



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: May 5, 2021

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Terri Hancharick – Chairperson *TH*
State Council for Persons with Disabilities

RE: HB 145 (An Act to Amend Title 30 of the Delaware Code Relating to
ABLE Act Accounts)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 145, which will amend Title 30 of the Delaware Code and create two (2) new personal income tax deductions. One is for the 529 College Savings Plan and the other is for the Achieving a Better Life Experience Act of 2014 (ABLE or 529A account) Program. If the bill becomes law, it would take effect on the latter of one of the following events: “The Division of Revenue has implemented the personal tax release of the Integrated Revenue Administration System” or the Secretary of Finance provides a written notice to the Registrar of Regulations that the Division of Revenue has implemented the personal tax release of the Integrated Revenue Administration System. 30 *Del. C.* §1106 Section 2. SCPD strongly endorses the bill and has the following observations.

By way of background, the 529 plan is named after section 529 of the Internal Revenue Code (IRC) and is designed to encourage saving for future education costs. 26 *U.S.C.* §529. It allows monies in the plan to accumulate earnings on a

tax-free basis and distributions are not subject to federal taxation when used for qualified higher education expenses. Simply put, the 529 plan is an investment account that offers tax-free earnings growth and tax-free withdrawals when the funds are used to pay for qualified education expenses. For colleges and universities, these qualified education expenses include tuition, fees, books, supplies, computers, and in some cases room and board. Also, withdrawals of up to \$10,000 per year are permitted to pay for tuition at private, public, and religious schools from kindergarten through grade 12. Student loans, both private and federal, can also be paid with distributions from the account.

In Delaware, the 529 plan is known as the Delaware College Investment Plan and is administered by the Plans Management Board. 14 *Del. C.* §§ 3483-3491. Contributions to a 529 plan, which consist of after-tax monies, are presently not deductible from state income taxes. In addition to Delaware, six (6) states that have a state income tax do not allow a deduction for contributions.¹ More than thirty (30) states and the District of Columbia offer either a state income tax deduction or tax credit.² Usually, the taxpayer must contribute to their home state's plan to qualify for the deduction.³

This bill will allow a deduction from taxable income of up to \$1,000.00 for contributions to the Delaware 529 plan. While it is easy for Councils to support this bill, it would be better if Delaware would offer a state income tax deduction for contributions to any 529 plan (whether Delaware's plan or another state's plan). Further, it would also be better and encourage saving if the deduction were higher; for example, up to \$5000.00 for individual taxpayers and up to \$10,000.00 for married filing jointly. SCPD is advocating for both of these recommended changes.

ABLE accounts were created by the Stephen J. Beck, Jr., Achieving a Better Life Experience Act of 2014, which was signed into law by President Obama on December 19, 2014. Pub. L. No. 113-295, 128 Stat. 4056 et seq. The act amends the IRC. 26 *U.S.C.* §529A. The purpose of the act was to increase the financial independence and improve the quality of life for persons with disabilities while

¹ California, Hawaii, Kentucky, Maine, New Jersey, and North Carolina. *How Much Is Your State's 529 Plan Tax Deduction Really Worth* by Matthew Toner, March 3, 2021; <https://www.savingforcollege.com/article/how-much-is-your-state-s-529-plan-tax-deduction-really-worth>

² *Id.*

³ Arizona, Arkansas, Kansas, Minnesota, Missouri, Montana, and Pennsylvania provide for a deduction in state taxes for a contribution to any 529 plan. *Id.*

easing the financial hardships faced by these individuals and their families. ABLE accounts are tax-advantaged saving accounts for eligible persons with disabilities (called beneficiaries). Although the beneficiary is the owner of the account, contributions can be made by anyone (including the account beneficiary, family, or friends) using after-tax monies. While contributions are not tax deductible for federal income tax, monies in the plan can accumulate earnings on a tax-free basis and distributions are not subject to federal taxation when used for qualified disability related expenses (QDE). QDEs are broad and expansive, and 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.” 26 U.S.C. §529A (e)(5).

In Delaware, the ABLE plan is known as the Delaware Achieving a Better Life Experience Saving Accounts and is administered by the Plans Management Board. 16 Del. C. §§ 9601A-9608A. Contributions to an ABLE plan, which consist of after-tax monies, are presently not deductible from state income taxes.

This bill will allow a deduction from taxable income of up to \$5,000.00 for contributions to the Delaware ABLE plan. While it is easy for Councils to support this bill, again, similar to the 529 plan, it would be better if Delaware would offer a state income tax deduction for contributions to any ABLE plan (whether Delaware’s plan or another state’s plan). There are over forty-four (44) ABLE plans nationwide and most allows individuals to enroll regardless of where they reside.⁴ Further, it would also be better and encourage saving if the deduction was higher; for example, up to \$7,500.00 for individual taxpayers and up to \$10,000.00 for married filing jointly. SCPD recommends the legislation be amended to include these two provisions.

This bill is a laudable attempt to encourage saving for qualified education expenses through a 529 plan and saving for QDEs for persons with disabilities through an ABLE account. SCPD endorses the proposed legislation but recommends even broader, more impactful and generous coverage for plans, accounts, and deductible limits.

⁴ ABLE National Resource Center; anrc@ablenrc.org

Thank you for your consideration and please contact SCPD if you have any questions or comments regarding our position and observations on the proposed legislation.

cc: Ms. Laura Waterland, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 145 ABLE accounts 5-5-21