

Establishment of ABLE Accounts in the 2014 ABLE Act

The tax laws have long encouraged Americans to save for college for their kids and to save for their retirement, but for families of those with disabilities there was no tax-advantaged way for them to save for those individuals. The recently enacted "Achieving a Better Life Experience (ABLE) Act of 2014" contains an important new provision which changes that. Allow me to take a few minutes to explain this exciting and long overdue change.

The new law, which applies for tax years beginning after December 31, 2014, allows for the creation of ABLE accounts, which are tax-free accounts that can be used to save for disability-related expenses.

Here are the key features of ABLE accounts:

- ABLE accounts can be created by individuals to support themselves or by families to support their dependents.
- There is no federal taxation on funds held in an ABLE account. Assets can be accumulated, invested, grown and distributed free from federal taxes. Contributions to the accounts are made on an after-tax basis (i.e., contributions aren't deductible), but assets in the account grow tax free and are protected from tax as long as they are used to pay qualified expenses.
- No federal tax benefits are provided for those who contribute to an ABLE account.
- Money in an ABLE account can be withdrawn tax free if the money is used for disability-related expenses. Expenses qualify as disability related if they are for the benefit of an individual with a disability and are related to the disability. They include education; housing; transportation; employment support; health, prevention, and wellness costs; assistive technology and personal support services; and other IRS-approved expenses.
- Distributions used for nonqualified expenses are subject to income tax on the portion of such distributions attributable to earnings from the account, plus a 10% penalty on that portion.
- Each disabled person is limited to one ABLE account and total annual contributions by all individuals to any one ABLE account can be made up to the gift tax exclusion amount (\$14,000 in 2014 and 2015, which is adjusted annually for inflation). Aggregate contributions are subject to the State limit for education-related Section 529 accounts.
- ABLE accounts can generally be rolled over only into another ABLE account for the same individual or

into an ABLE account for a sibling who is also an eligible individual.

- Eligible individuals must be blind or disabled, and must have become so before turning 26, and must be entitled to benefits under the Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) programs. An individual doesn't need to receive SSI or SSDI to open or maintain an ABLE account, nor does the ownership of an account confer eligibility for those programs. Alternatively, an individual can become eligible if a disability certificate for the individual is filed with IRS.
- ABLE accounts have no impact on Medicaid or SSI, although SSI payments are suspended while a beneficiary maintains excess resources in an ABLE account. More specifically, the first \$100,000 in ABLE account balances is exempted from being counted toward the SSI program's \$2,000 individual resource limit. However, account distributions for housing expenses are counted as income for SSI purposes. Assuming the individual has no other assets, if the balance of an individual's ABLE account exceeds \$102,000, the individual is suspended, but not terminated, from eligibility for SSI benefits but remains eligible for Medicaid.
- Upon the death of an eligible individual, any amounts remaining in the account (after Medicaid reimbursements) will go to the deceased's estate or to a designated beneficiary and will be subject to income tax on investment earnings, but not to a penalty.
- Contributions to an ABLE account by a parent or grandparent of a designated beneficiary are protected in bankruptcy. In order to be protected, ABLE account contributions must be made more than 365 days prior to the bankruptcy filing.

On a related note, the new legislation also changes the rules regarding investment direction for Section 529 qualified tuition programs, permitting investment direction by an account contributor or designated beneficiary up to two times per year. Under prior law, no investment direction was allowed, although Treasury guidance allowed such direction up to once per year.