

SUMMARY OF 529 AND ABLE CHANGES IN THE YEAR-END TAX AND SPENDING LEGISLATION (HR 2029)¹

ISSUE	CURRENT LAW	HR 2029
529 PLAN COMPUTER TECHNOLOGY AND EQUIPMENT	<p>529 plan distributions used to pay “qualified higher education expenses” are not included in the designated beneficiary’s income.</p> <p>In 2009 and 2010, “qualified higher education expenses” were defined to include certain expenses for the purchase of computer technology or equipment, and Internet access and related services. Those provisions expired after 2010.</p>	<p>The provisions that expired after 2010 would be reinstated. As a result, “qualified higher education expenses” under section 529 will again include expenses for the purchase of: (1) computers and certain peripheral equipment under the control of the computer (e.g. printers); (2) Internet access and related services; and (3) computer software.</p> <p>Purchases of such computer technology, equipment, and services are only qualified if they are to be used primarily by the beneficiary during any of the years the beneficiary is enrolled at an eligible education institution. Expenses for computer software that is designed for sports, games, or hobbies is generally excluded, unless the software is predominantly educational in nature.</p> <p><i>Effective Date:</i> Expenses incurred in taxable years after 12/31/2014.</p> <p><i>Revenue:</i> -\$51 million over 10 years.</p>
529 PLAN RECONTRIBUTION OF REFUNDS	<p>Distributions from 529 plans can be rolled over within 60 days. However, if a student makes a 529 plan withdrawal (e.g. to pay tuition), but later receives a refund from an eligible education institution (e.g., due to illness that requires withdrawal from college), there is no ability to recontribute the refunded amount to the 529 plan.</p>	<p>When a 529 plan beneficiary receives a refund of amounts paid for qualified higher education expenses from an eligible educational institution, the amount of the distribution that is recontributed to a 529 plan for which he or she is the beneficiary will not be included in the gross income of the beneficiary. A recontribution must be made no more than 60 days after the date of the refund, and the recontributed amount cannot exceed the amount of the refund.</p> <p><i>Effective Date:</i> Refunds after 12/31/2014. A special transition rule provides that refunds received after 12/31/14, and before the date of the enactment, may be recontributed not later than 60 days after the date of enactment.</p> <p><i>Revenue:</i> Included in estimate of the computer technology change above.</p>

¹ H.R. 2029 passed the House and Senate on December 18, 2016. The President has announced that he will sign the legislation. A Joint Committee on Taxation Description (JCX-144-15) of the tax provisions contained in that legislation is available [here](#).

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<p>529 PLAN DISTRIBUTION AGGREGATION REQUIREMENTS</p>	<p>Distributions from a 529 account are generally taxed under the rules of Code section 72, which require that the pro rata “earnings portion” of a nonqualified distribution be included in income.</p> <p>For example, if total contributions to a 529 plan account were \$8,000 and the account value has since grown to \$10,000, then \$2,000 or 20% of the account value represents earnings. If a \$1,000 nonqualified distribution is made from that account, the 20% (or \$200) that represents the earnings portion of that distribution, would be included in the recipient’s income and subject to ordinary income tax (and potentially a 10% penalty tax).</p> <p>In certain cases, however, one 529 plan account within a 529 program must be aggregated with other 529 plan accounts within that program in determining the pro rata earnings portion of any qualified or non-qualified distribution.</p>	<p>The proposal would eliminate the aggregation of multiple 529 accounts for purposes of computing the earnings portion of a distribution. Instead, the earnings portion of a distribution will be computed by each 529 program on an account-by-account basis, even where multiple accounts with the same account owner and same beneficiary are held by the same program.</p> <p><i>Effective Date:</i> Distributions after 12/31/2014.</p> <p><i>Revenue:</i> Included in estimate of the computer technology change above.</p> <p><i>[Note that the changes will apply to distributions already made during 2015 and thus could change an individual’s tax treatment retroactively.]</i></p>

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<p>ABLE PROGRAM STATE OF RESIDENCE LIMITATION REPEALED</p>	<p>A qualified ABLE program must allow for the establishment of ABLE accounts only for a designated beneficiary who is either a resident of the State maintaining such ABLE program or a resident of a State that has not established an ABLE program (a “contracting State”) which has entered into a contract with such State to provide the contracting State’s residents with access to the State’s ABLE program.</p>	<p>The requirement that ABLE accounts may be established only in the State of residence of the ABLE designated beneficiary or a contracting state is eliminated. In addition, related ABLE program reporting requirements with respect to the State of residence are deleted.</p> <p><i>Effective Date:</i> Taxable years beginning after 12/31/2014.</p> <p><i>Revenue:</i> -\$103 million over 10 years.</p> <p><i>[Note: the Joint Committee on Taxation Description (JCX-144-15) of the provisions includes the following statement:</i></p> <p><i>[T]he provision allows for amounts from qualified tuition programs (also known as 529 accounts) to be rolled over to an ABLE account without penalty. Such rolled-over amounts count towards the overall limitation on amounts that can be contributed to an ABLE account within a taxable year. Any amount rolled over that is in excess of this limitation shall be includible in the gross income of the distributee.</i></p> <p><i>We do not, however, believe that rollover change is included in the statutory language.]</i></p>