

## Section 529 Qualified Tuition Plans: Sometimes It Is Not Too Good To Be True



By Jennifer K. Huckfeldt

**S**ection 529 Qualified Tuition Plans, which receive very favorable tax treatment, are named

after the section of the Internal Revenue Code authorizing the plans. There are actually two types of plans authorized under §529, Tuition Credit Plans and College Savings Plans.

**Tuition Credit Plans.** With these plans, credits or certificates are purchased which can be used in the future to pay the percentage of tuition that was pre-purchased. Usually the purchase price is less than the current tuition rate. The advantage of these plans is to provide a hedge against the cost of future tuition increases by locking in tuition at the institution's current rate and any increase in fees is not taxed. For example, assume in 2005 one year of tuition is purchased at a cost of \$10,000. In 2011, the certificate is redeemed to pay for one year's tuition when the tuition fee has increased to \$18,000. The increase in tuition fees in the amount of \$8,000, which does not have to be paid, is not subject to income taxation. State institutions usually participate in these plans and eligible private institutions also have plans. You can review one private plan allowing tuition purchases to be utilized at more than 200 independent colleges at [www.independent529Plan.org](http://www.independent529Plan.org).

**College Savings Plans.** This program allows cash contributions to be made into an account for a designated beneficiary that is maintained by a state, state agency or state instrumentality. In Missouri, the program is

called the Missouri Saving For Tuition (MOST) Program. The accounts grow income tax free, and Federal and Missouri income taxes are not imposed on distributions so long as the money is utilized to pay for the qualified higher education expenses of the designated beneficiary. Such expenses can include, in addition to tuition and fees, room and board up to a designated amount. Contributions to the plan also qualify for a Missouri income tax deduction of up to \$8,000 per donating taxpayer, per year. You can log onto [www.missourimost.org](http://www.missourimost.org) for a complete overview of Missouri's plan. Missouri residents can contribute to plans managed by other states; however, the Missouri income tax deduction is only allowed for contributions Missouri residents make to the Missouri MOST Program. For details and to compare other states' plans, go to [www.savingforcollege.com](http://www.savingforcollege.com).

**Comparing the Plans.** The College Savings Plans are more flexible, because the funds can be utilized to pay for expenses at any eligible education institution, compared to Tuition Credit Plans wherein tuition is pre-purchased at a particular institution or group of institutions. On the other hand, Tuition Credit Plans guarantee tuition for a specified fee paid today, whereas with the Savings Plan, the tuition and fees at the institution in effect at the time the beneficiary attends the school must be paid.

Note: Although it will hopefully be extended or made permanent, the law allowing distributions to be free from federal income taxes is set to expire on December 31, 2010. ■

*The college savings plans are more flexible*

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## ...Ready or Not – The New Missouri Uniform Trust Code

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*The Code  
is merely  
a codification  
of existing  
law*

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By Clifford S. Brown

On January 1, 2005, the Missouri Uniform Trust Code became effective. The new law applies “to all trusts created before, on, or after January 1, 2005,” with some exceptions for acts done and trusts which were irrevocable prior to January 1, 2005.

For the most part, the Code is merely a codification of existing law, which has developed over several hundred years, first in England and then in the United States, primarily through court decisions. There are, however, some new concepts designed to fill gaps in the existing law and to allow easier administration of trusts. For example:

(1) An irrevocable trust may be modified, or even terminated, without court approval, if the settlor of the trust and all beneficiaries consent.

(2) The trustee of an irrevocable trust must provide financial information to beneficiaries of the trust, and this requirement cannot be overridden by the trust instrument.

(3) An irrevocable trust may be modified to achieve the settlor’s tax objectives, if the modification is “not contrary to the settlor’s probable intention,” or to correct a mistake based upon a misunderstanding of fact or of law.

(4) The time periods for objecting to actions of the trustee or for contesting a trust have been shortened substantially, but the law requires certain actions be taken to inform beneficiaries so that they have an opportunity to act.

With fourteen defined exceptions, the provisions of the law are defaults, that is, the law only applies if the trust agreement does not provide otherwise.

The provisions of the Missouri Uniform Trust Code will require a rethinking of the manner in which trusts are drafted, and may require amendment of existing trusts to carry forward the goals and desires of the settlor. We will be pleased to consult with you regarding your trust, questions you may have and the impact of the Code. ■

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## Congratulations to...



*John M. Carnaban III*, on his appointment by Governor Blunt and Senate confirmation to serve as a member of the Board of Curators for the University of Missouri. The Board of Curators is the governing body of a four campus system including the University of Missouri-Columbia, the University of Missouri-Kansas City, the University of Missouri-Rolla, and the University of Missouri-St. Louis.



*Clifford S. Brown*, on being recognized as one of the leading Trust and Estates attorneys in the country by The American Lawyer in their publication, *The Best Lawyers in America* for 2005-2006. This year marks the 10th consecutive year that Cliff has been acknowledged in *Best Lawyers*.



*Thomas D. Peebles, Jr.*, on his election to membership as a Fellow of the American College of Trust and Estate Counsel. The College is a national association of 2,600 trust and estate lawyers who have been affirmed by their peers as having made outstanding contributions to the practice of estate planning and trust law.



*Joseph D. Sheppard III*, on his election as a Fellow of the American Bar Foundation. Selection as a Fellow of the American Bar Foundation serves as recognition of a lawyer whose professional, public and private career has demonstrated outstanding dedication to the welfare of the community, the traditions of the profession and the maintenance and advancement of the objectives of the American Bar Association.



*C. Bradford Cantwell*, on his continuing education in the areas of Health Savings Accounts, Health Reimbursement Arrangements, and Flexible Spending Accounts.

## Supreme Court Resolves IRA Protection Issue

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***IRA's  
are exempt  
from creditors  
in bankruptcy  
filings***

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*John M. Carnahan III is a shareholder in the Transactional Practice Group of Carnahan, Evans, Cantwell & Brown, P.C. He concentrates his practice in the areas of tax planning, corporate transactions, and business succession planning for family-owned businesses.*



By John M. Carnahan III

**A**fter 25 years of on-going litigation through different court systems, the United States Supreme Court, in *Rousey v. Jacoway*, unanimously ruled as of April 4, 2005, that Individual Retirement Accounts are exempt from creditors in bankruptcy filings. As to assets held in Qualified Retirement Plans, the issue has been clear for many years that they are exempt from claims of creditors. Individual Retirement Plan account assets can result from several sources, including annual IRA contributions, but more prevalent today are rollovers from Qualified Retirement Plan accounts as you leave employment to either retire or move on to a new position. Many times you can have substantial amounts in your IRAs. The benefit of IRAs are that they allow you direct involvement in the investment of the assets and you may have more flexibility as to rights and timing of withdrawals.

The problem has been that the exemption from the claims of creditors in a bankruptcy filing was not as clear as it was as to Qualified Retirement Plans.

If you filed for bankruptcy, there was an open issue as to whether creditors, under the auspices of the Bankruptcy Court, could require that the IRA assets be cashed in, the bankruptcy estate pay any applicable

income taxes, and that the funds then be used to pay the claims of creditors.

This is a major benefit for holders of Retirement Plan Accounts including IRAs. In addition to the tax benefits associated with these accounts, the ability to have asset protection is extremely important, and should be part of your on-going planning process.

Also note that on a regular basis, you need to review the beneficiaries of your IRA and Qualified Retirement Plan accounts. If you have charitable goals, these types of assets are usually your best choice for satisfying charitable bequests. Also, who is to receive them determines the timing of tax and how long the assets can be retained in the tax deferred creditor protection status. We recommend that you review your Designation Beneficiary Forms at least every three years. You should have copies of your Designation of Beneficiary Forms as part of your estate planning documents, just as you would have your Insurance Beneficiary Forms in your life insurance policy.

Note: As of April 20, 2005, President Bush signed the Bankruptcy Reform Act of 2005, which reaffirmed *Rousey*, but also established a one million dollar cap on the exempt amount of IRA accounts (but excluding rollovers). Therefore, traditional IRA accounts are treated differently than retirement plan assets including rollovers. You should consult with your professional advisor before rolling over or mixing IRA and retirement plan assets. ■

## *Welcome Gary R. Long*

We are pleased to announce that Gary R. Long has joined the firm as an Associate Attorney as of April 1, 2005.

A 2003 graduate of the University of Missouri-Columbia School of Law, Gary concentrates his practice in both litigated and non-litigated business disputes such as breach of contract issues, loan enforcement actions, construction matters, insurance disputes, real estate and banking matters, and business torts.

### ESTATE PLANNING REMINDER ■■



What would your family be permitted to do if you became incapacitated and unable to make or communicate a health care decision?

No one should be without a durable power of attorney for medical decision-making. And, it is equally important to remember to update your written wishes every few years.



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- Corporate      ■ Taxation      ■ Transactions      ■ Environmental      ■ Commercial Litigation
- Estate Planning      ■ Probate      ■ Trust Administration      ■ Trial Practice      ■ Employee Benefits
- Litigation      ■ Dispute Resolutions      ■ Arbitration and Mediation      ■ Franchise      ■ Condemnation

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