

## **Internal Revenue Code Section 529A(b)(2)(B)(ii)**

### Qualified ABLE programs

(a) General rule.

A qualified ABLE program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Qualified able program.

For purposes of this section -

(1) In general.

The term "qualified ABLE program" means a program established and maintained by a State, or agency or instrumentality thereof-

(A) under which a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for such taxable year, to an ABLE account which is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account,

(B) which limits a designated beneficiary to 1 ABLE account for purposes of this section, and

(C) which meets the other requirements of this section.

(2) Cash contributions.

A program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted-

(A) unless it is in cash, or

(B) except in the case of contributions under subsection (c)(1)(C), if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the sum of-

(i) the amount in effect under section 2503(b) for the calendar year in which the taxable year begins, plus

(ii) in the case of any contribution by a designated beneficiary described in paragraph (7) before January 1, 2026, the lesser of-

(I) compensation (as defined by section 219(f)(1)) includible in the designated beneficiary's gross income for the taxable year, or

(II) an amount equal to the poverty line for a one-person household, as determined for the calendar year preceding the calendar year in which the taxable year begins.



For purposes of this paragraph, rules similar to the rules of section 408(d)(4) (determined without regard to subparagraph (B) thereof) shall apply. A designated beneficiary (or a person acting on behalf of such beneficiary) shall maintain adequate records for purposes of ensuring, and shall be responsible for ensuring, that the requirements of subparagraph (B)(ii) are met.

(3) Separate accounting.

A program shall not be treated as a qualified ABLE program unless it provides separate accounting for each designated beneficiary.

(4) Limited investment direction.

A program shall not be treated as a qualified ABLE program unless it provides that any designated beneficiary under such program may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.

(5) No pledging of interest as security.

A program shall not be treated as a qualified ABLE program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(6) Prohibition on excess contributions.

A program shall not be treated as a qualified ABLE program unless it provides adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the limit established by the State under section 529(b)(6). For purposes of the preceding sentence, aggregate contributions include contributions under any prior qualified ABLE program of any State or agency or instrumentality thereof.

(7) Special rules related to contribution limit.

For purposes of paragraph (2)(B)(ii)-

(A) Designated beneficiary. A designated beneficiary described in this paragraph is an employee (including an employee within the meaning of section 401(c)) with respect to whom-

(i) no contribution is made for the taxable year to a defined contribution plan (within the meaning of section 414(i)) with respect to which the requirements of section 401(a) or 403(a) are met,

(ii) no contribution is made for the taxable year to an annuity contract described in section 403(b), and

(iii) no contribution is made for the taxable year to an eligible deferred compensation plan described in section 457(b).

(B) Poverty line. The term "poverty line" has the meaning given such term by section 673 of the Community Services Block Grant Act (42 U.S.C. 9902).

(c) Tax treatment.

(1) Distributions.

(A) In general. Any distribution under a qualified ABLE program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) Distributions for qualified disability expenses. For purposes of this paragraph, if distributions from a qualified ABLE program-

(i) do not exceed the qualified disability expenses of the designated beneficiary, no amount shall be includible in gross income, and

(ii) in any other case, the amount otherwise includible in gross income shall be reduced by an amount which bears the same ratio to such amount as such expenses bear to such distributions.

(C) Change in designated beneficiaries or programs.

(i) Rollovers from able accounts. Subparagraph (A) shall not apply to any amount paid or distributed from an ABLE account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another ABLE account for the benefit of the same designated beneficiary or an eligible individual who is a member of the family of the designated beneficiary.

(ii) Change in designated beneficiaries. Any change in the designated beneficiary of an interest in a qualified ABLE program during a taxable year shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is an eligible individual for such taxable year and a member of the family of the former beneficiary.

(iii) Limitation on certain rollovers. Clause (i) shall not apply to any transfer if such transfer occurs within 12 months from the date of a previous transfer to any qualified ABLE program for the benefit of the designated beneficiary.

(D) Repealed. [Ed note: Congressional technical issue]

(2) Gift tax rules.

For purposes of chapters 12 and 13-

(A) Contributions. Any contribution to a qualified ABLE program on behalf of any designated beneficiary-

(i) shall be treated as a completed gift to such designated beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) Treatment of distributions. In no event shall a distribution from an ABLE account to such account's designated beneficiary be treated as a taxable gift.

(C) Treatment of transfer to new designated beneficiary. The taxes imposed by chapters 12 and 13 shall not apply to a transfer by reason of a change in the designated beneficiary under subsection (c)(1)(C).

(3) Additional tax for distributions not used for disability expenses.

(A) In general. The tax imposed by this chapter for any taxable year on any taxpayer who receives a distribution from a qualified ABLE program which is includible in gross income shall be increased by 10 percent of the amount which is so includible.

(B) Exception. Subparagraph (A) shall not apply if the payment or distribution is made to a beneficiary (or to the estate of the designated beneficiary) on or after the death of the designated beneficiary.

(C) Contributions returned before certain date. Subparagraph (A) shall not apply to the distribution of any contribution made during a taxable year on behalf of the designated beneficiary if-

(i) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such designated beneficiary's return for such taxable year, and

(ii) such distribution is accompanied by the amount of net income attributable to such excess contribution.

Any net income described in clause (ii) shall be included in gross income for the taxable year in which such excess contribution was made.

(4) Loss of ABLE account treatment.

If an ABLE account is established for a designated beneficiary, no account subsequently established for such beneficiary shall be treated as an ABLE account. The preceding sentence shall not apply in the case of an account established for purposes of a rollover described in paragraph (1)(C)(i) of this section if the transferor account is closed as of the end of the 60th day referred to in paragraph (1)(C)(i).

(d) Reports.

(1) In general

Each officer or employee having control of the qualified ABLE program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, the return of excess contributions, and such other matters as the Secretary may require.

(2) Certain aggregated information.

For research purposes, the Secretary shall make available to the public reports containing aggregate information, by diagnosis and other relevant characteristics, on contributions and distributions from the qualified ABLE program. In carrying out the preceding sentence an item may not be made available to the public if such item can be associated with, or otherwise identify, directly or indirectly, a particular individual.

(3) Notice of establishment of able account.

A qualified ABLE program shall submit a notice to the Secretary upon the establishment of an ABLE account. Such notice shall contain the name of the designated beneficiary and such other information as the Secretary may require.

(4) Electronic distribution statements.

For purposes of section 3 of the Stephen Beck, Jr., ABLE Act of 2014, States shall submit electronically on a monthly basis to the Commissioner of Social Security, in the manner specified by the Commissioner, statements on relevant distributions and account balances from all ABLE accounts.

(5) Requirements.

The reports and notices required by paragraphs (1), (2), and (3) shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) Other definitions and special rules.

For purposes of this section-

(1) Eligible individual.

An individual is an eligible individual for a taxable year if during such taxable year-

(A) the individual 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

(B) a disability certification with respect to such individual is filed with the Secretary for such taxable year.

(2) Disability certification.

(A) In general. The term "disability certification" means, with respect to an individual, a certification to the satisfaction of the Secretary by the individual or the parent or guardian of the individual that-

(i) certifies that-

(I) the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind (within the meaning of section 1614(a)(2) of the Social Security Act), and

(II) such blindness or disability occurred before the date on which the individual attained age 26, and

(ii) includes a copy of the individual's diagnosis relating to the individual's relevant impairment or impairments, signed by a physician meeting the criteria of section 1861(r)(1) of the Social Security Act.

(B) Restriction on use of certification. No inference may be drawn from a disability certification for purposes of establishing eligibility for benefits under title II, XVI, or XIX of the Social Security Act.

(3) Designated beneficiary.

The term "designated beneficiary" in connection with an ABLE account established under a qualified ABLE program means the eligible individual who established an ABLE account and is the owner of such account.

(4) Member of family.

The term "member of the family" means, with respect to any designated beneficiary, an individual who bears a relationship to such beneficiary which is described in section 152(d)(2)(B). For purposes of the preceding sentence, a rule similar to the rule of section 152(f)(1)(B) shall apply.

(5) Qualified disability expenses.

The term "qualified disability expenses" means any expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section.

(6) ABLE account.

The term "ABLE account" means an account established by an eligible individual, owned by such eligible individual, and maintained under a qualified ABLE program.

(7) Repealed.

(f) Transfer to state.

Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the total medical assistance paid for the designated beneficiary after the establishment of the account, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing of a claim for payment by such State. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. Subsection (c)(3) shall not apply to a distribution under the preceding sentence.

(g) Regulations.

The Secretary shall prescribe such regulations or other guidance as the Secretary determines necessary or appropriate to carry out the purposes of this section, including regulations-

- (1) to enforce the 1 ABLE account per eligible individual limit,
- (2) providing for the information required to be presented to open an ABLE account,
- (3) to generally define qualified disability expenses,

- (4) developed in consultation with the Commissioner of Social Security, relating to disability certifications and determinations of disability, including those conditions deemed to meet the requirements of subsection (e)(1)(B),
- (5) to prevent fraud and abuse with respect to amounts claimed as qualified disability expenses,
- (6) under chapters 11, 12, and 13 of this title, and
- (7) to allow for transfers from one ABLE account to another ABLE account.