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NEW INFORMATION

THE ABLE ACT – SECTION 529 DISABILITY SAVINGS PLAN

THE LATEST UPDATE

January 2015

In December of 2014, Congress passed, and the President signed into law, the ABLE Act. This is a completely new law. It creates the Section 529 Disability Savings Plan. The Section 529 Disability Savings Plan is similar to the Section 529 Educational Savings Plan that was passed into law years ago. The Section 529 Educational Savings Plan has become very popular as a way of saving money for children and grandchildren to go to college.

The new Section 529 Disability Savings Plan allows money to be put into a Section 529 Disability Savings Account for a disabled person who became disabled before the age of 26. The major advantage to this Account is that the money in the Account is not a countable asset and, thus, does not take the person off of government benefits. I believe it would be helpful for you to know that the Section 529 Disability Savings Plan provisions have been passed into federal law. These Section 529 Disability Savings Plan Accounts cannot yet be set up in Wisconsin until the legislature passes enabling legislation to permit people in Wisconsin to set up such Accounts. I am happy to report that I have spoken with Assembly Speaker Robin Vos and he is very supportive of having the Section 529 Disability Savings Plan adopted into law here in Wisconsin.

Hopefully, this should happen sometime in 2015 so that these Accounts will be able to be set up in 2016 or earlier.

GREATER MILWAUKEE AREA OFFICES IN BROOKFIELD, GLENDALE, MILWAUKEE & RACINE



* Attorney Timothy P. Crawford has been Nationally Board Certified as an Elder Law Attorney by The National Elder Law Foundation which has been Approved as the Sole Certifying Organization for Elder Law Attorneys by The American Bar Association.

The following will help you know a little bit about the Section 529 Disability Savings Plan.

The ABLE Act which creates the Section 529 Disability Savings Plan provides for Section 529 Disability Savings Plan Accounts similar to the Section 529 Educational Savings Plan Accounts that were put into the law years ago. The Section 529 Disability Savings Plan law limits the total annual contribution into the Account to a maximum of \$14,000 per year.

This is **not** a \$14,000 per contribution limit. It is a \$14,000 maximum per year contribution limit from all sources. It does qualify as a present interest exclusion gift. Therefore, there is no gift tax consequence to contributing money into the Section 529 Disability Savings Plan Account. However, any money in the Account at the disabled person's death is subject to Estate Recovery. This is a major negative to funding this type of an Account.

However, small amounts that are put into the Account will probably be spent during the disabled person's lifetime, and, there will be nothing left to be taken by the government (Estate Recovery). I can see it being used for small amounts. Contributions that are large cannot go into the Account because of the \$14,000 annual limit as well as the \$100,000 maximum Account balance. For the above reasons, contributions from parents and others may still be best placed into a Special Needs Trust set up by third parties (parents and grandparents) and will then not be subject to being taken by the government to repay the government for the benefits paid to the disabled child (Estate Recovery).

The Account does get a tax break similar to the Section 529 Educational Savings Plan Account. You do not pay tax on the earnings in the Account. However, since the Plan is limited to a \$100,000 maximum contribution, we are talking about insignificant tax savings associated with the Section 529 Disability Savings Plan Account. The major advantage is that money inside the Account does not count as a countable asset for Medical Assistance and SSI purposes. The other advantage will be that it will be simple to create. It is simply a special Account to be set up for this purpose. However, when withdrawals from an ABLE Account are made, legal advice will be needed.

I like the fact that it is anticipated that major brokerage firms will get involved just like they did with the Section 529 Educational Savings Plan. They will educate the public that these Section 529 Disability Savings Plan Accounts exist. A disabled person could have personal funds of \$2,000 and additional monies of up to \$100,000 in the Section 529 Disability Savings Plan Account. Any excess over \$100,000 in the Account would cause the disabled person to lose their SSI benefits, but not their Medical Assistance benefits.

I hope the above explanation about the Section 529 Disability Savings Plan is useful to you. Sometimes, the solution will be to use a Section 529 Disability Savings Plan Account. Other times, it would be more beneficial for to use a third-party funded Special Needs Trust. If you would like more information as to when to use a Special Needs Trust versus a Section 529 Disability Savings Plan Account, please contact my office to schedule a free phone conference with me.