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INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear

This letter responds to your request for information dated August 06, 2021. To help with your outreach efforts, you requested clarification regarding several aspects of the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act).

The ABLE Act added § 529A to the Internal Revenue Code (the Code). Section 529A provides rules under which States or State agencies or instrumentalities may establish and maintain a Federal tax-favored savings program for eligible individuals with a disability who are the owners and designated beneficiaries of accounts to which contributions may be made to meet qualified disability expenses (QDEs). These accounts also receive favorable treatment for purposes of certain means-tested Federal programs. On November 19, 2020, the Internal Revenue Service published final regulations providing guidance regarding programs under the ABLE Act. See 26 CFR § 1.529A (2020).

QDEs are any expenses incurred at a time when the designated beneficiary of an ABLE account is an eligible individual that relate to the blindness or disability of the designated beneficiary and are for the benefit of the designated beneficiary in improving the designated beneficiary's health, independence, or quality of life. Section 1.529A-2(h)(1) provides that QDEs 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. Distributions from an ABLE account for the QDEs of the designated beneficiary are not included in the designated beneficiary's gross income or the designated beneficiary's estate's gross income and are not taxable gifts. Under § 1.529A-3(d)(1), if any amount of a distribution from an ABLE account is includible in gross income, the income tax imposed would be increased by an amount equal to 10 percent of the includible amount.

You asked whether QDEs include payments towards a home mortgage or vehicle purchase, both during the designated beneficiary's life and upon the designated beneficiary's death. If the property or vehicle is owned by the designated beneficiary, then payments towards these purchases, including a payment of the remaining balance of the loans after the designated beneficiary's death, would be QDEs.

You also asked whether the repayment of an overpayment of Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits would be a QDE. The repayment of SSI and SSDI overpayments would be QDEs because they fall under the category of "financial management" under § 1.529A-2(h)(1).

You inquired about whether there are Federal tax implications when the remaining balance of an ABLE account goes to a spouse or a named beneficiary upon the death of the designated beneficiary of the account. The regulations provide that a qualified ABLE program may permit a change in the designated beneficiary of an ABLE account during the life of the designated beneficiary, to take effect upon the designated beneficiary's death.

If the successor designated beneficiary is both a sibling of the designated beneficiary and an eligible individual at the time of the transfer, there would be no income tax implications for the designated beneficiary's estate or the successor designated beneficiary. Nor would the ABLE account be subject to the additional tax described in § 1.529A-3(d)(1). However, the ABLE account would be subject to the payment of any outstanding QDEs of the designated beneficiary as well as any State Medicaid reimbursement claims.

A transfer to a successor designated beneficiary who is both a sibling of the designated beneficiary and an eligible individual has no gift tax or generation-skipping transfer (GST) tax implications. If the successor designated beneficiary is anyone else, the transfer is a gift for gift tax purposes by the designated beneficiary to the successor designated beneficiary, and the GST tax applies if the successor designated beneficiary also is two or more generations below the designated beneficiary's generation assignment (e.g., a grandchild). If the successor designated beneficiary is the spouse of the designated beneficiary, the gift tax marital deduction under § 2523 may apply. The designated beneficiary's ABLE account is includible in the designated beneficiary's gross estate for estate tax purposes under § 2031, regardless of the identity of the successor designated beneficiary; however, if the successor designated beneficiary is

the spouse of the designated beneficiary, the estate tax marital deduction under § 2056 may apply. The payment of the designated beneficiary's outstanding QDEs and State Medicaid reimbursement claims may be deductible for estate tax purposes under § 2053.

Finally, you asked whether an employer could take a deduction for a contribution to an ABLE account. You also requested clarification on how these types of contributions would be reported on a Form W-2. 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. It would 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. The business structure of the employer would not have an effect on how these contributions would be reported on a Form W-2.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2022-1, I.R.B. 2022-1 (Jan. 3, 2022). If you have any additional questions, please contact \_\_\_\_\_ at \_\_\_\_\_.

Sincerely,

Taina Edlund  
Senior Technician Reviewer, Exempt  
Organizations  
(Employee Benefits, Exempt Organizations and  
Employment Taxes (EEE))