

MEMO# 31339

August 20, 2018

IRS Announces Guidance on Contribution Limits Applicable to ABLE Accounts

[31339]

August 20, 2018 TO: ICI Members

ABLE Act Working Group

Tax Committee SUBJECTS: 529 Plans

Tax

Transfer Agency RE: IRS Announces Guidance on Contribution Limits Applicable to ABLE Accounts

On August 3, 2018, the Internal Revenue Service (IRS) released Notice 2018-62, announcing that it plans to issue regulations to clarify matters relating to the contribution limits applicable to ABLE accounts under Internal Revenue Code section 529A.[\[1\]](#)

Until IRS issues proposed regulations, taxpayers, beneficiaries, and administrators of ABLE programs may rely on the rules described in the notice. IRS expects that when it does issue the regulations, it will include transition relief to account for the need for ABLE programs to adjust their systems and update account documents, as well as the need in certain states for legislative action. IRS requests comments on the guidance described below by November 1, 2018.

Administration of ABLE Account Beneficiaries' Employment-Related Contributions

An ABLE program may not accept contributions that would result in aggregate contributions exceeding the overall annual limit for ABLE accounts.[\[2\]](#) The 529A rules allow an ABLE program to return any contributions that exceed the annual limit by the due date of the beneficiary's tax return (including extensions), similar to the rule that allows the return of excess IRA contributions.[\[3\]](#)

H.R. 1, the tax bill enacted in 2017 (the "2017 Tax Reform Legislation"),[\[4\]](#) modified the contribution limit for ABLE accounts to allow certain additional contributions prior to January 1, 2026. In addition to the existing dollar limit on contributions, an ABLE account beneficiary who is employed may also contribute his or her compensation (up to the poverty line amount for a one-person household)[\[5\]](#) ("Employment-Related Contributions"), as long as no contributions are made on behalf of that beneficiary to a 401(a) defined contribution plan, a 403(a) annuity contract, a 403(b) annuity contract, or a 457(b) eligible deferred compensation plan. The statute specifies that the ABLE account beneficiary (or

person acting on his or her behalf) is responsible for ensuring that the limit on Employment-Related Contributions is not exceeded.

In Notice 2018-62, IRS announces that it intends to provide guidance confirming that the employed ABLE account beneficiary (or the person acting on his or her behalf), “is solely responsible for ensuring that the [limit on Employment-Related Contributions is] met and for maintaining adequate records for that purpose.” Further, to minimize burdens for both the beneficiary and the ABLE program administrator, the proposed regulations will provide that ABLE programs may allow an ABLE account beneficiary to certify under penalties of perjury that he or she is an ABLE account beneficiary and that his or her contributions do not exceed the limit on Employment-Related Contributions.

In 2015, IRS issued proposed regulations that require an ABLE program to return excess contributions.^[6] In Notice 2018-62, IRS announced that it intends to issue proposed regulations that apply this requirement to Employment-Related Contributions that exceed the limit for Employment-Related Contributions.^[7] Because the statute specifies that the employed ABLE account beneficiary has the responsibility to ensure compliance with the limit on Employment-Related Contributions, IRS expects that the proposed regulations will include the following two provisions: (1) it will be the sole responsibility of the ABLE account beneficiary (or the person acting on his or her behalf) to identify and request the return of any excess Employment-Related Contributions, and (2) for purposes of determining the limit on Employment-Related Contributions, the ABLE program administrator may rely on self-certifications, made under penalties of perjury, of the ABLE account beneficiary (or the person acting on his or her behalf).

Shannon Salinas
Assistant General Counsel - Retirement Policy

endnotes

^[1] IRS Notice 2018-62 is available at <https://www.irs.gov/pub/irs-drop/n-18-62.pdf>. ABLE accounts, created by the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act), were designed to mirror 529 plans and to be used for individuals with disabilities for expenses related to living with a disability.

^[2] ABLE accounts are subject to the contribution limit of Code section 529A(b)(2)(B)(i), which refers to the annual gift tax exclusion under Code section 2503(b) (\$15,000 for 2018). Rollovers to ABLE accounts from 529 plans are also subject to this limit. See ICI Memorandum No. 31310, dated August 1, 2018, available here: https://www.ici.org/my_ici/memorandum/memo31310.

^[3] Code section 529A(b) references the rules in Code section 408(d)(4).

^[4] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018. See ICI Memorandum No. 30991, dated December 21, 2017, available here: https://www.ici.org/my_ici/memorandum/memo30991. The 2017 Tax Reform Legislation also amended Code section 529 to permit amounts from 529 plans to be rolled over to ABLE accounts without penalty. See footnote 2 above.

[5] Section 529A(b)(7)(B) defines “poverty line” as that term is term by section 673 of the Community Services Block Grant Act (42 U.S.C. 9902). The notice announces that IRS intends to clarify that this reference “means the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S. C. 9902(2)” and that, for this purpose, the guideline applicable in the state of the beneficiary’s residence should be used, not the guideline applicable in the state in which the ABLE account was established.

[6] See Prop. Treas. Reg. section 1.529A-2(g)(4).

[7] IRS will specify that ABLE programs should use the rules described in Treas. Reg. section 1.408-11 to return any excess contributions to the person(s) who made the contribution.

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