

New York Approves Tax-Advantaged Savings Account ("ABLE Account") for Disabled

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On December 22, 2015, Governor Cuomo signed legislation establishing a New York state program for the use of tax-advantaged savings accounts ("ABLE Accounts") by disabled individuals which also preserve their eligibility for means-tested government benefits such as Medicaid and Supplemental Security Income (SSI).

An ABLE (or "Achieving a Better Life Experience") Account allows for funds to be distributed tax-free for the payment of "qualified disability expenses" of a disabled individual whose disability occurred prior to attaining age 26. Examples of "qualified disability expenses" include education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees and expenses for oversight and monitoring. Any "nonqualified distributions" are subject to income tax and a 10% penalty.

The income tax-savings offered by an ABLE Account is its principal advantage over using a supplemental needs trust to provide additional funds to enhance a disabled individual's quality of life. Supplemental needs trusts are generally subject to traditional trust income taxation at compressed tax rates with a top rate of 39.6% beginning at \$12,400.

An ABLE Account, regardless of the balance, is not a countable asset in determining a disabled individual's eligibility for Medicaid assistance and, as long as the balance does not exceed \$100,000, is not a countable asset in determining a disabled individual's eligibility for Supplemental Security Income (SSI).

The disabled individual for whose benefit the ABLE Account is established must be both the account owner and the designated beneficiary of the ABLE Account. Although the disabled individual must be the account owner, anyone (including a parent or grandparent of the disabled individual) can contribute funds to an ABLE Account.

The maximum amount that may be contributed from any and all sources to an ABLE Account in one year is currently \$14,000. Only cash may be contributed to an ABLE Account. In-kind contributions of securities to an ABLE Account are prohibited.

The primary drawback to an ABLE Account is the ability of the State/Medicaid, upon the death of the disabled individual, to file a claim against the balance of the ABLE Account for reimbursement of any medical assistance the State/Medicaid has paid on the disabled individual's behalf. In contrast, no such claim can be filed by the State/Medicaid against the assets of a supplemental needs trust funded by someone other than the disabled individual (a "third-party supplemental needs trust").

An ABLE account can be a viable low-cost alternative to supplemental needs trusts for families wanting to contribute funds for the benefit of a disabled individual without jeopardizing public benefits. You should, however, consult with an experienced attorney familiar with special needs planning before deciding upon what is best for the needs of your disabled family member.

Please feel free to [contact me](#) or the attorney in our office with whom you typically work if you have any questions about an ABLE Account.