

# Invest, If You're ABLE

By Reg P. Wydeven  
November 5, 2017

It's hard to believe, but both my kids are teenagers now. We're super busy, driving to and from practices, rehearsals, lessons, concerts and games, but it is all a blast. Because time goes so quickly, we've been trying to save for their education.

A few years back, I wrote about 529 plans. These educational investment tools are tremendous. We sock away money in these plans for post-secondary education and related expenses for our kids. While you are normally taxed on growth from investments, if money in 529 plans is used for education expenses, the growth is not taxed.

The government recently expanded the concept of 529 plans to disabled individuals. Achieving a Better Life Experience, or an ABLE account, is a tax-sheltered savings plan for eligible individuals with disabilities to save for "qualified disability expenses." At the same time, the funds in an ABLE account do not jeopardize the individual's eligibility for governmental benefits.

Eligible expenses include education, housing, transportation, employment training and support, assistive technology, personal support services, health care expenses, financial management and administrative services and other expenses to enhance the person's quality of life. Like with 529 plans, if funds are withdrawn from an ABLE account for a qualified disability expense, the growth is not taxed.

To be eligible to open an ABLE account, the individual must have been disabled before the age of 26. Anyone can contribute to an individual's ABLE account, but they can only contribute up to \$14,000 per year. Contributions must be made with after-tax dollars and they are not tax deductible. Beneficiaries can only have one ABLE account.

Most states allow a beneficiary's account to hold up to \$300,000 in funds. However, if the account exceeds \$100,000, the beneficiary would no longer be eligible for supplemental security income (SSI), but they would still qualify for Medicaid.

The federal government created ABLE accounts a few years back, but each state has to pass laws adopting the legislation in order for their residents to open accounts. About half the states have adopted legislation allowing for the creation of accounts. Of those that haven't, many states, such as Wisconsin, have passed laws that allow its residents to open accounts in other states that have allowed for ABLE accounts.

Many parents of individuals with disabilities have wondered if ABLE accounts will now replace what are known as supplemental or special needs trusts. These trusts allow funds to be used for disabled individuals again without affecting governmental benefits. Growth in special needs trusts is taxable, however. There are two basic types of these trusts: self-funded and third-party funded.

Self-funded trusts are created using money belonging to the disabled individual. Upon the death of the individual, funds in the trust are paid back to the government as reimbursement for expenditures during the person's lifetime. This is commonly known as a 'payback provision.'

A third-party funded trust uses funds from someone other than the disabled individual, most often his or her parents. A third-party trust is not required to have a payback provision and the trust's creator can dictate where the funds go upon the individual's passing.

Like self-funded trusts, ABLE accounts are required to have a payback provision. For this reason, parents will likely want to utilize both ABLE accounts and special needs trusts. It's nice to know that there are multiple options out there for families with special needs children, each with their own advantages.

*This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2017 McCarty Law LLP. All rights reserved.*