

MEMO# 34302

October 3, 2022

IRS Addresses Questions Regarding ABLE Accounts

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TO: ICI Members
529 Plan Advisory Committee
ABLE Act Working Group SUBJECTS: 529 Plans
Tax RE: IRS Addresses Questions Regarding ABLE Accounts

The Internal Revenue Service (IRS) has released an Information Letter which addresses several questions that had been posed to the IRS on various ABLE account topics.[\[1\]](#)

ABLE accounts were designed to mirror 529 plans and to be used by individuals with disabilities to pay for expenses related to living with a disability. The account owner/beneficiary receives favorable tax treatment, provided the funds are used to pay for qualified disability expenses (QDEs).[\[2\]](#)

Qualification as QDE for home mortgage, vehicle purchase, and SSI or SSDI repayment.

The letter confirms that payments towards the purchase of a home or vehicle owned by the beneficiary (including a payment of the remaining balance of the loans after the beneficiary's death) would qualify as QDEs.

Likewise, the repayment of an overpayment of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits also would qualify as a QDE.

Estate and gift tax implications of post-death transfers of ABLE account funds.

The IRS's final regulations on ABLE accounts provide that a qualified ABLE program may permit a change in the beneficiary of an ABLE account during the life of the beneficiary that will take effect upon the beneficiary's death.[\[3\]](#) Before the post-death transfer to a successor beneficiary, however, the ABLE account is subject to federal estate tax on the estate of the deceased beneficiary.[\[4\]](#)

The letter addresses the federal tax implications of a transfer to a successor beneficiary after the death of the original beneficiary.

Transfers to a sibling who is blind or disabled

If the remaining funds are transferred to a successor beneficiary who is (1) the sibling of the designated beneficiary and (2) is an eligible individual (is blind or disabled meeting IRS requirements), then there will be no income tax implications for the original beneficiary's estate or the successor beneficiary.

Other transfers

If the successor designated beneficiary is anyone else, then the transfer will be treated as a gift for gift tax purposes, and the generation-skipping transfer (GST) tax will apply if the successor beneficiary is two or more generations below the beneficiary's generation assignment (e.g., a grandchild). If the account is transferred to a spouse, then the gift tax marital deduction may apply.

Regardless of the identity of the successor beneficiary, the ABLE account will be includible in the gross estate of the designated beneficiary for estate tax purposes. If the successor beneficiary is the spouse, then the estate tax marital deduction under may apply. In addition, the payment of the any outstanding QDEs and State Medicaid reimbursement claims of the beneficiary may be deductible for estate tax purposes.

Employer contributions to an ABLE account.

The letter confirms that an employer may make contributions to an employee's ABLE account or to an employee's family member's ABLE account, subject to an annual contribution limit. The contribution would be treated as a taxable fringe benefit to the employee and would be deductible as wages or compensation by the employer. The letter explains how these contributions should be reported on the Form W-2.[\[5\]](#)

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Notes

[\[1\]](#) The information letter, Number 2022-0007, dated June 24, 2022, is available at <https://www.irs.gov/pub/irs-wd/22-0007.pdf>. ABLE accounts were created by the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the ABLE Act), creating new Internal Revenue Code (Code) section 529A. See ICI Memorandum No. 28594, dated December 18, 2014, available at <https://www.ici.org/memo28594>.

[\[2\]](#) The IRS issued final regulations on ABLE accounts in 2020, published at 85 Fed. Reg. 74010 (November 19, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-11-19/pdf/2020-22144.pdf>.

In sections 1.529A-1(b)(15) and 1.529A-2(h)(1) of the final regulations, the IRS provides the following guidance regarding QDEs.

Qualified disability expenses means any expenses incurred at a time when the designated beneficiary is an eligible individual that relate to the blindness or disability of the designated beneficiary of an ABLE account, including expenses that are for the benefit of

the designated beneficiary in maintaining or improving his or her health, independence, or quality of life... However, any expenses incurred at a time when a designated beneficiary is neither disabled nor blind...even if the designated beneficiary is an eligible individual for that entire taxable year, do not relate to blindness or disability and therefore are not qualified disability expenses.

Qualified disability expenses are expenses incurred that relate to the blindness or disability of the designated beneficiary of the ABLE account and are for the benefit of that designated beneficiary in maintaining or improving his or her health, independence, or quality of life...Such expenses include, but are not limited to, expenses related to the designated beneficiary's education, housing, transportation, employment training and support, assistive technology and related services, personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, and funeral and burial expenses, as well as other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin... Qualified disability expenses include basic living expenses and are not limited to items for which there is a medical necessity or which solely benefit an individual with a disability.

[3] If no successor beneficiary is named, the assets in the ABLE account are payable to the estate of the deceased beneficiary. 85 Fed. Reg. at 74030. Note that while a qualified ABLE program may permit a change in beneficiary that takes effect upon the beneficiary's death, it must permit a change in the designated beneficiary of an ABLE account made during the life of the designated beneficiary. See section 1.529A-2(f) of the final regulation. Code section 529A(c)(1)(C)(ii) provides that a change in beneficiary will not be treated as a distribution if the new beneficiary is an eligible individual who is a brother, sister, stepbrother, or stepsister of the original beneficiary. In the case of any other beneficiary, the original beneficiary will be treated as having received a deemed distribution of the amount transferred to the successor beneficiary that is subject to tax (including income tax on the portion attributable to earnings from the account, plus a ten percent additional tax penalty, if the distribution is made prior to the death of the designated beneficiary). See section 1.529A-3(b)(3)(ii) of the final regulation and 85 Fed. Reg. at 74030.

[4] The ABLE account also would be subject to the payment of any outstanding QDEs of the original beneficiary as well as any State Medicaid reimbursement claims under Code section 529A(f).

[5] The contribution should be reported in box 1, box 3 (if applicable), and box 5 of the employee's Form W-2, regardless of whether the contribution is made to the ABLE account of the employee or the employee's family member.