

Can An ABLE Account Benefit Your Family?

A family with a disabled child faces difficult planning challenges. For many years, the most effective estate and financial planning tool for parents of a disabled child was a special needs trust (SNT). This trust type provides resources for the care of disabled children while preserving their eligibility for means-tested government benefits, such as Medicaid and Supplemental Security Income (SSI).

Another option available to families is the ABLE account. The Achieving a Better Life Experience (ABLE) Act was signed into law in 2014. It created Internal Revenue Code Section 529A, authorizing states to offer tax-advantaged savings accounts for the blind and severely disabled.

ABLE Account Details

Under the ABLE Act, you may contribute funds to a designated account that grows without current tax erosion, much in the same way that 529 plans operate. Furthermore, there's no tax on distributions paid for qualified expenses.

Currently, more than 40 states and the District of Columbia have established ABLE accounts for residents. If you live in one of the handful of states that doesn't permit ABLE accounts, you can create one in a state that allows nonresidents to participate. Fees paid to administer the account generally are minimal.

Bear in mind that an ABLE account may be used only to benefit an individual who experienced a disability prior to the age of 26 and who satisfies certain Social Security criteria. Therefore, it's not available to every disabled person.

Although an ABLE account can be managed by its beneficiary, these responsibilities typically are handled by the parents, a professional or another person acting under a power of attorney.

Funding ABLE Accounts

An ABLE account's funds are invested through options authorized by the applicable state. Investment changes may be made twice a year, and only one ABLE account can be set up for a qualified individual.

Normally, an ABLÉ account is funded through a series of annual contributions. These contributions are tied to the annual gift tax exclusion, which is indexed for inflation. (The gift tax exclusion amount for 2021 is \$15,000.) Plus, lifetime contributions are limited to the amounts imposed by the individual state for 529 plan accounts. These limits are generally at least \$250,000 – and can exceed \$500,000.

However, there are complications related to other programs. If a disabled individual meets SSI or Medicaid requirements and is receiving benefits from either, or both, he or she is still eligible for an ABLÉ account. An ABLÉ account's funds don't count toward the limits on personal assets for these public benefits.

If the assets in the ABLÉ account exceed \$100,000, the beneficiary's SSI benefits will be suspended until the total drops below this threshold. However, Medicaid eligibility will not be affected by the account's amount.

Also, be aware that contributions to an ABLÉ account aren't tax deductible. A few individual states have carved out limited state income tax benefits for these accounts.

Distribution Rules

If the funds in an ABLÉ account are used to pay for qualified expenses, the payouts are exempt from income tax. Qualified expenses must go toward maintaining or improving the health, independence or quality of life of the beneficiary. These include basic living costs and expenses for, among other things:

- Education,
- Food,
- Housing,
- Transportation,
- Employment training and support,
- Assistive technology,
- Personal support services,

- Health care expenses,
- Financial management, and
- Administrative services.

However, if withdrawals are made for nonqualified expenses, the portion of the distributions attributable to earnings is subject to tax at ordinary income rates, plus a 10% penalty tax is imposed on that portion. In states that have adopted special state income tax benefits, withdrawals might also result in penalties.

Other Considerations

Although SNTs offer more flexibility, an ABLE account may be especially beneficial in certain situations. For example, with an ABLE account a disabled individual can set aside wages or Social Security benefits for a future purchase without violating the general rule that the recipient of SSI and Medicaid can't accumulate more than \$2,000.

In addition, an ABLE account may be used if a small inheritance under \$15,000 has been left to someone receiving SSI or Medicaid. It might also be used for an unexpected windfall like lottery winnings or a legal settlement. In fact, the ability to pay for housing without affecting SSI is one of the main reasons for using ABLE accounts.

Worth Exploring

If you have a child or relative with a disability in existence before age 26, consider exploring the feasibility of an ABLE account. Contact your estate planning advisor for additional information.

© 2021



1875 Century Park East, Suite 2000
Los Angeles, CA 90067
(P) 310 553-8844 | (F) 310 553-5165
www.weinstocklaw.com

