

529A ABLÉ Accounts

The Achieving a Better Life Experience (ABLE) Act of 2014 enacted section 529A of the internal revenue code which allows states to establish “ABLE accounts” for disabled individuals.

What is an ABLE account?

ABLE accounts are tax-advantaged savings accounts for individuals with disabilities. The beneficiary of the account is also the account owner. Only one account can be set up for an individual. Contributions to the account can be made by any person, including the account beneficiary, family and friends. Contributions must be in cash.

Why would someone open an ABLE account?

Many disabled individuals and their families depend on public benefits under programs such as Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). To remain eligible for these benefits, an individual must have minimal assets (no more than \$2,000). ABLE accounts allow disabled individuals to accumulate savings without affecting eligibility for SSI, Medicaid and other public benefits.

Who are eligible beneficiaries?

There are two criteria for an individual to be an “eligible beneficiary” of an ABLE account. First, eligible individuals must be blind or disabled, and must have become so before age 26. Someone over age 26 can set up an ABLE account as long as they developed the onset of their disability before age 26. Second, the eligible individual must be entitled to benefits under the SSI or SSDI programs. If the individual is not actually receiving benefits under SSI or SSDI, the individual must obtain medical documentation of their disability.

What are the tax advantages?

Earnings in an ABLE account are not taxed. Distributions for qualified expenses are tax free. Contributions to ABLE accounts are not tax deductible for federal tax purposes. However, some states may allow for state income tax deductions for contributions.

What are “qualified expenses”?

“Qualified expenses” include expenses for the designated beneficiary related to the individual’s blindness or disability, including expense for education, housing, transportation, employment training, personal support services, prevention and wellness, financial management services, legal fees and funeral expenses. If the funds are used for expenses that are not qualified expenses, the gains in the account are subject to tax and an additional 10% penalty. Beneficiaries should keep their own records to verify that distributions are used for qualified expenses. Some states provide the beneficiary with a credit card and allow the beneficiary to charge expenses. This makes it easier to track how the money was spent on qualifying expenses.

Are there contribution limits?

Yes, there is an annual contribution limit equal to the amount of the annual gift tax exclusion (\$15,000 in 2019). While any number of people can contribute to one ABLE account, the total amount of those contributions cannot exceed the annual gift tax exclusion amount in each calendar year.

There is also a \$100,000 limit on the amount in each account that is exempt from SSI eligibility. If the eligible individual is receiving SSI and the ABLE account balance exceeds this amount, SSI payments are suspended until the excess amount is removed.

In addition, states generally impose limits on the maximum amount that can be held in an ABLE account, similar to limits on amounts in a 529 education savings account (e.g., \$300,000).

Can beneficiaries contribute to their own ABLE account?

Beneficiaries who work and earn income can contribute to their own ABLE account as long as they do not have an employer sponsored retirement plan. A beneficiary can contribute earned income up to an amount equal to the federal poverty level (\$12,140 in 2019). This is in addition to contributions by others which are subject to the annual gift exclusion amount.

Can ABLE accounts be opened in a different state?

An individual can open an ABLE account in any state which offers them, although some states restrict their programs to in-state residents.

What happens when the beneficiary dies?

Upon the death of the beneficiary, a state may file a claim against the ABLE account to recover amounts which the state spent on the beneficiary through the state Medicaid program. This is commonly known as "Medicaid pay back." If there is money left after any Medicaid pay back, it will go to the deceased's estate or to a designated beneficiary. The investment earnings will be subject to income tax, but no penalty applies.

Can a 529 education account be rolled over to an ABLE account?

A 529 education account may be rolled into a ABLE account, but the rollover amount is limited to the annual gift tax exclusion amount (\$15,000 in 2019). If the education account contains more than \$15,000, then the beneficiary will need to do a series of rollovers over a number of years. The beneficiaries on both accounts should be identical or at least members of the same family.

How does an ABLE account compare to a Special Needs Trust?

ABLE accounts are easy to set up and to administer. Special needs trusts, on the other hand, require a trust document to be created by an estate planning or elder law attorney. There are two main types of special needs trusts: first-party and third-party special needs trusts.

A first-party trust is most often used when the person with disabilities inherits money or receives a court settlement (they have their own money that will disqualify them from government benefits). The disabled person may transfer the assets to the first-party trust and then qualify for government aid; however, at death, the remaining assets in the

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trust must be paid back to the state to reimburse the state for state Medicaid programs the beneficiary received benefits from during life. Any remaining assets can go to the beneficiary's family.

A third-party trust is commonly used by persons planning for a loved one with special needs (parents planning for a child, for example). Third-party trusts can be created during life or at death through a will. The trustee is given specific instructions to use the trust assets for the benefit of the person with disabilities, but to manage distributions in such a way so the beneficiary remains eligible to continue to receive government aid. When the beneficiary dies there is no payback to the state and the assets can go to other family members as outlined in the trust document.

No income tax is paid on earnings in the ABLE account, while earnings in both types of special needs trust are subject to income tax. Contributions to ABLE accounts are limited and are subject to Medicaid recovery.

In many situations, both an ABLE account and one of the special needs trust can be used in combination. To learn more about ABLE accounts and each state plan, go to ABLE National Resource Center at: www.ablenrc.com.

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