Colorado ABLE Savings Account Contribution Deduction

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OFFICE OF THE STATE AUDITOR
COLORADO

The Colorado ABLE Savings Account Contribution Deduction (ABLE Deduction) allows individuals, estates, and trusts who contribute to Colorado ABLE accounts in Tax Years 2023 through 2025 to deduct their contributions up to established limits from their Colorado income. An ABLE account is a savings and investment account that allows certain individuals with disabilities to save money and pay for qualified disability expenses. For our evaluation, we considered two potential purposes for the deduction: (1.) To provide support to individuals with disabilities and their families in saving money to pay for qualified disability expenses, and (2.) To create an additional incentive for contributing to ABLE accounts not already created by other state or federal programs.

The ABLE Deduction provides a modest support for individuals with disabilities and their families; however, it likely provides only a small incentive to contribute to ABLE accounts and there are other, more significant incentives for making contributions.

- Based on the $3,650 average amount contributed to ABLE accounts during the first year the deduction was available, the deduction would have provided an average tax benefit of about $161, which would be split among all contributors to the account, based on the State's income tax rate of 4.4 percent that year.

- Stakeholders reported that the end of Medicaid Recovery, which ended Colorado's practice of recapturing funds in the ABLE accounts of those Medicaid recipients who have died, serves as a bigger incentive to contribute to ABLE accounts than the deduction.

Policy Considerations

If the General Assembly extends the ABLE Deduction, it could consider adding a purpose statement to statute.

Tax Type:	**Income**	Year Enacted:	**2022**
Expenditure Type:	**Deduction**	Repeal/Expiration date:	**December 31, 2025**
Statutory Citation:	**Section 39-22-104(4)(i)(II)(B), C.R.S.**	Revenue Impact:	**Could not determine**

Purpose given in statute or enacting legislation? **No**

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Background

The federal Achieving a Better Life Experience (ABLE) program [Internal Revenue Code, Section 529A] allows states to sponsor state-operated savings and investment accounts (ABLE accounts) to assist individuals with disabilities to save for qualifying expenses. In Colorado, the ABLE program is administered by CollegeInvest, a State enterprise within the Department of Higher Education that also administers the State's 529 college education savings program. Prior to the establishment of the ABLE program, individuals with a disability were limited in their ability to save to pay for expenses without losing eligibility for federal benefits programs such as Medicaid and Supplemental Security Income (SSI), which require that single beneficiaries have no more than $2,000 in assets and joint-filing beneficiaries have no more than $3,000 in assets [42 USC 1382]. Under the ABLE program, individuals with a disability can save up to $100,000 in ABLE accounts without having those assets counted for the purposes of determining eligibility. Parents can also establish ABLE accounts to save money for their children's disability expenses and anyone can contribute funds to an ABLE account, regardless of whether they are the account holder or beneficiary of the account. Currently, ABLE accounts must benefit individuals whose disabilities began before age 26; this age limit will rise to 46 after December 31, 2025. Individuals can only use funds saved in ABLE accounts for qualifying expenses, which include housing, transportation, employment training or supports, education, and assistive technologies.

Federal law [26 USC 529A(b)(2)(B)] imposes a limit on the total contributions that can be made to an ABLE account each year. The limit, which is adjusted every year based on inflation, was $17,000 for 2023. As part of the Tax Cuts and Jobs Act of 2017, federal law [26 USC 529A(b)(2)(B)(ii)] expanded the limit to allow ABLE account beneficiaries who have earned income to contribute an additional amount above the standard federal ABLE limit under a program known as ABLE-to-Work. In 2023, this expansion allowed an ABLE beneficiary to contribute an additional amount of $13,590 to their own account, for a total potential contribution of $30,590 for the year. Contributions to ABLE accounts are not deductible for federal tax purposes. However, under federal law [26 USC 529A(c)(1)], funds distributed from ABLE accounts are excluded from federal income for federal income tax purposes as long as all funds distributed from the account are used for qualified expenses.

The Colorado ABLE Savings Account Contribution Deduction (ABLE Deduction) allows individuals, estates, and trusts to deduct their contributions to ABLE accounts from their

Colorado Income. The ABLE Deduction was created by House Bill 22-1320 in 2022, and was first available to taxpayers beginning in Tax Year 2023. It is set to expire at the end of Tax Year 2025. For Tax Year 2023, statute [Section 39-22-104(4)(i)(II)(B), C.R.S.] allows taxpayers to deduct the amount they contribute to ABLE accounts up to $20,700 per beneficiary for single taxpayers and $31,000 per beneficiary for joint filers; these amounts are adjusted annually. The ABLE Deduction is modeled after and located in the same statute as the deduction for contributions to 529 college education savings accounts (529 Deduction). As a result, the ABLE Deduction and the 529 Deduction share the same annually adjusted per beneficiary cap, which is higher than the federally imposed limit on the total contributions that can be made to an ABLE account for Tax Years 2023 through 2025. Therefore, most contributions to ABLE accounts will not reach the State's statutory cap on the deduction. However, ABLE account beneficiaries who qualify for the ABLE-to-Work expansion would potentially be able to deduct up to the statutory cap if they contribute amounts above the standard federal limit on ABLE account contributions. Any qualified taxpayer can claim the deduction, regardless of whether they are the account holder or beneficiary. For example, individuals who contribute to an ABLE account benefiting a family member can also claim the deduction. However, the federal cap on ABLE accounts is an annual per account limit, so all contributors to an ABLE account are collectively constrained to that limit and would need to coordinate (to the extent possible) to make sure they do not exceed the cap. CollegeInvest reported that additional contributions to accounts that have hit their limit for the year are rejected. Statute [Section 39-22-104(4)(i)(I)(B), C.R.S.] also allows a deduction for both interest earned on ABLE accounts and distributions made for qualified purchases to the extent they are included in federal taxable income. However, since Colorado uses federal taxable income as the starting point for determining Colorado income, interest earned on Colorado ABLE accounts and distributions made for qualified purchases are effectively exempt from state income tax already since these amounts are already deductible for federal tax purposes.

Statute does not provide a purpose for the ABLE Deduction and we were not able to clearly determine its purpose based on its construction and legislative history. For our evaluation, we considered two potential purposes for the deduction:

- **To provide support to individuals with disabilities and their families in saving money to pay for qualified disability expenses.** We inferred this purpose based on the statutory purpose of the ABLE program, which provides, "The general assembly…finds, determines, and declares that the establishment of a savings program that qualifies under section 529A of the internal revenue code will…Assist individuals and families in saving money for the purpose of supporting individuals with disabilities in maintaining health, independence, and quality of life…"

- **To create an additional incentive for contributing to ABLE accounts not already created by other state or federal programs.** During legislative hearings for House Bill 22-1320, the bill sponsors stated that in creating the ABLE Deduction, they intended to provide the same tax treatment for contributions to ABLE accounts that is provided to 529 education savings accounts. Statute provides that the purpose of the 529 Deduction is "to create additional incentives for saving for college tuition not already created by other state or federal law."

We inferred that the intended beneficiaries of the deduction are taxpayers who make contributions to ABLE accounts and receive a reduction in their taxable income. These taxpayers could be the account owner and/or beneficiary, family or friends, or any other individual who provides support through contributions to the account. If the deduction has an additional incentivizing impact, secondary beneficiaries could be those account owners who receive additional contributions.

To determine if the deduction is meeting these potential purposes, we developed the following performance measures:

- **To what extent does the ABLE Deduction support individuals with disabilities and their families in saving money to pay for qualified disability expenses?**

- **To what extent does the ABLE Deduction provide an additional incentive to contribute to ABLE accounts?**

Evaluation Results

The ABLE Deduction provides a modest support for individuals with disabilities and their families; however, it likely provides only a small incentive to contribute to ABLE accounts and there are other, more significant incentives for making contributions. We were not able to determine the extent to which eligible contributors actually claimed the deduction because the Department of Revenue cannot provide taxpayer data on the ABLE Contribution Deduction for Tax Year 2023–the first year the Deduction was available–until January 2026. However, CollegeInvest data shows that in 2023, there were 2,982 ABLE accounts and total contributions of about $10.9 million to these accounts, or an average of about $3,650 contributed to each account. CollegeInvest reported that due to the federal Right to Financial Privacy Act, they are restricted from sharing information about individual ABLE account contributions, so could not provide data on the number of individuals who contributed to each account or the amount each individual contributed. Additionally, contributors can, but are not required to, report whether they are Colorado taxpayers or not. Therefore, we could not determine the potential tax benefit each contributor could have received. To estimate the total potential benefit that contributors may have received, we multiplied the $3,650 average contribution amount by the 2023 state income tax rate of 4.4 percent to determine that, on average, the individuals who made eligible contributions to an ABLE account would collectively have received an average tax benefit of about $161, assuming that they had Colorado taxable income in 2023. This is a relatively small tax benefit, especially if it is split among several taxpayers.

However, for some taxpayers, the total tax benefit from the ABLE Deduction could be more significant. In 2023, the federal ABLE contribution limit was $17,000; if a single Colorado taxpayer contributed this amount to a Colorado ABLE account, the tax benefit would be around $750, assuming they had enough taxable income to use the entire deduction. According to CollegeInvest data, 83 accounts (out of a total of 2,982) hit the annual contribution limit in 2023. However, because we only had data on total contributions made to accounts and not individual contribution or contributor data, we were unable to determine whether a single contributor provided the entire $17,000, or if multiple contributors provided smaller amounts to reach the $17,000 cap for those accounts, in which case the tax benefit per contributor would be less than $750.

Additionally, ABLE account beneficiaries could receive a larger benefit. As discussed above, under the federal ABLE-to-Work program, eligible ABLE account beneficiaries can make contributions to their own accounts in excess of the standard federal ABLE contribution limit. Therefore, account beneficiaries who contributed the first $17,000 and the additional $13,590 permitted under the ABLE-to-Work program in 2023, and filed jointly, could deduct up to $30,590, which would provide a tax benefit of $1,346, assuming they had enough taxable income to use the entire deduction. According to CollegeInvest, as of 2024, there were 82 accounts with authorized ABLE-to-Work expansions. However, we were unable to determine whether any of those account owners contributed the full amount they are allowed to contribute.

Six stakeholders working in the disability support services industry and one stakeholder that works with Colorado ABLE clients responded to our outreach. Three stakeholders who had experience with Colorado ABLE account beneficiaries said that the deduction has little impact in incentivizing contributions, especially when compared to other factors, such as the ability to save a larger amount of resources and still qualify for federal programs. One stakeholder reported that the deduction "very rarely helps if the disabled person is contributing their own money." This may be the case because individuals must have lower incomes to qualify for federal programs such as Medicaid and SSI, so they may not have the taxable income to take advantage of the deduction. For those contributing to someone else's ABLE account, stakeholder feedback indicated that the tax deduction is helpful to offset the extra expenses associated with disability care, but it is mostly viewed as a "bonus" that is secondary when compared to the ability to save beyond $2,000 for a single individual or $3,000 for joint filers and to receive gifts from family members without threat to losing one's Medicaid and other means-tested benefits.

The same legislation that created the ABLE Deduction (House Bill 22-1320) also ended Colorado's practice of recapturing funds in the ABLE accounts of those Medicaid recipients who have died, a process commonly referred to as Medicaid Recovery. Prior to this legislation, under Medicaid Recovery, the State could recover certain Medicaid benefits paid on behalf of a Medicaid enrollee from a Colorado ABLE account. This change now allows the surviving families of account beneficiaries the opportunity to inherit any remaining ABLE account funds when the account beneficiary passes. The end of Medicaid Recovery, as an incentive, likely has a larger impact than the deduction since it can be accessed by non-state residents and the overall value can be much higher. One stakeholder who works directly with current and eligible ABLE beneficiaries and their families explained that the end of Medicaid Recovery could, for example, result in a family inheriting amounts such as $50,000, while the deduction's value, and thus incentivizing effect, is much smaller.

The number of ABLE accounts in Colorado and amounts contributed to these accounts has increased steadily in recent years. Exhibit 1 shows the number of open ABLE accounts on the last day of the year, along with the total value of ABLE contributions for account beneficiaries for Calendar Years 2019 through 2023.

Exhibit 1
Colorado ABLE Accounts and Contribution Values
Calendar Years 2019 through 2023

Calendar Year	ABLE Accounts	Percentage Change in ABLE Accounts	Total Value of ABLE Contributions	Percentage Change in Total Value of ABLE Contributions
2019	949	N/A	$3,890,869	N/A
2020	1,349	42%	$5,405,285	39%
2021	1,843	37%	$7,398,460	37%
2022	2,322	26%	$7,519,157	2%
2023	2,982	28%	$10,895,210	45%

Source: Office of the State Auditor analysis of CollegeInvest data for Calendar Years 2019 through 2023.

Based on the $10,895,210 contributed in 2023, if all contributions were eligible for the ABLE Deduction and taxpayers claimed a deduction for the entire amount they contributed, the maximum revenue impact to the State would be just under $500,000. However, it is likely that the actual revenue impact was less due to contributors not claiming a deduction for the entire amount contributed. For example, only Colorado taxpayers are eligible for the ABLE Deduction and some of the contributions likely came from residents of other states. It is also likely that some taxpayers who made contributions were unable to claim the full amount of the deduction because they lacked sufficient taxable income to use it. Additionally, some eligible taxpayers might not be aware of the deduction. The majority of stakeholders we spoke with were aware of the ABLE program, but only one stakeholder was aware of the deduction. Most of these stakeholders reported that while they provide information about the ABLE program to clients who might be eligible, their organizations were either unaware of the deduction or not likely to provide information about the deduction due to concerns about it being perceived as offering tax guidance.

Some research has found that states that offer income tax incentives for contributing to ABLE accounts have higher rates of ABLE account use. National research conducted by the Social Security Administration found that the states with the highest rates of ABLE account participation in 2021 were those that either offered some form of tax incentive to contributors or had no state income tax. However, despite Colorado's lack of a contribution tax incentive at that time, Colorado's ABLE account participation rate was double the national average and in the top 15 among states. Therefore, the creation of the deduction might not significantly impact the number of ABLE accounts in Colorado.

Forty-five states and the District of Columbia offer an ABLE program and the majority of these allow enrollees from other states. As of 2024, there are 40 other states and the District of Columbia that impose an income tax; of those, 23 states (56 percent) offer some form of tax expenditure for contributions made to ABLE accounts. Twenty-one (91 percent) of these tax expenditures are structured as deductions. Although the value of a state's deduction is dependent on the specific income tax structure and rates used, Colorado offers the highest deduction cap. Similar to Colorado, four other states (17 percent) also allow their tax expenditures to be claimed on a per beneficiary basis. Of the other 22 states that have an ABLE program and offer a tax expenditure, 13 have also ended Medicaid Recovery practices.

Policy Consideration

If the General Assembly extends the ABLE Deduction, it could consider adding a purpose statement to statute. Statute [Section 39-21-304(1)(a), C.R.S.] provides that any bill that "extends an expiring tax expenditure must include a tax preference performance statement [i.e., a purpose statement] as part of a statutory legislative declaration." As discussed, we were not able to definitively determine the purpose for the ABLE Deduction. We inferred two purposes based on the statutory purpose for the ABLE program and legislative testimony from the bill sponsors that created the ABLE Deduction. Adding a purpose statement to statute would eliminate potential uncertainty regarding the deduction's purpose and allow our office to more definitively assess the extent to which it is accomplishing its intended goal(s) if the deduction is extended.

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