



State of Wisconsin

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RICHARD CHAMPAGNE
CHIEF

January 26, 2016

MEMORANDUM

To: Representative Macco

From: Marc E. Shovers, Senior Attorney, (608) 266-0129

Subject: Technical Memorandum to **2015 AB 731** (LRB-4270/1) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

January 22, 2016

TO: Marc Shovers
Legislative Reference Bureau

FROM: Mike Wagner
Department of Revenue

SUBJECT: Technical Memorandum on Assembly Bill 731: Relating to Repealing the Authority to Create ABLE Accounts in this State and Creating Tax Benefits for Contributions to ABLE Accounts in Other States

The Department has the following concerns related to the bill:

- The addition to income prescribed by s. 71.05(6)(a)27 is not necessary and should be repealed as Wisconsin follows s. 529A(c)(1) of the Internal Revenue Code (IRC) which provides the earnings from an ABLE account are included in the income of the distributee in the taxable year a distribution occurs. Exceptions are provided for:
 - Distributions for qualified disability expenses of the designated beneficiary;
 - Rollovers from one account to another;
 - A change in the designated beneficiary of an account; and
 - The return of a contribution by the due date (including extensions) of the return for the taxable year in which the contribution is made.
- Currently, Wisconsin only taxes the earnings portion of nonqualified withdrawals from an account while allowing a deduction for contributions to an account. This could be an incentive for a contribution to an account in one taxable year and a nonqualified withdrawal in the following taxable year. DOR suggests recreating 71.05(6)(a)27 to read:

Except as provided in subd. 28., to the extent that an amount is not included in federal adjusted gross income, any amount withdrawn from a qualified ABLE program account described under section 529A(b)(1) of the Internal Revenue Code for any reason other than the payment of qualified disability expenses, as defined in section 529A(e)(5) of the Internal Revenue Code for the account beneficiary.
- There are several issues with the subtraction under s. 71.05(6)(b)52:
 - Under the IRC accrued earnings on an account are not subject to tax if redeposited; allowing a subtraction for accrued earnings provides a double benefit.
 - The subtraction could be interpreted to apply to a deposit that is a rollover contribution or a transfer because of a change in beneficiary.
 - It is not clear when a contribution must be made in order to be eligible for a subtraction.

DOR suggests amending s. 71.05(6)(b)52., to read:

Subject to the limits under ~~s. 16.643 (3) (c) 1. and 2.~~ section 529A (b) (2) of the Internal Revenue Code, any amount that is deposited by an account owner or any other person for the taxable year in which the contribution is made into an ABLE account described under ~~s. 16.643~~ section 529A (b) (1) of the Internal Revenue Code, and ~~any interest, dividends, or other gain that accrues in the account if the interest, dividends, or other gain is redeposited into the account.~~ The subtraction under this subdivision does not apply to rollover contributions or transfers.

If you have any questions regarding this technical memorandum, please contact Brad Caruth at (608) 261-8984 or bradley.caruth@revenue.wi.gov.

cc: Representative Macco