

Senate Bill No. 324

CHAPTER 796

An act to add Section 17140.4 to the Revenue and Taxation Code, and to add Chapter 15 (commencing with Section 4875) to Division 4.5 of the Welfare and Institutions Code, relating to taxation.

[Approved by Governor October 11, 2015. Filed with
Secretary of State October 11, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 324, Pavley. Income taxation: savings plans: Qualified ABLE Program.

The Personal Income Tax Law and the Corporation Tax Law, in specified conformity with federal income tax laws regarding qualified tuition programs, provide that distributions from a qualified tuition program are generally not included in the income of the donor or the beneficiary, as specified.

Existing federal law, the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act), for taxable years beginning on or after January 1, 2014, encourages and assists individuals and families to save private funds for the purpose of supporting persons with disabilities to maintain their health, independence, and quality of life by excluding from gross income distributions used for qualified disability expenses by a beneficiary of a Qualified ABLE Program established and maintained by a state, as specified.

This bill, for taxable years beginning on or after January 1, 2016, would conform to these federal income tax law provisions relating to the ABLE Act under the Personal Income Tax Law, as provided. The bill would create the ABLE Act Board and would require the board provide an annual listing of distributions to individuals that have an interest in an ABLE account to the Franchise Tax Board, as provided.

This bill would provide that it will only become effective if AB 449 is enacted and becomes effective.

The people of the State of California do enact as follows:

SECTION 1. Section 17140.4 is added to the Revenue and Taxation Code, to read:

17140.4. For taxable years beginning on or after January 1, 2016, Section 529A of the Internal Revenue Code, relating to qualified ABLE programs, added by Section 102 of Division B of Public Law 113-295, shall apply, except as otherwise provided.

- (a) Section 529A(a) of the Internal Revenue Code is modified as follows:
- (1) By substituting the phrase “under this part and Part 11 (commencing with Section 23001)” in lieu of the phrase “under this subtitle.”
 - (2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “Section 511.”
- (b) Section 529A(c)(3)(A) of the Internal Revenue Code is modified by substituting “2.5 percent” in lieu of “10 percent.”
- (c) A copy of the report required to be filed with the Secretary of the Treasury under Section 529A(d) of the Internal Revenue Code, relating to reports, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.
- SEC. 2. Chapter 15 (commencing with Section 4875) is added to Division 4.5 of the Welfare and Institutions Code, to read:

CHAPTER 15. QUALIFIED ABLE PROGRAM

4875. For purposes of this chapter:
- (a) “ABLE account” or “account” means the account established and owned by a designated beneficiary pursuant to this chapter for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account.
 - (b) “Administrative fund” means the fund used to administer this chapter.
 - (c) “Board” means the California ABLE Act Board established under this chapter.
 - (d) “California ABLE Program Trust” or “ABLE program trust” means the trust created pursuant to this chapter.
 - (e) “Designated beneficiary” means the eligible individual who established an ABLE account and is the owner of the account.
 - (f) “Eligible individual” means an individual who is eligible under the program for a taxable year if during that taxable year both of the following criteria are met:
 - (1) The individual is entitled to benefits based on blindness or disability under Title II or XVI of the federal Social Security Act, and that blindness or disability occurred before the date on which the individual attained 26 years of age.
 - (2) A disability certification, as defined in the federal ABLE Act, with respect to the individual is filed pursuant to the requirements set forth in the federal ABLE Act.
 - (g) “Federal ABLE Act” means the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014.
 - (h) “Investment management” means the functions performed by a manager contracted to perform functions delegated by the board.
 - (i) “Investment manager” means a manager contracted to perform functions delegated by the board.

(j) “Program fund” means the program fund established by this chapter, which shall be held as a separate fund within the California ABLE Program Trust.

(k) “Qualified ABLE Program” or “program” means the program established by this chapter to implement the federal ABLE Act pursuant to Section 529A of the Internal Revenue Code.

(l) “Qualified disability expenses” means any expenses related to the eligible individual’s blindness or disability that are made for the benefit of an eligible individual who is the designated beneficiary, including expenses related to education, housing, transportation, employment training and support, assistive technology and 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 of the Treasury under regulations and consistent with the purposes of the federal ABLE Act.

4876. There is hereby created the California ABLE Act Board that consists of the Treasurer, the Director of Finance, the Controller, the Director of Developmental Services, the Chairperson of the State Council on Developmental Disabilities, the Director of Rehabilitation, and the Chair of the State Independent Living Council, or their designees. The Treasurer shall serve as chair of the board.

4879. (a) Under the program, a person may make contributions for a taxable year, for the benefit of an individual who is an eligible individual for that taxable year, to an ABLE account that is established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account if both of the following criteria are met:

(1) The designated beneficiary is limited to one ABLE account for purposes of this chapter.

(2) The ABLE account is established only for a designated beneficiary who is a resident of this state.

(b) A contribution shall not be accepted if either of the following occurs:

(1) The contribution is not in cash.

(2) Except in the case of contributions under Section 529A(c)(1)(C) of the Internal Revenue Code, relating to change in designated beneficiaries or programs, the contribution to an ABLE account would result in aggregate contributions from all contributors to the ABLE account for the taxable year exceeding the amount in effect under Section 2503(b) of the Internal Revenue Code, relating to exclusion from gifts, for the calendar year in which the taxable year begins.

(c) The designated beneficiary shall retain ownership of all contributions made to the designated beneficiary’s ABLE account to the date of utilization for qualified disability expenses, and all interest derived from the investment of the contributions to the designated beneficiary’s ABLE account shall be deemed to be held in the ABLE program trust for the benefit of the designated beneficiary. Neither the contributions, nor any interest derived therefrom, may be pledged as collateral for any loan.

(d) The board shall develop adequate safeguards to prevent aggregate contributions on behalf of a designated beneficiary in excess of the maximum contribution limits necessary to provide for the qualified disability expenses of the designated beneficiary. For purposes of this subdivision, aggregate contributions include contributions under any prior qualified ABLE program of any state or agency or instrumentality thereof.

4881. (a) The board shall provide an annual listing of distributions to individuals with respect to an interest in an ABLE account to the Franchise Tax Board at a time and in a manner and form as specified by the Franchise Tax Board. The taxpayers' identification numbers obtained in connection with an ABLE account shall be used exclusively for state and federal tax administration purposes.

(b) The board shall make a report to the appropriate individual of any distribution to any individual with respect to an interest in an ABLE account, at a time and in a form and manner as required by the Franchise Tax Board.

(c) The board shall report annually to each designated beneficiary all of the following:

- (1) The value of the designated beneficiary's account.
- (2) The interest earned thereon.
- (3) The rate of return of the investments in the designated beneficiary's account for that reporting period.
- (4) Information on investments and qualified disability expenses that designated beneficiaries can use to set savings goals and contribution amounts.

(d) The board shall provide a means for designated beneficiaries to express concerns or comments regarding the ABLE program trust and any information required to be reported by this section.

4883. This act shall be construed liberally in order to effectuate its legislative intent. The purposes of this act and all of its provisions with respect to powers granted shall be broadly interpreted to effectuate the intent and purposes of the federal ABLE Act and not as a limitation of those powers.

SEC. 3. This act shall only become effective if Assembly Bill 449 of the 2015–16 Regular Session is enacted and becomes effective.