

## IRS Issues New Rules for ABLE Accounts

ABLE accounts were authorized by the Achieving a Better Life Experience Act of 2014 and can be an excellent resource for individuals with disabilities. Let's take a deeper dive into what these accounts are, how they can benefit certain individuals, and some new regulations issued by the Internal Revenue Service (IRS) in order to clarify some rules regarding ABLE accounts.

### *Who is eligible to open an ABLE account?*

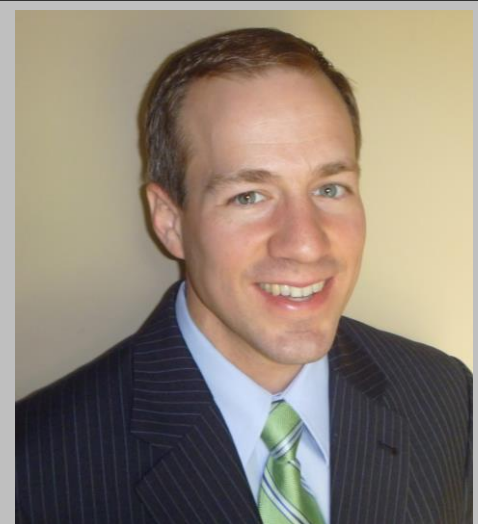
To be eligible to open an ABLE account, one must be a U.S. citizen or legal resident and an individual with a significant disability that began before age twenty-six. Such an individual is termed the *designated beneficiary* of the ABLE account. The designated beneficiary can be of any age when the account is opened, but the disability had to have onset before age twenty-six. If the individual receives Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI), that individual is already eligible to open an ABLE account. If the individual isn't receiving SSI or SSDI, they must obtain a disability certification from a doctor and meet the Social Security Administration's definition of [significant functional limitation](#). Finally, each eligible designated beneficiary can only have one ABLE account.

### *Who can contribute to an ABLE account?*

Anyone can contribute to an ABLE account. The account owner, or designated beneficiary, can contribute to the account, as can their family or friends.

### *How much can one contribute to an ABLE account?*

There are limits on how much can be contributed to an ABLE account. In 2020, the annual limit for each contributor is \$15,000. Consistent with the Tax Cuts and Jobs Act, eligible designated beneficiaries can make additional contributions to their ABLE account, up to the amount equal to their state's poverty limit or the



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federal poverty line, whichever is less. (However, if the eligible designated beneficiary's employer contributes to a workplace retirement plan, the individual cannot make these additional contributions.) There are also lifetime caps set by individual states. Many such lifetime limits are as much as \$300,000.

#### *What are the advantages of an ABLÉ account?*

Such accounts allow those with disabilities and their families to save money in a tax beneficial way. Contributions to an ABLÉ account are not tax-deductible and are made with post-tax earnings, but withdrawals and investment income earned will not be taxed. Possibly the best advantage of an ABLÉ account is that the balance therein will not be a countable resource when applying for needs-based public benefits. These needs-based programs have strict asset limits, sometimes as low as \$2,000. So, if the individual has more than that amount, they would not qualify for benefits. But through an ABLÉ account, the individual can have extra funds set aside for their care and maintenance without jeopardizing their eligibility for needs-based government benefits. The funds in an ABLÉ account will not impact Medicaid, FAFSA, HUD, or SNAP eligibility. (There could be limits regarding how much ABLÉ account funds will be a non-countable asset. For example, the amount up to that state's 529 plan savings limit may be the amount exempt for Medicaid eligibility purposes.) Also, the first \$100,000 in ABLÉ account funds is exempt when qualifying for SSI.

#### *What can ABLÉ account funds be spent on?*

Distributions from the account are tax-free if used for any expense related to living with a disability, including healthcare costs, living expenses, housing, transportation, assistive technology, legal fees, and education. To be tax-free, the distribution must be made for a *qualified disability expense*, which is defined as follows:

"Qualified disability expenses mean any expenses incurred at a time when the designated beneficiary is an eligible individual that relates to the blindness or disability of the designated beneficiary of an ABLÉ 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. See §1.529A-2(h). However, any expenses incurred at a time when a designated beneficiary is neither disabled nor blind within the meaning of §1.529A-1(b)(8)(i) or §1.529A-2(e)(1)(i), 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."

#### *Who administers ABLÉ accounts?*

Although ABLÉ accounts are sanctioned by federal law, the ABLÉ account programs are operated by individual states. Many states have their own ABLÉ account programs, but some states may not have programs available. However, some programs don't have residency requirements to enroll in their programs, such as Nebraska, Ohio, and Tennessee. Those state programs have nationwide enrollment. Individuals should shop around and really understand each program's terms to analyze whether it is the right one for them. Here is a [useful chart](#) of the different states' plans.

#### *What are the new IRS regulations?*

The [final regulations](#) issued by the IRS in October amends 26 CFR parts 1, 25, 26, and 301. The purpose of the new regulations is to provide guidance under section 529A of the Internal Revenue Code, which authorized states to create ABLÉ account programs. These new regulations finalize two proposed regulations, the first proposed in 2015 and the other proposed in 2019.

Below are some key takeaways from the new final regulations:

- Funds from qualified tuition programs (529 plans) may be rolled over into ABLE accounts.
- Distributions after the designated beneficiary's death that are made for outstanding debts for qualified disability expenses, or for the funeral or burial expenses of the designated beneficiary, are not included in the designated beneficiary's estate.
- A change of a designated beneficiary is not treated as a distribution if the successor beneficiary is an eligible individual and a family member of the designated beneficiary. (A member of the family includes any "sibling, whether by blood or adoption, and includes a brother, sister, stepbrother, stepsister, half-brother, and half-sister.")

If a change in designated beneficiary is to someone other than an eligible individual who is a family member of the designated beneficiary, then the change is considered a distribution to the former designated beneficiary.

- A contribution in excess of the annual contributions limit is subject to an excise tax of 6% of the excess contribution.

Here are some of the new regulations that will be effective beginning January 1, 2021:

- Contributions to an ABLE account, other than a designated beneficiary's contribution, is a completed gift for gift tax purposes.
- If a contribution is a nontaxable gift for Federal gift tax purposes, the inclusion ratio for GST-tax purposes will be zero.
- Funds in the ABLE account are included in the designated beneficiary's estate for estate tax purposes.

ABLE accounts can be an excellent resource for folks who are disabled, and a great way for their families to be able to contribute in a meaningful way. Many advocates can arm themselves with the knowledge about what ABLE accounts are, how they are beneficial to their clientele, and how the law around them evolves. And with this new guidance, practitioners can be more confident when advising clients about the ins-and-outs of ABLE accounts.

Sources:

<https://www.savingforcollege.com/529-able-accounts/>

<https://www.able-now.com/resources/faqs/>

<https://www.irs.gov/pub/irs-drop/td-9923.pdf>

<https://www.disabilityscoop.com/2020/10/12/irs-issues-final-rules-for-able-accounts/29030/>

<https://www.savingforcollege.com/529-able-accounts/>

<https://www.ssa.gov/disability/professionals/bluebook/listing-impairments.htm>

<https://www.irs.gov/government-entities/federal-state-local-governments/able-accounts-tax-benefit-for-people-with-disabilities>

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