DESCRIPTION OF THE CHAIRMAN'S MODIFICATION TO THE PROVISIONS OF THE "ENHANCING AMERICAN RETIREMENT NOW (EARN) ACT"

Scheduled for Markup
By the
SENATE COMMITTEE ON FINANCE
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Prepared by the Staff
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JOINT COMMITTEE ON TAXATION

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INTRODUCTION

This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's modification to the provisions of the "Enhancing American Retirement Now (EARN) Act," which is to be marked up by the Senate Committee on Finance on June 22, 2022.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Modification to the Provisions of the "Enhancing American Retirement Now (EARN) Act,"* (JCX-11-22), June 21, 2022. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Provisions Modifying the Proposal in the Chairman's Mark

1. Modification to Item A.9 of the Chairman's Mark relating to the higher catch-up limit to apply at age 60, 61, 62 and 63.

The modification changes the effective date for the higher catch-up limit to apply at age 60, 61, 62 and 63 to be effective for taxable years beginning after December 31, 2024.

2. Modification to Item K.3 of the Chairman's Mark relating to the optional treatment of employer matching and nonelective contributions as Roth contributions

The modification accelerates the effective date for the optional treatment of employer matching and nonelective contributions as Roth contributions to apply to contributions made after December 31, 2022.

B. Additions to the Chairman's Mark

1. Assists savers in recovering unclaimed savings bonds

The proposal amends Title 31 of the United States Code to require the Secretary of the Treasury ("Secretary") to share certain information relating to the registered owners of matured and unredeemed savings bonds with the States to enable the States to locate the owners in accordance with the States' standards for recovery of abandoned property.

2. Modification of age requirement for qualified ABLE programs

Present Law

Qualified ABLE programs

In general

Section 529A[2] provides for a tax-favored savings program intended to benefit disabled individuals, known as a qualified ABLE program.

A qualified ABLE program is a program established and maintained by a State or agency or instrumentality thereof.[3] A qualified ABLE program must meet the following conditions: (1) 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

[2] Except where otherwise provided, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").

[3] Sec. 529A(b)(1).

designated beneficiary of the account;[4] (2) the program must limit a designated beneficiary to one ABLE account;[5] and (3) the program must meet the other requirements of section 529A.

Designated beneficiaries and eligible individuals

A designated beneficiary of an ABLE account is the owner of the ABLE account.[6] A designated beneficiary must generally be an eligible individual at the time the ABLE account is established.[7]

An ABLE account may be transferred to a successor designated beneficiary who is a member of same family as the original designated beneficiary.[8] For this purpose, a member of the family includes the original designated beneficiary's brother, sister, stepbrother, or stepsister.[9] In the case of such a transfer, the successor designated beneficiary must be an eligible individual at the time of transfer.[10]

An eligible individual for a taxable year is an individual who meets one of two requirements for the taxable year:[11]

1. The individual is entitled to benefits based on blindness or disability under title II[12] or Title XVI[13] of the Social Security Act, and such blindness or disability occurred before the date on which the individual attained age 26.[14]

2. A disability certification with respect to such individual is filed with the Secretary for such taxable year.[15]

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[4] Sec. 529A(b)(1)(A).

[5] Sec. 529A(b)(1)(B).

[6] Sec. 529A(e)(3).

[7] *Ibid.*

[8] Sec. 529A(c)(1)(C)(ii).

[9] Sec. 152(d)(2)(B). For purposes of this definition, a rule similar to the adoption rule of section 152(f)(1)(B) applies.

[10] Sec. 529A(c)(1)(C)(ii).

[11] Sec. 529A(e)(1).

[12] 42 U.S.C. secs. 401-433.

[13] 42 U.S.C. secs. 1381-1383f.

[14] Sec. 529A(e)(1)(A).

[15] Sec. 529A(e)(1)(B). Disability certification is defined in section 529A(e)(2).

Tax treatment and additional requirements

A qualified ABLE program is generally exempt from income tax,[16] but it may be subject to the taxes imposed on the unrelated business income of tax-exempt organizations.[17]

Contributions to an ABLE account must be made in cash[18] and are not deductible for Federal income tax purposes. Aggregate contributions to an ABLE account for a taxable year are generally limited to the gift tax annual exclusion.[19] For contributions made before January 1, 2026, there is an increase to the contribution limit for certain designated beneficiaries who are employees.[20] Contributions are treated as a completed gift to the designated beneficiary which is not a future interest in property.[21] Finally, a qualified ABLE program must provide adequate safeguards to ensure that ABLE account contributions do not exceed the limit imposed on accounts under the section 529 program of the State maintaining the qualified ABLE program.[22]

For taxable years beginning before January 1, 2026, a designated beneficiary who makes contributions to the beneficiary's ABLE account may be eligible for the credit under section 25B, the "saver's credit."[23]

Distributions (including earnings) from an ABLE account are not includible in gross income if the distributions do not exceed the designated beneficiary's qualified disability expenses.[24] Qualified disability expenses are any expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the

[16] Sec. 529A(a).

[17] See sec. 511.

[18] Sec. 529A(b)(2)(A).

[19] See sec. 529A(b)(2)(B)(i). The amount of the exclusion is $16,000 for 2022. See sec. 2503(b); Rev. Proc. 2021-45, 2021-48 I.R.B. 764, November 29, 2021. This limitation does not apply to rollover contributions from another ABLE account or changes to the designated beneficiary. Sec. 529A(b)(2)(B).

[20] Sec. 529A(b)(2)(B)(ii), (b)(7).

[21] Sec. 529A(c)(2)(A)(i). Contributions are not treated as qualified transfers under section 2503(e). Sec. 529(c)(2)(A)(ii).

[22] Sec. 529A(b)(6).

[23] Sec. 25B(d)(1)(D).

[24] Sec. 529A(c)(1)(B)(i).

designated beneficiary.[25] If distributions are not used to pay qualified disability expenses, then the portion of the distribution based on earnings must generally be included in gross income.[26]

Distributions includible in gross income are also generally subject to an additional 10 percent tax.[27] Distributions from an ABLE account are not treated as a taxable gift.[28]

A qualified ABLE program must provide for separate accounting for each designated beneficiary.[29] The program must provide that any designated beneficiary may, directly or indirectly, direct the investment of any contributions to the program, or earnings thereon, not more than two times in any calendar year.[30] The program must not allow any interest in the program or any portion thereof to be used as security for a loan.[31] Qualified ABLE programs are subject to reporting requirements.[32]

Description of Proposal

The proposal modifies the definition of eligible individual for purposes of a qualified ABLE program. Under the proposal, an individual may be an eligible individual if entitled to benefits based on blindness or disability, and such blindness or disability occurred before the date on which the individual attains the age of 46 (increased from 26).

Effective Date

The proposal applies to taxable years beginning after December 31, 2025.

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[25] Sec. 529A(e)(5). Enumerated qualified disability expenses include: education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary under regulations and consistent with the purposes of this section. *Id.*

[26] Treas. Reg. sec. 1.529A-3. Amounts that are rolled over to another ABLE account within 60 days are not includible in gross income.

[27] Sec. 529A(c)(3).

[28] Sec. 529A(c)(2)(B).

[29] Sec. 529A(b)(3).

[30] Sec. 529A(b)(4).

[31] Sec. 529A(b)(5).

[32] See sec. 529A(d).