



## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

#### **RIN 1545-BP10**

### **Contribution Limits Applicable to ABLE Accounts**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations related to the Internal Revenue Code (Code), which allows a State (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account for the purpose of paying for the qualified disability expenses of the designated beneficiary of the account. The affected Code section was amended by the Tax Cuts and Jobs Act, signed into law on December 22, 2017. The Tax Cuts and Jobs Act allows certain designated beneficiaries to contribute a limited amount of compensation income to their own ABLE accounts.

**DATES:** Comments must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-128246-18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public

availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG-128246-18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-128246-18), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, Julia Parnell, (202) 317-4086; concerning submissions of comments and requests for a public hearing, Regina Johnson at email address [fdms.database@irs.counsel.treas.gov](mailto:fdms.database@irs.counsel.treas.gov) and (202) 317-6901 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** This document contains proposed regulations related to section 529A of the Internal Revenue Code (Code), which allows a State (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account for the purpose of paying for the qualified disability expenses of the designated beneficiary of the account. Section 529A was amended by the Tax Cuts and Jobs Act, Public Law 115-97, 131 Stat. 2054, (2017) (2017 Act), signed into law on December 22, 2017. The 2017 Act allows certain designated beneficiaries to contribute a limited amount of compensation income to their own ABLE accounts.

## **Background**

### 1. The ABLE Act

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (the “ABLE Act”) was enacted on December 19, 2014, as part of the Tax Increase Prevention Act of 2014, Public Law 113-295, 128 Stat. 4010, (2014). The ABLE Act added section 529A to the Code. Section 529A allows a State (or its agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an ABLE account for the purpose of paying for the qualified disability expenses of the designated beneficiary of the account. Section 529A was amended by the 2017 Act.

Prior to its amendment by the 2017 Act, section 529A(b)(2) stated that a program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted unless it is in cash, or if the contribution (other than a rollover contribution described in section 529A(c)(1)(C)) would result in aggregate contributions from all contributors in excess of the amount of the section 2503(b) gift tax exclusion for the calendar year in which the designated beneficiary’s taxable year begins. Under section 529A(b)(2), rules similar to the rules of section 408(d)(4) apply to permit the return of excess contributions (with any attributable net income) on or before the due date (including extensions) of the designated beneficiary’s income tax return. In addition, under section 529A(b)(6), a qualified ABLE program must provide adequate safeguards to ensure that total contributions do not exceed the State’s limit for aggregate contributions under its qualified tuition program as described in section 529(b)(6). A qualified tuition program under section 529 is a program established by a State (or its agency or instrumentality) that permits a person to prepay or contribute to a tax-favored savings account for a designated beneficiary’s qualified

higher education expenses (QHEEs) or a program established by an eligible educational institution that permits a person to prepay a designated beneficiary's QHEEs.

## 2. Prior Rulemaking and Statutory Change

On June 22, 2015, the Treasury Department and the IRS published a Notice of Proposed Rulemaking (REG-102837-15) in the **Federal Register** (80 FR 35602) (the 2015 Proposed Regulations). More than 200 written comments were received in response to the 2015 Proposed Regulations and a public hearing was held on October 14, 2015.<sup>1</sup> In addition to these comments, several commenters asked the Treasury Department and the IRS to issue interim guidance to address three particular issues so that these programs could be established before the issuance of final regulations. In order to prevent a delay in the creation of ABLE programs, the Treasury Department and the IRS issued Notice 2015-81, 2015-49 I.R.B. 784 (Dec. 7, 2015), which describes how the Treasury Department and the IRS intend to revise three particular provisions of the proposed regulations under section 529A when those regulations are finalized.

Since the issuance of the 2015 Proposed Regulations and the Notice, two statutes have been enacted that amended one or more provisions of section 529A. On December 18, 2015, section 303 of the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act), was enacted as part of the Consolidated Appropriations Act, Public Law 114-113, 129 Stat. 2242, (2016). The PATH Act amended section 529A(b)(1), effective for taxable years beginning after December 31, 2014, by removing the requirement that a State's qualified ABLE program allow the establishment of an

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<sup>1</sup> Comments related to the 2015 Proposed Regulations will be considered prior to finalizing them, which the Treasury Department and the IRS expect to occur in conjunction with the finalization of these proposed regulations.

ABLE account only for a designated beneficiary who is a resident of that State or of a contracting State. Due to this amendment, the Treasury Department and the IRS intend to remove references to the residency requirement in the proposed regulations under section 529A when those regulations are finalized. The other statutory change was made in the 2017 Act as described in these proposed regulations.

### 3. The 2017 Act

The 2017 Act amended section 529A(b)(2)(B) to allow an employed designated beneficiary described in new section 529A(b)(7) to contribute, prior to January 1, 2026, an additional amount in excess of the limit in section 529A(b)(2)(B)(i) (the annual gift tax exclusion amount in section 2503(b), formerly set forth in section 529A(b)(2)(B)). This additional permissible contribution is subject to its own limit as described in section 529A(b)(2)(B)(ii). Specifically, this additional contributed amount may not exceed the lesser of (i) the designated beneficiary's compensation as defined by section 219(f)(1) for the taxable year, or (ii) an amount equal to the poverty line for a one-person household for the calendar year preceding the calendar year in which the taxable year begins. The 2017 Act also amended the section 529A(b)(2) flush language to require the designated beneficiary, or a person acting on behalf of the designated beneficiary, to maintain adequate records to ensure, and to be responsible for ensuring, that the requirements of section 529A(b)(2)(B)(ii) are met.

New section 529A(b)(7)(A) identifies a designated beneficiary eligible to make this additional contribution as one who is an employee (including a self-employed individual) with respect to whom there has been no contribution made for the taxable year to: a defined contribution plan meeting the requirements of sections 401(a) or

403(a); an annuity contract described in section 403(b); or an eligible deferred contribution plan under section 457(b). Section 529A(b)(7)(B) defines the term “poverty line” as having the meaning provided in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902).

The 2017 Act also amended section 529 to allow, before January 1, 2026, a limited amount to be rolled over to an ABLÉ account from the designated beneficiary’s own section 529 qualified tuition program (QTP) account or from the QTP account of certain family members. The 2017 Act added section 529(c)(3)(C)(i)(III), which provides that a distribution from a QTP made after December 22, 2017, and before January 1, 2026, is not subject to income tax if, within 60 days of the distribution, it is transferred to an ABLÉ account of the designated beneficiary or a member of the family of the designated beneficiary. Under section 529(c)(3)(C)(i), the amount of any rollover to an ABLÉ account is limited to the amount that, when added to all other contributions made to the ABLÉ account for the taxable year, does not exceed the contribution limit for the ABLÉ account under section 529A(b)(2)(B)(i), that is, the annual gift tax exclusion amount under section 2503(b). This limited rollover is described in more detail in Notice 2018-58, 2018-33 I.R.B. 305 (Aug. 13, 2018).

#### 4. Notice 2018-62

To address the 2017 Act modifications to section 529A, the Treasury Department and the IRS published Notice 2018-62, 2018-34 I.R.B. 316 (Aug. 20, 2018), which announces the intent of the Treasury Department and the IRS to issue proposed regulations to implement these changes, and describes the anticipated rules to implement the statutory changes. No comments were received in response to the

Notice. These proposed regulations incorporate, without substantive change, the anticipated rules described in that Notice.

## **Explanation of Provisions**

### **1. Additional Contributions**

The 2017 Act amended section 529A(b)(2)(B) to permit an employed or self-employed designated beneficiary described in section 529A(b)(7) to contribute to his or her ABLE account the lesser of the designated beneficiary's compensation for the taxable year or an amount equal to the poverty line for a one-person household for the calendar year preceding the calendar year in which the designated beneficiary's taxable year begins. These proposed regulations confirm that the employed designated beneficiary, or the person acting on his or her behalf, is solely responsible for ensuring that the requirements in section 529A(b)(2)(B)(ii) are met and for maintaining adequate records for that purpose. In addition, to minimize burdens for the designated beneficiary and the qualified ABLE program, these proposed regulations provide that ABLE programs may allow a designated beneficiary or the person acting on his or her behalf to certify, under penalties of perjury, that he or she is a designated beneficiary described in section 529A(b)(7) and that his or her contributions of compensation do not exceed the limit set forth in section 529A(b)(2)(B)(ii).

### **2. Poverty Line**

Section 529A(b)(7)(B) provides that the term poverty line referred to in section 529A(b)(2)(B)(ii) has the same meaning given to that term by section 673 of the Community Services Block Grant Act (42 U.S.C. 9902). These proposed regulations clarify that the poverty line in section 529A(b)(7)(B) is to be determined by using 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). Those guidelines vary based on locality. Specifically, there are separate guidelines for (1) the contiguous 48 states and the District of Columbia, (2) Alaska, and (3) Hawaii. Because the Treasury Department and the IRS have concluded that the poverty guideline that most closely reflects the employed designated beneficiary's cost of living is the most relevant for determining the contribution limit, these proposed regulations provide that a designated beneficiary's contribution limit is to be determined using the poverty guideline applicable in the state of the designated beneficiary's residence.

### 3. Return of Excess Contributions

Because section 529A(b)(2) provides that rules similar to those set forth in section 408(d)(4) regarding the return of excess contributions to an individual retirement account or annuity apply to ABLE accounts, these proposed regulations provide that a qualified ABLE program must return any contributions of the designated beneficiary's compensation in excess of the limit in section 529A(b)(2)(B)(ii) to the designated beneficiary.

Consistent with section 529A(b)(2), these proposed regulations provide that it will be the sole responsibility of the designated beneficiary (or the person acting on the designated beneficiary's behalf) to identify and request the return of any excess contribution of such compensation income. Such returns of excess compensation contributions must be received by the employed designated beneficiary on or before the due date (including extensions) of the designated beneficiary's income tax return for the year in which the excess compensation contributions were made. A failure to return

excess contributions within this time period will result in the imposition on the designated beneficiary of a 6 percent excise tax under section 4973(a)(6) on the amount of excess compensation contributions.

Additionally, in order to minimize administrative burdens for the designated beneficiary and the qualified ABLE program, for purposes of ensuring that the limit on contributions made under section 529A(b)(2)(B)(ii) is not exceeded, the qualified ABLE program may rely on self-certifications, made under penalties of perjury, of the designated beneficiary or the person acting on the designated beneficiary's behalf.

#### **Proposed Effective/Applicability Date**

These regulations are proposed to apply to taxable years beginning after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**. Until the issuance of final regulations, taxpayers and qualified ABLE programs may rely on these proposed regulations.

#### **Special Analyses**

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

#### **Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations will not impact a substantial number of small

entities. These regulations primarily affect states and individuals and therefore will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### **Comments and Requests for Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are timely submitted to the IRS as prescribed in this preamble under the “**ADDRESSES**” heading. The Treasury Department and the IRS request comments on all aspects of these proposed rules. All comments will be available at [www.regulations.gov](http://www.regulations.gov) or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Statement of Availability of IRS Documents**

Notices 2015-81, 2018-58 and 2018-62 are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, D.C. 20402, or by visiting the IRS website at <http://www.irs.gov>.

### **Drafting Information**

The principal author of these regulations is Julia Parnell, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS and the Treasury Department participated in

their development.

## List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for

§1.529A–8 in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

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Section 1.529A–8 also issued under 26 U.S.C. 529A(g).

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Par. 2. Section 1.529A-0, as proposed to be added at 80 FR 35602, June 22, 2015, is further amended by adding an entry for §1.529A-8 in numerical order to read as follows:

§1.529A-0 Table of contents.

\* \* \* \* \*

*§1.529A-8 Additional contributions to ABLE accounts made by an employed designated beneficiary.*

(a) Additional contributions to ABLE accounts made by an employed designated beneficiary.

(1) In general.

(2) Amount of additional contribution.

(b) Additional definitions.

- (1) Employed designated beneficiary.
- (2) Applicable poverty line.
- (3) Excess compensation contribution.
- (c) Example.
- (d) Responsibility for ensuring contribution limit is met.
- (e) Return of excess compensation contributions.
- (f) Applicability date.

Par.3. Section 1.529A-1, as proposed to be added at 80 FR 35602, June 22, 2015, is further amended by revising paragraph (b)(3) to read as follows:

**§1.529A-1 Exempt status of qualified ABLE program and definitions.**

\* \* \* \* \*

(b) \* \* \*

(3) *Contribution* means any payment directly allocated to an ABLE account for the benefit of the designated beneficiary, including amounts transferred from a qualified tuition program under section 529 after December 22, 2017 and before January 1, 2026.

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Par. 4. Section 1.529A-8 is added to read as follows:

**§1.529A-8 Additional contributions to ABLE accounts made by an employed designated beneficiary.**

(a) Additional contributions by an employed designated beneficiary—(1) In general. An employed designated beneficiary defined in paragraph (b)(1) of this section may contribute amounts up to the limit specified in paragraph (a)(2) of this section in addition to the annual amount described in section 529A(b)(2)(B)(i).

(2) Amount of additional permissible contribution. Any additional contribution made by the designated beneficiary pursuant to this section is limited to the lesser of—

(i) The designated beneficiary's compensation as defined by section 219(f)(1) for the taxable year; or

(ii) An amount equal to the applicable poverty line, as defined in paragraph (b)(2) of this section, for a one-person household for the calendar year preceding the calendar year in which the designated beneficiary's taxable year begins.

(b) Additional definitions. In addition to the definitions in §1.529A-1(b), the following definitions also apply for the purposes of this section—

(1) Employed designated beneficiary means a designated beneficiary who is an employee (including an employee within the meaning of section 401(c)), with respect to whom no contribution is made for the taxable year to—

(i) A defined contribution plan (within the meaning of section 414(i)) with respect to which the requirements of sections 401(a) or 403(a) are met;

(ii) An annuity contract described in section 403(b); and

(iii) An eligible deferred compensation plan described in section 457(b).

(2) Applicable poverty line means the amount provided in 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) for the State of residence of

the employed designated beneficiary. If the designated beneficiary lives in more than one state during the taxable year, the applicable poverty line is the poverty line for the state in which the designated beneficiary resided longer than in any other state during that year.

(3) Excess compensation contribution means the amount by which the amount contributed during the taxable year of an employed designated beneficiary to the designated beneficiary's ABLE account exceeds the limit in effect under section 529A(b)(2)(B)(ii) and paragraph (a)(2) of this section for the calendar year in which that taxable year of the employed designated beneficiary begins.

(c) Example. The following example illustrates the principles of paragraphs (a)(2) and (b)(2) of this section. In 2019, A, the designated beneficiary of an ABLE account, lives in Hawaii. A's compensation, as defined by section 219(f)(1), for 2019 is \$20,000. The poverty line for a one-person household in Hawaii was \$13,960 in 2018. Because A's compensation exceeded the applicable poverty line amount, A's additional permissible contribution in 2019 is limited to \$13,960, the amount of the 2018 applicable poverty line.

(d) Responsibility for ensuring contribution limit is met. (1) The employed designated beneficiary, or the person acting on his or her behalf, is solely responsible for ensuring that the requirements in section 529A(b)(2)(B)(ii) and paragraph (a)(2) of this section are met and for maintaining adequate records for that purpose.

(2) A qualified ABLE program may allow a designated beneficiary (or the person acting on his or her behalf) to certify, under penalties of perjury, and in the manner specified by the qualified ABLE program that —

- (i) The designated beneficiary is an employed designated beneficiary; and
- (ii) The designated beneficiary's contributions of compensation are not excess compensation contributions.

(e) Return of excess compensation contributions. If an excess compensation contribution is deposited into or allocated to the ABLE account of a designated beneficiary, the qualified ABLE program must return that excess contribution, including all net income attributable to the excess contribution, as determined under the rules set forth in §1.408-11 (treating references to an IRA as references to an ABLE account, and references to returned contributions under section 408(d)(4) as references to excess compensation contributions), to the employed designated beneficiary. The employed designated beneficiary, or the person acting on the employed designated beneficiary's behalf, is responsible for identifying any excess compensation contribution and for requesting the return of the excess compensation contribution. The excess compensation contribution, if requested, must be received by the employed designated beneficiary on or before the due date (including extensions) of the Federal income tax return of the employed designated beneficiary for the taxable year in which the excess compensation contribution is made.

(f) Applicability date. The rules of this section apply to taxable years beginning after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**].

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

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