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## **Tax-Favored Accounts for Individuals with Disabilities Permitted under the ABLÉ Act**

by Shannon A. Laymon-Pecoraro, Esq.

On December 16, 2014, Congress passed legislation permitting the establishment of tax-favored accounts for the benefit of an individual whose disability occurred prior to the age of 26. The Act, known as the Achieving a Better Life Experience Act of 2014 or ABLÉ Act of 2014 and referred herein as the ABLÉ Act, is designed to promote the health, independence, and quality of life of individuals with disabilities by allowing families to fund an account in which such an individual can secure funding for disability-related expenses. Similar to a special needs trust, the individual with the disability will have a beneficial interest and the purpose is to supplement and not supplant other benefits.

To meet the requirements of a qualified ABLÉ program, a State, or an agency or instrumentality thereof, must establish and maintain a program that, in addition to other specific requirements set forth under the ABLÉ Act, permits contributions by a person to an ABLÉ account for a beneficiary with a disability to meet qualified disability expenses. Although the Act expressly indicates that only one account may be established for the benefit of a qualified individual, multiple persons may contribute to such an account. Any contributions by a person to such an account must be in cash and the aggregate of contributions made by a single person may not exceed the annual gift tax exclusion (currently \$14,000) in effect for the year in which the contribution is made. It is important to note that so long as the account does not exceed \$100,000, an individual's public benefits will not be affected,[1] and that upon the death of the beneficiary, Medicaid may be entitled to repayment for medical assistance provided to the beneficiary. As a result of this payback provision, the use of third-party special needs trusts will still play an integral role in special needs planning.

By amending section 529 of the Internal Revenue Code, Congress has also provided tax incentives by exempting accounts under a qualified ABLÉ program from taxation[2], thereby further encouraging family members to establish and fund such accounts. To preserve such an exemption, distributions from the ABLÉ account must not exceed the qualified disability expenses of the beneficiary. A qualified disability expenses is defined as "any expenses related to the eligible individual's blindness or disability which are made for the benefit of an eligible individual who is the designated beneficiary, including the following expenses: education, housing, transportation, employment training and support, assistive technology and

## Tax-Favored Accounts for Individuals with Disabilities Permitted under the ABLE Act (cont'd)

personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and other expenses, which are approved by the Secretary ." If distributions exceed the qualified disability expenses of the beneficiary, the excess distribution will be counted as income.

While the ABLE Act is set to take effect starting January 1, 2015, it is anticipated that it will take some for the states to establish ABLE programs. In the meantime, the attorneys and staff will continue to study the ABLE Act and track the progress of an ABLE program within the Commonwealth of Virginia. To discuss this important development with one of our attorneys, please contact us.

[1] An account over \$100,000 will suspend Supplement Security Income benefits, but will not affect Medicaid eligibility.

[2] There is an exclusion from such exemption for taxes relating to unrelated business income of charitable organizations.



### Gentle Burros

**Hook Law Center:** Kit Kat, what can you tell us about burros?

**Kit Kat:** Well, there's quite a bit to tell actually. Burros (Spanish word for donkey) have been bred over time to carry things. Some are bred in captivity, but there are others that have become wild and roam throughout the southwestern US, especially Arizona, Nevada, and parts of California. When their populations in the wild become too much to be sustained on their own, the Humane Society of the US (HSUS) rounds them up and relocates them to holding areas until they can be adopted. In 2013, there were about 1,300 burros being held in such Bureau of Land Management holding areas.

So spread the word about burros. They are wonderful creatures with the gentlest of spirits. According to Cathy Brasfield, a trainer, they "are programmed from Day 1 to look for a leader for answers. As long as you are a strong leader and do not cause them any harm or pain...they'll do anything for you." Nacho, a burro adopted from the Great Escape Mustang Sanctuary in Colorado, eventually was placed on a farm in Massachusetts. His adoptive parents had not meant for it to be a permanent arrangement, but he was so lovable that they soon changed their minds and kept him for themselves. He was found in Arizona, relocated to Colorado, and then moved on to them in Massachusetts. Through it all, he has remained calm and docile, never nipping or kicking. Only once during his early days with them, he became a little skittish when a helicopter flew by. They later learned he had been rounded up by a helicopter from his original home in Arizona.

There are many other wonderful stories about burros which I cannot go into here because of space constraints. But from what I have read, they are lovable creatures who bask in the attention of caring owners. They adore being petted, especially on their shoulder blades, and will follow you around like a big dog. Their admirers say they are not stubborn, but merely like to think things through before acting. They really sound adorable and can be kept on relatively small properties with just a couple of acres. They truly are the gentle

members of the equine world. (Ruthanne Johnson, "There's just something about burros," All Animals, November/December 2014, p. 32-33)



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## Upcoming Events

- **January 22, 2015** – Andrew Hook will be speaking to the Portsmouth Community Criminal Justice Board regarding how the aging population may affect the court system.
- **January 29 – 31, 2015** - Andrew Hook will attend the NAELA Summit in Newport Beach, California.
- **February 3, 2015** – Andrew Hook will be speaking at King's Grant House regarding Long-term Care Insurance.
- **February 7, 2015** – Shannon Laymon-Pecoraro will be speaking to the Down Syndrome Association of Hampton Roads' Baby Play Group.
- **February 20-21, 2015** – Andrew Hook will be speaking on Managing a Small Law Firm at the 2015 VAELA UnProgram in Charlottesville, VA.
- **August 12, 2015** - Andrew Hook will be speaking to a group at Maryview Hospital in Portsmouth, Virginia.
- **August 21, 2015** - Andrew Hook will be speaking to a group at DePaul Hospital in Norfolk, Virginia.
- **August 27, 2015** - Andrew Hook will be speaking to a group at Mary Immaculate Hospital in Newport News, Virginia.

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