

Financial Planning

CREATIVE ALTERNATIVES ARE AVAILABLE

Use RESPs for a developmentally delayed child



**MERRICK
WEALTH**

By
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As parents, we do our best to help open doors, which will provide our children with opportunities to continue learning. Children with developmental difficulties may not be interested in or able to attend university or college, however this does not preclude them from developing other interests and skills through post-secondary educational opportunities.

Registered Education Savings Plans provide a method of saving for post-secondary learning by allowing you to earn investment income in a tax-deferred environment.

Individual plans can be set up for the benefit of an individual beneficiary while family plans accept contributions for more than one beneficiary.

The maximum annual contribution to an RESP is \$4,000 for each beneficiary. These contributions are

not tax deductible. The federal government provides a grant of 20 cents for each dollar contributed, up to a maximum of \$400 each year and a lifetime limit of \$7,200.

Recently they have announced that there will be an additional grant for families with an income below \$70,000. The grant on the first \$500 contributed will be 40 per cent for families with incomes below \$35,000 and 30 per cent for families with incomes between \$35,000 and \$70,000. Contributions can be made for a period of 21 years and the maximum contributions for each beneficiary are limited to \$42,000.

An RESP must be terminated by the end of the year that includes the 25th anniversary of the plan. Parents have always had the assurance that if their child decides not to pursue post-secondary education, their capital contributions to the savings plan would be returned to them tax-free. They now have the additional assurance that up to \$50,000 of the income that accumulates in the RESP can be transferred into their RRSPs, to the extent that they have unused contribution room available.

Alternatively, parents can withdraw the RESP income and pay tax at their marginal rate plus an additional 20 per cent, to offset the interest earned on the grant. The grant portion is returned to the federal government.

It is now also possible to roll

over the educational assistance payments, without tax implications, to another family member, so long as the beneficiary is under 21 years of age and is related by blood or adoption. In the case of an RESP in the family plan format, educational assistance payments can be paid out to another family member as long as the same qualifying criteria are followed.

To disburse the funds from the RESP the education facility must be a "designated educational institution", with a "qualifying educational program" The school must qualify under the Canada Student Loans program or be certified by the minister of human resources as an educational institution that will provide courses that will develop or improve skills in an occupation or vocation.

A "qualifying educational program" is not less than three consecutive weeks and provides that each student spend not less than 10 hours per week on courses or work in the program. The in-class portion of a recognized apprenticeship can also be included.

There are a huge variety of courses offered at post secondary schools, which meet these qualifications. Lawyer Kenneth C. Pope, one of the most experienced legal practitioners in Ontario providing legal services to families with a member who has a disability, says

"courses can be created specifically to meet the special needs of adult children. For example, a group of families in Ottawa arranged for a program of classes designed for their 25 children at Algonquin College. The course curriculum was created for their continuing education and interest, after leaving high school at 21. This is an approved post-secondary program. A little creativity goes a long way." To explore options for courses of study visit www.canlearn.ca

In order to make post secondary studies more attainable, students with disabilities now have the option to attend school on a part-time basis, they can access distance education courses through correspondence, take part in online learning opportunities, or they can learn through a variety of apprenticeship programs.

Once the money from the RESP has been distributed to the beneficiary, the income earned in the plan, plus the amount of federal contributions, are taxed as income of the beneficiary. As a student your child will probably not have much other taxable income and will be eligible for the tuition and education tax credits, therefore he or she will have little to pay in taxes.

While in pursuit of post secondary education, Ontario Disability Support Payments, (ODSP) continue to be received by the child.

These payments cover the cost of accommodation and food and are considered non-taxable income. RESP funds are used for tuition and books. It is very important that if there is a residential or meal plan component, this not be paid with RESP funds. Separate paperwork should be kept in order, otherwise there would be a deemed overpayment of ODSP and a surprise claw back of 'overpayments' due to simple misapplication of funds for the wrong use according.

Although students with developmental difficulties face a number of challenges, most post-secondary learning facilities offer exceptional services for students with disabilities.

Registered Education Savings Plans are a practical tool, which can be utilized for systematically saving funds to provide for a wide variety of possible post-secondary learning experiences, both for able students and for those who face a variety of developmental and cognitive challenges.

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Make sure limits of private foundations understood

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for gifts that are made as a result of the donor's death. Pursuant to subsection 118.1(5), a donation tax credit for a gift made through an individual's will can be claimed in the individual's terminal tax return, or in the year immediately prior to death for up to 100 per cent of the deceased's income in those years.

If a gift does not satisfy the requirements of subsection 118.1(5), the estate may only be entitled to a credit of 75 per cent of income. Also, a gift made through a testamentary trust may sometimes be treated as a distribution in satisfaction of the charity's income or capital interest in the trust and not a gift.

There is little case law dealing with what would constitute a gift made by will pursuant to subsection 118.1(5). Therefore, it is important for estate planners and solicitors to take into consideration CRA's interpretation of this sub-

section when drafting wills and gift planning.

Since 2001, CRA has relaxed its previously strict views in a number of respects, including allowing trustees to have discretion in determining the amount to be given to charities listed in the will and accepting the use of a formula to calculate the residue of the estate in order to determine the gift to be made from the residue.

In order for a gift made through a testamentary trust to qualify as a gift made by will, all of the criteria concerning outright gifts must be satisfied, failing which the trust may be not be entitled to claim the donation tax credit.

When a payment is made from the income of a testamentary trust, it is sometimes permissible for such payment to be recognized as a distribution in satisfaction of the charity's income interest in the trust, depending on whether it is dealing with a testamentary trust or an alter ego trust, although the test

to be applied by CRA in this regard is not clear.

Use of private foundations

The effective use of a private foundation could be a very useful and flexible planned giving tool for an individual, providing many benefits that are not available by using other gift planning vehicles: the donor can retain control over the assets donated to the private foundation, while maintaining the donor's privacy in his or her personal affairs; other family members may be involved in the private foundation; the timing of a donation to a private foundation may be controlled to meet the donor's estate and tax planning needs, while providing the foundation and the donor with time to decide how the donated property should be used.

While there are many benefits in utilizing a private foundation, there are also limitations which might not make it a suitable planning tool for everyone in all circumstances. For

example, a private foundation is subject to many restrictions under the act in relation to its operations, including prohibitions on carrying on any business activities and acquiring control of another corporation.

Private foundations are subject to the provincial statutes that apply to charities, such as the *Charities Accounting Act*, the *Charitable Gifts Act*, and the *Trustee Act* in Ontario. The elimination of capital gains tax on gifts publicly listed securities or ecologically sensitive land explained above does not apply if such gifts are made to a private foundation and a donation of "non-qualifying securities" to private foundations is also subject to serious restrictions.

In addition, other issues that would need to be carefully addressed before establishing a private foundation include the types of charitable causes that the foundation would support, whether the foundation would be established as

a trust or a corporation, the jurisdiction under which the foundation would be incorporated, and how the foundation would be structured.

Other structures that this article does not deal with, but which should be considered for high net worth clients include gifts of life insurance, charitable annuities, and using joint partner trust or alter ego trusts as will substitutes.

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