

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 to have an ABLE Account, and many feel, arguably, the easiest to use, is Ohio’s found at:

<http://www.stableaccount.com>

To compare the different State ABLE programs got to:

http://www.ablenrc.org/state_compare/

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 2018 limit is \$15,000 per year, and there is a limit of one ABLE account per individual. However, in addition, beginning in 2018, due to the December 2017 Federal Tax Bill (the Tax Cuts and Jobs Act), until 12/31/25, an ABLE beneficiary who has income from employment may make an additional contribution of the lesser of the beneficiary’s earned gross income from employment for the year, and an amount equal to the Federal Poverty Level for a one-person household (which is currently at \$11,770), if there is no contribution by or for the beneficiary, to an employer retirement saving plan. However, beware; the earned income will still be counted for purposes of eligibility. Additionally, the Tax Cuts and Jobs Act allows, beginning in 2018 until 12/31/25, a designated beneficiary of an ABLE account, to claim the saver’s credit for contributions made by the beneficiary to his or her ABLE account, if not a full time student and if age 18 or older. Of note is another new provision regarding ABLE accounts under the December 2017 Federal Tax Bill. That is, in 2018 a traditional 529 college tuition account which has an ABLE beneficiary as the beneficiary, may be transferred to the 529A ABLE Account for that beneficiary, but the amount of the “rollover” is subject to the annual limitation for contributions, again \$15,000 for 2018.

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 \$400,000.

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

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“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 \$15,000 a year into an ABLE Account.

An ABLE account might also be useful where a relative has left an inheritance of less than \$15,000 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 ABLE account might be to receive “adult” child support ordered by a court, in order not to impact SSI or Medicaid.

ABLE 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 with a \$4,150 exemption in 2018, and with the beneficiary’s 2018 standard deduction of \$12,000, the Trust can shelter potentially (subject to the beneficiary’s earned income) more than \$16,000 in annual investment income.

In short, the ABLE 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 ABLE 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 ABLE account cannot have more than \$100,000. The individual can use their 2018 standard deduction of \$12,000 to shelter their earned income and any income on ABLE account investments. Further, If you add the average individual’s (receiving SSI) annual earned income to the current possible return on \$100,000 in ABLE 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”.

It is important to remember the benefits as well as the shortcomings of ABLE accounts as you consider them as one of the savings tools for an individual with disabilities.

Before considering an ABLE account, when they become available, you should consult with an experienced special needs planning attorney. To find such an attorney we suggest 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).

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