

**MEMO# 29515**

November 24, 2015

# **IRS Publishes Interim Guidance to Simplify ABLE Act Program Administration**

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TO: ABLE ACT WORKING GROUP

TRANSFER AGENT ADVISORY COMMITTEE No. 58-15 RE: IRS PUBLISHES INTERIM GUIDANCE TO SIMPLIFY ABLE ACT PROGRAM ADMINISTRATION

As you may recall, earlier this year the Internal Revenue Service published for comment regulations intended to implement Section 529A of the Internal Revenue Code, the ABLE Act. [\[1\]](#) In September, the Institute filed with the IRS two letters relating to the proposed regulations. The first letter, which was filed on September 4th, recommended that during the pendency of the IRS's ABLE Act rulemaking, [\[2\]](#) it issue interim guidance on three issues:

1. Satisfying the eligibility determination for ABLE Act accounts;
2. Determining the use of proceeds withdrawn from an account; and
3. The IRS's proposed requirements for programs to obtain TINs on all contributors to an account.

I am pleased to report that, earlier this week, the IRS published Notice 2015-81, which addresses each of the three issues listed above in a manner that is consistent with the Institute's recommendations. [\[3\]](#) According to the Notice, the Treasury Department and IRS "intend that the final regulations, when issued, will address the three identified issues in the manner indicated in this notice. Pending the issuance of final regulation, taxpayers may rely on the guidance contained in this notice." [\[4\]](#) The guidance contained in the notice is briefly described below.

## **Satisfying the Eligibility Determination for ABLE Act Accounts**

According to this Notice, programs will not be required to certify that a person opening an account is permanently disabled and qualified to open an ABLE Act account. Instead, "a certification under penalties of perjury that the individual . . . has the signed physician's

diagnosis, and that the signed diagnosis will be retained and provided to the ABLE program or the IRS upon request” will suffice. [5]

## **Determining the Use of Proceeds Withdrawn from an Account**

The Notice confirms “that the final regulations will not require, for any federal income tax purpose, a qualified ABLE Act program to establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions.” [6] Instead, the onus will be on the designated beneficiary to categorize distributions in order to properly determine such person’s federal income tax obligations.

## **Obtaining TINs on All Contributors to an Account**

Finally, the Notice anticipates “that the final regulations will eliminate the requirement to request the TIN of each contributor at the time a contribution is made (if the program does not already have a record of that person’s correct TIN) if the qualified ABLE program has a system in place to identify and reject excess contributions and excess aggregate contributions before they are deposited into an ABLE account.” According to the Notice, in the event an excess contribution is deposited into an account, the ABLE Act program “will be required to request the TIN of the contributor making the excess contribution.” [7]

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### **endnotes**

[1] See Institute [Memorandum](#) No. 29144, dated July 6, 2015, which summarized the IRS’s proposal.

[2] The Institute’s second letter, dated September 18, 2015, provided detailed and extensive comments on the IRS’s proposed regulations. See Institute [Memorandum](#) No. 29358, dated September 18, 2015, for a summary of the recommendations in this letter. The memo includes a copy of the letter as an attachment.

[3] See Section 529A Interim Guidance Regarding Certain Provisions of Proposed Regulations Related to Qualified ABLE Programs, IRS Notice 2015-81 (November 2015) (the “Notice”), which is available at: <https://www.irs.gov/pub/irs-drop/n-15-81.pdf>.

[4] Notice at p. 10.

[5] Notice at p. 9.

[6] Notice at pp. 4-5.

[7] Notice at p. 7.

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