

 Tax Alert

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2017 Tax Act Allows Limited 529 Plan Distributions for Elementary and Secondary School Tuition; Permits Rollover from 529 Plan to ABL Account

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529 Plans – An Overview

The next alert in our weekly series highlighting the major changes to the law as a result of the Tax Cuts and Jobs Act of 2017 (the “Act”) discusses limited 529 Plan distributions for elementary and secondary school tuition and rollovers from 529 Plans to ABL Accounts.

Since 1996, the Internal Revenue Code has provided favorable tax treatment for investment accounts, known as 529 Plans, which are designed to pay for higher education. Pursuant to the 2017 Tax Cuts and Jobs Act (the “Act”), the rules governing the treatment of these plans have been liberalized in certain circumstances. But first, let’s talk about what a 529 Plan is all about.

Generally, donors contribute funds to 529 Plan investment accounts for the benefit of one or more current or future students to be used to pay for qualified higher education expenses. When the funds are withdrawn and used for these qualified higher education expenses, the appreciation in these accounts is not subject to federal income tax. Some 529 Plans even provide certain state income tax benefits, which may include deducting contributions from state income tax or matching grants. Typically, these benefits are only available if the donor contributes to a 529 Plan sponsored by the donor’s state of residence.

If the beneficiary of the account doesn’t use all, or even any, of the account, the beneficiary can be changed to another member of the beneficiary’s family. Also, any funds distributed from a 529 which are rolled over to another plan for the benefit of the same beneficiary, or for the benefit of a member of the beneficiary’s family, within 60 days of such distribution, remain untaxed.

Distributions from 529 Plans are not taxable so long as the funds are used to pay for “qualified higher education expenses,” which means tuition, fees, books, etc., required for the enrollment or attendance of the beneficiary at an “eligible educational institution.” Prior to the Act, and for years prior to 2018, an “eligible educational institution” meant only higher education beyond high school (e.g. college, university, or trade school). Expenses related to elementary or secondary school didn't qualify as “qualified higher education expenses,” and payments for such expenses couldn't receive tax-free 529 Plan distributions.

Expanded Benefits for 529 Plans – Distributions for Elementary and Secondary School Tuition

Under the new Act, for tax years 2018 through 2025, the rules regarding the use of funds in a 529 Plan have been liberalized. The law now provides that “qualified higher education expenses” include expenses for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or even a religious school (e.g. high school or elementary school). There is, however, a limit to how much of a distribution can be taken from a 529 Plan for these expenses. The amount of cash distributions from all 529 Plans for any single beneficiary during any single tax year for elementary school and secondary school tuition incurred during the tax year cannot, when combined, exceed \$10,000. In other words, the \$10,000 limitation applies on a per-student basis, rather than a per-account basis.

ABLE Accounts – An Overview

An ABLE account is a tax-favored savings vehicle that can be established for a designated beneficiary who is disabled or blind. They work in a manner very similar to 529 Plans discussed above, except that the favorable tax treatment is provided so long as the funds are used for certain qualified disability expenses.

Contributions to an ABLE account, which may be made by the beneficiary as well as third persons, are not deductible, but the account may grow on a tax-free basis (like a 529 Plan). Total annual contributions by all contributors to an ABLE account may not exceed the gift tax exclusion amount in effect for that year (\$15,000 for 2018). However, tax-free rollovers from another ABLE account do not count toward this limit. Distributions are tax-free to the extent used to pay for the beneficiary's qualified disability expenses, which includes basic living expenses such as housing, transportation, and education, as well as medical necessities. One major non-tax advantage of the ABLE account is that the assets in the account and distributions used to pay qualified disability expenses are generally disregarded in determining the beneficiary's eligibility for federal means-tested programs. This allows the beneficiary to save for the future without sacrificing current benefits.

Rollovers from 529 Accounts to ABLE Accounts Now Receive Favorable Tax Treatment

Under the 2017 Tax Cuts and Jobs Act distributions from a 529 account are tax-free if, within 60 days of the distribution, the funds are redeposited into an ABLE account of the same designated beneficiary or a member of the family of the designated beneficiary. “Member of the family” of the designated beneficiary is broadly defined.

This provision is especially helpful, for example, when a beneficiary of a 529 account no longer needs the 529 account balance to pay for qualified higher education expenses and either the beneficiary or a member of the beneficiary's family is disabled or blind. The funds in the 529 account may be rolled over to an ABLE account for the future benefit of the disabled or blind beneficiary or the beneficiary's family member. The rollover to the ABLE account will continue to grow tax-free, and distributions from the ABLE account will be tax-free to the extent used to pay for the beneficiary's (or beneficiary's family member's) qualified disability expenses.

The attorneys at Einhorn Harris are happy to discuss these and other available tax planning opportunities that can still be employed to reduce your income tax liabilities.

Please contact Einhorn Harris for any questions you have regarding the new tax law.



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