Tax Law Changes for Those with Disabilities

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Late in 2017, Congress passed a sweeping new tax law. You may have noticed some of its effects in your take-home pay, and a lot has been written about the changes. As we all get ready to file our first tax returns under the new law, you might wonder what it will mean for your family member who has a disability.

Tax Rates

One big change, of course, affects everyone. Tax rates are generally lower under the new law.

Susan, a single person with taxable income of $25,000, for example, would have paid $3,283.75 in federal income taxes before the change. Under the new law, Susan's tax bill will be $2,809.25—a savings of almost $500. That change applies to everyone, not just people with disabilities or their caregivers.

What taxes will Susan pay if, say, she receives Social Security Disability or Supplemental Security Income payments?

Taxation of Social Security Benefits

Actually, not much changes under the new tax law in taxation of Social Security benefits. Approximately, one-third of Social Security Disability Insurance recipients pay income tax on their benefits. Those who do generally have taxable income from some other source. If, for example, Susan has $25,000 in interest or dividend income, she might have to pay taxes on that income plus a portion of her Social Security payments.

If the only income Susan receives is Social Security, she won't have to pay any taxes on that income. If she is married, though, her spouse's income may figure into the calculation. The married couple can earn up to $32,000 from sources other than Social Security before any of Susan's disability benefits are taxable.

Tax Deductions and Credits

For taxpayers who itemize their deductions (and far fewer will do so this year, due to the increase in the standard deduction), there are changes in how to compute those deductions. At least one tax credit figures into income taxes for some caregivers.

One piece of particularly good news for people with disabilities: their medical expenses will still be deductible. That said, the increase in the standard deduction might mean that many people do not need to keep track of medical expenses at all, but for those who spend a lot on medical care, the deduction remains. In fact, it is ever-so-slightly enhanced for the 2017 and 2018 tax years, since the threshold for claiming medical expenses dropped from 10% to 7.5% of adjusted gross income. Unless the law is amended, beginning with the 2019 tax year, medical expenses can be deducted to the extent they exceed 10% of the taxpayers Adjusted Gross Income.

The child tax credit doubled to $2,000 per child. It can be claimed by people who have a dependent under age 16 and income of less than $200,000 (or less than $400 for married couples). Because it is a credit, it reduces any tax due dollar for dollar. Remember Susan from the example above? If she had a child under 16, her tax bill would be reduced to very nearly zero. In fact, she could get up to $1,400 of the tax credit back even if she had paid no taxes at all. It would not matter that Susan's 12-year-old son had a disability—but it might make a big difference in her ability to care for her son.

Special Needs Trusts

As is so often the case, there's good news and bad news for trust beneficiaries. The good news is mostly for beneficiaries of third-party special needs trusts. The bad news is mostly for those who had a special needs trust set up to handle a personal injury settlement, or an unrestricted inheritance.

First the good news: most third-party special needs trusts will still meet the definition of a "Qualified Disability Trust." That will mean that they get an extra deduction of $4,150 against trust income. It may not directly benefit the trust's beneficiary, but it can reduce the amount of tax paid by the trust itself, leaving more intact to be applied for the use and needs of the beneficiary.

The bad news: self-settled special needs trust beneficiaries can no longer take deductions for most of the costs of administering the trust itself. Fiduciary/trustee fees, legal expenses, tax preparation fees, and other deductions that would have been subject to the 2% floor will no longer be deductible on the beneficiary's tax return.

Under the new kiddie tax rules, the tax rate for minor trust beneficiaries of first-party supplemental needs trusts might actually go up. Remember, these first-party trusts are considered grantor trusts for tax filing purposes, and all items of income, deduction and credit are carried out and reported on the minor beneficiary's personal income tax return. Under the prior law, in order to complete the child's tax return we needed to get a copy of the parents' returns in order to determine the applicable tax rate to be applied to the minor's income. Under the new law, the kiddie tax rate structure is now the same as the rate structure that applies to non-grantor trusts and estates, where income in excess of $12,500 is taxed at the 27% rate. This new structure eliminates the need of getting the parents' returns, but in the case of monied trusts, likely at a much higher tax cost.

Not Everything Is About Taxes

Other things changed with the new tax law. Beginning in January of 2017, several changes were implemented to ABLE accounts. Although these changes have been in place for a full year, it is worth mentioning them again.

The Achieving a Better Life Experience (ABLE) Act, you may recall, allows up to $15,000 to be set aside each year for the use of a person with a disability. The beneficiary can control the funds (or his or her parents or guardian can manage the account), and the ABLE account will not affect Supplemental Security Income payments, Medicaid eligibility, or eligibility for other government benefits, so long as the balance of the account stays below $100,000.

The 2017 tax act made two important improvements to the ABLE Act. First, the law now allows a working individual with disabilities to put more than the $15,000 maximum into his or her ABLE account, at least in some cases. A qualifying beneficiary can put up to an additional $12,060 into his or her ABLE account.

The other big change allows money from a Section 529 plan (education) established for an individual with a disability, who is not likely to benefit from the education plan, to be rolled over into an ABLE account. Use this provision carefully—only $15,000 total can go into the ABLE Act account, and that figure includes any rollover money from the 529 account. In fact, there may be good reasons to delay making any such transfer, so make sure you've checked out the benefits and drawbacks with a knowledgeable adviser before making any change.

The Bottom Line

Tax law has always been bewilderingly complicated. Congress didn't simplify the law last year—they made it even more complex. The ideas we offer here are just that: ideas. Make sure you talk through the choices and consequences with your lawyer and/or accountant

before celebrating—or panicking. There's considerable change in last year's new tax law, and it may take this first year's filing experience before you figure out what it all means for you.

For another take on the new tax laws and their effect on people with disabilities, consider two other resources. One is last year's newsletter from SNA member law firm Fleming & Curti in Tucson (at https://elder-law.com/federal-tax-cut-law-affects-seniors-and-those-with-disabilities/). The other is a more recent article in "Parenting Special Needs" magazine, written by SNA Member James M. McCarten, at https://magazine.parentingspecialneeds.org/publication/?i=564048#{%22issue_id%22:564048,%22page%22:%2226%22}.

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