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Notice 2018-58: Future regulations to clarify section 529 re-contributions, rollovers, qualified expenses

The IRS today released an advance version of Notice 2018-58 announcing that the IRS and Treasury Department intend to issue regulations to clarify:

- The special rules for re-contributions of refunded qualified higher education expenses to a qualified tuition program under section 529(c)(3)(D)
- The new rules under section 529(c)(3)(C)(i)(III) permitting a rollover from a qualified tuition program to an ABLE account under section 529A
- The new rules under section 529(c)(7) treating certain elementary or secondary school expenses as qualified higher education expenses

[Notice 2018-58](#) [PDF 30 KB] states that taxpayers may rely on this guidance until the proposed regulations are issued.

Background

The IRS notice concerns section 529 “qualified tuition programs”—that is, programs established by a state (or a state agency or instrumentality) or by an eligible education institution that permit a person to prepay or contribute to an account for the qualified higher education expenses of a “designated beneficiary” (i.e., student).

Before the new tax law (Pub. L. No. 115-97, enacted December 22, 2017), earnings from section 529 plans were not currently taxable for federal purposes, and distributions were not taxable provided that the distributions were made for qualified higher education expenses such as tuition, room and board, fees, books, supplies, and equipment required for enrollment.

Under the new tax law, the definition of “qualified higher education expenses” was expanded to include public, private, or religious elementary and secondary schools. The new law also limits the tax-free distribution amount to an aggregate of \$10,000

per student per year when used for expenses relating to elementary and secondary schools. This limit does not apply to distributions for post-secondary school expenses.

Re-contributions of refunded qualified higher education expenses

The future regulations will distinguish the treatment of re-contributions of refunds of qualified higher education expenses (for instance, if the student were to drop a class in mid-semester).

The *Protecting Americans From Tax Hikes (PATH) Act of 2015* provided a rule for a beneficiary (student) who received a refund of tuition or other qualified education expenses. If the student were to recontribute the refund to any section 529 plan within 60 days, the refund would be tax-free. As noted in a separate IRS release—[IR-2018-156](#)—the future regulations would aim to simplify the tax treatment of these transactions, and would provide that such re-contributions would not “count against the plan’s contribution limits.”

Notice 2018-58 provides that to reduce the administrative burden associated with section 529 plans, the future regulations will provide:

- The entire amount of re-contributions of refunded qualified higher education expenses will be treated as principal, and thus eliminate the burden associated with determining the earnings portion of the recontributed amount.
- The recontributed amount will not count against the limit on contributions made on behalf of the designated beneficiary.
- It will not be necessary for the re-contribution to be made to a section 529 plan for the same student who received the refund of the qualified higher education expenses.

Rollovers involving ABLÉ accounts

ABLE accounts are available under the “achieve a better life experience” program, and are designed to allow disabled individuals and their families to save and pay for disability-related expenses.

Notice 2018-58 states that future regulations will provide that a distribution—akin to a rollover—from a section 529 plan to an eligible ABLÉ account will not be subject to income tax if certain requirements are satisfied. For instance, funds could be rolled over from a designated beneficiary’s section 529 plan to an ABLÉ account for certain individuals who become disabled before age 26 years.

It is anticipated that the future regulations would prohibit the direct transfer of any amount that would cause a taxable distribution and that ABLÉ accounts would be prohibited from accepting certain contributions in excess of the applicable limits (\$15,000 for 2018).

Expansion to include elementary and secondary education tuition

The future regulations (according to the IRS notice) will reflect the new tax law provisions to cover enrollment in an elementary or secondary school, subject to the annual limit of \$10,000 per student, regardless of the number of section 529 plans making distributions for that same student. The future regulations will define the term “elementary and secondary” to mean kindergarten through grade 12 (consistent with the rules for Coverdell education savings accounts).

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