

ABLE Accounts for Families with Disabled Individuals: Important Considerations

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April 2016

In December of 2014, the Achieving a Better Life Experience Act, commonly known as the ABLE Act, was signed into law by President Obama. The ABLE Act authorizes, at the state level, the establishment of programs allowing the families of eligible disabled individuals to open investment accounts for which earnings are tax-exempt and assets are exempt for Medicaid qualification purposes. An eligible individual is generally defined as someone who became disabled prior to reaching the age of 26, and who qualifies for supplemental social security benefits (SSI).

Although a majority of states, including New Jersey, have enacted legislation establishing ABLE programs, none have gone into effect to date. New Jersey is scheduled to begin offering ABLE accounts in October of 2016.

Once these programs are active, the families of disabled individuals will need to consider both the positive and negative aspects of ABLE accounts before opening one. The tax-free earnings (similar to those available under 529 Plans) are certainly attractive, but similar to 529 Plans, investments options are limited. Under the federal statutes, both 529 Plans and ABLE accounts limit the ability to direct investments to no more than two times in any calendar year.

Furthermore, unlike 529 Plans, upon the death of the designated beneficiary, the remaining assets in an ABLE account do not automatically pass to another family member. Those assets must first be paid back to the state as reimbursement for medical assistance provided during the beneficiary's lifetime.

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There are two important statutory limitations placed on ABLE accounts. First, contributions are limited to \$14,000 per year from all contributors (other than the disabled beneficiary) combined. Second, and most importantly, the ABLE Act provides that if an ABLE account exceeds \$100,000, SSI benefits for the beneficiary will be suspended until the account drops below this limitation. Medicaid eligibility, however, will not be affected.

Given these limitations, families wishing to provide a source of funds for a disabled individual's future care and support, including for the time when that individual's family is no longer alive, should first determine how much money will need to be contributed prior to opening an ABLE account. For residents of states where the cost of living is more affordable, the \$100,000 limitation may not present an issue. In New Jersey, however, the combination of a high cost of living and the fact that the benefits provided by the state are consistently in danger of being cut, families with sufficient financial resources may desire to leave assets to a disabled family member in excess of the \$100,000 limitation.

One solution to this problem is the creation of a Supplemental Needs Trust. A Supplemental Needs Trust does not provide for tax-free earnings and typically requires retaining an attorney. Still, if set up correctly it can be funded with any amount a family deems sufficient to maintain their loved one's standard of living without threatening a loss of SSI or Medicaid benefits, and upon that beneficiary's death can set forth to whom the remaining assets will pass.

As with all estate planning techniques, there are no hard and fast rules as to what methods are correct, as every situation is different and the factors influencing decisions endless. To learn more about ABLE accounts, Supplemental Needs Trusts or other estate planning issues, please contact **Brian R. Selvin**, a partner in the firm's **Tax, Trusts & Estates Department** and the author of this Alert.