education savings ac-  
19 counts)”.

20       (c) TAX ON EXCESS CONTRIBUTIONS.—Section 4973  
21 of such Code (relating to tax on excess contributions to  
22 individual retirement accounts, certain section 403(b) con-  
23 tracts, and certain individual retirement annuities) is  
24 amended—

1 (1) by inserting “**EDUCATION SAVINGS AC-**  
2 **COUNTS,**” after “**ACCOUNTS,**” in the heading of  
3 such section,

4 (2) by striking out “or” at the end of para-  
5 graph (1) of subsection (a),

6 (3) by redesignating paragraph (2) of sub-  
7 section (a) as paragraph (3) and by inserting after  
8 paragraph (1) the following new paragraph:

9 “(2) an education savings account (within the  
10 meaning of section 220(c)(2)), or”, and

11 (4) by adding at the end thereof the following  
12 new subsection:

13 “(d) **EXCESS CONTRIBUTIONS TO EDUCATION SAV-**  
14 **INGS ACCOUNTS.**—For purposes of this section, in the  
15 case of an education savings account, the term ‘excess con-  
16 tributions’ means the amount by which the amount con-  
17 tributed for the taxable year to the account exceeds the  
18 amount allowable as a deduction under section 220 for  
19 such taxable year. For purposes of this subsection, any  
20 contribution which is distributed out of the education sav-  
21 ings account in a distribution to which section 220(d)(4)  
22 applies shall be treated as an amount not contributed.”

23 (d) **CONTRIBUTION NOT SUBJECT TO GIFT TAX.**—  
24 Section 2503 of such Code (relating to taxable gifts) is

1 amended by adding at the end thereof the following new  
2 subsection:

3 “(h) EDUCATION SAVINGS ACCOUNTS.—Any con-  
4 tribution made by an individual to an education savings  
5 account described in section 220(c)(2) which is allowable  
6 as a deduction under section 220 shall not be treated as  
7 a transfer of property by gift for purposes of this chap-  
8 ter.”

9 (e) TAX ON PROHIBITED TRANSACTIONS.—Section  
10 4975 of such Code (relating to prohibited transactions)  
11 is amended—

12 (1) by adding at the end of subsection (c) the  
13 following new paragraph:

14 “(4) SPECIAL RULE FOR EDUCATION SAVINGS  
15 ACCOUNTS.—An individual for whose benefit an edu-  
16 cation savings account is established and any con-  
17 tributor to such account shall be exempt from the  
18 tax imposed by this section with respect to any  
19 transaction concerning such account (which would  
20 otherwise be taxable under this section) if, with re-  
21 spect to such transaction, the account ceases to be  
22 an education savings account by reason of the appli-  
23 cation of section 220(e)(2)(A) to such account.”,  
24 and

1           (2) by inserting “, an education savings account  
2           described in section 220(c)(2),” in subsection (e)(1)  
3           after “described in section 408(a)”.

4           (f) FAILURE TO PROVIDE REPORTS ON EDUCATION  
5 SAVINGS ACCOUNTS.—Section 6693 of such Code (relat-  
6 ing to failure to provide reports on individual retirement  
7 accounts or annuities) is amended—

8           (1) by inserting “**OR ON EDUCATION SAV-**  
9           **INGS ACCOUNTS**” after “**ANNUITIES**” in the  
10          heading of such section, and

11          (2) by adding at the end of subsection (a) the  
12          following new sentence: “The person required by sec-  
13          tion 220(i) to file a report regarding an education  
14          savings account at the time and in the manner re-  
15          quired by such section shall pay a penalty of \$50 for  
16          each failure, unless it is shown that such failure is  
17          due to reasonable cause.”.

18          (g) SPECIAL RULE FOR DETERMINING AMOUNTS OF  
19 SUPPORT FOR DEPENDENT.—Subsection (b) of section  
20 152 of such Code (relating to definition of dependent) is  
21 amended by adding at the end thereof the following new  
22 paragraph:

23           “(6) A distribution from an education savings  
24          account described in section 220(c)(2) to the individ-  
25          ual for whose benefit such account has been estab-

1 lished shall not be taken into account in determining  
2 support for purposes of this section to the extent  
3 such distribution is excluded from gross income of  
4 such individual under section 220(d)(2).”

5 (h) CLERICAL AMENDMENTS.—

6 (1) The table of sections for part VII of sub-  
7 chapter B of chapter 1 of such Code is amended by  
8 striking out the item relating to section 220 and in-  
9 serting in lieu thereof the following new items:

“Sec. 220. Education savings accounts.  
“Sec. 221. Cross reference.”

10 (2) The table of sections for chapter 43 of such  
11 Code is amended by striking out the item relating to  
12 section 4973 and inserting in lieu thereof the follow-  
13 ing new item:

“Sec. 4973. Tax on excess contributions to individual retirement  
accounts, education savings accounts, certain  
403(b) contracts, and certain individual retirement  
annuities.”

14 (3) The table of sections for subchapter B of  
15 chapter 68 of such Code is amended by striking out  
16 the item relating to section 6693 and inserting in  
17 lieu thereof the following new item:

“Sec. 6693. Failure to provide reports on individual retirement  
accounts or annuities or on education savings ac-  
counts.”

18 (i) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to contributions made in taxable  
20 years beginning after December 31, 1993.



HR 1863 IH—2