ACHIEVING INDEPENDENCE

ABLE Act
Another Tool in the Tool Chest

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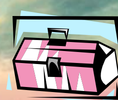
The *Achieving a Better Life Experience (ABLE) Act of 2014*

- The purpose of the video is to review the "Achieving a Better Life Experience (ABLE) Act of 2014" so the viewer will have a better understanding of what the law does and does not do.



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The *Achieving a Better Life Experience (ABLE) Act of 2014*

- **The ABLE Act has enormous bipartisan support:**
- Cosponsored by 380 Members of the House and 74 Members of the Senate.

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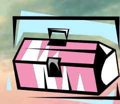
The *Achieving a Better Life Experience* (ABLE) Act of 2014

- It is also supported by more than 70 organizations and healthcare professionals, including the American Association of People with Disabilities, the Autism Society of America, Autism Speaks, the Brain Injury Association of America, Easter Seals, the National Association of Councils on Developmental Disabilities, the National Disability Institute, the National Down Syndrome Society, the National Federation of the Blind, and The ARC.



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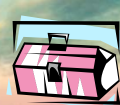
The *Achieving a Better Life Experience* (ABLE) Act of 2014

- For over 6 years this legislation has been introduced, revised and reintroduced, and has now finally become law.
- My suggestion is that even if you think you understand the ABLE Act based on news releases and alerts to support passage, take a moment and read the law.



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The *Achieving a Better Life Experience* (ABLE) Act of 2014

- As we walk through a review of the ABLE Act, think of it as one tool in a toolbox with many tools.


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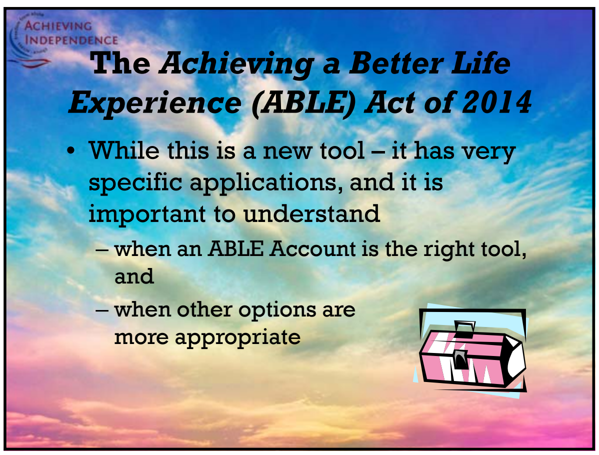
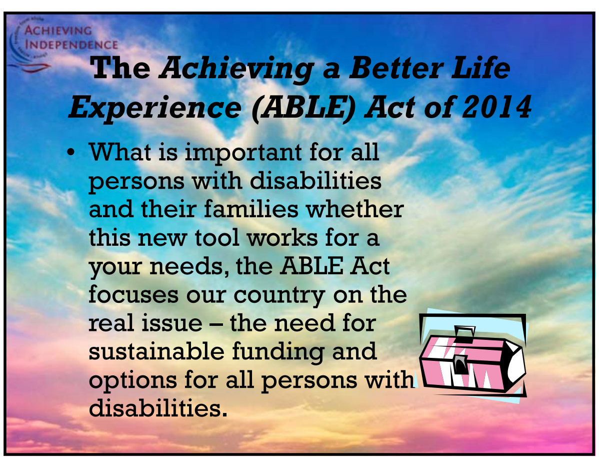
The *Achieving a Better Life Experience* (ABLE) Act of 2014
• If you are driving a nail into a board – you certainly would not try to pound it in with a screw driver.


ACHIEVING INDEPENDENCE
The *Achieving a Better Life Experience* (ABLE) Act of 2014
• While this is a new tool – it has very specific applications, and it is important to understand
– when an ABLE Account is the right tool, and
– when other options are more appropriate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The *Achieving a Better Life Experience* (ABLE) Act of 2014
• What is important for all persons with disabilities and their families whether this new tool works for a your needs, the ABLE Act focuses our country on the real issue – the need for sustainable funding and options for all persons with disabilities.

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AN OVERVIEW OF THE ABLE ACT

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Let's Begin with an Overview

- The following is from a document produced by the Committee on Ways and Means called "A Short Summary and Talking Points of H.R. 647" to educate members of Congress and the community on the ABLE Act.

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Let's Begin with an Overview

- The U.S. Constitution requires that all bills regarding taxation must originate in the House of Representatives.
- The **Committee of Ways and Means** is the chief tax-writing committee of the United States House of Representatives. The Committee has jurisdiction over all taxation, tariffs, and other revenue-raising measures, as well as a number of other programs including:
  - Social Security
  - Unemployment benefits
  - Medicare
  - Enforcement of child support laws
  - Temporary Assistance for Needy Families,
  - Foster care and adoption programs

Achieving Independence

Let's Begin with an Overview

- **To download this document as well as other materials related to the ABLE Act, go to**

www.achievingindependence.com/able

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The Committee on Ways and Means Short Summary

- **The details:** Starting in 2015, States would have the option to establish an ABLE program, under which eligible individuals with disabilities could start an ABLE account, modeled after current Section 529 savings accounts.

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The Committee on Ways and Means Short Summary

- Eligible individuals must be severely disabled before turning age 26, based on a marked and severe functional limitation or receipt of benefits under the SSI or Disability Insurance (DI) programs.

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The Committee on Ways and Means Short Summary

Other key features:

- Contributions into an ABLE account could be made by any person;
- Contributions would not be tax deductible;
- Income earned by the accounts would not be taxed;
- Account withdrawals, including portions attributable to investment earnings generated by the account, for qualified expenses would not be taxable;

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The Committee on Ways and Means Short Summary

- Individuals would be limited to one ABLE account, and total annual contributions by all individuals to any one account could be made up to the gift tax limit ($14,000 in 2014).

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The Committee on Ways and Means Short Summary

- Aggregate contributions to an ABLE account would be subject to an overall limit matching the State limit for Section 529 accounts.
- (Example – California's 529 limit is $371,000.)

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The Committee on Ways and Means Short Summary

- Individuals with ABLE accounts could maintain eligibility for means-tested benefits.

In SSI, the first $100,000 in account balances are excluded from counting as resources, as are most account withdrawals.	**ABLE account balances and withdrawals are completely excluded for the purpose of Medicaid and other benefit programs.**

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The Committee on Ways and Means Short Summary

- Something not covered in the Committee on Ways and Means Short Summary was mention of the Medicaid payback.

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Medicaid Payback

- *In the event the qualified beneficiary dies with remaining assets in an ABLE account:*
  - *The assets in the ABLE Account are first distributed to any State Medicaid plan that provided medical assistance to the designated beneficiary*
  - *The amount of any such Medicaid payback is calculated based on amounts paid by Medicaid **after the creation** of the ABLE Account*

Medicaid Payback

- While the Medicaid Payback should be a major consideration when selecting what tool to use, it is only one factor.
- Basically –this is a 529 plan with a lien for any Medicaid used by the beneficiary from the time the account was created.
- Compare this with a traditional 529 plan where there are no liens.

ABLE ACT – A CLOSER LOOK

What can be Contributed to an ABLE Account

(2) CASH CONTRIBUTIONS.—A program shall not be treated as a qualified ABLE program unless it provides that no contribution will be accepted—

- (A) unless it is in cash, or“
- (B) except in the case of contributions under subsection (c)(1)(C), *(rollovers to another beneficiary who is a family member of the designated beneficiary)* of an ABLE Account to another disabled beneficiary if such contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under section 2503(b) for the calendar year in which the taxable year begins.

What can be Contributed to an ABLE Account

- Basically what this means is that if the total amount of contributions to an ABLE Account exceed the annual gift tax exclusion, the annual gift-tax exemption amount (For 2014, this amount is $14,000) then the account no longer would be counted as an ABLE Account.

ABLE Basics

- Qualified disability expenses are any expenses made for the designated beneficiary related to their disability, including:
  - education,
  - housing,
  - transportation,
  - employment training and support,
  - assistive technology and personal support services, health,
  - prevention and wellness,
  - financial management and administrative services,
  - legal fees,
  - expenses for oversight and
  - monitoring, funeral and burial expenses.

(3) SEPARATE ACCOUNTING REQUIRED

- A program shall not be treated as a qualified ABLE program unless it provides separate accounting for each designated beneficiary.
- This is presumably because of the requirement that all Medicaid used by the beneficiary from the time the account was established upon the death of the beneficiary.

LIMITED INVESTMENT DIRECTION

A program shall not be treated as a qualified ABLE program unless it provides that any designated beneficiary under such program may, directly or indirectly, direct the investment of any contributions to the program (or any earnings thereon) no more than 2 times in any calendar year.

LIMITED INVESTMENT DIRECTION

- 529A accounts would be administered on a voluntary basis by the States in a similar manner as 529 college savings accounts.
- As with 529 college savings accounts, the range of investment options available for ABLE accounts would be determined by the States.

Tax Free Growth and Penalties if Used for Non Qualified Expenses

- Contributions are in after-tax dollars but earnings would grow tax-free just like with 529 college savings accounts (Roth style).
- Withdrawals must be for qualified expenses or else the earning portion would be subject to regular income tax and a 10% penalty (state penalties could also apply).

Tax Free Growth and Penalties if Used for Non Qualified Expenses

- Example – Bob over a decade saves $50,000, and over that period the account earns $10,000 for a total of $60,000.
- If Bob were to use the $60,000 for a down payment on a home, no taxes would be due
- If Bob were to use $5,000 to pay for a trip to Disneyland – the $10,000 would be taxable, plus a 10% penalty.

ABLE Accounts Must Be Opened in the State Beneficiary Resides

- Qualified individuals or their families must open ABLE account in the state in which the beneficiary resides or in a state that has a memorandum of understanding with another state to provide accounts.
- There is a limit of one ABLE account per eligible individual

Who Qualifies?

1. Persons Diagnosed as Disabled Before Age 26 and Receiving SSI or SSDI

- *Any individual who has been diagnosed with a disability before the age of 26 years old*, and who is receiving, deemed to be, or treated as receiving supplemental security income benefits or disability benefits under Title II of the Social Security Act.

Or

2. Persons Diagnosed as Disabled Before Age 26 and Certified as Meeting Conditions Similar to that Required by SSI or SSDI

- *Any individual who has been diagnosed with a disability before the age of 26 years old*, who has a medically determined 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 month or is blind, **and** provides a copy of their diagnosis signed by a physician.

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Who Qualifies?

- If the ABLE account beneficiary qualifies because of certification, eligibility cannot be used to secure supplemental security income (SSI) or Medicaid

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ABLE and SSI Eligibility

- If the beneficiary is receiving Supplemental Security Income (SSI) benefits, when the assets in the account total $100,000, any monthly SSI benefits will be placed in suspension.
- If the assets in the ABLE Account drop back below $100,000, the SSI benefit suspension ceases and any SSI benefit resumes.
- The beneficiary will not have to reapply for SSI benefits once the account drops back below the $100,000 threshold.

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ABLE and Medicaid Eligibility

- ABLE account beneficiaries do not lose Medicaid eligibility based on assets in their ABLE account or suspension of SSI benefits.
- For instance, in California the maximum amount that can be placed in a 529 plan is $371,000.
- Therefore – if contributions exceed $100,000 – SSI eligibility would be lost – but as long as the account remains below $371,000 – Medi-Cal eligibility continues.

ABLE ACCOUNTS AND SPECIAL NEEDS TRUSTS

Comparing ABLE Accounts to Special Needs Trust

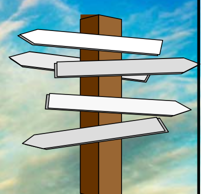
- To make an intelligent decision about what tool to use – it is important to understand the basics of special needs trusts.

A PRIMER OF SPECIAL NEEDS TRUSTS

Special Needs Trusts Can Be Divided Into Two Categories

- If the source of the fund are from someone other than the benefits recipient, the trust is categorized as a Third Party Special Needs Trust.
- If the source of the funds of the Special Needs Trust are from the benefit's recipient, then the trust is categorized as a self settled or Medicaid Payback Trust

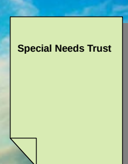
The Third Party or Estate Planning Special Needs Trust



Third-Party Trust Social Security says

SI 01120.200 A 17

- A **third-party trust** is a trust established by someone other than the beneficiary as grantor. For example, a third-party trust may be established by a grandparent for a grandchild.
- Be alert for situations where a trust is allegedly established by a third party, but in reality is created with the beneficiary's property.



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Third-Party Trust

SI 01120 200 A 17

- A **third-party trust** can have great latitude, and upon the death of the beneficiary can be left to anyone you wish except:
- You cannot leave it to the drafting attorney

Special Needs Trust

ACHIEVING INDEPENDENCE

Third-Party Trust

- A third-party trust can have great latitude, and upon the death of the beneficiary can be left to anyone you wish except with no payback to the state.
- There are no limits to how much can be placed in a Third Party Special Needs Trust
- A third-party trust had no age limit for the beneficiary

Special Needs Trust

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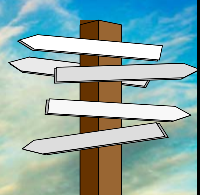
The Individual Self Settled Medicaid Payback Trust



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Self Settled Special Needs Trusts or Medicaid Payback Trusts

SI 01120.203 B1.

- Federal Law Allows A Disabled Individual to Protect Their Own Assets And Maintain Their SSI AND Medicaid If The Special Needs Trust
  - Which contains the assets of an individual **under age 65** and who is **disabled** ; and

Special Needs Trust

ACHIEVING INDEPENDENCE

Self Settled Special Needs Trusts or Medicaid Payback Trusts

SI 01120.203 B1.

- Federal Law Allows A Disabled Individual to Protect Their Own Assets And Maintain Their SSI AND Medicaid If The Special Needs Trust
  - Which is **established for the benefit of such individual by a parent, grandparent, legal guardian or a court**; and

Special Needs Trust

ACHIEVING INDEPENDENCE

Self Settled Special Needs Trusts or Medicaid Payback Trusts

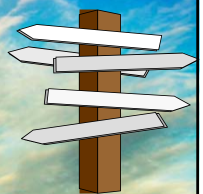
SI 01120.203 B1.

- Federal Law Allows A Disabled Individual to Protect Their Own Assets And Maintain Their SSI AND Medicaid If The Special Needs Trust
  - Which provides that the **State will receive all amounts remaining** in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State Medicaid plan.

Special Needs Trust

Pooled Special Needs Trusts

Medicaid Payback Required



A Pooled Trust is a Trust

SI 01120.203 B2a

- It is sometimes called a "master trust" because it contains the assets of many different individuals, each in separate accounts established by individuals, and each with a beneficiary.
  - By analogy, the pooled trust is like a bank that holds the assets of individual accountholders.

The provisions of the SSI trust statute do not apply to a trust containing the **assets of a disabled individual** which meets the following conditions:

- The pooled trust is established and maintained by a **nonprofit association**;

The provisions of the SSI trust statute do not apply to a trust containing the **assets of a disabled individual** which meets the following conditions:

- **Separate accounts** are maintained for each beneficiary, but assets are pooled for investing and management purposes;

The provisions of the SSI trust statute do not apply to a trust containing the **assets of a disabled individual** which meets the following conditions:

- **NOTE**: There is no age restriction under this exception.

Who Established the Trust Account

- In order to qualify for the pooled trust exception, the trust **account** must have been established by the disabled individual himself/herself or by the disabled individual's:
  - parent(s);
  - grandparent(s);
  - legal guardian(s); or
  - a court.

State Medicaid Reimbursement Provision

To qualify for the pooled trust exception, the trust must contain specific language that provides that:

– to the extent that amounts remaining in the individual's account upon the death of the individual are not retained by the trust, the trust pays to the State from such remaining amounts in the account an **amount equal to the total amount of medical assistance paid on behalf of the individual under the State Medicaid plan**.

LET'S TALK ABOUT PAYBACKS AND MEDI-CAL LIENS

ABLE Act Medicaid Payback

- "(f) TRANSFER TO STATE.—Subject to any outstanding payments due for qualified disability expenses, upon the death of the designated beneficiary, all amounts remaining in the qualified ABLE account not in excess of the amount equal to the **total medical assistance paid for the designated beneficiary after the establishment of the account**, net of any premiums paid from the account or paid by or on behalf of the beneficiary to a Medicaid Buy-In program under any State Medicaid plan established under title XIX of the Social Security Act, shall be distributed to such State upon filing of a claim for payment by such State. For purposes of this paragraph, the State shall be a creditor of an ABLE account and not a beneficiary. **Subsection (c)(3) shall not apply to a distribution under the preceding sentence.**

Medicaid Payback

Medicaid Recovery	ABLE Account	3^{rd} Party SNT	D4A Trust
Medicaid used for medical purposes after age 55	The amount of any such Medicaid payback is calculated based on amounts paid by Medicaid after the creation of the ABLE Account	No lien	All Medicaid paid during lifetime

Medicaid Payback

PLAN FOR LIEN UPON DEATH

- If family are using this as a savings tool – ideally the funds will be expended before death. This is a 529 plan with a lien.

MAKE SURE THAT THE PAYBACK IS EVEN AN ISSUE

- No every disabled person uses Medicaid. Some use massive amounts of Medicaid.

"SECTION 102(c.)(1)(C)

CHANGE IN DESIGNATED BENEFICIARIES OR PROGRAMS

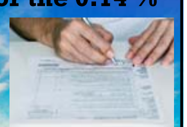
- "(i) ROLLOVERS FROM ABLE ACCOUNTS.—Subparagraph (A) shall not apply to any amount paid or distributed from an ABLE account to the extent that the amount received is paid, not later than the 60th day after the date of such payment or distribution, into another ABLE account for the benefit of the same designated beneficiary or an eligible individual who is a family member of the designated beneficiary.
- (ii) CHANGE IN DESIGNATED BENEFICIARIES.—Any change in the designated beneficiary of an interest in a qualified ABLE program during a taxable year shall not be treated as a distribution for purposes of subparagraph (A) if the new beneficiary is an eligible individual for such taxable year and a member of the family of the former beneficiary.

"SECTION 102(c.)(1)(C)
CHANGE IN DESIGNATED BENEFICIARIES OR PROGRAMS

- Rollovers from one ABLE account are limited to another to a "family member" as defined in IRS code 152(d)(2)(B).

ABLE ACT AND GIFT TAXES

Gift and Estate Tax Benefit for the 0.14 %



- The Center on Budget and Policy Priorities estimates that only the richest 0.14 percent of Americans pay any estate tax.
- The gift and estate tax is a boogie man for most of us.
- Beware – some states also have estate taxes. California does not.

The ABLE Act – and Gift Taxes

- The ABLE Act states in part "(A) CONTRIBUTIONS.—Any contribution to a qualified ABLE program on behalf of any designated beneficiary— "(i) shall be treated as a completed gift to such designated beneficiary which is not a future interest in property, and "(ii) shall not be treated as a qualified transfer under section 2503(e)."

Gift Tax Gift for the .14%

- The problem with a special needs trust is that by its nature gifts to the trust are not considered a completed gift.
- But here is the reality of the situation.

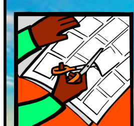
Gift Tax Gift for the .14%

- Let's say you were to make a gift into your child's special needs trust which was properly drafted for estate tax purposes. Because the trust is not a completed gift, you can't use your annual $14,000 federal gift exclusion, you will need to use part of your $5,430,000 lifetime exclusion.

The ABLE Act – and Gift Taxes

- To understand how gift and estate taxes work, think of the estate and gift tax exclusion as "lifetime and annual coupons."
- You can use your coupon while you are alive and whatever portion is not used, will be left to the beneficiaries of your choice when you die.

Gift Tax Gift for the .14%



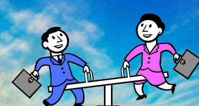
- There is an exception to the lifetime gift and estate tax rules – the coupon as I like to call it.
- Each person also has an annual gift tax exclusion of $14,000 per person.
- This is a separate coupon that allows each of us to give up to $14,000 a year to as many people as we like as long as it is a "completed gift".

Gift Tax Gift for the .14%

- So for instance – you could literally completely avoid estate taxes if you are wealthy by walking down the street and giving everyone a check for $14,000.
- In fact, if you are married, you could give everyone $28,000 a year.

The ABLE Act – and Estate Taxes

- If you pass away in 2015 you can pass up to $5,430,000 to anyone you like, including your child's special needs trust, without paying one cent of gift or estate tax.
- If you were to give $50,000 to your child's special needs trust right now, you would still have a coupon allowing you to give another $5,380,000 tax free during your lifetime or upon your death.



INCOME TAXES - STRIKING A BALANCE – AN ABLE ACCOUNT COMPARED TO SPECIAL NEEDS TRUST

Income Taxes - Striking a Balance

ABLE Account compared to Special Needs Trust

- Need to focus on all tax options
- One value of an ABLE Account is that it is tax free like a 529 plan
  - Probably as simple as it gets
- A special needs trust can often qualify as a Qualified Disability Trust – and many distributions are deductible at the beneficiaries tax level
  - Requires tax return for trust and beneficiary

Qualified Disability Trusts

- From the Special Needs Alliance

www.specialneedsalliance.org

Income Taxes - Striking a Balance

ABLE Account compared to Special Needs Trust

If a 3rd party special needs trust is drafted as a Qualified Disability Trust

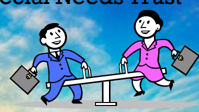
- It has a full $4,000 exemption in 2015, & all distributions from the Trust for the benefit of the beneficiary are taxed to the beneficiary, AND
- The beneficiary has his/her own, a 2nd exemption of $4,000, & a standard deduction in 2015 of $6,300.
- A 3rd party special needs trust can shelter a total of $14,300 in 2015 of taxable income.

Income Taxes - Striking a Balance

ABLE Account compared to Special Needs Trust

- An ABLE Account (s) with $100,000 (maximum not to lose SSI) would need to earn over 14% for any income tax benefit over a 3rd party SNT.
- Keep in mind the ABLE Account is subject to a Medicaid Payback.

Income Taxes - Striking a Balance
ABLE Account compared to Special Needs Trust



- For a 1st party "pay back" trust, ALL income is taxed to the beneficiary, NOT to the Trust. Again, the beneficiary has a $4,000 exemption & a standard deduction of $6,300.
- Therefore, no tax until the trust income exceeds $10,300, and, then at the lowest tax bracket (10% on next $9,225).

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CASE STUDIES

Example
The $10,000 Inheritance Dilemma

- Bob has a disability that occurred before the age of 26 and is on SSI and Medicaid
- Bob inherited $10,000.
- He has the following options
  - Spend down the assets in the month of receipt
  - Join a pooled trust or have parents or grandparents establish a self settled trust
  - Put the funds in an ABLE Account

Example
The $10,000 Inheritance Dilemma

- Keep in mind that Bob has to have the capacity to transfer the funds into the ABLE Account.

Example
Difficulty Remaining Below Resource Limit

- Jane has a disability that occurred before the age of 26 and is on SSI and Medicaid
- She has a job – receives Section 8 – lives very frugally – and has difficulty staying below the $2,000 resource limitation
- She could transfer up to $14,000 a year of his excess wages to her ABLE Account to be used at a later date.

2011 ANNUAL REPORT OF THE SSI PROGRAM FROM THE SOCIAL SECURITY ADVISORY BOARD

- The conference report on the 1984 legislation that raised the resource limit stated that a major purpose of allowing SSI recipients to have a certain amount of resources was to help them cover major costs of an urgent nature that could not be met from their monthly benefit payments, such as to replace a furnace or make essential household repairs.[9] Research into congressional intent in 1984 does not show any plan for future increases, nor was there any discussion of indexing at that time. ….If the 1972 amounts had been adjusted for inflation, they would now be nearly $8,000 for an individual and $12,000 for a couple.[10]

In Conclusion

- The ABLE Act is a new tool – and in limited situations can be an easy way to shelter assets and still remain qualified for SSI and Medi-Cal.
- ABLE in most cases is not a substitute for a special needs trust.
- There is a great need for broad education about all the different options for setting aside assets for persons with disabilities to ensure quality of life.

What I Would Like to See the ABLE Act Focus On.

- Eliminate in-kind support and maintenance reduction for outside support from family
- Allow conduit trust treatment of qualified plans
- Allow UTMA transfers to an ABLE account
- Tax deductions or credits for parents of adult children with disabilities that provide support

Medicaid Payback

Can we call this what it is?

MEDICAID PAYBACK ACCOUNTS

or maybe

ABLE PAYBACK ACCOUNTS


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