What is the ABLE legislation?

ABLE is federal legislation that would allow families and individuals to save for the disability-related expenses of a disabled individual in a federal tax-advantaged account. The legislation is modeled after the 529 educations savings program legislation and provides similar federal income tax advantages – contributions grow tax deferred and are tax exempt when used for "qualified disability expenses." ABLE savings programs would need to be "established and maintained" by a state.

Significant provisions:

With the revision creating a new IRC section (529A) much of the confusion and concern of the 529 industry caused by the original bills has been eliminated.

The revised ABLE legislation still requires ABLE programs to be established and maintained by a state. States will need to pass their own enabling legislation to offer an ABLE program. For states that wish to offer such programs, the most effective and efficient way to do so is likely to be building on the infrastructure of the current 529 college savings program. While ABLE is modeled on the 529 structure, there are some significant differences that states should be aware of in considering whether and how to implement ABLE.

1. <u>Eligible individual.</u> An eligible individual is one who is:
    a. disabled, defined as being entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act, or has a "disability certification" filed with the Treasury Secretary; and
    b. became disabled before age 26.
2. <u>Disability certification.</u> A disability certification must state that "the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months," or is blind. The certification must include the diagnosis and be signed by a physician
3. <u>Yearly eligibility.</u> The beneficiary must be disabled (including having a certification, if needed) in each year in which a contribution is made.
4. <u>Account Owner.</u> The beneficiary is the account owner.
5. <u>One account.</u> There may be only one account for a beneficiary. If there is a second account, only the one that is established first can be treated as an ABLE account.
6. <u>Home state.</u> The account must be opened in the beneficiary's state of residence or a state contracting with the home state.
7. <u>Change of beneficiary.</u> The beneficiary can be changed to a disabled "member of the family" of the old beneficiary. But that is defined more narrowly than for 529 college savings program to be only siblings and step-siblings.
8. <u>Contribution limit.</u> Annual contributions per beneficiary (not per contributor) are limited to the federal gift tax limitation (currently $14,000). The maximum contribution amount is the same as set by the state for its 529 college savings plan.

9. Investment direction. The beneficiary is allowed to change the investments twice in a calendar year. (NOTE: the legislation provides this same flexibility to 529 college savings accounts).
10. Distributions. Distributions are not taxed if used for "qualified disability expenses" which include expenses for:
    a. Education
    b. Housing
    c. Transportation
    d. Employment training and support
    e. Assistive technology and personal support services
    f. Health
    g. Prevention and wellness
    h. Financial management and administrative services
    i. Legal fees
    j. Expenses for oversight and monitoring
    k. Funeral and burial expenses
    l. Other expenses approved by the Treasury Secretary
11. Tax penalty. There is a 10% federal tax penalty for distributions not used for qualified disability expenses or if there is a change of beneficiary to an individual who is not disabled.
12. As with 529s, the penalty is not imposed for distributions made after the death of the beneficiary.
13. But in ABLE the penalty can be avoided even though the beneficiary does not have qualified expenses if contributions are distributed along with their earnings before the federal tax filing deadline for the year in which the contributions were made.
14. Exclusion from means-tested federal programs. ABLE accounts are excluded from being counted for means-tested federal programs except for supplemental security income programs: (1) distributions for housing expenses are not excluded; and (2) account values over $100,000 are counted and could result in the suspension but not termination of benefits – but not Medicaid eligibility.
15. Medical assistance claim. Upon the death of the beneficiary, the state can make a claim for funds in the account up to the net amount the state paid in medical assistance.
16. Reporting. Programs must make reports, including reports
    a. at the time an account is established, to the Treasury Secretary giving the name and state of residence of the beneficiary;
    b. as specified by the Treasury Secretary, on contributions, distributions, return of excess contributions, and such other matters as requested; and
    c. monthly, to the Commissioner of Social Security, giving information on distributions and account balances from all ABLE accounts.
17. Medicaid claw back. Funds remaining in the account after the death of the beneficiary can be claimed by Medicaid to reimburse it for benefits provided to the beneficiary.

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