Notice 2015-18

SECTION 1. PURPOSE

This notice provides advance notification of a provision anticipated to be included in the proposed regulations to be issued under section 529A of the Internal Revenue Code.

SECTION 2. BACKGROUND

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) was enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (P.L. 113-295). The ABLE Act creates a new section 529A of the Internal Revenue Code (Code) that permits a state (or a state agency or instrumentality) to establish and maintain a new type of tax-advantaged savings program, a qualified ABLE program, under which contributions may be made to an account (an ABLE account) that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account who is a resident of that state and who is disabled (as defined in section 529A). If a state does not establish and maintain its own qualified ABLE program, it may enter into a contract with another state in order to provide its residents with access to a qualified ABLE program. The statute directs the Secretary of the Treasury or his designee to issue regulations or other guidance to implement section 529A no later than June 19, 2015.

The Treasury Department and the Internal Revenue Service (IRS) have been advised that several state legislatures currently are in the process of enacting enabling legislation in order to ensure that their citizens may create ABLE accounts during 2015. While the Treasury Department and the IRS currently are working on section 529A guidance, it is anticipated that ABLE programs may be in operation in some states before such guidance can be issued.

The Treasury Department and the IRS do not want the lack of guidance to discourage states from enacting their enabling legislation and creating their ABLE programs, which could delay the ability of the families of disabled individuals or others to begin to fund ABLE accounts for those disabled individuals. Therefore, the Treasury Department and the IRS are assuring states that enact legislation creating an ABLE program in accordance with section 529A, and those individuals establishing ABLE accounts in accordance with such legislation, that they will not fail to receive the benefits of section 529A merely because the legislation or the account documents do not fully comport with the guidance when it is issued. The Treasury Department and the IRS intend to provide transition relief with regard to necessary changes to ensure that the state programs and accounts meet the requirements in the guidance, including providing sufficient time after issuance of the guidance in order for changes to be implemented. For those states that are moving forward before the issuance of additional guidance, this notice provides advance notice of certain important ways in which future section 529A guidance is expected to differ from the section 529 proposed regulations so that states promulgating rules may appropriately reflect a fundamental statutory requirement.

SECTION 3. NOTICE

Section 529A was modeled on section 529 of the Code, which provides tax-exempt status to qualified tuition programs (QTPs) established and maintained by a state (or agency or instrumentality thereof), or by one or more eligible educational institutions, under which contributions may be made to an account that is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account. However, there are a few significant differences between the statutory provisions governing QTPs and those governing qualified ABLE programs.

To assist states currently contemplating legislation regarding ABLE programs in advance of issuing further guidance to implement section 529A, the Treasury Department and the IRS advise that the section 529A guidance, when issued, may differ in various ways from the proposed regulations that have been promulgated under section 529. In particular, the Treasury Department and the IRS currently anticipate that, consistent with section 529A(e)(3), the guidance will provide that the owner of an ABLE account is the designated beneficiary of the account. In addition, the Treasury Department and the IRS currently anticipate that the section 529A guidance will provide that, with regard to the ABLE account of a designated beneficiary who is not the person with signature authority over that account, the person with signature authority over the account of the designated beneficiary may neither have nor acquire any beneficial interest in the account and must administer that account for the benefit of the designated beneficiary of that account.

DRAFTING INFORMATION

The principal author of this notice is Sean Barnett of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Mr. Barnett at (202) 317-5800 (not a toll-free call).