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ABLE Accounts

A new, potentially simpler alternative to special needs trusts

A tax bill enacted in December also included the Achieving a Better Life Experience Act (ABLE), a permanent expansion of Sec. 529 savings accounts for the benefit of disabled young people. The purpose is to encourage private savings to support disabled individuals in a manner that supplements, but does not supplant, other benefits that may be provided by private insurance, Medicaid, the supplemental security income program, or the beneficiary's employment.

Qualified ABLE programs. ABLE programs will need to be established in each of the states, as with Sec. 529 college savings plans. ABLE accounts will be available only to residents of the state establishing the program. A disabled person will be limited to a single ABLE account, except that creating a successor account for rollover purposes is permitted.

Contributions to an ABLE account generally must be made in cash; an exception allows for the rollover of funds to another ABLE account for the same beneficiary or an eligible individual who is a family member of the beneficiary. As with 529 college savings plans, there is no deduction for making a contribution to an ABLE account. Investment changes are limited to twice each year.

More than one donor may contribute to an individual's ABLE account, but the aggregate of such contributions may not exceed the amount of the gift tax annual exclusion in any calendar year ($14,000 in 2015).

The beneficiary of an ABLE account must have become disabled or blind before reaching age 26.

Amounts accumulated in ABLE accounts generally will not be counted for purposes of means-testing eligibility for federal programs. However, amounts distributed for housing expenses will not be disregarded for the Supplemental Security Income program. In the event that the ABLE account balance exceeds $100,000, SSI benefits may be suspended, but Medicaid benefits will not be.

Tax treatment. In contrast to a conventional special needs trust, which has the same broad goals as an ABLE account, these accounts offer the potential for freedom from income tax. No taxes are imposed upon the investment earnings of ABLE accounts. Similarly, there are no income taxes on distributions for qualified disability expenses. Qualified disability expenses are defined quite broadly and include "education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative expenses, legal fees, expenses for oversight and monitoring, funeral and burial expenses," and any other expenses as may be provided in future Regulations.

On the other hand, distributions not used for qualified disability expenses are taxable to the beneficiary, and a 10% penalty tax applies as well. The distribution may not be treated as a taxable gift.

There is a price to pay for the tax favors accorded to the ABLE account. At the death of the ABLE account beneficiary, the state may make a claim on the account up to the total medical assistance paid for the beneficiary after the establishment of the account.

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