UTMA's and 529 Plans

Basics of UTMA's. The UTMA is the Uniform Transfers to Minors Act and is codified in U.C.A. §§ 75-5a-101 to 75-5a-123. In general, once assets are transferred to minors, they are indefeasibly vested in the minor (the transfer is irrevocable).

Advantages UTMA transfers get assets (and their growth) out of the donor's estate for estate and income tax purposes.

Disadvantages The child gets the assets outright at age 21. Possible imposition of "kiddie tax," capital gains taxes, and regular income taxes.

Basics of 529 Plans 529 plans are qualified tuition plans established by Section 529 of the Internal Revenue Code. 529 plans are tax-advantaged savings vehicles to help encourage individuals to save for the costs of higher education. Any state can create a 529 Plan. Utah's 529 plan is the Utah Educational Savings Plan ("UESP"). A Utah resident can create an account in any state.

529 Plans can be funded with UTMA assets. Certain states allow UTMA assets to be used to fund a 529 plan. Utah is one of those states.

How are assets converted from UTMA to UESP? The custodian of the UTMA asset must liquidate the asset. The liquidation is likely taxable (specifically subject to capital gains taxes–we are confirming whether or not the liquidation of stock would be subject to capital gains tax). UESP accounts must be funded with cash. UTMA accounts converted to a UESP account will be a custodial UESP account and the beneficiary (the minor) is in fact the owner, with a custodian acting on his behalf until he reaches the age of 21. Additionally, the beneficiary cannot be changed on these accounts (until the beneficiary reaches the age of majority and acts to do so) and moneys can only be disbursed for the benefit of the beneficiary.

Points to Consider:

- For assets converted from a UTMA to a UESP 529 plan, the minor still controls the assets at 21, but the assets must be used for educational purposes, or penalties attach.
- For UESP 529 plans established from the outset, an independent trustee can control the distribution of the funds to the beneficiary, and beneficiaries can be changed under certain circumstances. Again, the funds must be used for educational purposes or penalties attach.
- Investment options are limited to those offered by the 529 plan (UESP offers 9 options, from moderately aggressive mutual funds to conservative municipal bonds or combinations thereof).
- Investments must be managed by the Vanguard Group and the Utah Public Treasures Investment Fund.
- Investment options can only be changed once a year.
- Newsweek recently listed the 3 plans that are run at rock-bottom commission and administrative prices; Utah was listed as number 1, the most cost-effective 529 state in

the nation.

- A Utah taxpayer may deduct contributions to a UESP 529 plan of up to $1,510 ($3,020 if filing jointly) per beneficiary, per year as long as the beneficiary was younger than 19 years old when the account was established.
- Growth exempt from state taxes. If used for qualified education expenses, no state income taxes on the growth.
- Growth possibly exempt from Federal taxes. Until EGTRRA expires, if funds used for qualified education expenses, the growth is not taxed.
- Gift-lumping. Donors can contribute 5 times the current annual exclusion and elect to have the donation treated as though it were made over 5 years. With gift splitting, in January this could be $120,000.
- Multiple parties may contribute to one account.
- Plan deposits are completed gifts.
- Contribution limit in Utah is $315,000 –no more than this can be contributed, but the amount can grow to any amount.
- Beneficiary does not have to go to school in Utah.
- Penalty if withdrawals are not used for qualified education expenses. However, the Penalty is only 10% of the earnings which is a penalty, but is not prohibitive if funds must be made available for an emergency or other pressing need.
- There is an exception to the penalty if the beneficiary receives a scholarship. That is, the beneficiary receiving a scholarship can withdraw the amount of the scholarship from the UESP 529 to be used for non-educational purposes (car, etc) without any penalties (there would be income taxes though:)
- Income is taxable on distribution if the distribution is not for qualified education expenses.

Qualified Education Expenses. Qualified education expenses include tuition, room and board (with some limitations), books, supplies, and equipment required for enrollment or attendance at any eligible post-secondary school in the U.S. or abroad.

Sources

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Utah Educational Savings Plan “Program Description,” 11 March 2005.