

SENATE BILL No. 559

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-3-3.

Synopsis: ABLE account tax credit. Creates a stand-alone credit for contributions to Indiana ABLE accounts. Provides that a taxpayer is entitled to a credit against adjusted gross income tax equal to the least of: (1) 20% of the amount of the total contributions made by the taxpayer to an account or accounts of an Indiana ABLE 529A savings plan during the taxable year; (2) \$1,000; or (3) the amount of the taxpayer's adjusted gross income tax for the taxable year, reduced by the sum of all allowable credits. Provides that a taxpayer is not entitled to a carryback, carryover, or refund of an unused credit. Provides that a taxpayer may not sell, assign, convey, or otherwise transfer the tax credit. Provides that an account owner of an Indiana ABLE 529A savings plan must repay all or a part of the credit in a taxable year in which any nonqualified withdrawal is made. Provides that a rollover of assets or transfer of assets to an Indiana ABLE 529A account is a qualified withdrawal from a college choice 529 education savings plan.

Effective: January 1, 2020.

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January 14, 2019, read first time and referred to Committee on Appropriations.



First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 559

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-3-3-12, AS AMENDED BY P.L.214-2018(ss),
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2020]: Sec. 12. (a) As used in this section, "account" has
4 the meaning set forth in IC 21-9-2-2.
5 (b) As used in this section, "account beneficiary" has the meaning
6 set forth in IC 21-9-2-3.
7 (c) As used in this section, "account owner" has the meaning set
8 forth in IC 21-9-2-4.
9 (d) As used in this section, "college choice 529 education savings
10 plan" refers to a college choice 529 plan established under IC 21-9.
11 (e) As used in this section, "contribution" means the amount of
12 money directly provided to a college choice 529 education savings plan
13 account by a taxpayer. A contribution does not include any of the
14 following:
15 (1) Money credited to an account as a result of bonus points or
16 other forms of consideration earned by the taxpayer that result in
17 a transfer of money to the account.



- 1 (2) Money transferred from any other qualified tuition program
 2 under Section 529 of the Internal Revenue Code or from any other
 3 similar plan.
- 4 (3) Money that is credited to an account and that will be
 5 transferred to **from an any qualified ABLÉ program under**
 6 **account (as defined in Section 529A of the Internal Revenue Code**
 7 **or any other similar plan.**
- 8 (f) As used in this section, "nonqualified withdrawal" means a
 9 withdrawal or distribution from a college choice 529 education savings
 10 plan that is not a qualified withdrawal.
- 11 (g) As used in this section, "qualified higher education expenses"
 12 has the meaning set forth in IC 21-9-2-19.5.
- 13 (h) As used in this section, "qualified K-12 education expenses"
 14 means expenses that are for tuition in connection with enrollment or
 15 attendance at an elementary or secondary public, private, or religious
 16 school located in Indiana and are permitted under Section 529 of the
 17 Internal Revenue Code.
- 18 (i) As used in this section, "qualified withdrawal" means a
 19 withdrawal or distribution from a college choice 529 education savings
 20 plan that is made:
- 21 (1) to pay for qualified higher education expenses, excluding any
 22 withdrawals or distributions used to pay for qualified higher
 23 education expenses, if the withdrawals or distributions are made
 24 from an account of a college choice 529 education savings plan
 25 that is terminated within twelve (12) months after the account is
 26 opened;
- 27 (2) as a result of the death or disability of an account beneficiary;
- 28 (3) because an account beneficiary received a scholarship that
 29 paid for all or part of the qualified higher education expenses of
 30 the account beneficiary, to the extent that the withdrawal or
 31 distribution does not exceed the amount of the scholarship; or
- 32 (4) by a college choice 529 education savings plan as the result of
 33 a transfer of funds by a college choice 529 education savings plan
 34 from one (1) third party custodian to another; **or**
- 35 **(5) as a rollover distribution or transfer of assets to an**
 36 **Indiana ABLÉ 529A savings plan adopted by the state under**
 37 **IC 12-11.**
- 38 However, a qualified withdrawal does not include a withdrawal or
 39 distribution that will be used for expenses that are for tuition in
 40 connection with enrollment or attendance at an elementary or
 41 secondary public, private, or religious school unless the school is
 42 located in Indiana. A qualified withdrawal does not include a rollover



1 distribution or transfer of assets from a college choice 529 education
 2 savings plan to any other qualified tuition program under Section 529
 3 of the Internal Revenue Code, **to any qualified ABLE program under**
 4 **Section 529A other than an Indiana ABLE 529A savings plan**
 5 **adopted by the state under IC 12-11**, or to any other similar plan.

6 (j) As used in this section, "taxpayer" means:

- 7 (1) an individual filing a single return; or
- 8 (2) a married couple filing a joint return.

9 (k) A taxpayer is entitled to a credit against the taxpayer's adjusted
 10 gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable
 11 year equal to the least of the following:

12 (1) The following amount:

13 (A) For taxable years beginning before January 1, 2019, the
 14 sum of twenty percent (20%) multiplied by the amount of the
 15 total contributions that are made by the taxpayer to an account
 16 or accounts of a college choice 529 education savings plan
 17 during the taxable year and that will be used to pay for
 18 qualified higher education expenses that are not qualified K-12
 19 education expenses, plus the lesser of:

- 20 (i) five hundred dollars (\$500); or
- 21 (ii) ten percent (10%) multiplied by the amount of the total
 22 contributions that are made by the taxpayer to an account or
 23 accounts of a college choice 529 education savings plan
 24 during the taxable year and that will be used to pay for
 25 qualified K-12 education expenses.

26 (B) For taxable years beginning after December 31, 2018, the
 27 sum of:

- 28 (i) twenty percent (20%) multiplied by the amount of the
 29 total contributions that are made by the taxpayer to an
 30 account or accounts of a college choice 529 education
 31 savings plan during the taxable year and that are designated
 32 to pay for qualified higher education expenses that are not
 33 qualified K-12 education expenses; plus
- 34 (ii) twenty percent (20%) multiplied by the amount of the
 35 total contributions that are made by the taxpayer to an
 36 account or accounts of a college choice 529 education
 37 savings plan during the taxable year and that are designated
 38 to pay for qualified K-12 education expenses.

39 (2) One thousand dollars (\$1,000).

40 (3) The amount of the taxpayer's adjusted gross income tax
 41 imposed by IC 6-3-1 through IC 6-3-7 for the taxable year,
 42 reduced by the sum of all credits (as determined without regard to



1 this section) allowed by IC 6-3-1 through IC 6-3-7.

2 (l) This subsection applies after December 31, 2018. At the time a
3 contribution is made to or a withdrawal is made from an account or
4 accounts of a college choice 529 education savings plan, the person
5 making the contribution or withdrawal shall designate whether the
6 contribution is made for or the withdrawal will be used for:

- 7 (1) qualified higher education expenses that are not qualified
8 K-12 education expenses; or
9 (2) qualified K-12 education expenses.

10 The Indiana education savings authority (IC 21-9-3) shall use
11 subaccounting to track the designations.

12 (m) A taxpayer who makes a contribution to a college choice 529
13 education savings plan is considered to have made the contribution on
14 the date that:

- 15 (1) the taxpayer's contribution is postmarked or accepted by a
16 delivery service, for contributions that are submitted to a college
17 choice 529 education savings plan by mail or delivery service; or
18 (2) the taxpayer's electronic funds transfer is initiated, for
19 contributions that are submitted to a college choice 529 education
20 savings plan by electronic funds transfer.

21 (n) A taxpayer is not entitled to a carryback, carryover, or refund of
22 an unused credit.

23 (o) A taxpayer may not sell, assign, convey, or otherwise transfer the
24 tax credit provided by this section.

25 (p) To receive the credit provided by this section, a taxpayer must
26 claim the credit on the taxpayer's annual state tax return or returns in
27 the manner prescribed by the department. The taxpayer shall submit to
28 the department all information that the department determines is
29 necessary for the calculation of the credit provided by this section.

30 (q) An account owner of an account of a college choice 529
31 education savings plan must repay all or a part of the credit in a taxable
32 year in which any nonqualified withdrawal is made from the account.

33 The amount the taxpayer must repay is equal to the lesser of:

- 34 (1) twenty percent (20%) of the total amount of nonqualified
35 withdrawals made during the taxable year from the account; or
36 (2) the excess of:

37 (A) the cumulative amount of all credits provided by this
38 section that are claimed by any taxpayer with respect to the
39 taxpayer's contributions to the account for all prior taxable
40 years beginning on or after January 1, 2007; over

41 (B) the cumulative amount of repayments paid by the account
42 owner under this subsection for all prior taxable years



beginning on or after January 1, 2008.

(r) Any required repayment under subsection (q) shall be reported by the account owner on the account owner's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(s) A nonresident account owner who is not required to file an annual income tax return for a taxable year in which a nonqualified withdrawal is made shall make any required repayment on the form required under IC 6-3-4-1(2). If the nonresident account owner does not make the required repayment, the department shall issue a demand notice in accordance with IC 6-8.1-5-1.

(t) The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to account owners, account beneficiaries, and other taxpayers for each taxable year with respect to:

(1) nonqualified withdrawals made from accounts, including subaccounts of a college choice 529 education savings plan for the taxable year; or

(2) account closings for the taxable year.

SECTION 2. IC 6-3-3-12.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: **Sec. 12.1. (a) As used in this section, "ABLE account" has the meaning set forth in IC 12-11-14-1.**

(b) As used in this section, "contribution" means the amount of money directly provided to an Indiana ABLE 529A savings plan account by a taxpayer. A contribution does not include any of the following:

(1) Money credited to an account as a result of bonus points or other forms of consideration earned by the taxpayer that result in a transfer of money to the account.

(2) Money transferred from any qualified ABLE program under Section 529A of the Internal Revenue Code or from any other similar plan.

(3) Money transferred from any qualified tuition program under Section 529 of the Internal Revenue Code or from any other similar plan.

(4) Money from a withdrawal or distribution as the result of the disability of an account beneficiary under IC 6-3-3-12(i)(2) directly provided to an account.

(c) As used in this section, "designated beneficiary" has the meaning set forth in IC 12-11-14-5.

(d) As used in this section, "Indiana ABLE 529A savings plan" refers to the Achieving a Better Life Experience (ABLE) 529A plan



1 established under IC 12-11.

2 (e) As used in this section, "nonqualified withdrawal" means a
3 withdrawal or distribution from an Indiana ABLE 529A savings
4 plan that is not a qualified withdrawal.

5 (f) As used in this section, "qualified disability expense" has the
6 meaning set forth in 12-11-14-8.

7 (g) As used in this section, "qualified withdrawal" means a
8 withdrawal or distribution from an Indiana ABLE 529A savings
9 plan that is made:

10 (1) to pay for qualified disability expenses, excluding any
11 withdrawals or distributions used to pay for qualified
12 disability expenses, if the withdrawals or distributions are
13 made from an Indiana ABLE 529A savings plan that is
14 terminated within twelve (12) months after the account is
15 opened;

16 (2) as a result of the death of an account beneficiary; or

17 (3) by an Indiana ABLE 529A savings plan as the result of a
18 transfer of funds by an Indiana ABLE 529A savings plan
19 from one (1) third party custodian to another.

20 A qualified withdrawal does not include a rollover distribution or
21 transfer of assets from an Indiana ABLE 529A savings plan to any
22 other qualified ABLE program under Section 529A of the Internal
23 Revenue Code, or to any qualified tuition program under Section
24 529 of the Internal Revenue Code other than a college choice 529
25 saving plan established under IC 21-9, or to any other similar plan.

26 (h) As used in this section, "taxpayer" means:

27 (1) an individual filing a single return; or

28 (2) a married couple filing a joint return.

29 (i) A taxpayer is entitled to a credit against the taxpayer's
30 adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7
31 for a taxable year equal to the least of the following:

32 (1) Twenty percent (20%) of the amount of the total
33 contributions made by the taxpayer to an account or accounts
34 of an Indiana ABLE 529A savings plan during the taxable
35 year.

36 (2) One thousand dollars (\$1,000).

37 (3) The amount of the taxpayer's adjusted gross income tax
38 imposed by IC 6-3-1 through IC 6-3-7 for the taxable year,
39 reduced by the sum of all credits (as determined without
40 regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

41 (j) A taxpayer is not entitled to a carryback, carryover, or
42 refund of an unused credit.



1 (k) A taxpayer may not sell, assign, convey, or otherwise
2 transfer the tax credit provided by this section.

3 (l) To receive the credit provided by this section, a taxpayer
4 must claim the credit on the taxpayer's annual state tax return or
5 returns in the manner prescribed by the department. The taxpayer
6 shall submit to the department all information that the department
7 determines is necessary for the calculation of the credit provided
8 by this section.

9 (m) An account owner of an Indiana ABLE 529A savings plan
10 must repay all or a part of the credit in a taxable year in which any
11 nonqualified withdrawal is made from the account. The amount
12 the taxpayer must repay is equal to the lesser of:

13 (1) twenty percent (20%) of the total amount of nonqualified
14 withdrawals made during the taxable year from the account;
15 or

16 (2) the excess of:

17 (A) the cumulative amount of all credits provided by this
18 section that are claimed by any taxpayer with respect to
19 the taxpayer's contributions to the account for all prior
20 taxable years; over

21 (B) the cumulative amount of repayments paid by the
22 account owner under this subsection for all prior taxable
23 years.

24 (n) Any required repayment under subsection (m) must be
25 reported by the account owner on the account owner's annual state
26 income tax return for any taxable year in which a nonqualified
27 withdrawal is made.

28 (o) A nonresident account owner who is not required to file an
29 annual income tax return for a taxable year in which a
30 nonqualified withdrawal is made shall make any required
31 repayment on the form required under IC 6-3-4-1(2). If the
32 nonresident account owner does not make the required repayment,
33 the department shall issue a demand notice in accordance with
34 IC 6-8.1-5-1.

35 (p) The executive director of the Indiana ABLE authority shall
36 submit or cause to be submitted to the department a copy of all
37 information returns or statements issued to account owners,
38 account beneficiaries, and other taxpayers for each taxable year
39 with respect to:

40 (1) nonqualified withdrawals made from accounts for the
41 taxable year; or

42 (2) account closings for the taxable year.



1 SECTION 3. [EFFECTIVE JANUARY 1, 2020] (a) **IC 6-3-3-12.1,**
2 **as added by this act, and IC 6-3-3-12, as amended by this act, apply**
3 **to taxable years beginning after December 31, 2019.**
4 **(b) This SECTION expires January 1, 2022.**

