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The ABLE Act: Is it all that it's cracked up to be?

The Achieving a Better Life Experience Act of 2014 (the "ABLE Act") was signed into law by President Obama in December 2014 and effective in New York as of April 1, 2016. The law is designed to help certain individuals with disabilities pay for qualified expenses without adversely affecting benefits from Supplemental Security Income ("SSI"), Medicaid, private insurance, and employment. An ABLE account is similar to that of a 529 plan in that, as long as funds are spent on qualified expenses, the account grows tax free.

However, the law places several restrictions on who may utilize these accounts and the manner in which funds can be used. For example, the owner of the account must have a disability, the onset of which occurred before age twenty-six (26). There is also a cap on yearly contributions to the account and on the total amount the account can hold. At the death of the owner's life, the balance remaining in the account is paid to the State as reimbursement for Medicaid benefits paid during the lifetime of the owner ("Medicaid pay back"). Also, while the ABLE account gives the owner greater autonomy to manage his or her funds, the individual must be very careful that funds are spent only on allowable expenses. The penalty for improper expenditures is the potential loss of benefits and that the income in the account will be taxed.

Given the restrictions imposed on an ABLE account, an alternative that may be more beneficial for a disabled individual is a supplemental needs trust ("SNT"). There are different types of SNTs that may be established by or for a disabled individual to supplement but not supplant government benefits available to the beneficiary. A trust established with the disabled individual's own assets is known as a First Party SNT, whereas a trust funded with the assets of another for the benefit of the disabled individual is a Third Party SNT. First Party SNTs require the individual to be under age sixty-five (65), and like the ABLE account, there is a Medicaid pay back requirement. Third Party SNTs do not have an age limit or pay back requirement. An advantage to utilizing an SNT is that the creator of the trust appoints a trustee to manage the funds and to assure that they are being properly utilized for the benefit of the disabled individual.

While, as of this publication, no financial institutions in New York are offering ABLE accounts, we expect that they will soon be available. If you or a loved one need assistance implementing an ABLE account or establishing the trusts discussed above, please call Berwitz & DiTata LLP.