



CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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CC:ITA:B04:
CONEX-103344-16

UIL: 1001.00-00

The Honorable Elise Stefanik
Member, U.S. House of Representatives
136 Glen Street
Glens Falls, NY 12801

Attention:

Dear Representative Stefanik:

I am responding to your letter dated August 26, 2015, on behalf of your constituent, . asked if a gain from the sale of investments held in a Uniform Transfer to Minor Account (UTMA) was subject to income tax when he used the gain to pay his college expenses.

The Internal Revenue Code (the "Code") does not have any provision that excludes from income, or defers the recognition of, the gain from investments held in an UTMA when the beneficiary uses the gain to pay for educational expenses. Publication 970, *Tax Benefits for Education*, describes available income tax credits and deductions for educational expenses.

letter provided the following information. Before the enactment of section 529 of the Code, parents created an UTMA through for his benefit. His parents contributed to this account pursuant to the provision of the Code that allowed individuals to make an annual gift of up to \$11,000 without being subject to gift tax. invested these contributions. His parents liquidated these investments and used the proceeds (including the gain recognized upon the sale of the investments) to pay for college expenses. We notified that he owed \$ in taxes and penalties because of the gain realized on the sale of these investments in 2013.

Theresa Melchiorre of the Office of the Associate Chief Counsel (Passthroughs and Special Industries) provided with the following information in January of 2016. The UTMA that parents established for him is a trust. The UTMA holds the assets for the benefit of as the trust's beneficiary.

In general, for purposes of the gift tax, section 2503(b) of the Code provides that gifts to a person (including certain trusts) are not subject to gift tax provided the gifts do not exceed the "annual exclusion amount" for the year the gifts were made. It appears from the information provided that his parents made gifts into the UTMA in one or more years when the annual exclusion amount was \$11,000. However, this exclusion is for gift tax purposes. It does not apply to gain on the sale of investments for federal income tax purposes.

I hope this information is helpful. If you have questions, please call me or at .

Sincerely,

Michael J. Montemurro
Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax and Accounting)