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An act to amend Sections 17140, 17140.3, 17140.4, 23711, and 23711.4  
of the Revenue and Taxation Code, relating to taxation.



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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17140 of the Revenue and Taxation Code is amended to read:

17140. (a) For purposes of this section, the following terms have the following meanings as provided in the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) "Beneficiary" has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) "Benefit" has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) "Participant" has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) "Participation agreement" has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) "Scholarshare trust" has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) For taxable years beginning on or after January 1, 1998, and before January 1, 2002, except as otherwise provided in subdivision (c), gross income of a beneficiary or a participant does not include any of the following:

(1) Any distribution or earnings under a Scholarshare trust participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Any contribution to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) For taxable years beginning on or after January 1, 1998, and before January 1, 2002:

(1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 17085, to the extent not excluded from gross income under this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during a taxable year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation agreement shall be computed as of the close of the calendar year in which the taxable year begins.

(2) A contribution by a for-profit or nonprofit entity, or by a state or local government agency, for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.



(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a "member of the family," as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a "member of the family," as that term is used in Section 529(e)(2) of the Internal Revenue Code, as amended by Section 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former beneficiary of that Scholarshare trust.

(d) For taxable years beginning on or after January 1, 2002, Sections 529(c) and 529(e) of the Internal Revenue Code, relating to tax treatment of designated beneficiaries and contributors and to other definitions and special rules, respectively, shall apply, except as otherwise provided in Part 11 (commencing with Section 23001) and this part.

(e) (1) The amendments made by Section 302(a)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(e) of the Internal Revenue Code, relating to other definitions and special rules, shall apply except as otherwise provided.

(2) The amendments made by Section 302(b)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(c)(3) of the Internal Revenue Code, relating to distributions, shall apply, except as otherwise provided.

(3) The amendments made by Section 302(c)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(c)(3)(D) of the Internal Revenue Code, relating to special rule for contributions of refunded amounts, shall apply, except as otherwise provided.

(f) (1) The amendments made by Section 11025(a) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(c)(3)(C) of the Internal Revenue Code, relating to change in beneficiaries or programs, shall apply, except as otherwise provided.

(2) (A) The amendments made by Section 11032(a)(1) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(c) of the Internal Revenue Code, relating to tax treatment of designated beneficiaries and contributors, shall not apply, except as otherwise provided.

(B) The amendments made by Section 11032(a)(2) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(e)(3)(A) of the Internal Revenue Code, relating to qualified higher education expenses, shall not apply, except as otherwise provided.

(C) In the case of any distribution made under Section 529(e)(3)(A) of the Internal Revenue Code, as amended by Section 11032(a)(2) of the Tax Cuts and Jobs Act (Public Law 115-97), that would be treated for federal income tax purposes as a "qualified higher education expense" under Section 529(c)(7) of the Internal Revenue Code, as added by Section 11032(a)(1) of the Tax Cuts and Jobs Act (Public Law 115-97), the amount of that distribution shall, notwithstanding anything in Section 529 of the Internal Revenue Code to the contrary, be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code.

(D) Any distribution includable in the gross income of a distributee under subparagraph (C) shall not affect the exempt status of the qualified tuition program under Section 529 of the Internal Revenue Code for purposes of this part.



SEC. 2. Section 17140.3 of the Revenue and Taxation Code is amended to read:  
17140.3. Section 529 of the Internal Revenue Code, relating to qualified state tuition programs, shall apply, except as otherwise provided.

(a) Section 529 (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) A copy of the report required to be filed with the Secretary of the Treasury under Section 529(d) of the Internal Revenue Code shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

(c) (1) The amendments made by Section 302(a)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(e) of the Internal Revenue Code, relating to other definitions and special rules, shall apply except as otherwise provided.

(2) The amendments made by Section 302(b)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(c)(3) of the Internal Revenue Code, relating to distributions, shall apply, except as otherwise provided.

(3) The amendments made by Section 302(c)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(c)(3)(D) of the Internal Revenue Code, relating to special rule for contributions of refunded amounts, shall apply, except as otherwise provided.

(d) (1) The amendments made by Section 11025(a) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(c)(3)(C) of the Internal Revenue Code, relating to change in beneficiaries or programs, shall apply, except as otherwise provided.

(2) (A) The amendments made by Section 11032(a)(1) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(c) of the Internal Revenue Code, relating to tax treatment of designated beneficiaries and contributors, shall not apply, except as otherwise provided.

(B) The amendments made by Section 11032(a)(2) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(e)(3)(A) of the Internal Revenue Code, relating to qualified higher education expenses, shall not apply, except as otherwise provided.

(C) In the case of any distribution made under Section 529(e)(3)(A) of the Internal Revenue Code, as amended by Section 11032(a)(2) of the Tax Cuts and Jobs Act (Public Law 115-97), that would be treated for federal income tax purposes as a “qualified higher education expense” under Section 529(c)(7) of the Internal Revenue Code, as added by Section 11032(a)(1) of the Tax Cuts and Jobs Act (Public Law 115-97), the amount of that distribution shall, notwithstanding anything in Section 529 of the Internal Revenue Code to the contrary, be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code.

(D) Any distribution includable in the gross income of a distributee under subparagraph (C) shall not affect the exempt status of the qualified tuition program under Section 529 of the Internal Revenue Code for purposes of this part.

SEC. 3. Section 17140.4 of the Revenue and Taxation Code is amended 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.

(d) (1) The amendments made by Section 303(a) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529A(b)(1) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(2) The amendments made by Section 303(b) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Sections 529A(d)(3) and 529A(e) of the Internal Revenue Code, relating to qualified ABLE programs shall apply, except as otherwise provided.

(3) The amendments made by Section 303(c) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Sections 529A(d)(4) and 529A(c)(1)(C)(i) of the Internal Revenue Code, relating to qualified ABLE program, shall apply, except as otherwise provided.

(e) The amendments made by Section 11024(a) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529A(b)(2)(B) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

SEC. 4. Section 23711 of the Revenue and Taxation Code is amended to read:  
23711. Section 529 of the Internal Revenue Code, relating to qualified state tuition programs, shall apply, except as otherwise provided.

(a) Section 529(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase “under Part 10 (commencing with Section 17001) and this part” in lieu of the phrase “under this subtitle.”

(2) By substituting “Article 2 (commencing with Section 23731)” in lieu of “section 511.”

(b) A copy of the report required to be filed with the Secretary of the Treasury under Section 529(d) of the Internal Revenue Code shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

(c) (1) The amendments made by Section 302(a)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(e) of the Internal Revenue Code, relating to other definitions and special rules, shall apply except as otherwise provided.

(2) The amendments made by Section 302(b)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(c)(3) of the Internal Revenue Code, relating to distributions, shall apply, except as otherwise provided.

(3) The amendments made by Section 302(c)(1) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529(c)(3)(D) of the Internal



Revenue Code, relating to special rule for contributions of refunded amounts, shall apply, except as otherwise provided.

(d) (1) The amendments made by Section 11025(a) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(c)(3)(C) of the Internal Revenue Code, relating to change in beneficiaries or programs, shall apply, except as otherwise provided.

(2) (A) The amendments made by Section 11032(a)(1) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(c) of the Internal Revenue Code, relating to tax treatment of designated beneficiaries and contributors, shall not apply, except as otherwise provided.

(B) The amendments made by Section 11032(a)(2) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529(e)(3)(A) of the Internal Revenue Code, relating to qualified higher education expenses, shall not apply, except as otherwise provided.

(C) In the case of any distribution made under Section 529(e)(3)(A) of the Internal Revenue Code, as amended by Section 11032(a)(2) of the Tax Cuts and Jobs Act (Public Law 115-97), that would be treated for federal income tax purposes as a "qualified higher education expense" under Section 529(c)(7) of the Internal Revenue Code, as added by Section 11032(a)(1) of the Tax Cuts and Jobs Act (Public Law 115-97), the amount of that distribution shall, notwithstanding anything in Section 529 of the Internal Revenue Code to the contrary, be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code.

(D) Any distribution includable in the gross income of a distributee under subparagraph (C) shall not affect the exempt status of the qualified tuition program under Section 529 of the Internal Revenue Code for purposes of this part.

SEC. 5. Section 23711.4 of the Revenue and Taxation Code is amended to read:

23711.4. 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 Part 10 (commencing with Section 17001) and this part" 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.

(d) (1) The amendments made by Section 303(a) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Section 529A(b)(1) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(2) The amendments made by Section 303(b) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Sections 529A(d)(3) and 529A(e) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.



(3) The amendments made by Section 303(c) of Division Q of the Consolidated Appropriations Act, 2016 (Public Law 114-113) to Sections 529A(d)(4) and 529A(c)(1)(C)(i) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

(e) The amendments made by Section 11024(a) of the Tax Cuts and Jobs Act (Public Law 115-97) to Section 529A(b)(2)(B) of the Internal Revenue Code, relating to qualified ABLE programs, shall apply, except as otherwise provided.

SEC. 6. The Legislature hereby finds and declares that providing ABLE account beneficiaries the ability to contribute their own earnings to the ABLE account up to the federal poverty level and allowing Section 529 plan accounts to roll over to ABLE accounts eliminates differences in the qualification criteria for ABLE accounts under federal tax law and California tax law, and thus constitutes a public purposes and is not a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.



## LEGISLATIVE COUNSEL'S DIGEST

Bill No.  
as introduced, \_\_\_\_\_.  
General Subject: Income taxes: gross income exclusions: qualified tuition program:  
qualified ABLE program.

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. Existing federal law, the Tax Cuts and Jobs Act, increases the amount of contributions allowed to an ABLE account, adds special rules for the increased contribution limit, and exempts from taxation distributions from a qualified tuition program, as defined, rolled into an ABLE account for taxable years beginning on or after December 31, 2017; and before January 1, 2026. Existing federal law, the Consolidated Appropriations Act, 2016 expanded the definitions of "qualified higher educational expenses" and "qualified ABLE program."

Existing law, the Personal Income Tax Law and the Corporation Tax Law, for taxable years beginning on or after January 1, 2016, conforms to the exclusions from gross income provided under federal income tax law provisions relating to the ABLE Act, as those exclusions read prior to the federal Tax Cuts and Jobs Act and the Consolidated Appropriations Act, 2016. Existing law creates the California ABLE Act Board and requires the board to 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 conform state tax law to those changes relating to qualified ABLE accounts made by the Tax Cuts and Jobs Act and the Consolidated Appropriations Act, 2016. The bill would make a legislative finding and declaration that providing ABLE account beneficiaries the ability to contribute their own earnings to the ABLE account up to the federal poverty level and allowing Section 529 plan accounts to roll over to ABLE accounts eliminates differences in the qualification criteria for ABLE accounts under federal tax law and California tax law, and thus serves a public purpose and does not constitute a prohibited gift of public funds.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

