a domestic entity that are disregarded) will apply to acquisitions completed on or after November 19, 2015. In addition, except as provided in this section 5, the regulations described in: (i) section 3.01(b) (which provides that inversion gain includes certain income or gain recognized by an expatriated entity from an indirect transfer or license of property and provides aggregate treatment for certain foreign partnerships for purposes of determining inversion gain) will apply to transfers or licenses of property occurring on or after November 19, 2015, but only if the inversion transaction is completed on or after September 22, 2014; (ii) section 3.02(b) (which requires the recognition of realized stock gain in certain specified exchanges) will apply to specified exchanges occurring on or after November 19, 2015, but only if the inversion transaction is completed on or after September 22, 2014; and (iii) section 4.03 (which clarifies certain exceptions to the rules announced in Notice 2014–52 regarding transactions to de-control or significantly dilute CFCs) will apply to specified transactions and specified exchanges completed on or after November 19, 2015, but only if the inversion transaction is completed on or after September 22, 2014.

Taxpayers may elect to apply the rules in sections 4.01(b) of this notice (which modifies the definition of foreign group nonqualified property in Notice 2014–52) and 4.02(b) of this notice (which provides a de minimis exception to the rules announced in Notice 2014–52 regarding certain distributions of a domestic entity that are disregarded) to acquisitions completed before November 19, 2015.

No inference is intended regarding the treatment under current law of the transactions described in this notice. The IRS may challenge such transactions under applicable Code provisions or judicial doctrines.

SECTION 6. REQUEST FOR COMMENTS AND CONTACT INFORMATION

The Treasury Department and the IRS expect to issue additional guidance to further limit (i) inversion transactions that are contrary to the purposes of section 7874 and (ii) the benefits of post-inversion tax avoidance transactions. In particular, as described in section 5 of Notice 2014–52, the Treasury Department and the IRS continue to consider guidance to address strategies that avoid U.S. tax on U.S. operations by shifting or "stripping" U.S.-source earnings to lower-tax jurisdictions, including through intercompany debt. Accordingly, the Treasury Department and the IRS reiterate the requests for comments made in Notice 2014–52.

Written comments may be submitted to the Office of Associate Chief Counsel (International), Attention: David A. Levine and Shane M. McCarrick, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to notice.comments@irscounsel.treas.gov. Comments will be available for public inspection and copying.

The principal authors of this notice are Mr. Levine and Mr. McCarrick of the Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in its development. For further information regarding this notice, contact Mr. Levine or Mr. McCarrick at (202) 317-6934 (not a toll-free number).

Section 529A INTERIM GUIDANCE REGARDING CERTAIN PROVISIONS OF PROPOSED REGULATIONS RELATING TO QUALIFIED ABLE PROGRAMS

Notice 2015–81

I. PURPOSE AND OVERVIEW

This notice advises how the Treasury Department and the Internal Revenue Service (IRS) intend to respond to comments by revising three provisions of the proposed regulations under § 529A of the Internal Revenue Code when those regulations are finalized. Specifically, commenters noted that the following three requirements for qualified Achieving a Better Life Experience (ABLE) programs in the proposed regulations would create significant barriers to the establishment of such programs: (1) the requirement to establish safeguards to categorize distributions from ABLE accounts, (2) the requirement to request the taxpayer identification number (TIN) of each contributor to an ABLE account, and (3) the requirements for disability certifications, and in particular the requirement to process disability certifications with signed physicians' diagnoses.

II. BACKGROUND

The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) was enacted on December 19, 2014, as part of The Tax Increase Prevention Act of 2014 (P.L. 113–295). The ABLE Act added § 529A to the Code. Section 529A allows a State (or State agency or instrumentality) to establish and maintain a tax-advantaged savings program under which contributions may be made to an account (an ABLE account) for the purpose of providing for the qualified disability expenses of the designated beneficiary of the account. The designated beneficiary generally must be a resident of that State who has a disability that commenced before the designated beneficiary's 26th birthday and who meets the statutory eligibility requirements. In general, neither the ABLE account nor distributions from the account are treated as income or resources of a designated beneficiary who is an eligible individual in determining that designated beneficiary's qualification for federal benefits.[1] The undistributed income earned in an ABLE account is not taxable and distributions made from an ABLE account for qualified disability expenses of the designated beneficiary are not included in the designated beneficiary's gross income for federal income tax purposes. However, the earnings portion of distributions from an ABLE

[1]While section 103 of the ABLE Act (not a tax provision) generally provides that a designated beneficiary's ABLE account is disregarded in determining the designated beneficiary's eligibility under certain federal means-tested programs, there are two exceptions. In the case of the Supplemental Security Income program under title XVI of the Social Security Act, distributions for certain housing expenses are not disregarded and the balance (including earnings) in an ABLE account is considered a resource of the designated beneficiary to the extent that balance exceeds $100,000. Section 103 also addresses the impact of an excess balance on the designated beneficiary's eligibility under the Supplemental Security Income program and Medicaid.

account in excess of qualified disability expenses generally is includible in the gross income of the designated beneficiary.

The Treasury Department and the IRS released proposed regulations concerning qualified ABLE programs on June 19, 2015, which were published in the Federal Register on June 22, 2015 (80 Fed. Reg. 35602). Although the comments received to date generally have been positive regarding most aspects of the proposed regulations, commenters raised concerns that the provisions in the proposed regulations requiring a qualified ABLE program to establish safeguards to categorize distributions, collect taxpayer identification numbers (TINs) from contributors, and process disability certifications with signed physicians' diagnoses, if unchanged in the final regulations, would impose substantial administrative and cost burdens on the States administering qualified ABLE programs. States indicated that these burdens were sufficiently significant that they were encountering substantial hurdles in moving forward with creating their ABLE programs because they did not know if the final regulations would resolve their concerns regarding these requirements. Several commenters requested that the Treasury Department and the IRS issue interim guidance on these three requirements in order to facilitate the establishment of qualified ABLE programs by the States.

III. DISTRIBUTIONS FOR QUALIFIED DISABILITY EXPENSES

Consistent with § 529A(e)(5), § 1.529A–1(b)(16) of the proposed regulations defines the term "qualified disability expenses" as expenses incurred that relate to the blindness or disability of the designated beneficiary of an ABLE account and that are for the benefit of the designated beneficiary in maintaining or improving his or her health, independence, or quality of life. As stated in the preamble to the proposed regulations, the Treasury Department and the IRS recognize that this term should be broadly construed to permit the inclusion of basic living expenses and should not be limited to expenses for items for which there is a medical necessity or which provide no benefit to others in addition to the benefit to the eligible individual. Section 1.529A–2(h)(1) of the proposed regulations provides that a qualified ABLE program must establish safeguards to allow the ABLE program to distinguish between distributions used to pay for qualified disability expenses and other distributions, and to permit the identification of amounts distributed for housing expenses as defined for purposes of the Supplemental Security Income program of the Social Security Administration.

Commenters noted that, because the identification of housing expenses is relevant only for purposes of determining eligibility for certain Social Security benefits and has no relevance for federal income tax purposes, any reference to classifying distributions as housing expenses should be eliminated from the regulations. The Treasury Department and the IRS agree, and the final regulations will not require a qualified ABLE program to identify or record whether distributions were made for housing expenses.

Commenters also expressed concerns regarding the requirement that a qualified ABLE program establish safeguards to distinguish between distributions for qualified disability expenses and other distributions. Commenters emphasized that requiring a qualified ABLE program to determine how a distribution will be used prior to making the distribution would be unduly burdensome for both the program and the designated beneficiary and explained that the particular use of a distribution might not be known when the distribution is made. The commenters recommended that any requirement or suggestion that qualified ABLE programs will have to classify distributions should be eliminated from the regulations.

Consistent with the reporting requirements in § 1.529A–6 of the proposed regulations, which require that qualified ABLE programs report only aggregate distributions and distinguish such distributions as basis, earnings, or returned contributions, the Treasury Department and the IRS confirm that the final regulations will not require, for any federal income tax purpose, a qualified ABLE program to establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions. The designated beneficiary, however, will have to categorize distributions in order to properly determine the designated beneficiary's federal income tax obligations.

IV. REPORTING REQUIREMENTS REGARDING CONTRIBUTORS

Consistent with §§ 529A(b)(2)(B) and (b)(6), §§ 1.529A–2(g)(2) and (3) of the proposed regulations provide that a qualified ABLE program must provide that no contribution to an ABLE account will be accepted to the extent that such contribution exceeds certain stated limits. Specifically, the total contributions (whether from the designated beneficiary or one or more other persons) to the designated beneficiary's ABLE account made during the designated beneficiary's taxable year must not exceed the amount in effect under § 2503(b) (the annual gift tax exclusion amount) for the calendar year in which the designated beneficiary's taxable year begins. In addition, the aggregate amount of contributions to an ABLE account must not exceed the limit established by the State under § 529(b)(6) (the limit on contributions to a qualified tuition program). If an excess contribution under § 1.529A–2(g)(2) or an excess aggregate contribution under § 1.529A–2(g)(3) is allocated to or deposited into the ABLE account of a designated beneficiary, § 1.529A–2(g)(4) of the proposed regulations requires the qualified ABLE program to return that excess contribution or excess aggregate contribution (with any net income attributable to it, as determined under the applicable rules) to the person who made that contribution. Because the income earned on that excess contribution or excess aggregate contribution (if any) will be taxable to that contributor, § 1.529A–6(d) of the proposed regulations requires a qualified ABLE program to request the TIN for each contributor to the ABLE account at the time a contribution is made if the program does not already have a record of that person's correct TIN.

One commenter suggested that excess contributions instead could be required to be paid to the designated beneficiary so there would be no need for a qualified ABLE program to procure a contributor's TIN. The Treasury Department and the IRS do not agree with this suggestion be-

cause the designated beneficiary's receipt of such an excess amount could put the designated beneficiary at risk of being disqualified for his or her federal benefits that are income or resource based, a result that would be inconsistent with the purposes of the statute.

Commenters are concerned about the substantial burdens imposed on qualified ABLE programs if they must request the TIN of every contributor (if the program does not already have a record of that person's correct TIN) at the time a contribution is made. Commenters explained that it is likely that contributions will come from multiple sources and will be made in a variety of ways (payroll deduction, check, debit, automated clearing house (ACH) transfers, or others), making it difficult as a practical matter to obtain the TIN of the contributor. Commenters also stated that some contributors, especially those making small gifts, may be reluctant to make a contribution if a TIN were required to be provided. Further, several commenters indicated that systems would be used that would ensure that qualified ABLE programs do not accept contributions that would exceed applicable limits.

As an alternative, commenters suggested that a contributor's TIN be required to be collected only by those qualified ABLE programs that do not have systems in place to prevent the acceptance and/or deposit to the ABLE account of a particular designated beneficiary of an excess contribution or excess aggregate contribution. The commenters expect that most qualified ABLE programs will adopt the infrastructure currently utilized by State § 529 qualified tuition programs either to reject such excess contributions or to escrow and immediately refund the excess contributions. Other commenters recommend that the obligation to request a contributor's TIN should only arise in the unlikely circumstance in which an excess contribution or excess aggregate contribution has been deposited into an individual's ABLE account and has accrued earnings or losses. One commenter suggested eliminating the TIN requirement altogether while another suggested the collection of TINs should be required only in the case of contributions over a specified dollar amount.

In consideration of these comments, the Treasury Department and the IRS believe that a modification to § 1.529A–6(d) of the proposed regulations is appropriate. Consequently, it is anticipated that the final regulations will eliminate the requirement to request the TIN of each contributor at the time a contribution is made (if the program does not already have a record of that person's correct TIN) if the qualified ABLE program has a system in place to identify and reject excess contributions and excess aggregate contributions before they are deposited into an ABLE account. However, in the event an excess contribution or excess aggregate contribution is deposited into an ABLE account, the qualified ABLE program will be required to request the TIN of the contributor making the excess contribution or excess aggregate contribution.

V. ELIGIBLE INDIVIDUAL, FILING OF DISABILITY CERTIFICATION AND PHYSICIAN DIAGNOSIS

Consistent with § 529A(e)(1), § 1.529A–2(d)(1) of the proposed regulations provides that a qualified ABLE program must specify the documentation that an individual must furnish, both at the time an ABLE account is established for the designated beneficiary of that account and thereafter, to ensure that the designated beneficiary of the ABLE account is, and continues to be, an eligible individual. One way to qualify as an eligible individual under § 529A(e)(1) is to have a disability certification filed with the Secretary of the Treasury. Under the proposed regulations, a disability certification is deemed to be filed with the Secretary once the qualified ABLE program has received the disability certification or a disability certification is deemed to have been received under the rules of the qualified ABLE program, which information the qualified ABLE program must file with the IRS in accordance with the filing requirements under § 1.529A–5(c)(2)(iv). Section 529A(e)(2)(A) defines a disability certification as "a certification to the satisfaction of the Secretary" by the individual or the parent or guardian of the individual that (i) certifies that the individual meets the disability standard and (ii) includes a copy of the individual's diagnosis signed by a licensed physician. Section 1.529A–2(e) defines the disability certification to include the required certifications and a copy of the signed diagnosis, but also provides for certain conditions to be deemed to meet the requirements of filing a disability certification.

States and potential qualified ABLE program administrators expressed concerns about their responsibilities and potential liabilities for receiving and safeguarding medical information contained in a signed diagnosis, particularly when they do not anticipate having any expertise or ability to evaluate that medical information. The commenters emphasized that qualified ABLE programs would incur unmanageable costs and burdens in trying to comply with applicable laws imposing system and other requirements on those in possession of medical records, as well as in implementing systems to receive and store paper documentation. The commenters also expressed the concern that, if these costs and burdens cannot be minimized, some States may not proceed with the implementation of qualified ABLE programs for their residents. The commenters recommended that a qualified ABLE program be permitted to open an ABLE account on the basis of a certification by the person opening the ABLE account, signed under penalties of perjury, that the individual has a condition that meets all of the required elements to qualify as an eligible individual and that a diagnosis signed by a physician regarding the relevant impairment or impairments has been obtained.

After consideration of these comments, the Treasury Department and the IRS have concluded that a certification under penalties of perjury that the individual (or the individual's agent under a power of attorney or a parent or legal guardian of the individual) has the signed physician's diagnosis, and that the signed diagnosis will be retained and provided to the ABLE program or the IRS upon request, is adequate to satisfy the Secretary with regard to the requirements of §§ 529A(e)(1)(B) and 529A(e)(2)(A) pertaining to the filing of a disability certification. Accordingly, the Treasury Department and the IRS intend, in the final regulations, to permit such a certification of eligibility for purposes of satisfying the requirement for filing a disability certification. The Trea-

sury Department and the IRS anticipate that the final regulations will contain further details with regard to the information required to be included in the certification, annual recertifications, and annual reporting. Based on the comments received, the required information is likely to include the statutory basis for the individual's eligibility (blindness or disability under title II or XVI of the Social Security Act, or a disability certification); confirmation that the blindness or disability occurred before age 26; the existence of an impairment that satisfies the required level of marked and severe functional limitations, if necessary for eligibility; and, if necessary for eligibility, confirmation of receipt of a written diagnosis relating to the disability, the name and address of the diagnosing physician, the date of the diagnosis, and identification of the applicable diagnostic code from those listed on Form 5498–QA. The final regulations may also provide that the certification may include information provided by the physician as to the categorization of the disability that could determine, under the particular State's program, the appropriate frequency of required recertifications.

VI. RELIANCE

The Treasury Department and the IRS intend that the final regulations, when issued, will address the three identified issues in the manner indicated in this notice. Pending the issuance of final regulations, taxpayers may rely on the guidance contained in this notice. In particular, if a certification used to open a qualified ABLE account before the issuance of final regulations is consistent with the discussion in section V of this notice but does not contain other information required by the final regulations, the account will not lose its qualification as an ABLE account solely for that reason. To the extent that additional information is required by the final regulations, the final regulations will provide a transition period to facilitate compliance with the additional requirements.

VII. DRAFTING INFORMATION

The principal authors of this notice are Terri Harris and Sean Barnett, Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Harris at (202) 317-4541, or Mr. Barnett at (202) 317-5800 (not toll-free numbers).