ABLE Accounts

In 2014, President Obama signed into law the *Tax Increase Prevention Act of 2014* (TIPA 2014), which added a new code section 529A. This code section provides for the creation of a new type of tax-favored savings account, termed an "ABLE" (Achieving a Better Life Experience) account.

Overview

Individuals with disabilities face significant barriers to finding and holding employment and living independently because their access to safety-net programs such as Supplemental Security Income (SSI) and Medicaid can be lost once they establish a minimum level of savings income. ABLE accounts are designed to encourage and facilitate the ability of those with significant disabilities to live and work independently, without losing the benefits of SSI or Medicaid.[1]

Under current federal legislation, a state may establish and maintain a qualified ABLE Program. In general, a qualified ABLE program must meet the following requirements:

1. Contributions may be made to an account established solely for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.
2. The program must limit a designated beneficiary to *one* account, wherever located.
3. Certain other requirements of the law. For example:
   - There must be a separate accounting for each designated beneficiary
   - A beneficiary's ability to direct the investment of contributions to the account must be limited to no more than two times per year
   - No interest in any portion of an account may be pledged as a security for a loan

A qualified ABLE program is generally exempt from federal income tax, other than the tax on unrelated business income of tax-exempt organizations.

[1] SSI has an individual resource limitation of only $2,000. In most states, qualifying for SSI also confers Medicaid eligibility. Generally, when SSI recipients have income and resources over the limit, their SSI benefits are suspended, but they remain eligible for Medicaid.

Effect of ABLE Accounts on Federal Means-Tested Programs

An amount in an ABLE account, or any distribution from an ABLE account for qualified disability expenses, is generally disregarded for the purposes of determining eligibility for federal means-tested programs such as SSI or Medicaid. There are two exceptions to this:

- Distributions from an ABLE account for the purpose of housing expenses may be a countable resource if retained beyond the month of receipt.
- Any amount in excess of $100,000 is considered a "resource" for purposes of federal means-tested programs.

Generally, if a disabled individual is found to have excess resources, his or her eligibility for SSI is suspended (not terminated), but eligibility for Medicaid is unaffected.

Eligible Individual

An eligible individual is someone who became blind or disabled before reaching the age of 26. Additionally, the individual must be either (1) entitled to Social Security disability benefits or SSI, or, (2) have a physician-signed certificate of disability on file with the IRS. The certificate of disability must attest that the disabled individual is either blind of has a medically determinable physical or mental impairment which results in marked and severe functional limitations which can be expected to result in death or which has lasted or can be expected to last continually for at least 12 months.

Designated Beneficiary

A designated beneficiary of an ABLE account must be an eligible individual who is the owner of the account and who is designated at the beginning of participation in a qualified ABLE program as the beneficiary of amounts paid into the program.

Contributions

Contributions to an ABLE account are considered a completed gift of a present interest, must generally be in *cash,* and are *nondeductible* for federal income tax purposes.[2] In addition:

[2] In general, exempt from both gift tax and Generation Skipping Tax (GST).

- On an annual basis, contributions to an ABLE account may not exceed the federal annual gift tax exclusion. This limit may be exceeded in case of a rollover from a prior ABLE account. Excess contributions are subject to a 6% excise tax.
- Total overall contributions may not exceed the limit imposed on accounts under the qualified tuition program of the state maintaining the qualified ABLE program.
- Tax Cuts and Jobs Act of 2017 (TCJA) allows the amount from 529 education plans to be rolled over to an ABLE account, provided that the ABLE account is owned by the beneficiary of the 529 account or a member of the beneficiary's family for 2018-2025. Such rolled-over amounts count toward the annual limitation that may be contributed to an ABLE account. Any amount rolled over in excess of this limit will be included in the beneficiary's gross income.
- TCJA also included a provision to temporarily (2018-2025) increase the amount that may be contributed to an ABLE account. After the overall limitation on contributions is reached, an ABLE account's designated beneficiary may contribute an additional amount, up to the lesser of (a) the federal poverty level for a one-person household; or (b) the individual's compensation for the year.[3] TCJA also temporarily allows the designed beneficiary to claim the Saver's Credit for contributions made to his or her ABLE account.
- Contributions may be made by any person. The term "person" includes an individual, trust, estate, partnership, association, company, or corporation.
- If a contributor makes other gifts to a designated beneficiary, in addition to the gift to the designated beneficiary's ABLE account, the contributor's total gifts to the designated beneficiary could exceed the annual gift tax exclusion and result in a gift tax liability.

Distributions from an ABLE Account

Distributions from an ABLE account to the designated beneficiary are excluded from income to the extent that they *do not exceed* the beneficiary's qualified disability expenses. If the amount distributed *exceeds* the beneficiary's qualified disability expenses, a portion of the distribution is included in the beneficiary's income. This follows the tax treatment of annuities. An amount includable in a beneficiary's income is also subject to an additional 10% tax.

[3] For 2020, the federal poverty level for a one-person household in the continental US is $12,490; for Alaska it is $15,600; and for Hawaii it is $14,380.

Qualified Disability Expenses

Qualified disability expenses are any expenses related to the beneficiary's disability or blindness and which are made for the benefit of the designated beneficiary, including:

- Education
- Housing
- Employment training and support
- Assistive technology and personal support services
- Health, prevention, and wellness
- Financial management and administrative services
- Legal fees
- Oversight and monitoring
- Funeral and burial expenses
- Other expenses identified in future published guidance from the IRS

Rollovers

Amounts in one ABLE account may be rolled over tax-free to another ABLE account for the same beneficiary. However, no more than one such rollover may be made within a continuous 12-month period. Further, funds must be deposited into the new ABLE account within 60 days of being distributed from the prior account. A tax-free rollover may also be made to another ABLE account with a different designated beneficiary if the new designated beneficiary is (1) an "eligible individual," i.e. blind or disabled before age 26, and (2) a sibling (including step=siblings and half-siblings, by either blood or adoption) of the former designated beneficiary.

Death of the Beneficiary – Transfer to State

The proposed regulations provide that upon the death of the designated beneficiary, all amounts remaining in the ABLE account are includable in the designated beneficiary's gross estate for estate tax purposes. Further, after all outstanding qualified disability expenses have been paid, any amounts remaining in the deceased beneficiary's ABLE account are subject to a claim from the state for an amount equal to the total medical assistance (Medicaid) paid for by the state. Any funds remaining in the account after the state has been re-paid would generally be paid to the beneficiary's estate, subject to income tax on the earnings, but not subject to the 10% penalty.

The ability to establish an ABLE account represents a new option for parents or guardians to provide for the needs of a disabled individual, without jeopardizing means-tested benefits such as Supplemental Security Income (SSI) or Medicare. Your Jacobi Capital team is here to help you decide whether or not to establish an ABLE account and help maintain one.