

Passage of The ABLE Act Could Provide Additional Planning Options For Disabled Individuals

In late December 2014, President Obama signed into law the “Achieving a Better Life Experience Act of 2014” (known as the ABLE Act). The Act extends the 529 college savings account rules to allow for similar, tax-free “ABLE Accounts” to be created for qualified disabled individuals. When properly established and funded, these accounts can grow tax-free, provide for qualified supplemental needs for disabled individuals, and can be disregarded (with certain limitations) as countable resources for Medicaid and Supplemental Security Income (SSI) purposes.

Characteristics of Qualified ABLE Accounts

The Act outlines several characteristics of “qualified” ABLE accounts:

1. Accounts are for “Eligible Individuals” only which is defined as disabled individuals as determined by Medicaid, Social Security, and/or by other statutory certification requirements, and the disability has to have been determined to have occurred before age 26;
2. Only one account may be established/maintained for a disabled individual at a time and the account may only be funded with cash contributions (with one exception – rollover funds from prior ABLE accounts);
3. The account can grow to an unlimited amount for Medicaid eligibility purposes, but amounts exceeding \$100,000 will be countable by Social Security for SSI qualification; and
4. Distributions must be made only for “Qualified Disability Expenses.”

Any individual can establish an ABLE account. This includes third-parties or even the disabled individual him or herself. Once established, the statute allows anyone to make contributions to the account. There are, however, **significant** limitations with regard to funding an ABLE account. Each year, the maximum amount of all contributions is limited to the annual gift tax exclusion amount (\$14,000 in 2015), regardless of the number individuals contributing to the account. All contributions are considered completed gifts and are not deductible as medical expenses or under any other deduction.

ABLE Account Distributions

Proper distributions from an ABLE account can be made tax-free and without penalty if made for “qualified disability expenses.” General examples of such expenses are:

- Education;
- Housing;
- Transportation;
- Employment training and support;
- Assistive technology and personal support services;
- Health prevention and wellness;
- Financial management and administrative services;
- Legal fees;
- Expenses for oversight and monitoring; and
- Funeral and burial expenses.

Government agencies and regulations may expand the list of qualified disability expenses in the future. If any distributions are made for non-qualifying expenses, they will be taxed as ordinary income and can be subject to a 10% penalty, similar to regular 529 Plans.

Termination

ABLE accounts will generally terminate upon the eligible individual's death. The accounts can remain intact should an eligible individual move to a different state. Should the eligible individual die with proceeds remaining in the account, there is a required payback provision to the state for medical expenses paid on the individual's behalf, similar to first-party special needs trusts. If any proceeds remain, they may be either distributed to the eligible individual's estate, to a designated beneficiary, or they could be rolled over to another ABLE account established for a sibling who is also an "eligible individual." At death, the account will be subject to income tax on investment earnings, but there will not be any penalty charged to the account.

Conclusion

The ABLE Act could prove to be a valuable tool for disabled individuals and their families. In many respects, it may provide a practical and more easily accessible way to protect and use funds for disabled individuals in lieu of pursuing more complicated and costly protection strategies such as special needs trusts. And, in some cases, these accounts could be used in conjunction with already proven methods of asset protection to expand protection of assets for disabled individuals. However, the limitations imposed by the statute with respect to annual contributions and account beneficiaries do not make these accounts readily available to all disabled Americans. These limitations were the result of budgetary choices made during the legislative process.

Federal and state regulations have not yet been issued. The regulations will help explain and identify ambiguities that exist in the statutory language. Like other federal programs, it is up to each state to implement the Act and more clarification is needed to truly understand the promise of the ABLE Act and how it can be utilized to support disabled Americans. It is also unclear as to whether and how the states will implement the Act differently. It is clear that this legislation was a conscious effort made by Congress to help a segment of the disabled population increase their quality of life. In this light, the Act is a step in the right direction and could lead to similar and more expansive legislation in the future to continue to enable disabled Americans to preserve and protect their assets.

If you have any questions, please contact any of the members of our Trust and Estate Department listed below.

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