

**MEMO# 28594**

December 18, 2014

# **Congress Passes Tax Extenders, RIC Mod Technical Corrections, and ABLE Act**

[28594]

December 18, 2014

TO: TAX MEMBERS No. 36-14

PENSION MEMBERS No. 53-14

ACCOUNTING/TREASURERS MEMBERS No. 20-14

529 PLAN MEMBERS No. 21-14

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 50-14

TRANSFER AGENT ADVISORY COMMITTEE No. 78-14

INTERNATIONAL MEMBERS No. 48-14 RE: CONGRESS PASSES TAX EXTENDERS, RIC MOD TECHNICAL CORRECTIONS, AND ABLE ACT

The Congress recently passed H.R. [5771](#), The Tax Increase Prevention Act of 2014 (the “Act”), which includes a one year retroactive extension of various provisions that generally were set to expire at the end of 2013; technical corrections to the Regulated Investment Company (“RIC”) Modernization Act of 2010 (“RIC Mod”); and the Achieving a Better Life Experience Act of 2014 (the “ABLE Act”). The President is expected to sign the legislation into law.

## **Tax Extenders**

The Act includes several tax extenders of interest to the industry.

**International Tax Provisions.** The Act includes a one-year extension (effective for a RIC’s taxable year beginning after December 31, 2013) of the flow-through provision in section 871(k), which permits U.S. RICs to provide more equitable U.S. withholding tax treatment for distributions of interest and short-term gains to their foreign shareholders. This treatment provides foreign investors in U.S. funds with the same U.S. tax treatment they would receive if they invested directly in a U.S. fund’s underlying portfolio securities.

The bill also extends for one year provisions regarding a RIC’s qualified investment entity treatment under the Foreign Investment in Real Property Tax Act (FIRPTA) and the Active Financing Exception to Subpart F.

**IRA Charitable Distributions.** The Act retroactively extends the ability to make qualified charitable distributions from an IRA held by someone age 70½ or older (of up to \$100,000 per taxpayer, per taxable year), through the end of 2014. This means that a charitable

distribution must be made before the end of 2014 to qualify for the special treatment (unless Congress subsequently extends the provision further). A qualified charitable distribution, paid directly from the IRA to a qualified charity, is excluded from gross income and will apply towards satisfying the individual's required minimum distribution for the year. The provision previously had expired at the end of 2013.

## **RIC Mod Technical Corrections**

We are pleased to report that the Act includes the following technical corrections to the RIC Mod Act:

- Capital Loss Carryovers.
  - Allows a RIC to elect to delay the new provisions for excise purposes for one year and thereby prevent situations in which loss carryovers may expire for excise purposes before expiring for tax purposes.
  - Provides that capital loss carryovers will not prevent the RIC from having sufficient earnings and profits to make excise distributions.
- Spillover Dividends. Clarifies that the spillover dividend declaration may be made on or before the later of the 15th day of the 9th month following the close of the taxable year or the extended due date for filing the return.
- Late Year Losses.
  - Fixes the ordering rule for post-October capital losses, clarifying that a RIC looks first to its post-October net capital loss. In the absence of an overall net capital loss, it then may defer any post-October net short-term capital loss or post-October net long-term capital loss.
  - Corrects the definition of late-year ordinary loss so that post-October foreign currency and passive foreign investment company (PFIC) losses are calculated separately from post-December ordinary gains and losses.
  - Contains a "savings provision," pursuant to which a RIC may treat the late-year loss provisions in the Act as not applying to an election under section 852(b)(8) with respect to any taxable year beginning before the date of enactment of the Act. The technical corrections bill otherwise would be effective as of the original enactment date of the RIC Mod Act. Note that this savings provision, as we requested, is slightly different from the language included in the technical corrections bills introduced in the Ways & Means Committee and approved by the Senate Finance Committee earlier this year. [\[1\]](#)
- Deferral of Certain Gains and Losses for Excise.

- Provides that any rule that determines income by reference to the value on the last day of the taxable year is treated as a mark-to-market provision and determined on October 31 for excise tax purposes.
- Clarifies the application of sections 4982(e)(7) and (e)(2)(B) by allowing a RIC to push any portion of any net ordinary loss to the next calendar year in determining its ordinary income or net ordinary loss.

## **ABLE Act**

The ABLE Act creates a new section 529A of the Internal Revenue Code to permit states to establish tax-exempt savings programs for disability-related expenses. In general, the legislation allows states to voluntarily establish qualified ABLE programs, under which individuals may establish ABLE accounts to save for the disability-related expenses of a disabled beneficiary. Contributions to an ABLE account are not tax-deductible. Earnings on an ABLE account and distributions from the account for qualified disability expenses (as defined by the Act) are not included within the taxable income of an account contributor or the account's designated beneficiary. The account's designated beneficiary must meet the definition of an "eligible individual" under the Act.

The ABLE Act includes the following provisions:

**Effective Date.** The Act is effective for tax years beginning after December 31, 2014, and the Secretary of the Treasury is to promulgate any required regulations or guidance not later than six months after enactment.

**Account Establishment.** Any contributor may establish an ABLE account for a designated beneficiary. Each designated beneficiary is limited to one ABLE account, which must be established in the state in which he or she resides, or if such state has not established an ABLE program, in the program of another state with which the eligible individual's state of residence has contracted to provide its residents access to an ABLE program. The designated beneficiary is the owner of the ABLE account.

**Contribution Limit.** Annual contributions per designated beneficiary are limited to the federal gift tax limitation contained in section 2503(b), currently \$14,000. The maximum aggregate contribution amount is the same dollar amount as set by the state for its 529 college savings program.

**Eligible Individual/Disability Certification.** A designated beneficiary must meet the Act's definition of an "eligible individual" at the time the account is established. Under the Act, an individual is an "eligible individual" for a taxable year if during such taxable year:

- the individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act, or has a disability certification filed with the Secretary of the Treasury, and
- the individual became disabled before age 26.

The Act defines the term "disability certification" as a certification to the satisfaction of the

Secretary of the Treasury, made by the individual or the parent or guardian of the individual that:

- certifies that the individual has a medically determinable physical or medical impairment which results in marked and severe functional limitations and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind, and
- includes a copy of the individual's diagnosis signed by physician.

**Qualified Disability Expenses.** The Act defines the term "qualified disability expenses" as any expenses related to the eligible individual's blindness or disability, including education, housing, transportation, employment training and support, assistance technology and personal support services, health, prevention and wellness, financial management and administration services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses which are approved by the Secretary of the Treasury under regulations.

**Penalties.** Distributions used for non-qualified disability expenses are subject to income tax on the portion of such distributions attributable to earnings from the account, plus a ten percent additional tax penalty. The ten percent penalty does not apply to distributions made on or after the death of the designated beneficiary. Additionally, the penalty may be avoided if the amount distributed (plus the net income attributable to such distribution) is returned to the account prior to the designated beneficiary's income tax filing deadline for the tax year in which the distribution was made.

**Investment Direction.** The Act permits an account beneficiary to direct the investment of contributions to the account up to twice per year.

**Rollovers/Change in Designated Beneficiaries.** Assets in an ABLE account may be rolled-over to another ABLE account if the amount received is paid not later than the 60th day after the day of the payment or distribution, into another ABLE account for the benefit of the same designated beneficiary or an eligible individual who is a brother, sister, stepbrother, or stepsister of the designated beneficiary. Only one rollover is permitted within each 12-month period. Additionally, the Act permits a change in the designated beneficiary of an existing ABLE account if the new beneficiary is an eligible individual who is a brother, sister, stepbrother, or stepsister of the original beneficiary.

**Effect on Eligibility for Means-Tested Programs.** Assets in an ABLE account are generally excluded from being counted for means-tested federal programs, such as the Supplemental Security Income (SSI) program and Medicaid. However, with respect to the SSI program, distributions from an ABLE account for housing expenses are not excluded. Additionally the first \$100,000 in each ABLE account is exempted from being counted toward the SSI program's \$2,000 income limit. When assets in an ABLE account reach \$100,000, if the designated beneficiary is receiving SSI benefits, any monthly SSI benefits are placed in suspension. Once the ABLE account balance falls below \$100,000, SSI benefits resume. Medicaid eligibility is not impacted, even if SSI benefits are suspended.

**State Reimbursement.** Upon the death of the designated beneficiary, the state is permitted to make a claim for funds in the account up to the net amount the state paid in medical

assistance for the designated beneficiary after the account was established.

**Reporting Requirements.** The Act requires that state ABLE programs comply with the following reporting requirements:

- The ABLE program is required to submit a notice to the Secretary of the Treasury upon the establishment of an ABLE account, providing the name and state of residence of the designated beneficiary.
- Each officer or employee having control of the ABLE program is required to submit reports regarding the program to the Secretary of the Treasury and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and other such matters as the Secretary may require
- Each state maintaining an ABLE program is required to submit electronically, on a monthly basis to the Commissioner of Social Security, statements on relevant distributions and account balances from all ABLE accounts

Additionally, for research purposes, the Secretary of the Treasury is to make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the ABLE program.

**Bankruptcy Provisions.** The Act protects contributions to an ABLE account by a parent or grandparent of a designated beneficiary in the event of bankruptcy. In order to be protected, the ABLE account contributions must have been made more than 365 days prior to the bankruptcy filing.

## **Section 529 Amendment**

The ABLE Act provisions also amend section 529(b)(4) to permit investment direction by a section 529 qualified tuition program account contributor or beneficiary up to two times per year. The amendment is effective for tax years beginning after December 14, 2014.

Elena Barone Chism  
Senior Associate Counsel – Pension Regulation

Karen Lau Gibian  
Senior Associate Counsel – Tax Law

Howard Bard  
Associate Counsel – Pension Regulation

### **endnotes**

[1] See Institute Memorandums [28404](#), dated September 25, 2014, and [28077](#), dated April 30, 2014.

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.