

payments due for his or her other qualified disability expenses, and will be limited to the amount of the total medical assistance paid for the designated beneficiary after the establishment of the ABLÉ account over the amount of any premiums paid, whether from the ABLÉ account or otherwise by or on behalf of the designated beneficiary, to a Medicaid Buy-In program under any such State Medicaid plan. The establishment of the ABLÉ account is the date on which the ABLÉ account was established or, if earlier, the date on which was established any ABLÉ account for the same designated beneficiary from which amounts were rolled over or transferred to the ABLÉ account, but in no event earlier than the date on which the designated beneficiary became the designated beneficiary of the account from which amounts were transferred. After the expiration of the applicable statute of limitations for filing Medicaid claims against the designated beneficiary's estate, a qualified ABLÉ program may distribute the balance of the ABLÉ account to the successor designated beneficiary or, if none, to the deceased designated beneficiary's estate. A State law prohibiting the filing of such a claim against either the ABLÉ account or the designated beneficiary's estate will not prevent that State's program from being a qualified ABLÉ program.

(p) *Reporting requirements.* A qualified ABLÉ program must comply with all applicable reporting requirements, including without limitation those described in §§ 1.529A-5 through 1.529A-7.

(q) *Applicability date.* This section applies to calendar years beginning on or after January 1, 2021. See § 1.529A-8 for the provision of transition relief.

§ 1.529A-3 Tax treatment.

(a) *Taxation of distributions—(1) In general.* Each distribution from an ABLÉ account consists of an earnings portion of the account (computed in accordance with paragraph (c) of this section) and investment in the account. If the total amount distributed from an ABLÉ account to or for the benefit of the designated beneficiary of that ABLÉ account during his or her taxable year does not exceed the qualified disability expenses of the designated

beneficiary paid during that year, no amount distributed is includible in the gross income of the designated beneficiary for that year. If the total amount distributed from an ABLÉ account to or for the benefit of the designated beneficiary of that ABLÉ account during his or her taxable year exceeds the qualified disability expenses of the designated beneficiary paid during that year (regardless of when incurred), the distributions from the ABLÉ account, except to the extent excluded from gross income under this section or any other provision of chapter 1 of the Internal Revenue Code, must be included in the gross income of the designated beneficiary in the manner provided under this section and section 72. The amount to be included in gross income is based on the earnings portion of each distribution, computed in accordance with paragraph (c) of this section. The earnings portion that is includible in gross income is the sum of the earnings portion of all distributions made in that year, reduced by an amount that bears the same ratio to the total earnings portion as the amount of qualified disability expenses paid during the year bears to such total distributions during the year. If an excess contribution or excess aggregate contribution is returned within the time period required in § 1.529A-2(g)(4), any net income distributed is includible in the gross income of the contributor(s) in the taxable year in which the excess contribution or excess aggregate contribution was made.

(2) *Additional period.* The designated beneficiary may treat as having been paid during the preceding taxable year qualified disability expenses paid on or before the 60th day immediately following the end of the designated beneficiary's preceding taxable year. Qualified disability expenses treated, pursuant to the rule in the preceding sentence, as having been paid during the designated beneficiary's taxable year immediately prior to the year of their actual payment may not be included in the total qualified disability expenses for the year in which they were paid.

(b) *Additional exclusions from gross income—(1) Rollover.* A rollover as defined in § 1.529A-1(b)(16) is not included in

gross income under paragraph (a) of this section.

(2) *Program-to-program transfers.* A program-to-program transfer as defined in § 1.529A-1(b)(13) is not a distribution and is not included in gross income under paragraph (a) of this section.

(3) *Change of designated beneficiary—*
(i) *In general.* A change of designated beneficiary of an ABLE account is not treated as a distribution for purposes of section 529A, and is not included in gross income under paragraph (a) of this section, if the successor designated beneficiary is—

(A) An eligible individual for the taxable year in which the change is made; and

(B) A member of the family (as defined in § 1.529A-1(b)(12)) of the former designated beneficiary.

(ii) *Other designated beneficiary changes.* In the case of any change of designated beneficiary not described in paragraph (b)(3)(i) of this section, the former designated beneficiary of that ABLE account will be treated as having received a distribution of the fair market value of the assets in that ABLE account on the date on which the change is made to the new designated beneficiary.

(4) *Payments to creditors post-death.* Distributions made after the death of the designated beneficiary in payment of outstanding obligations due for qualified disability expenses, as well as the funeral and burial expenses of the designated beneficiary, are not included in gross income of the designated beneficiary or his or her estate. Included among these obligations is the post-death payment of any part of a claim filed against the deceased designated beneficiary or his or her estate or ABLE account by a State with respect to benefits provided to the designated beneficiary under that State's Medicaid plan.

(c) *Computation of earnings.* The earnings portion of a distribution is equal to the product of the amount of the distribution and the earnings ratio, as defined in § 1.529A-1(b)(7). The balance of the distribution (the amount of the distribution minus the earnings portion of that distribution) is the portion of that distribution that constitutes

the return of investment in the account.

(d) *Additional tax on amounts includible in gross income—*(1) *In general.* If any amount of a distribution from an ABLE account is includible in the gross income of a person for any taxable year under paragraph (a) of this section (includible amount), the income tax imposed on that person by chapter 1 of the Internal Revenue Code will be increased by an amount equal to 10 percent of the includible amount.

(2) *Exceptions—*(i) *Distributions on or after the death of the designated beneficiary.* Paragraph (d)(1) of this section does not apply to any distribution made from the ABLE account on or after the death of the designated beneficiary to the estate of the designated beneficiary, to an heir or legatee of the designated beneficiary, or to a creditor described in paragraph (b)(4) of this section.

(ii) *Returned excess contributions and additional accounts.* Paragraph (d)(1) of this section does not apply to any return made in accordance with § 1.529A-2(g)(4) of an excess contribution as defined in § 1.529A-1(b)(9), an excess compensation contribution as defined in § 1.529A-2(g)(2)(iii)(C), excess aggregate contribution as defined in § 1.529A-1(b)(10), or an additional account as referenced in § 1.529A-2(c)(3)(ii)(A), (B), or (C).

(e) *Tax on excess contributions.* Under section 4973(h), a contribution to an ABLE account in excess of the annual contributions limit described in § 1.529A-2(g)(2) is subject to an excise tax in an amount equal to 6 percent of the excess contribution. However, any the excess contribution or excess compensation contribution as defined in § 1.529A-2(g)(2)(iii)(C) returned in accordance with the provisions of § 1.529A-2(g)(4) is not treated as a contribution.

(f) *Filing requirements.* A qualified ABLE program is not required to file Form 990, "Return of Organization Exempt From Income Tax," Form 1041, "U.S. Income Tax Return for Estates

and Trusts,” or Form 1120, “U.S. Corporation Income Tax Return.” However, a qualified ABLE program is required to file Form 990-T, “Exempt Organization Business Income Tax Return,” if such filing would be required under the rules of §§1.6012-2(e) and 1.6012-3(a)(5) if the ABLE program were an organization described in those sections.

(g) *No inference outside section 529A.* The rules provided in this section concerning the Federal tax treatment of contributions apply only for purposes of the application of section 529A. No inference is intended with respect to the application of any other Code provisions or Federal tax doctrines. For example, a contribution made by an employer to the ABLE account of an employee or an employee’s family member is subject to the rules governing the Federal taxation of compensation.

(h) *Applicability date.* This section applies to calendar years beginning on or after January 1, 2021. See §1.529A-8 for the provision of transition relief.

§ 1.529A-4 Gift, estate, and generation-skipping transfer taxes.

(a) *Contributions—(1) In general.* Each contribution by a person to an ABLE account other than by the designated beneficiary of that account is treated as a completed gift to the designated beneficiary of the account for gift tax purposes. Under the applicable Federal gift tax rules, a contribution from a corporation, partnership, trust, estate, or other entity is treated as a gift by the shareholders, partners, or other beneficial owners in proportion to their respective ownership interests in the entity. See §25.2511-1(c) and (h) of this chapter. A gift to an ABLE account is not treated as either a gift of a future interest in property, or a qualified transfer under section 2503(e). To the extent a contributor’s gifts to the designated beneficiary, including gifts paid into the designated beneficiary’s ABLE account, do not exceed the annual limit in section 2503(b), the contribution is not a taxable gift. This provision, however, does not change any other provision applicable to the transfer. For example, a contribution by the employer of the designated

beneficiary’s parent continues to constitute earned income to the parent and then a gift by the parent to the designated beneficiary. The timely return of an excess contribution or an excess aggregate contribution in accordance with §1.529A-2(g)(4) is not a taxable gift.

(2) *Generation-skipping transfer (GST) tax.* To the extent the contribution into an ABLE account is a nontaxable gift for Federal gift tax purposes, the inclusion ratio for purposes of the GST tax will be zero pursuant to section 2642(c)(1).

(3) *Designated beneficiary as contributor.* A designated beneficiary may make a contribution to fund his or her own ABLE account. That contribution is not a gift.

(b) *Distributions.* No distribution from an ABLE account to or for the benefit of the designated beneficiary is treated as a taxable gift to that designated beneficiary.

(c) *Transfer to another designated beneficiary.* Neither gift tax nor generation-skipping transfer tax applies to the transfer (by rollover, program-to-program transfer, or change of beneficiary) of part or all of an ABLE account to the ABLE account of a different designated beneficiary if the successor designated beneficiary is both an eligible individual and a member of the family (as described in §1.529A-1(b)(12)) of the designated beneficiary. Any other transfer will constitute a gift by the designated beneficiary to the successor designated beneficiary, and the usual gift and GST tax rules will apply.

(d) *Transfer tax on death of designated beneficiary.* Upon the death of the designated beneficiary, the designated beneficiary’s ABLE account is includible in his or her gross estate for estate tax purposes under section 2031. The payment of outstanding qualified disability expenses and the payment of certain claims made by a State under its Medicaid plan may be deductible for estate tax purposes if the requirements of section 2053 are satisfied.

(e) *Applicability date.* This section applies to calendar years beginning on or after January 1, 2021. See §1.529A-8 for the provision of transition relief.