

**DESCRIPTION OF H.R. 647,
THE “ACHIEVING A BETTER LIFE EXPERIENCE ACT
(‘ABLE ACT’) OF 2013”**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on July 31, 2014

Prepared by the Staff
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 647, the “Achieving a Better Life Experience Act (‘ABLE Act’) of 2013” on July 31, 2014. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 647, the “Achieving a Better Life Experience Act (‘ABLE Act’) of 2013”* (JCX-94-14), July 29, 2014. This document can also be found on our website at www.jct.gov.

A. Qualified ABLE Programs

Present Law

Although present law does not contain tax-advantaged savings vehicles specifically targeted to persons with disabilities, present law does contain other tax-advantaged savings vehicles, as well as a trust and estates provision intended for those with disabilities. Below is a description of one such savings vehicle and that trust and estates provision.

Section 529 qualified tuition programs

A qualified tuition program is a program established and maintained by a State or agency or instrumentality thereof, or by one or more eligible educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary (a “prepaid tuition program”). Section 529² provides specified income tax and transfer tax rules for the treatment of accounts and contracts established under qualified tuition programs.³ In the case of a program established and maintained by a State or agency or instrumentality thereof, a qualified tuition program also includes a program under which a person may make contributions to an account that is established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account, provided it satisfies certain specified requirements (a “savings account program”). Under both types of qualified tuition programs, a contributor establishes an account for the benefit of a particular designated beneficiary to provide for that beneficiary’s higher education expenses.

For this purpose, qualified higher education expenses means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution, and expenses for special needs services in the case of a special needs beneficiary that are incurred in connection with such enrollment or attendance. Qualified higher education expenses generally also include room and board for students who are enrolled at least half-time.⁴

² Except where otherwise specified, all section references are to the Internal Revenue Code of 1986, as amended (the “Code”).

³ For purposes of this description, the term “account” is used interchangeably to refer to a prepaid tuition benefit contract or a tuition savings account established pursuant to a qualified tuition program.

⁴ For taxable years 2009 and 2010 only, qualified higher education expenses included the purchase of any computer technology or equipment, or internet access or related services, if such technology or services were to be used by the beneficiary or the beneficiary’s family during any of the years a beneficiary was enrolled at an eligible institution.

Contributions to a qualified tuition program must be made in cash. Section 529 does not impose a specific dollar limit on the amount of contributions, account balances, or prepaid tuition benefits relating to a qualified tuition account; however, the program is required to have adequate safeguards to prevent contributions in excess of amounts necessary to provide for the beneficiary's qualified higher education expenses. Contributions generally are treated as a completed gift eligible for the gift tax annual exclusion. Contributions are not tax deductible for Federal income tax purposes, although they may be deductible for State income tax purposes. Amounts in the account accumulate on a tax-free basis (*i.e.*, income on accounts in the plan is not subject to current income tax).

A qualified tuition program may not permit any contributor to, or designated beneficiary under, the program to direct (directly or indirectly) the investment of any contributions (or earnings thereon), and must provide separate accounting for each designated beneficiary. A qualified tuition program may not allow any interest in an account or contract (or any portion thereof) to be used as security for a loan.

Distributions from a qualified tuition program are excludable from the distributee's gross income to the extent that the total distribution does not exceed the qualified higher education expenses incurred for the beneficiary. If a distribution from a qualified tuition program exceeds the qualified higher education expenses incurred for the beneficiary, the portion of the excess that is treated as earnings generally is subject to income tax and an additional 10-percent tax. Amounts in a qualified tuition program may be rolled over without income tax liability to another qualified tuition program for the same beneficiary or for a member of the family of that beneficiary.

In general, prepaid tuition contracts and tuition savings accounts established under a qualified tuition program involve prepayments or contributions made by one or more individuals for the benefit of a designated beneficiary. Decisions with respect to the contract or account are made by an individual who is not the designated beneficiary. Qualified tuition accounts or contracts generally require the designation of a person (generally referred to as an "account owner")⁵ whom the program administrator (oftentimes a third party administrator retained by the State or by the educational institution that established the program) may look to for decisions, recordkeeping, and reporting with respect to the account established for a designated beneficiary. The person or persons who make the contributions to the account need not be the same person who is regarded as the account owner for purposes of administering the account. Under many qualified tuition programs, the account owner generally has control over the account or contract, including the ability to change designated beneficiaries and to withdraw funds at any time and for any purpose. Thus, in practice, qualified tuition accounts or contracts generally involve a contributor, a designated beneficiary, an account owner (who oftentimes is not the contributor or the designated beneficiary), and an administrator of the account or contract.

⁵ Section 529 refers to contributors and designated beneficiaries, but does not define or otherwise refer to the term "account owner," which is a commonly used term among qualified tuition programs.

Treatment of savings accounts under Federal programs⁶

Means-tested programs typically include income and resources limits designed to properly target benefits to individuals with limited income and other financial resources on which to depend for support. Income is the money an individual receives in a month from wages and other sources while resources are savings and other items of significant value that individuals may own, such as a home or vehicle. Income and resources limits vary from program to program and sometimes from State to State for State-administered programs such as Medicaid. The Supplemental Security Income (“SSI”) program is federally-administered and has a \$2,000 resource limit for individuals. In most States, SSI receipt confers Medicaid eligibility. When SSI recipients have income and resources over the limit, their SSI benefits are suspended but they remain eligible for Medicaid.

Use of a trust to provide for the needs of a disabled person

In general

A specially designed trust, sometimes referred to as special needs trusts or supplemental needs trust, may be used to provide financial assistance to a disabled person (the trust beneficiary) without disqualifying the beneficiary for certain government benefits, such as Medicaid. The trust may be established using the disabled person's own funds (a self-settled trust) or the funds of a third party who does not have a legal obligation to support the trust beneficiary (a third-party trust).

The assets of a carefully drafted third-party trust generally are not counted when determining the beneficiary's eligibility for Medicaid. Assets held in a self-settled trust, however, generally are counted when determining Medicaid eligibility, unless for example the trust is described in section 1917(d)(4)(A) of the Social Security Act. That section describes a trust: (1) containing the assets of an individual who is disabled (within the meaning of section 1614(a)(3) of the Social Security Act); (2) which is established for the benefit of the individual by a parent, grandparent, legal guardian, or a court; and (3) pursuant to the terms of which the State will be reimbursed upon the individual's death for the total amount of medical assistance paid on behalf of the individual under the State's Medicaid plan, up to the amount of the assets remaining in the trust upon the death of the individual.

Income tax deduction for qualified disability trusts

Under present law, a qualified disability trust is allowed a deduction for a personal exemption equal to that of an unmarried individual (for 2014, \$3,900 subject to phaseout if adjusted gross income exceeds \$254,200)).⁷

⁶ This description prepared by the staff of the Ways and Means Human Resources Subcommittee.

⁷ Sec. 642(b)(2)(C). The exemption amount of a trust generally is either \$100 or \$300 (if required to distribute all its income currently).

In addition, amounts distributed to a child who is a beneficiary of a qualified disability trust are treated as earned income for purposes of the "kiddie" tax and thus are not taxed at parents' tax rates.⁸

For these purposes a qualified disability trust means a disability trust described in section 1917(c)(2)(B)(iv) of the Social Security Act⁹ all the beneficiaries of which are determined to be disabled (within the meaning of section 1614(a)(3) of that Act).

Description of Proposal

The proposal provides rules for a new type of tax-favored savings program and related accounts—qualified ABLE programs and ABLE accounts. A qualified ABLE program is a program established and maintained by a State or agency or instrumentality thereof, where, under the provisions of the program, contributions may be made to an account (an “ABLE account”) established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account. Except as described below, ABLE accounts are to be treated in the same manner as accounts established in a qualified tuition program (described above), including the tax treatment of amounts contributed to, accruing in, and distributed from, such accounts.

Distributions from an ABLE account are excludable from the distributee’s gross income to the extent that the total distribution does not exceed the qualified disability expenses of the beneficiary during the taxable year. If a distribution from an ABLE account exceeds the qualified disability expenses of the beneficiary, the portion of the excess that is treated as earnings is subject to income tax and an additional 10-percent tax.

Under the proposal, amounts in ABLE accounts may be rolled over into another ABLE account of the same designated beneficiary, an ABLE account of an individual with a disability who is a family member of the beneficiary, a special needs trust or supplemental needs trust (described above), or a qualified tuition program for the benefit of the designated beneficiary or a member of that designated beneficiary’s family. Such rollovers do not incur tax on the amount distributed provided that the amount distributed from the former ABLE account is rolled over into the new account not later than the 60th day after distribution.

Qualified disability expenses

For these purposes, qualified disability expenses means any expenses which are made for the benefit of an individual with a disability who is a designated beneficiary. These expenses include expenses incurred for education, housing, transportation, employment support, health,

⁸ Sec. 1(g)(4)(C).

⁹ Section 1917(c)(2)(B)(iv) of the Social Security Act describes trusts, including disability trusts described in section 1917(d)(4) of that Act, established solely for the benefit of an individual under 65 years of age who is disabled (within the meaning of section 1614(a)(3) of that Act).

prevention and wellness, miscellaneous expenses (such as financial management and administrative services, legal fees, home improvements maintenance and repairs at a primary residence, or funeral and burial expenses), assistive technology and personal support services, and other expenses which are approved by the Secretary of the Treasury under regulations.

Individual with a disability

For purposes of a qualified ABLE program, an individual with a disability is an individual (regardless of age) who has a medically determinable physical or mental impairment which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or who is blind. In order to be an individual with a disability for purposes of qualified ABLE programs, an individual must be receiving benefits under the SSI program under title XVI of the Social Security Act (or deemed to be receiving such benefits by the State Medicaid agency or whose benefits are suspended other than by reason of misconduct), receiving disability benefits under title II of the Social Security Act, or the individual must file a disability certification with the Secretary of the Treasury for the taxable year. For these purposes, a disability certificate means a certification to the satisfaction of the Secretary of the Treasury by the individual, or the parent or guardian of the individual, certifying that the individual meets the above-described criteria, and which includes a copy of the individual's diagnosis relating to the individual's relevant impairment, signed by a licensed physician.

Transfer to State

Under the proposal, in the event that the designated beneficiary dies or ceases to be disabled, subject to any outstanding payments due for qualified disability expenses incurred by the designated beneficiary, all amounts remaining in the deceased beneficiary's ABLE account not in excess of the amount equal to the total medical assistance paid for such individual after creation of the account under any State Medicaid plan established under title XIX of the Social Security Act shall be distributed to such State upon filing of a claim for payment by such State. Such repaid amounts shall be net of any premiums paid from the account or by or on behalf of the beneficiary to a Medicaid Buy-In program.

Reports to Congress

Under the proposal, the Secretary of the Treasury is required to report annually to Congress on the usage of ABLE accounts. Such a report may include (1) the number of people with an ABLE account; (2) the total amount of contributions to such accounts; (3) the total amount and nature of distributions from such accounts; (4) issues relating to the abuse of such accounts, if any; and (5) the amounts repaid from such accounts to State Medicaid programs.

Treatment of ABLE accounts under Federal programs

Under the proposal, any amounts in an ABLE account, and any distribution for qualified disability expenses, shall be disregarded for purposes of determining eligibility to receive, or the amount of, any assistance or benefit authorized by any Federal means-tested program. However, in the case of the SSI program, a distribution for housing expenses is not disregarded, nor are amounts in an ABLE account in excess of \$100,000. In the case that an individual's ABLE

account balance exceeds \$100,000, such individual's SSI benefits shall not be terminated, but instead shall be suspended until such time as the individual's resources fall below \$100,000. However, such suspension shall not apply for purposes of Medicaid eligibility.

Effective Date

The proposal relating to ABLE programs and ABLE accounts applies to taxable years beginning after the date of enactment. The proposal relating to the disregard of ABLE accounts and distributions from such accounts in the case of certain means-tested Federal programs is effective on the date of enactment.