



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D. C. 20224

OFFICE OF THE CHIEF COUNSEL

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Dear _____,

This letter responds to your requests for information dated February 17, 2022 and October 19, 2022. 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 section 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. ABLE accounts receive favorable treatment for purposes of certain means-tested Federal programs. Section 529A(b)(2)(B) of the ABLE Act provides an annual contribution limit of an amount not exceeding the section 2503(b) gift tax annual exclusion amount (excluding rollovers and program-to-program transfers). Section 529A(b)(2)(B)(ii) allows employed designated beneficiaries who have not had contributions made for them in the taxable year to certain types of employer-sponsored plans to contribute an additional amount to his or her ABLE account that is up to the lesser of the employed designated beneficiary's compensation for that taxable year or the poverty line amount for a one-person household for the calendar year preceding the calendar year in which the taxable year began. On November 19, 2020, the Internal Revenue Service (IRS) published final regulations providing guidance regarding programs under the ABLE Act. See 26 CFR § 1.529A (2020).

You asked what types of retirement plan contributions would preclude an ABLE account owner from contributing the additional amount described in section 529A(b)(2)(B)(ii) and whether section 401(k) plans and IRAs are included. Section 529A(b)(7)(A) defines an employed designated beneficiary as 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 (1) 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; (2) an annuity contract described in section 403(b); and (3) an eligible deferred compensation plan described in section 457(b). A defined contribution plan within the meaning of section 414(i) includes a section 401(k) plan, but does not include an IRA. Therefore, if a contribution is made on behalf of a designated beneficiary to one of the employer-maintained plans listed in section 529A(b)(7)(A), the designated beneficiary would not be an employed designated beneficiary eligible to make an ABLE account contribution for the taxable year in which the contribution to the employer-sponsored plan was made.

You also asked whether, for the purposes of the additional contribution amount for certain employed designated beneficiaries, compensation is limited to gross employment compensation or whether distributions from stocks, pensions, or retirement accounts would be included in the designated beneficiary's compensation. Section 1.529A-2 provides that the term "compensation" has the same meaning as the definition in section 219(f)(1). Section 219(f)(1) states that the term "compensation," for the purposes of that section, does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation. Therefore, for the purposes of the additional contribution amount for certain employed designated beneficiaries, compensation is limited to gross employment compensation and does not include amounts received as a pension or annuity.

You inquired about the Federal tax consequences of a rollover of funds from a Coverdell education savings account (ESA) to either an ABLE account or a section 529 qualified tuition program (QTP) account. A Coverdell ESA is a trust or custodial account created or organized only for the purpose of paying the qualified education expenses of the designated beneficiary of the account. A distribution from a Coverdell ESA is not subject to income tax if, within 60 days of the distribution, it is transferred to another Coverdell ESA for the same designated beneficiary or a member of the family of the designated beneficiary who is under age 30 or is a special needs beneficiary. A contribution to a QTP account is a qualified education expense if it is on behalf the designated beneficiary of the Coverdell ESA or a family member of the designated beneficiary. In addition, before January 1, 2026, a distribution made from a QTP account is not subject to income tax if, within 60 days of the distribution, it is transferred to the ABLE account of the designated beneficiary or a member of the family of the designated beneficiary. The amount of the rollover is limited to the amount that, when added to all other contributions made to the ABLE account for the taxable year, does not exceed the contribution limit for the ABLE account.

Finally, you asked about whether the designation of an individual as disabled by his or her employer would be "accepted" by the IRS. Only an eligible individual may be the designated beneficiary of an ABLE account. An individual is an eligible individual if (1) he or she is entitled to benefits based on blindness or disability under title II or XVI of

the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26, or (2) a disability certification with respect to such individual is filed with the Secretary of the Treasury for the taxable year. Therefore, the designation of an employee as disabled by his or her employer is not relevant to whether the designated beneficiary of an ABLE account is an eligible individual.

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,

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