

MEMO# 29684

February 2, 2016

IRS and Treasury Release Guidance on Section 529 Plans

February 2, 2016

TO: TAX MEMBERS No. 4-16

TRANSFER AGENT ADVISORY COMMITTEE No. 7-16

OPERATIONS COMMITTEE No. 4-16

BROKER/DEALER ADVISORY COMMITTEE No. 5-16

529 PLAN MEMBERS No. 1-16 RE: IRS AND TREASURY RELEASE GUIDANCE ON SECTION 529 PLANS

The PATH Act's Retroactive Tax Changes

Congress passed the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act") [\[1\]](#) in December. The PATH Act made certain changes to the rules applicable to Section 529 qualified tuition programs. The IRS and Treasury have released [Notice 2016-13](#), [\[2\]](#) which provides transition relief for Section 529 plans with respect to 2015 tax reporting that may have been impacted by the PATH Act's changes.

Under Section 529's rules, to the extent distributions from a customer's account exceed the designated beneficiary's qualified higher education expenses, the earnings portion of such excess is includible in the taxable income of the account owner. Under prior law and guidance, if an account owner had multiple Section 529 accounts for the same designated beneficiary, then such accounts would have to be aggregated for purposes for calculating the earnings portion of any distribution. [\[3\]](#) The PATH Act eliminated this aggregation requirement retroactively to the beginning of 2015.

Transition Relief

Section 529 qualified tuition programs and ICI members expressed concerns that the retroactive elimination of the account aggregation requirement made it impossible for the industry to both comply with the retroactive rule change and to timely satisfy their reporting requirements on Forms 1099-Q for the 2015 tax reporting season. In Notice 2016-13, the IRS and Treasury address these concerns by providing the industry with

transition relief.

Section 3 of Notice 2016-13 says that penalties will not be imposed on Forms 1099-Q for calendar year 2015 if those forms are misstated due to the repeal of the aggregation rule. Notice 2016-13 also notes that if a customer believes that it would be advantageous to have their 2015 tax reporting reflect the repeal of the aggregation rule, then such customer should request a corrected Form 1099-Q from their account provider. The Notice states that “[f]or this purpose, the beneficiary’s funds invested in different investment options under the program do not constitute separate ‘accounts.’ ”

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endnotes

[1] See ICI Memorandum [#29576](#), dated December 18, 2015.

[2] See Notice 2016-13, available at: <https://www.irs.gov/pub/irs-drop/n-16-13.pdf>

[3] See ICI Memorandum [#14216](#), dated December 10, 2001 for additional information.

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