Update on ABLE Accounts: What Trust and Estate Lawyers Need to Know

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ABLE (Achieving a Better Life Experience) accounts, first discussed in an article published in this magazine last spring, have already undergone significant changes since the original enactment of the law in 2014. Prob & Prop., May/June 2017, at 40. Most recently, the Tax Cuts and Jobs Act of 2017 (2017 Tax Act) made two significant changes that will be discussed below.

ABLE accounts are tax-advantaged savings accounts that can be established for certain persons with disabilities and used for qualified disability-related expenses. Annual contributions to ABLE accounts are limited to an amount not to exceed the federal annual gift tax exclusion. This annual contribution limit is from all sources, and individuals can have only one ABLE account. As a result of an increase in the annual gift tax exclusion amount in 2018, the cap on annual contributions to an ABLE account has been increased from $14,000 to $15,000.

The 2017 Tax Act modifies ABLE accounts to permit the beneficiary of the account to make additional contributions to the beneficiary's own ABLE account above and beyond the $15,000 limitation. Additional contributions are permitted in an amount up to the lesser of (1) the federal poverty line for a one-person household (currently, $12,060) or (2) the individual's compensation for the year. No additional contribution, however, may be made if a contribution, on behalf of the individual, was made for the taxable year to (1) a defined contribution plan under IRC § 414(i), (2) an annuity contract described in IRC § 403(b), or (3) an eligible deferred compensation plan described in IRC § 457(b). This provision is effective for tax years commencing in 2018 and sunsets on December 31, 2025.

In addition, the beneficiary may now be eligible to claim a nonrefundable saver's tax credit for contributions to an ABLE account up to $2,000. Because the credit is nonrefundable, from a practical perspective it may not help many ABLE account owners, who often have very low or no individual tax liability.

The other significant change made by the 2017 Tax Act permits rollovers from 529 accounts to an ABLE account of the individual or certain family members. The rollover amount counts toward the $15,000 annual contribution limitation. Thus, if other contributions have been made that year they must be taken into account in determining whether the annual limit has been reached. Caution should be exercised before making the rollover, however, because ABLE accounts are subject to the Medicaid payback upon death of the beneficiary, but 529 accounts are not. The new rollover provisions apply to distributions from 529 accounts commencing in 2018 and ending on December 31, 2025.

The changes to ABLE accounts that went into effect on January 1, 2018, create new opportunities for individuals with disabilities and their families. However, like all aspects of special needs planning, the issues are complex. Practitioners should recommend taking advantage of these opportunities only after examining the individual circumstances of each particular family.