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ABLE ACCOUNTS

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Many of you have probably heard about “ABLE” accounts. The concept is for individuals with disabilities to have a tax-free savings account similar to a 529 College Savings Plan (ABLE accounts will be “529A” accounts).

For information specifically on the State of Illinois ABLE Account program please visit <http://www.illinoistreasurer.gov/Individuals/ABLE>. However, Illinois residents can also use many other State’s ABLE Account programs. The first State, and many feel arguably the easiest to use, is Ohio’s found at <http://www.stableaccount.com/>.

While an ABLE account may be a very useful additional “tool” in some circumstances, an ABLE account may not be as useful as first thought for many families of individuals with disabilities.

First, the ABLE account is limited in terms of the amount of money that can be deposited on an annual basis; the current limit is \$14,000 per year, and there is a limit of one ABLE account per individual.

Second, the total value of an ABLE account cannot exceed \$100,000 or the individual will have their SSI eligibility suspended until the account balance returns below that level. Further, the ABLE account is capped at the College Savings 529 Plan maximum in the state in which the ABLE account is open; State limits vary from approximately \$250,000 to \$450,000. Illinois’ limit is \$350,000.

Third, ABLE accounts can be used solely to cover disability related expenses or face a penalty.

Fourth, an ABLE account requires strict, complex reporting and record keeping.

Fifth, the individual, unless there is a court appointed Guardian appointed, has full control and access to the Account. That is there is no “trustee” or “custodian”.

Finally, be aware that the States that provided medical assistance and/or Medicaid waiver services during the life of the individual, such as Home Based or residential services, are allowed on the individual’s death to claim a “payback” or reimbursement, for all such amounts (including medical and Medicaid waiver) which were provided to the individual after the establishment of the ABLE account.

There are several circumstances in which an ABLE account may be very useful. For example, in situations where an individual with disabilities wants to save excess work earnings or Social Security money so that it may be used in the future, as this money cannot be accumulated over

\$2,000 in their own name (under SSI and “traditional” Medicaid rules) but they can place up to \$14,000 a year into an ABLÉ Account. An ABLÉ account might also be useful where a relative has left an inheritance of less than \$14K directly to the child who is on “traditional” Medicaid and/or SSI and mistakenly did not leave it to a 3rd party Special Needs Trust. Another possible use for an ABLÉ account might be to receive “adult” child support ordered by a court, in order not to impact SSI or Medicaid. ABLÉ accounts could also be used to avoid the 1/3 reduction to SSI for family contributions to the individual for food and shelter. If the family contributes the funds for food and shelter to the Able Account, its use will not cause the 1/3 reduction to SSI as it would if such funds came from them directly or through a special needs trust. Lastly, it might be the perfect vehicle for small litigation settlements.

However, due to the “payback” or reimbursement to the State(s) on death for Medicaid use, it is definitely not an appropriate vehicle for gifts or inheritances from others for the benefit of the individual with disabilities, unless there is the strong belief that all funds gifted will be spent for disability related expenses before the individual with disabilities dies. In that situation a Third Party Special Needs Trust is the only appropriate option and with a Third Party Special Needs Trust’s favorable income tax rules, that is, being taxed as a Qualified Disability Trust, the Trust can shelter potentially more than \$14,000 in annual investment income. In short, the ABLÉ account has some use for the individual’s own savings, but generally not for gifts or inheritances from others due to the pay-back on death of the individual.

Many believe that the most beneficial provision of an ABLÉ account is that it grows “income tax free”, at least for Federal Income Tax purposes. However, if you “do the math” you will see that, that fact is really of little benefit. If the individual is receiving SSI, the ABLÉ account cannot have more than \$100,000. The individual can use their personal exemption and standard deduction to shelter their earned income and any income on ABLÉ account investments potentially to the extent of over \$14,000. Further, if you add the average individual’s (receiving SSI) annual earned income to the current possible return on \$100,000 in ABLÉ account investments, you will see that more than likely than not there wouldn’t be any income tax anyway on those funds, even if they were “taxable”.

There are current proposals in Congress to make ABLÉ accounts more beneficial to those with disabilities and to deal with some of the drawbacks. The proposals include an increase from 26 to 46 for the age that disability must have occurred, a move to allow traditional 529 plans to be rolled over into ABLÉ accounts (529A Accounts), and permitting individuals with disabilities to save additional monies to an ABLÉ account above the annual maximum (\$14,000.00) now in place if the individuals with disabilities work and earn income. Regardless of the success of these proposals, it is important to remember the benefits as well as the shortcomings of ABLÉ accounts as you consider them as one of the savings tools for an individual with disabilities.

Before considering an ABLÉ account, when they become available, you should consult with an experienced special needs planning attorney. To find such an attorney we suggest contacting the Arc of Illinois at 815-464-1832 (<http://www.hearcofil.org>), and/or visit <http://www.specialneedsalliance.org/find-an-attorney/illinois/> (the national not-for-profit association of experienced special needs planning attorneys, membership by invitation only) or <http://specialneedsanswers.com/illinois-special-needs-planners>.