

2013 DRAFTING REQUEST

Senate Amendment (SA-SB389)

Received: 11/25/2013 Received By: mshovers
Wanted: As time permits Same as LRB:
For: Alberta Darling (608) 266-5830 By/Representing: Andrew
May Contact: Drafter: mshovers
Subject: Tax, Individual - dedct/sbtrct Addl. Drafters:
Extra Copies:

Submit via email: YES
Requester's email: Sen.Darling@legis.wisconsin.gov
Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Index the college savings account deduction; add penalties, allow carry-forwards

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 11/25/2013			_____			
/1	mshovers 12/5/2013	jdyer 11/26/2013	jfrantze 11/26/2013	_____	mbarman 11/26/2013	mbarman 11/26/2013	
/2	mshovers 12/12/2013	jdyer 12/6/2013	rschluet 12/6/2013	_____	srose 12/6/2013	srose 12/6/2013	
/3	mshovers	jdyer	rschluet	_____	lparisi	lparisi	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	1/9/2014	12/12/2013	12/12/2013	_____	12/12/2013	12/12/2013	
/4		jdye 1/10/2014	jfrantze 1/10/2014	_____	sbasford 1/10/2014	sbasford 1/10/2014	

FE Sent For:

<END>

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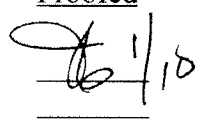
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See attached

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/?	mshovers 11/25/2013	4/10 jld	jd				
/1	mshovers 12/5/2013	jdyer 11/26/2013	jfrantze 11/26/2013		mbarman 11/26/2013	mbarman 11/26/2013	
/2	mshovers 12/12/2013	jdyer 12/6/2013	rschluet 12/6/2013		srose 12/6/2013	srose 12/6/2013	
/3		jdyer	rschluet		lparisi	lparisi	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
		12/12/2013	12/12/2013	_____	12/12/2013	12/12/2013	

FE Sent For: 14 MES 11/9/14

<END>

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May Contact: Nate @ DOR 6-7817 Drafter: mshovers
Subject: Tax, Individual - dedct/sbtrct Addl. Drafters:
Extra Copies:

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Pre Topic:

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See attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 11/25/2013	3 ¹² 13 jld jd	jd	_____			
/1	mshovers 12/5/2013	jdyer 11/26/2013	jfrantze 11/26/2013	_____	mbarman 11/26/2013	mbarman 11/26/2013	
/2		jdyer 12/6/2013	rschluet 12/6/2013	_____	srose 12/6/2013	srose 12/6/2013	

13 MES 12/12/13

FE Sent For:

Handwritten initials and signature: jld, jd, jdyer, rschluet, srose, and a large signature.

<END>

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Received: 11/25/2013 Received By: mshovers
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/?	mshovers 11/25/2013	12/6 jld					
/1		jdyer 11/26/2013	jfrantze 11/26/2013		mbarman 11/26/2013	mbarman 11/26/2013	

12 MES
FE Sent For:

12/5/13

<END>

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1/?	mshovers	1/26 jld	jld	[Signature]			
1/25/13							

FE Sent For:

<END>

Shovers, Marc

From: Evenson, Andrew
Sent: Wednesday, November 20, 2013 3:42 PM
To: Shovers, Marc
Subject: Edvest Amendment



Andrew Evenson
Office of State Senator Alberta Darling
State Capitol 317 East
(608) 266-5830

CHANGE 1

1. There is an inconsistency between sec. 16.641(3)(a)1 and the amended sec. 71.05(6)(b)32.(intro.) Section 16.641(3)(a)1 provides that the owner of the account may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to contribute to the account. Section 71.05(6)(b)32,(intro.) provides that any other individual may contribute to a college savings account. What is the intent? Is the intent that anyone other than a parent, grandparent, great-grandparent, aunt, or uncle must open a separate account for a beneficiary, and an owner can authorize only a parent, grandparent, great-grandparent, aunt, or uncle to contribute to the account set up by the owner. If the intent is that an owner can authorize anyone to contribute to the account set up by the owner, then sec. 16.641(3)(a)1 should be amended accordingly.

Section 5. Section 16.641 (3)(a)(1) is hereby amended to read as follows:

(3) ACCOUNT OWNERS; BENEFICIARIES; CONTRIBUTIONS; TERMINATION OF SAVINGS ACCOUNTS.

(a) An account owner may do all of the following:

1. Contribute from any legal source to a college savings account or authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to contribute and accept contributions thereto from any entity or person to the account.

CHANGE 2

3. Section 71.05(6)(b)32.(intro.) provides a subtraction for "an amount paid into a college savings account... on or before the 15th day of the 4th month beginning after the close of a taxpayer's taxable year to which this subtraction relates, subject to any applicable extension under s. 71.03(7)..." This is unclear as it could be interpreted to mean only amounts contributed after the close of a taxable year and before the 15th day of the 4th month (plus extensions) can be subtracted.

This is going to be difficult for contributors to keep track of contributions for the year unless any statement from EdVest would indicate the year for which contributions are made. For example, under the extension provision a calendar-year filer would have until October 15, 2015, to contribute an amount for 2014. At the same time, amounts contributed from January 1 – October 15, 2015 could be confused as being a 2015 contribution.

The federal Internal Revenue Code allows a similar extension of time to contribute to an IRA. The federal language reads "...a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extension thereof)."

Language similar to the federal language could be used. It would be preferable to also limit the time period to the time prescribed by law for filing the return for the taxable year (not including extensions).

SECTION 4. 71.05 (6) (b) 32. (intro.) of the statutes is amended to read:

71.05 (6) (b) 32. (intro.) An amount paid into a college savings account, as described in s. 16.641, **during the taxpayer's taxable year or** on or before the 15th day of the 4th month beginning after the close of **such** taxpayer's taxable year to which this subtraction relates, subject to any applicable extension under s. 71.03 (7), by the owner of the account or by a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary, if the any other individual, for the benefit of any beneficiary of the an account is one of the following: the claimant; the claimant's child; the claimant's grandchild; the claimant's great-grandchild; or the claimant's niece or nephew; calculated as follows:

CHANGE 3

Use August CPI number instead of October

CHANGE 4

Set effective date to 6/1/14



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa1292/1

MES: [handwritten initials] jld
fma

SOON

SENATE AMENDMENT,
TO SENATE BILL 389

D-note

1 At the locations indicated, amend the bill as follows: ✓

2 1. Page 4, line 6: delete "on" and substitute "in the taxable year to which the
3 claim relates or on". ✓

4 2. Page 5, line 5: on lines 5 and 7, delete "October" and substitute "August". ✓

5 3. Page 5, line 21: after that line insert:

6 "SECTION 7m. Effective date.

7 (1) This act takes effect on June 1, 2014." ✓

8 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1292/1/dn

mes:1:...

jd

date

Senator Darling:

This amendment contains 3 of the 4 requested items. I'm not sure the 4th item is necessary so I did not include it in this version of the amendment. One of the requested changes is the following:

CHANGE 1

"1. There is an inconsistency between sec. 16.641(3)(a)1 and the amended sec. 71.05(6)(b)32.(intro.) Section 16.641(3)(a)1 provides that the owner of the account may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to contribute to the account. Section 71.05(6)(b)32,(intro.) provides that any other individual may contribute to a college savings account. What is the intent? Is the intent that anyone other than a parent, grandparent, great-grandparent, aunt, or uncle must open a separate account for a beneficiary, and an owner can authorize only a parent, grandparent, great-grandparent, aunt, or uncle to contribute to the account set up by the owner. If the intent is that an owner can authorize anyone to contribute to the account set up by the owner, then sec. 16.641(3)(a)1 should be amended accordingly."

Section 16.641 (3) (a) 1. ✓ authorizes an account owner to contribute to an account or to authorize certain listed individuals to contribute to an account. Amended s. 71.05 (6) (b) 32. (intro.) authorizes an owner or any other individual who pays into an account to deduct that amount, or a portion of that amount, from his or her federal AGI as specified in the statute. The clear implication is that, if an individual may claim a deduction for amounts deposited into an account, the individual may certainly contribute to the account without the owner's authorization. *

I don't see the provisions as being inconsistent. Nothing in s. 16.641 (3) limits the individuals who may contribute to an account; it merely lists who an owner may authorize to contribute, but the statute does not say that only authorized individuals may contribute, and amended s. 71.05 (6) (b) 32. (intro.) implicitly authorizes any individual to contribute to such an account, so I don't really see the need for this amendment.

As for suggested change 4:

"CHANGE 4

Set effective date to 6/1/14." *

The initial applicability provision is unaffected by this request, so changing the effective date from the day after publication (the default for all bills), to 6/1/14 has no legal effect on s. 71.05 (6) (a) 26. and (b) 32. (intro.) and a.; is that your intent? Please let me know if you have any questions about any of the issues raised in this drafter's note.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa1292/1dn
MES:jld:jf

November 26, 2013

Senator Darling:

This amendment contains 3 of the 4 requested items. I'm not sure the 4th item is necessary so I did not include it in this version of the amendment. One of the requested changes is the following:

CHANGE 1

"1. There is an inconsistency between sec. 16.641(3)(a)1 and the amended sec. 71.05(6)(b)32.(intro.) Section 16.641(3)(a)1 provides that the owner of the account may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to contribute to the account. Section 71.05(6)(b)32,(intro.) provides that any other individual may contribute to a college savings account. What is the intent? Is the intent that anyone other than a parent, grandparent, great-grandparent, aunt, or uncle must open a separate account for a beneficiary, and an owner can authorize only a parent, grandparent, great-grandparent, aunt, or uncle to contribute to the account set up by the owner. If the intent is that an owner can authorize anyone to contribute to the account set up by the owner, then sec. 16.641(3)(a)1 should be amended accordingly."

Section 16.641 (3) (a) 1. authorizes an account owner to contribute to an account or to authorize certain listed individuals to contribute to an account. Amended s. 71.05 (6) (b) 32. (intro.) authorizes an owner or any other individual who pays into an account to deduct that amount, or a portion of that amount, from his or her federal AGI as specified in the statute. The clear implication is that, if an individual may claim a deduction for amounts deposited into an account, the individual may certainly contribute to the account without the owner's authorization.

I don't see the provisions as being inconsistent. Nothing in s. 16.641 (3) limits the individuals who may contribute to an account; it merely lists who an owner may authorize to contribute, but the statute does not say that only authorized individuals may contribute, and amended s. 71.05 (6) (b) 32. (intro.) implicitly authorizes any individual to contribute to such an account, so I don't really see the need for this amendment.

As for suggested change 4:

"CHANGE 4

Set effective date to 6/1/14."

The initial applicability provision is unaffected by this request, so changing the effective date from the day after publication (the default for all bills), to 6/1/14 has no legal effect on s. 71.05 (6) (a) 26. and (b) 32. (intro.) and a.; is that your intent? Please let me know if you have any questions about any of the issues raised in this drafter's note.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

MEMORANDUM

November 5, 2013

TO: Marc Shovers
Legislative Reference Bureau

FROM: Mike Wagner
Department of Revenue

SUBJECT: Technical Memorandum on Senate Bill 389: Indexing for Inflation of, and Making Other Changes to, the College Savings Plan income Tax Deduction

The Department has the following concerns related to the bill:

made in 2

There is an inconsistency between sec. 16.641(3)(a)1 and sec. 71.05(6)(b)32.(intro.), as amended. Section 16.641(3)(a)1 provides that the owner of the account may authorize a parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary to contribute to the account. Section 71.05(6)(b)32.(intro.) provides that any other individual may contribute to a college savings account. In order to allow an owner to authorize anyone to contribute to the account set up by the owner, then sec. 16.641(3)(a)1 should be amended accordingly.

this change made in 2 - its

Section 71.05(6)(a)26. provides that any amount not used for qualified higher education expenses must be added to income by the owner or beneficiary, to the extent that the amount was previously claimed as a deduction. With multiple contributors and a potential 15 to 20 year lag between the contribution and the distribution, it may be hard to determine the amounts that were previously claimed as a deduction. It may be more easily administrable to remove "to the extent that the amount was previously claimed as a deduction under par. (b)32."

orig instr. in 2

Section 71.05(6)(b)32.(intro.) provides a subtraction for "an amount paid into a college savings account... on or before the 15th day of the 4th month beginning after the close of a taxpayer's taxable year to which this subtraction relates, subject to any applicable extension under s. 71.03(7)...". Without further clarification, this could be interpreted to mean only amounts contributed after the close of a taxable year and before the 15th day of the 4th month (plus extensions) can be subtracted.

Given the extended contribution period under the bill, it may be unclear to which taxable year a particular contribution pertains. The federal Internal Revenue Code allows a similar extension of time to contribute to an IRA and language similar to the federal statute could be used to clarify the contribution periods for this bill. The federal statute reads "...a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extension thereof)."

If you have any questions regarding this technical memorandum, please contact Brad Caruth at (608) 261-8984 or bradley.caruth@revenue.wi.gov.

cc: Senator Darling



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa1292/2
MES:jld:jf

SOON

RMP

SENATE AMENDMENT,
TO SENATE BILL 389

A NOTE

INS ✓
1-1

1
2
3
4
5
6
7
8

At the locations indicated, amend the bill as follows:

1. Page 4, line 6: delete "on" and substitute "in the taxable year to which the claim relates or on".
2. Page 5, line 5: on lines 5 and 7, delete "October" and substitute "August".
3. Page 5, line 21: after that line insert:
"SECTION 7m. Effective date.
(1) This act takes effect on June 1, 2014."

(END)

INS 1-1

#. Page 3, line 1: Before that line insert:

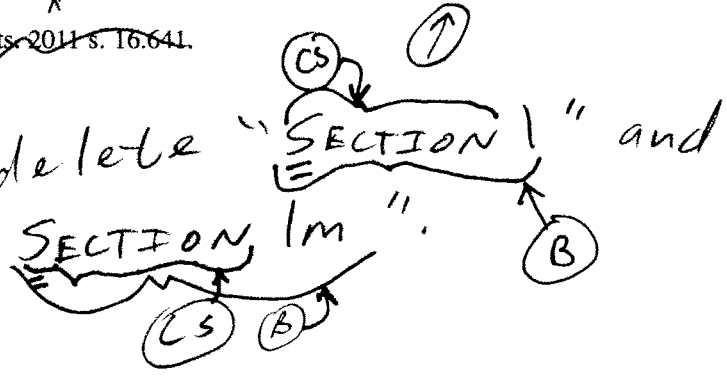
Section #. 16.641 (3) (a) 1. of the statutes is amended to read:

16.641 (3) (a) 1. Contribute to a college savings account or authorize a parent, grandparent, ~~great-grandparent, aunt, or uncle of the beneficiary~~ any other individual to contribute to the account. "

History: 1999 a. 44; 2001 a. 7, 38; 2011 a. 32 s. 76; Stats. 2011 s. 16.641.

Strike an extra space before

#. Page 3, line 1: delete "SECTION 1" and substitute "SECTION 1m".



#. Page 3, line 15: delete lines 15 and 16 and substitute "USC 529(e)(3)".

END of INS 1-1

D-NOTE

Senator Darling:

This version of the amendment addresses a concern raised by DOR in their November 5, 2013, technical memo, relating to created s. 71.05 (6) (a) 2 b, although this concern was not contained in your original drafting instructions. Andrew in your office suggested that I talk to DOR about the department's concerns and Nate at DOR reiterated that DOR would like this concern addressed. Is this OK?

MZA

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1292/2dn
MES:jld:rs

December 6, 2013

Senator Darling:

This version of the amendment addresses a concern raised by DOR in their November 5, 2013, technical memo, relating to created s. 71.05 (6) (a) 26., although this concern was not contained in your original drafting instructions. Andrew in your office suggested that I talk to DOR about the department's concerns and Nate at DOR reiterated that DOR would like this concern addressed. Is this OK?

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov

At the locations indicated, amend the bill as follows:

1. Page 3, line 1: before that line insert:

"SECTION 1e. 16.641 (3) (a) 1. of the statutes is amended to read:

16.641 (3) (a) 1. Contribute to a college savings account or authorize a ~~parent, grandparent, great-grandparent, aunt, or uncle of the beneficiary~~ any other [individual to] contribut[e] ions to the account."

Note: the intention of this bill is not to limit the source of contributions so this language could allow something other than an individual, such as a scholarship fund, to contribute.

2. Page 3, line 1: delete "SECTION 1" and substitute "SECTION 1m".

3. Page 3, line 15: delete lines 15 and 16 and substitute "USC 529 (e) (3)."

Note: this change above will result in ANY contribution made to an account & not expended for qualified expenses being included as taxable income, whether or not such contributions had been deducted. That may result in a tax increase. Although the bill's language is similar to language appearing in other state statutes and no problems with such language have been reported, it is important to recognize DOR's concerns as to recordkeeping. The suggested language below would be to apply DOR's broader recapture suggested policy to all contributions made after January 1, 2014 - this may be more appropriate as contributions after such date should be presumed to have been deducted since the contributor is able to deduct all contributed over time. So,

Page 3, line 15: add: "for contributions made after January 1, 2014"

4. Page 4, line 6: delete "on" and substitute "in the taxable year to which the

(claim relates) contribution is made or on". Note: this clarifies the intent.

5. Page 5, line 5: on lines 5 and 7, delete "October" and substitute "August".

6. Page 5, line 21: after that line insert:

SECTION 7m. Effective date.

(1) This act takes effect on {June} January 1, 2014." Note: all provisions of this bill are intended to be effective January 1, 2014.

Also include DOR's suggestion to delete extension to any app. on P. 4, ll. 7 & 8

not a benefit

intent was to do this if a penalty results - DOR said it's treated as a penalty

12/31/13

may be hard to track

Instructions from College Board: limit delayed eff date to P. 71.05(6)(a) 26. 11/11



RMR

SENATE AMENDMENT,
TO SENATE BILL 389

D-NO 6e

SOON

Hand was contributed to the account after December 31, 2013 ✓

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 1: before that line insert:

3 "SECTION 1e. 16.641 (3) (a) 1. of the statutes is amended to read:

4 16.641 (3) (a) 1. Contribute to a college savings account or authorize a parent,
5 grandparent, great grandparent, aunt, or uncle of the beneficiary any other
6 individual person to contribute to the account." ✓

7 2. Page 3, line 1: delete "SECTION 1" and substitute "SECTION 1m".

8 3. Page 3, line 15: delete lines 15 and 16 and substitute "USC 529 (e) (3)".

9 4. Page 4, line 6: delete "on" and substitute "in the taxable year in which the
10 contribution is made".

11 5. Page 5, line 5: on lines 5 and 7, delete "October" and substitute "August".

12 6. Page 5, line 21: after that line insert:

move
#. Page 4, line 7: delete "subject to any"
#. Page 4, line 8: delete ~~the applicable extension under s. 71.03 (7)~~
= "applicable extension under s. 71.03 (7)"

INSERT 2-1 ←

on the day after publication,
except as follows: (a) The
treatment of section 71.05
(b) (a) 26. of the statute
takes effect

"SECTION 7m. Effective date.

(1) This act takes effect on June 1, 2014."

(END)

1
2
3

D-Note

Senator Darling:

I believe the treatment of D. 71.05
(b) (a) 26. a. in this amendment is
consistent with your instructions
but, because contributions to an
account are fungible, it may be
difficult for DOR to keep track
of the contributions to which a
penalty may apply. You may wish
to discuss this issue with DOR.

MZJ

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1292/3ins
MES:jld:rs

INSERT 2-1

“SECTION 7m. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 71.05 (6) (a) 26. of the statutes takes effect on June 1, 2014.”.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa1292/3dn
MES:jld:rs

December 12, 2013

Senator Darling:

I believe the treatment of s. 71.05 (6) (a) 26. a. in this amendment is consistent with your instructions but, because contributions to an account are fungible, it may be difficult for DOR to keep track of the contributions to which a penalty may apply. You may wish to discuss this issue with DOR.

Marc E. Shovers
Managing Attorney
Phone: (608) 266-0129
E-mail: marc.shovers@legis.wisconsin.gov



State of Wisconsin
2013 - 2014 LEGISLATURE



LRBa1292/3

MES:jld:rs

SOON

RMP

**SENATE AMENDMENT ,
TO SENATE BILL 389**

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 3, line 1: before that line insert:

3 **"SECTION 1e.** 16.641 (3) (a) 1. of the statutes is amended to read:

4 16.641 (3) (a) 1. Contribute to a college savings account or authorize ~~a parent,~~
5 ~~grandparent, great-grandparent, aunt, or uncle of the beneficiary~~ any other person
6 to contribute to the account."

7 **2.** Page 3, line 1: delete "SECTION 1" and substitute "SECTION 1m".

8 **3.** Page 3, line 15: delete lines 15 and 16 and substitute "USC 529 (e) (3), and
9 was contributed to the account after December 31, 2013."

10 **4.** Page 4, line 6: delete "on" and substitute "in the taxable year in which the
11 contribution is made or on".

12 **5.** Page 4, line 7: delete "subject to any".

