



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: April 26, 2021

TO: The Honorable Members of the Delaware General Assembly

FROM: Ann C. Fisher, Chairperson
GACEC

RE: House Bill No. 145 Personal Income Tax Deductions for 529 College Savings and ABLÉ Savings Plans

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 145, which will create two new personal income tax deductions; one for the 529 College Savings Plan and one for the Achieving a Better Life Experience Act of 2014 (ABLE or 529A account) Program. Council endorses this proposed legislation as written as it is a praiseworthy attempt to encourage saving for qualified education expense and for persons with disabilities through an ABLE account. Council would only suggest even broader, more impactful and generous coverage for plans, accounts and deductible limits.

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 states that have a state income tax do not allow a deduction for contributions.

More than 30 states and the District of Columbia offer either a state income tax deduction or tax credit. Usually, the taxpayer must contribute to their home state's plan to qualify for the deduction.

This bill will allow a deduction from taxable income of up to \$1,000.00 for contributions to the Delaware 529 plan. As mentioned, Council supports this bill; however, it would be better if Delaware would offer a state income tax deduction for contributions to any 529 plan (whether a Delaware plan or a plan from another state). 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.

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. The purpose of the Act was to increase the financial independence and improve the quality of life for persons with disabilities while 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. As mentioned earlier, while it is easy for Council to support this bill, similar to the 529 plan, it would be better if Delaware would offer a state income tax deduction for contributions to any ABLE plan, in Delaware or another state. There are over 44 ABLE plans nationwide and most allows individuals to enroll regardless of where they reside. 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.

Thank you for your time and consideration of our endorsement of this proposed legislation and our recommendations. Please feel free to contact me or Wendy Strauss at the GACEC office should you have any questions.