WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2009

ENROLLED

Senate Bill No. 1009

(By Senators Tomblin (Mr. President) and Caruth, By Request of the Executive)

[Passed June 2, 2009; in effect ninety days from passage.]
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Senate Bill No. 1009

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed June 2, 2009; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended,
by adding thereto a new section, designated §11-21-12i;
and to amend said code by adding thereto a new article,
designated §44-16-1, §44-16-2, §44-16-3, §44-16-4, §44-16-5
and §44-16-6, all relating to the future support of children
with autism; creating a personal income tax modification
to adjusted gross income for parents and guardians
contributing to a qualified trust fund; providing for
limitations on amount of modification earned and taken;
specifying modification carryforward and treatment of
modification carryforward; specifying personal income tax
treatment of deposits, earnings and withdrawals of trust
funds; specifying effective date for tax modification;
providing rule-making authority for use and administra-
tion of qualified trust funds and requirements for claiming
the tax modification; specifying tax assessment for modifi-
cation improperly taken; addressing statute of limitations;
defining terms; specifying criteria for creating a qualified trust for a child with autism; establishing eligibility criteria; providing for creation of trust accounts for a child with autism; creating the West Virginia Children with Autism Trust Board; requiring board certification of certain information; setting forth membership of the board; setting forth duties and responsibilities of the board; granting rule-making authority to the board; providing for reimbursement of board members' expenses; exempting identities of trust fund beneficiaries, account owners or donors from chapter twenty-nine-b of said code; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-21-12i; and to amend said code by adding thereto a new article, designated §44-16-1, §44-16-2, §44-16-3, §44-16-4, §44-16-5 and §44-16-6, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12i. Decreasing modification reducing federal adjusted gross income for qualifying contribution to a qualified trust maintained for the benefit of a child with autism; effective date.

(a) In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to section twelve of this article, a modification reducing federal adjusted gross income is hereby authorized in the amount of any qualifying contribution to a qualified trust maintained for the benefit of a child with autism by the parent or guardian of a child with autism, up to a maximum of $1,000 per year for individual filers and persons who are married but filing separately, and $2,000 per year for persons who are married and filing jointly, but only to the
extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the payment is made. This modification is available regardless of the type of return form filed. The taxpayer may elect to carry forward the modification over a period not to exceed four tax years, beginning in the tax year in which the payment was made: Provided, That the amount of the decreasing modification, in combination with all other decreasing modifications authorized pursuant to this article, shall in no event reduce taxable income below zero. Any unused decreasing modification carryforward amount remaining after the four-year carryforward period is forfeited. The accrued deposits and earnings on the qualified trust account for a child with autism and the subsequent withdrawal of funds from that trust account, made in accordance with the provisions of article sixteen, chapter forty-four of this code, shall not be treated as taxable income to either the trust or the beneficiary. The provisions of this section are effective for taxable years beginning on and after January 1, 2011.

(b) The following definitions apply to this section:

(1) “Autism” means “autism” as that term is defined in section one, article sixteen, chapter forty-four of this code.

(2) “Child with autism” means “child with autism” as that term is defined in section one, article sixteen, chapter forty-four of this code.

(3) “Guardian” means “guardian” as that term is defined in section one, article sixteen, chapter forty-four of this code.

(4) “Parent” means a “parent” as that term is defined in section one, article sixteen, chapter forty-four of this code.

(5) “Qualified trust for a child with autism” means “qualified trust for a child with autism” as that term is
defined in section one, article sixteen, chapter forty-four of this code.

(c) If it appears upon audit or otherwise that any person or entity has taken the decreasing modification allowed under this section and was not entitled to take the decreasing modification, or has withdrawn funds from the qualified trust for a child with autism in a way not consistent with the requirements of article sixteen, chapter forty-four of this code, then an assessment shall be made and the income tax liability of the taxpayer shall be recomputed disallowing the decreasing modification so taken. Such assessment shall not be barred by any statute of limitations otherwise applicable to the tax imposed pursuant to this article. Amended returns shall be filed for any tax year for which the decreasing modification was improperly taken. Any additional taxes due under this chapter shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in section seventeen, article ten of this chapter and such other penalties and additions to tax as may be applicable pursuant to the provisions of article ten of this chapter.

(d) Married parents who qualify for the modification provided under this section and who file separate state tax returns shall each receive the modification provided in this section in an amount equal to the amount of contributions made by the parents into the trusts, not to exceed $1,000 each.

(e) Joint guardians who qualify for the modification provided under this section and who file separate state tax returns shall each receive the modification provided in this section, in an amount equal to the amount of contributions made by the guardians into the trust, not to exceed $1,000 each.
(f) In the event the parents or guardians of a child with autism, claiming the modification provided under this section, become divorced or legally separated, each party shall be allowed to claim the amount of unused carryforward modification that remains available under this section according to the terms of an agreed property settlement approved by the divorce court which specifically addresses the unused carryforward modification. In the event that no property settlement specifically addressing the unused carryforward modification exists relating to the divorce or legal separation, then any unused carryforward modification remaining at the time of the divorce or legal separation is granted shall be evenly divided between the parties.

(g) The Tax Commissioner may propose rules necessary to carry out the provisions of this section and to provide guidelines and requirements to ensure uniform administrative practices statewide to effect the intent of this section, all in accordance with the provisions of article three, chapter twenty-nine-a of this code.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 16. TRUSTS FOR CHILDREN WITH AUTISM.

§44-16-1. Definitions.

1 For purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise:

4 (a) "Autism" means a complex developmental disability and spectrum disorder, whose diagnosis must be clinically confirmed by qualified physicians and psychiatrists after extensive examination and testing, defined by a certain set of behaviors and symptoms which affects a person's ability to communicate and interact with others.
(b) "Board" means the West Virginia Children with Autism Trust Board created in section three of this article.

(c) "Child with autism" means a child, under the age of eighteen, who has been clinically diagnosed as having autism to a degree to which it results in a moderate or severe impairment in two or more areas of daily living, as the terms "moderate impairment", "severe impairment" and "daily living" are defined under Title II or Title XVI of the Social Security Disability Act, or a child who has been clinically diagnosed with autism and has been determined to be disabled under either Title II or Title XVI of the Social Security Disability Act for any reason.

(d) "Guardian" means a person lawfully invested with the power and charged with the duty of taking care of another person and managing the property and rights of another person who for some peculiarity of status or defect of age, understanding or self-control is considered incapable of administering his or her own affairs.

(e) "Parent" means a person who is another person's natural or adoptive mother or father or who has been granted parental rights by valid court order and whose parental rights have not been terminated by a court of law.

(f) "Qualified trust for a child with autism" means a trust account for a child with autism that: (1) Is established at a national bank, a state bank of a state of the United States or a trust company that at all times is no less than adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws of a state of the United States or is a member of the Federal Reserve System; and (2) has been approved by the West Virginia Children with Autism Trust Board in accordance with this article.
(g) "Qualified trustee" means any person authorized by the laws of this state or of the United States to act as a trustee who has been approved by the board to serve as the trustee of a qualified trust for a child with autism.

(h) "Tax Commissioner" means the same as that term is used in section one, article one, chapter eleven of this code.

§44-16-2. Creation of a qualified trust for a child with autism.

(a) Any parent or guardian of a child with autism may establish a qualified trust for a child with autism. No account shall qualify as a qualified trust for a child with autism until it has been approved as such by the West Virginia Children with Autism Trust Board established in section three of this article. The board shall certify the establishment of each qualified trust to the Tax Commissioner.

(b) To qualify for the tax deduction established in section twelve-i, article twenty-one, chapter eleven of this code, the parent or guardian seeking the tax deduction shall provide to the Tax Commissioner certification that the qualified trust has been authorized by the board and any other documentation required by the Tax Commissioner.

(c) The following types of expenses incurred to support the designated beneficiary after the named beneficiary has reached the age of eighteen or after the death of the parent or guardian who established the trust account shall be allowable if made for the benefit of the beneficiary of the trust.

(1) Education. – Expenses for education, including tuition for preschool through post-secondary education, books, supplies and educational materials related to such education, tutors and special education services.
(2) Housing. — Expenses for housing maintained for the beneficiary, separate and apart from the housing used by the parent or guardian who established the trust account while the parent or guardian is still alive, including rent, mortgage payments, home improvements and modifications, maintenance and repairs, real property taxes and utility charges.

(3) Transportation. — Expenses for transportation, including the use of mass transit, the purchase or modification of vehicles and moving expenses.

(4) Employment support. — Expenses related to obtaining and maintaining employment, including job-related training, assistive technology and personal assistance supports.

(5) Health, prevention and wellness. — Expenses for the health and wellness, including premiums for health insurance, medical, vision and dental expenses, habilitation and rehabilitation services, durable medical equipment, therapy, respite care, long-term services and supports, and nutritional management.

(6) Life necessities. — Expenses for life necessities, including clothing, activities which are religious, cultural or recreational, supplies and equipment for personal care, community-based supports, communication services and devices, adaptive equipment, assistive technology, personal assistance supports, financial management and administrative services, life and health insurance premiums, expenses for oversight, monitoring or advocacy, and funeral and burial expenses.

(7) Assistive technology and personal support services. — Expenses for assistive technology and personal support with respect to any item described in subparts (1) through (6) above.
§44-16-3. West Virginia Children with Autism Trust Board; creation and composition of the trustee board; duties and responsibilities; reimbursement of expenses.

(a) The West Virginia Children with Autism Trust Board is created to qualify and oversee trust accounts created pursuant to this article and held by approved banks or trust companies for administration by qualified trustees.

(b) The West Virginia Children with Autism Trust Board shall consist of the following governmental officials: The Tax Commissioner or his or her designee, who shall serve as the chair, the Secretary of the Department of Health and Human Resources as set forth in article one, chapter five-f of this code, or his or her designee, and the Commissioner of Banking as set forth in article one, chapter thirty-one-a of this code, or his or her designee. The board shall also consist of the following six public members who shall be appointed by the Governor with advice and consent of the Senate:

(1) An attorney at law, licensed to practice law in this state pursuant to article two, chapter thirty of this code. The attorney should have extensive knowledge and experience in the creation, management and administration of trusts;

(2) A counselor licensed in this state pursuant to the provisions of article thirty-one, chapter thirty of this code. The counselor should have experience in the delivery of vocational, rehabilitative or support services to persons with disabilities;

(3) A physician or psychiatrist licensed in this state pursuant to the provisions of article three, chapter thirty of this code. Such physician or psychiatrist must have extensive knowledge and experience in diagnosis and treatment of persons with autism;
(4) One public member with a background in advocacy on behalf of persons with disabilities; and

(5) Two citizen members.

(c) Each of the appointments shall be for a period of five years and appointees are eligible for reappointment at the expiration of their terms. Of the public members of the board first appointed, one shall be appointed for a term ending June 30, 2012, and a second for a four-year term. The remainder shall be appointed for the full five-year terms as provided in this section. In the event of a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.

(d) Members of the board may not be compensated in their capacity as members, but shall be reimbursed for reasonable expenses incurred in the performance of their duties by the Department of Administration. Expense payments are to be made at the same rate paid to state employees.

(e) The board shall meet at least once per month to review and recommend to the Tax Department approval of proposed qualified trust funds or to conduct other business as required by this article or section twelve-i, article twenty-one, chapter eleven of this code. Board meetings shall be held in person, by video conference or by teleconference, or a combination thereof. Five members of the board shall constitute a quorum.

(f) Notwithstanding the provision of section four, article six, chapter six of this code, the Governor may remove any board member for incompetence, misconduct, gross immorality, misfeasance, malfeasance or nonfeasance in office.
(g) The Department of Administration shall provide support staff and office space for the board.

(h) Nothing in this section creates an obligation of State General Revenue Funds: Provided, That funding for expenses and offices of the West Virginia Children with Autism Trust Board shall be paid, subject to appropriation.

(i) The board may propose rules for legislative approval and may adopt procedural and interpretive rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to carry out the provisions of this article.

§44-16-4. Reports and account.

1 In addition to any other requirements of this article, the board shall:

(a) Receive annual summary information on the financial condition of qualified trust funds and statements on the qualified trust funds and savings plan accounts from qualified trustees; and

(b) Prepare, or have prepared, by January 1, each year, an annual report on the status of the program, including a summary of the qualified trust funds, and provide a copy of the report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Health and Human Resources Accountability.

§44-16-5. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, account owner or donor is exempt from the provisions of the Freedom of Information Act, located in chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the
7 individuals involved or provide personal information.
8 Account owners are permitted access to their own personal
9 information.

§44-16-6. Effective date.

1 This article is effective for years beginning on or after
2 January 1, 2011.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 17th Day of June 2009.

[Signature]
Governor
PRESENTED TO THE GOVERNOR
JUN 16 2009
Time 9:00 am