

Comparing ABLE Act Accounts and Special Needs Trusts

	ABLE Account	First-party Special Needs Trust	Third-party Special Needs Trust
Governing authority	26 USC §529A (tax code)	42 USC §1396p(d)(4) NY SSL§366 NY EPTL§7-1.12	NY EPTL§7-1.12
Payback provision	Yes. State entitled to receive all ABLE balance at death of beneficiary up to amount of Medicaid provided	Yes. State named as remainder beneficiary to extent of Medicaid provided	No
Beneficiary eligibility	Individual entitled to Social Security benefits (or otherwise disabled) before age 26	Under 65 at time of trust creation and disabled by Social Security definition	No limits or requirements
Grantor/settlor	Any person (but beneficiary owns account)	Person with disability, parent, grandparent, guardian or court	Anyone other than person with disability
Tax issues	No tax on earnings; distributions taxed unless used for “qualified disability expenses”	Trust earnings taxed to beneficiary under grantor trust rules; no separate tax on distributions	Sometimes income taxable to person contributing money to the trust; otherwise taxed at higher trust rates but distributions to or for beneficiary may carry out income tax liability also possible Qualified Disability Trust
Effect of distributions on benefits	If for “qualified disability expenses,” no effect on eligibility or benefit levels	Only distributions for food and shelter raise issues re: eligibility; distributions directly to beneficiary general precluded	Distributions to beneficiary may cause benefit reduction or loss, as may distributions for food or shelter; other distributions have no effect on most eligibility programs
Management of assets	State program provider; account holder may choose state	Someone other than beneficiary; court often supervises	Someone selected by settlor; often family members but sometimes professionals (with costs and bureaucracy)
Countable resource?	Yes for SSI if balance exceeds \$100,000		No
Maximum contribution	Gift tax exemption amount (\$14,000 in 2017/\$15,000 in 2018) per year total, from any source		No limit
Limit on number of accounts	1 per beneficiary		No limit