IRS Issues New Rules on ABLE Savings Programs

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The IRS has issued proposed regulations related to § 529A of the Internal Revenue Code (the "Code"), which allows a State (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account for the purpose of paying for the qualified disability expenses of the designated beneficiary of the account. Section 529A of the Code was amended by the Tax Cuts and Jobs Act ("TCJA"), which was signed into law on December 22, 2017.

What is an ABLE Account?

The Achieving a Better Life Experience ("ABLE") Act allows people with disabilities who became disabled before they turned 26 to set aside up to $15,000 a year in tax-free savings accounts without affecting their eligibility for government benefits like Medicaid and Supplemental Security Income (SSI). Unlike direct gifts, transfers to ABLE accounts, either from the designated beneficiary or a family member, do not affect SSI or Medicaid benefits.

These accounts can be used to pay for qualifying expenses of the designated beneficiary, such as the costs of treating the disability or for education, housing and health care, among other things.

On the death of the designated beneficiary, the state maintaining the ABLE program or the contracting state is entitled to reimbursement from the remaining balance of the ABLE account for the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan. This right of reimbursement is, however, subject to any outstanding payments due for qualified disability expenses.

What were the TCJA Amendments to § 529A?

TCJA amended § 529A to allow an employed designated beneficiary to contribute, prior to January 1, 2026, an additional amount in excess of the annual gift tax exclusion amount (currently $15,000) to his or her own ABLE account. This additional contribution for a year is limited to the lesser of: (i) income earned by the designated beneficiary or (ii) the federal poverty level for a one-person household (currently $12,490). As amended by TCJA, the determination of eligibility to make such additional contributions rests with the designated beneficiary, or a person acting on his or her behalf. Excess contributions and their earnings are to be removed from an ABLE account by the methodology used to correct excess IRA contributions.

TCJA also amended § 529 to allow, before January 1, 2026, a limited amount to be rolled over to an ABLE account from the designated beneficiary's own 529 plan or from the 529 plan of certain family members. In order to take advantage of this provision, the following must be met:

- The rollover must originate in the 529 plan account of the designated beneficiary or another family member.
- The rollover amount, when added to other contributions to the account for the year (not including contributions by the designated beneficiary), cannot exceed the annual gift tax exclusion amount (currently $15,000).

What are the proposed regulations?

To address the TCJA modifications to § 529A, the IRS published Notice 2018-62. The proposed regulations incorporate the guidance laid out in that Notice. Notice 2018-62 provided that the designated beneficiary is the one responsible for ensuring contribution limits are met and for maintaining proper records. In addition, the Notice addressed the 529 plan rollover provisions.

In addition to addressing these TCJA changes, these new proposed regulations state that current proposed regulations will (when finalized) reflect a 2015 statutory change found in the Protecting Americans from Tax Hikes (PATH) Act. That legislation removed a residency requirement that limited state ABLE programs to establishing accounts only for designated beneficiaries who resided in that state, or in a "contracting state" (a multi-state program).