

An Affordable Proposal

for Guardianship:

The Special Needs Tax Credit Bill

BY JARET L. VOGEL

The mom's anguished question was, "Why do I have to pay \$5,000 to speak for my 18-year old with Autism?" I then stood up and asked, "Why can't we get a tax refund for that amount?" The whole room went silent. In that moment, the idea for the Special Needs Tax Credit was born.

It was November of 2006, and my lovely wife, Karen, and I were attending a Guardianship conference in Ft. Lauderdale. The room was filled with a veritable "Who's Who" of South Florida Elder Law attorneys and professional guardians. We attended as Prosperity Life Planning, (www.prosperitylifeplanning.org) our small, educational nonprofit organization, through which we educate and advocate for parents through the special needs planning process with area attorneys, benefit consultants, tax and investment professionals.

I had been working with these families for just over two years at that time, and found the challenge

of implementing the legal, social and financial planning resources for special needs families to be my calling. Unlike New York, where my stepson with Autism, Ricky, lives in a wonderful group home paid entirely by Medicaid, Florida families often are hard-pressed to find benefits for supports and therapies. The "Med-Waiver" program has 17,000 families on its waiting list. Med-Waiver provides for non-medical but supportive services, such as housing, transportation, therapies, "day-hab" training, summer programs and respite.

Through our numerous free consultations, we met families with one, two, even three young adults with special needs; parents who were surprised to learn they were no longer the legal guardians of their 18-year old or older kids. Surprise turned to shock when they learned that full guardianship might cost \$5,000 in attorney, specialist and court fees.

There they were, with kids who couldn't speak for themselves, kids who lacked the judgment to

make legal, health care or financial decisions for themselves, and parents unable to afford the \$5,000 expense to speak for their child. A real "Catch-22."

We immediately began a petition drive through our planning workshops and our website. Everyone agreed it was a common-sense idea; that *MY* taxes could come back to me as a tax refund for the legal expenses of setting up a protective guardianship for *MY* own child.

With Karen being a tax expert and accountant, and having her Certified Financial Planner™ designation, we talked about how this could work. A "refundable tax credit" from the IRS would be available for someone who paid the expense for guardianship and/or a Special Needs Trust, up to a maximum amount of \$5,000. This would reduce their taxes owed dollar-for-dollar, and a check issued for any remaining balance.

This method would especially benefit lower income families, who might not pay as much in taxes, and receive a refund for the difference, much like the Earned Income Credit or the Additional Child Tax Credit currently provide.

On September 11, 2008, we went to Washington, DC, and met with the legislative assistant to my local representative, Congressman Robert Wexler (D-19th Cong. District- Boca Raton). We discussed the problem and introduced him to our proposal. In May, 2009, I received notice that Congressman Wexler would sponsor legislation to create the Special Needs Tax Credit proposal as we envisioned. Language for the Bill has been completed, and a Republican co-sponsor has been identified. While Congressman Wexler recently announced his interest to work in the nonprofit sector, other Democratic Representatives are being discussed to co-sponsor the Bill, which would be introduced when finalized.

Simultaneously, in January of 2009, we met with attorney Elaine Bucher in the Boca Raton office of international law firm Proskauer Rose, LLP. She was impressed with our proposal, and shortly thereafter, we were told they would create a Florida nonprofit organization and provide the IRS filing as a 501(c)(4), Social Welfare Organization, for us pro bono, a task we could not have afforded. The nonprofit designation for the "Special Needs Tax Credit Alliance, Inc." (www.specialneedstaxcredit.org) was finalized in July of 2009.

We actually see this potential revision to the tax code as a civil rights bill, because "typical" families are not burdened with the expense of \$5,000 to speak for their adult children, or need to spend \$1000 to \$1500. for a Special Needs Trust, as typical kids may well have the abilities and opportunities to have full-time careers, with pension plans or retirement accounts to build over their working lives.

The First and Fourteenth Amendments were established to provide for **Free Speech** and **Equal Treatment Under the Law**. Yet how can our young adults, who may have cognitive impairments and cannot speak for themselves, enjoy this equal treatment, if their parents can't afford thousands of dollars in legal fees? No one is empowered to speak for these millions of Americans.

The Special Needs Tax Credit (SNTC) proposal offers a sensible and affordable "soft-dollar" approach to solving this problem, while possibly reducing expenses to the court system. If more people who need a guardian have one, there may be less expense for Guardians Ad Litem, or court-appointed emergency guardianship, when no one has been previously appointed.

We are in the process of raising \$500,000, for a four-year program to build awareness throughout state and national disability support organizations, as well as the Elder Law groups and Probate sections of state and national Bar Associations. Groups such as AARP for seniors

will be contacted, as seniors with dementia and Alzheimer's may need their adult child to become their Guardian. Other groups in support of the Americans with Disabilities Act and the ACLU will be called upon to build awareness to their membership, and finally, members of Congress will be lobbied to expand Democracy to those who cannot speak for themselves.

"Everyone Deserves to Have a Voice, or Someone to Speak for Them."

Please contribute to our cause. Donations to the Special Needs Tax Credit Alliance are not tax deductible to the donor, but funds are utilized tax exempt by the organization. A petition can be downloaded from the SNTCA website at www.specialneedstaxcredit.org, and voluntary contributions can be sent to:

"Special Needs Tax Credit Alliance, Inc."
4673 Brady Boulevard
Delray Beach, FL 33445
attn: Jaret Vogel, Director
(561) 865-2921
info@specialneedstaxcredit.org
www.specialneedstaxcredit.org



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The Special Needs Tax Credit Alliance, Inc.

A 501 (c)(4) not for profit Social Welfare Organization



The Corporation (SNTCA) is organized exclusively for promoting the creation of congressional legislation to amend the Internal Revenue Code of 1986, that will provide a refundable federal tax credit for legal and other professional fees associated with establishing legal guardianship or a trust for a person with disabilities, to lessen the burden on families with a disabled family member, and providing for the future needs and well-being of such members.

“I support establishment of the Special Needs Tax Credit proposal, to assist persons with disabilities enjoy a more protected and rewarding quality of life. My signature attests to my support for this legislation and my desire for my elected representative in Congress to sponsor and support the passage of this legislation.”

Name _____ Signature _____ Date _____

Address _____

City _____ State _____ Zip _____

Phone _____ Email _____

Please sign, date and mail your statement of support to:

Special Needs Tax Credit Alliance, Inc.

Attn: Jaret L. Vogel

4673 Brady Boulevard

Delray Beach, FL 33445

561-865-2921

info@specialneedstaxcredit.org

www.specialneedstaxcredit.org

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