

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-H-81-(3)-I  
Income Tax  
March 6, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I810112B

On January 12, 1981, a Petition for Advisory Opinion was received from Charles L. Sawyer, 53 Colvin Avenue, Hamburg, New York 14075.

The issue raised is whether a qualified higher education fund, known as a PASS account, established by the taxpayer under Article 22 of the Tax Law will terminate if the assets of the fund are transferred directly from one trustee bank to another.

Section 612(k) of the Tax Law provides for the creation of qualified higher education funds designed to assist taxpayers in accumulating savings to be used to finance the higher education of their dependents. Section 612(k) (4) sets forth various occurrences which will result in the termination of such a fund. One of these is where "...a distribution is made by the fund other than to, or on behalf of, an eligible beneficiary..." for the payment of qualifying educational expenses described in the statute. Tax Law, §612(k) (4) (B).

A transfer of funds directly from one trustee bank to another does not result in the funds being paid to the creator of the Pass account. In the absence of such payment, a transfer of funds from one trustee bank to another trustee bank does not constitute a "distribution," because the funds do not come within the direct control and use of the creator of the fund. Consequently, such transfer does not constitute a terminating condition within the meaning and intent of section 612(k) (4) (B) of the Tax Law.

DATED: March 4, 1981

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau