

OCTOBER 24, 2019

**AGENDA ITEM 1
Action ITEM**

CALIFORNIA ABLE ACT BOARD

Approval of Minutes from May 28, 2019 Meeting

Attachments

- Attachment #1 – CalABLE Board 5/28/19 Meeting Minutes

Recommended Action—Approve meeting minutes

CALIFORNIA ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACT BOARD

Meeting Minutes

May 28, 2019 – 1:30 p.m.

915 Capitol Mall, Room 587, Sacramento, CA 95814

Public Participation Call-In Number* (877) 810-9415 and Access Code: 653-5126

Board members present:

Genevieve Jopanda for the State Treasurer, Fiona Ma

David Oppenheim for the State Controller, Betty T. Yee

Elena Gomez for Director of the Department of Rehabilitation, Joe Xavier

Gayle Miller for the Director of the Department of Finance, Keely Bosler

Peter Mendoza for the Chairperson of the State Independent Living Council

Patti Mericantante for the Director of the Department of Developmental Services,
Nancy Bargmann

CalABLE Board members absent:

Francis Lau for the Chairperson of the State Council on Developmental
Disabilities, Sandra Smith

CalABLE Board staff present:

Dante Allen, Executive Director

Erica Jaramillo, Associate Governmental Program Analyst

Ravinder Kapoor, Legal Counsel

CalABLE Board consultants present:

Andrea Feirstein, Managing Director, AKF Consulting, LLC

Mark Chapleau, Senior Consultant, AKF Consulting, LLC

Eric White, Executive Vice President, Meketa Investment Group, Inc.

CalABLE Board program manager, Tuition Financing, Inc. (TFI), staff present:

Vivian Tsai, Senior Director of Relationship Management

Linda English, Senior Director of Relationship Management (*via teleconference*)

Douglas Harrison, Senior Director of Marketing (*via teleconference*)

Jeremy Thiessen, Senior Director of Investment Strategies (*via teleconference*)

CalABLE Board Marketing consultants, Propose LLC dba Sagent present:

Lynn Wallace, Marketing Director

Elizabeth Merwin, Account Supervisor

Michelle Baker, Account Executive

Kevin Muela, Account Coordinator

Chairperson Jopanda called the meeting to order at 1:32 p.m.

Agenda Item 1 – Approval of the Minutes of the February 26, 2019 Meeting of the California ABLE Act Board (ACTION ITEM)

Chairperson Jopanda asked for public comment. There was none.

Board Action

Motion to approve the minutes of the February 26, 2019 meeting of the California ABLE Act Board.

MOTION:	Gayle Miller	SECONDED:	David Oppenheim
AYES:	Peter Mendoza, Patti Mericantante, Elena Gomez, David Oppenheim, Gayle Miller, Genevieve Jopanda		
NOES:			
ABSTAIN:			
RECUSE:			
ACTION:	Minutes are approved		

Agenda Item 2 – Executive Director’s Report (INFORMATION ITEM)

Mr. Allen provided report on CalABLE’s weekly numbers - total enrollment in the program is 1,391 and total assets under management is \$4,686,433. Mr. Allen explained the differences between the numbers he provides and the numbers provided by program manager TIAA-CREF.

Mr. Allen discussed current budget. As of April 30, the program has spent \$824,000 in loan funding in the current fiscal year and a total of \$1.9 million since the program’s inception in 2016. Mr. Allen noted that there is an unspent balance for the year of \$1.1 million and have requested the final invoices for the year and expect to have some surplus for the year. Mr. Allen reported that CalABLE has had its 19-20 budget change proposal accepted by both the Assembly and the Senate.

Mr. Allen reported that former Deputy Executive Director, Carrie Fisher Stone, has been offered and accepted job promotion with CalSTRS.

Mr. Allen provided an overview of his trip to the NAST 2019 Treasury Management Symposium which offered two full days of ABLER information. Mr. Allen stated that discussions around what’s been successful for ABLER and where is there room for growth opportunity were had.

Mr. Allen reported that HUD released guidance on ABLER accounts on April 26, 2019. He stated that this has been a significant achievement because it has been since before the ABLER Act was enacted that HUD wouldn’t release guidance. Mr. Allen noted that CalABLE has been actively sharing this with stakeholders.

Mr. Allen discussed CalABLE’s outreach and education efforts including 25 past presentations and 9 or 10 upcoming ones. Mr. Allen reported that Independent Living Centers and Regional Centers have been great partners in getting information out about the program. Mr. Allen noted that a matrix of feedback was compiled from the presentations and staff are refining messaging in and honing in on the perfect presentation.

Mr. Allen stated that on the legislative front, two of the bills that we’re tracking AB 416 and SB 263, have both been placed on the suspense file. He noted that if they do not come out of that suspense file they will not advance this year. Mr. Allen reported that AB 736, co-sponsored by Treasurer Ma, has passed through the Assembly and waiting for

assignment with the Senate. He also noted that bills SB 817 and HR 1814 are being followed and the prospect of them passing are relatively strong.

Mr. Allen provided an update on prepaid card option. He noted that TFI is on schedule to be released this summer. Mr. Allen concluded his report. Ms. Jopanda thanked him and asked for questions from the board.

Mr. David Oppenheim stated he had a couple questions to ask. He asked for clarification on item 1 on the spread between the accounts that have been opened and the accounts that have been funded.

Mr. Allen responded by stating that the vast majority have been funded and that the first quarterly report only tracks a certain time period and cannot reflect that as of yet but there is a factor that is being watched very carefully which is the accounts that have been open and then closed because of no account activity. Mr. Allen noted that he talked to his peers at NAST about those automatic closures.

Mr. Oppenheim requested a table showing the different components of this information. Mr. Allen stated he would be happy to share that.

Mr. Oppenheim also asked what was specifically in the BCP and if anything out of the ordinary was in it. Mr. Allen stated the 19-20 BCP was almost identical to the 18-19 BCP. Mr. Allen discussed items included in the BCP. Mr. Oppenheim requested to be sent BCP information in the future. Mr. Allen responded with a yes.

Chairperson Jopanda asked for public comment. There was none.

Agenda Item 3 – Review and Analysis of Investment and Administrative Performance for CalABLE for First Quarter 2019 – TIAA-CREF Tuition Financing, Inc., (TFI). (INFORMATION ITEM)

Mr. Dante Allen introduced item 3 and present members of TFI, Vivian Tsai. Mr. Allen stated that this is first full quarter to present data and staff are open to providing as much transparency as we can and encouraged board to ask questions. Mr. Allen noted

that Ms. Linda English was unable to attend due to illness but was present via teleconference.

Ms. Vivian Tsai reported that Jeremy Thiessen, head of investments, was on the phone and would give the investment report first.

Mr. Thiessen provided report on First Quarter Market Overview which included three months of data. He noted the short time period. Mr. Thiessen discussed the assets by portfolio. He noted that the key theme of the first quarter was one of renewed optimism. Mr. Thiessen stated that US equities were up over 14% and the sub asset classes within equities led by growth stocks over 16% percent, but all of them producing double digit returns. Mr. Thiessen stated that all eleven U.S. equity sectors had positive returns. Information Technology and Real Estate had the highest returns while Health Care was the laggard. He noted that international developed and emerging markets also participated in the rally.

Mr. Thiessen noted that total assets were \$3.3 million and that is made up of the four investment options and the largest one is represented by Moderate Portfolio. Mr. Thiessen discussed the various funds used to build the portfolios and noted the largest is the FDIC-Insured Bank Account.

Mr. Thiessen discussed investment portfolios versus composite benchmarks. He noted that the three portfolios moderate, conservative, and aggressive all had strong positive returns and the highest return portfolio is aggressive at 10.8% return. He stated they are all within basis points of their blended benchmarks. Mr. Thiessen provided overview of average annual total return of each portfolio option.

Mr. Thiessen reported on each of the portfolios, the funds that make up those portfolios, and each underlying portfolio relative to its benchmark. He noted that TIAA-CREF Equity Index Fund was three points below its benchmark. He discussed underlying funds versus benchmarks since the year of their inception. Mr. Thiessen concluded his report and welcomed questions from the board.

Mr. Oppenheim asked for clarification on expectations when benchmarks were built.

Mr. Eric White introduced himself as a member from Meketa, third party investment consultant. He stated in the future he will have the monitoring reports and monitoring guidelines including qualitative analysis.

Mr. Oppenheim stated that he understood the presentation just given to say that zero of the accounts did not meet their expectations and only one met the expectations and so going forward curious just to be able to continue to monitor that. Mr. Oppenheim stated that he imagines the goal is to out-perform or is goal to hit the benchmark?

Mr. White responded that the goal is to hit the benchmark and all of the funds within the program are known as passively managed options. Mr. Oppenheim asked how the benchmarks are derived. Mr. White stated that at the underlying fund level they are third party derived. Mr. Oppenheim asked if it's cheaper to own the benchmark bundle than a prepared bundle. Mr. White stated that the goal is to tread at benchmark and is the cheapest way to achieve that performance. He also noted that at the underlying fund level they are designed to track the benchmarks but they do have a fee on them so over time you would expect them to slightly underperform the benchmark which is equivalent to that fee. He also stated that what they are tracking is any deviation around how it is tracking the benchmark on average we think the time it out performs or under performs should wash out and it should never be by a large amount, but over time because they are subtracting a very modest fee they will have a lag over time because of the fee itself.

Mr. Oppenheim notes that it is important to understand the funds as it pertains to their fiduciary responsibility. He asked another question – are we inadvertently shunting people to a very conservative portfolio and potentially missing out on longer term earnings should they be longer term investors.

Mr. White stated he would argue yes and thinks that the work they did at the beginning with the initial design where people could self-identify with their own risk tolerance and find the best investment that fits it. He stated that in terms of the fee structure they have tried to build out those options at the lowest cost possible and the nature of where interest rates are, yes the fee will over penalize options that have lower expected returns.

Mr. Allen stated that he would like to point out that when they approved the fees related to each account and the board elected to waive the fee for FDIC insured options we did projections of what we anticipated the actual individual who would select that option

would be and we said it would be 1/3, and that is rounded out in the data we see for the first quarter report. He stated that additional monitoring is necessary.

Mr. Oppenheim asked Eric White from Meketa if they have been watching China and tariffs and how it can potentially impact industries and whether adjustments need to be made.

Mr. White stated yes and they have chosen not to take tactical changes and to track broad U.S. indexes.

Ms. Vivian Tsai provided overview on first quarter administrative performance report. She stated there is well over \$3 million in the CalABLE program and almost net new 700 accounts opened. She discussed the breakdown of contributions and redemptions. Ms. Tsai reported that FDIC Insured Savings Account held the most money amounting to \$1.1 million. She gave an overview of call center data and the macro view of website data. Ms. Tsai explained that they keep a tight view on where people spend their time on the website and how effective it is.

Ms. Tsai stated that over first quarter they met their service level performance. She provided overview of program eligibility and demographics in the first quarter.

Ms. Jopanda asked if the board had any comments or questions.

Ms. Elena Gomez asked the Executive Director for sustainability and repayment purposes what was the breakeven point that they were looking at in terms of the number of accounts or assets within the program.

Mr. Allen responded by stating we not projected far enough out to get to the breakeven amount. Mr. Allen stated we purposefully didn't project out more than 5 years because of the relative immaturity of the industry overall and the need for having numbers that are based in reality.

Ms. Gomez noted that there was not a category for disability types that included sensory disorders and asked how TIAA came up with their categories.

Ms. Tsai responded by stating she will look into that. Ms. Jopanda suggested that they break down the other category.

Mr. Allen made a suggestion to TIAA to use plain language when applicants are selecting their disability type.

Ms. Gomez asked for more information on the language needs given the diverse population in California.

Mr. Allen explained that the goal is to offer the top 5 languages in California and materials are currently offered in Spanish and English. Ms. Tsai clarified that the call center offers Spanish language services and that they also engage with third party language service providers.

Ms. Jopanda requested data around individuals with more than one disability type.

Ms. Gayle Miller suggested to expand categories to increase outreach. She suggested to also expand type of relationship category to include other types such as siblings and make them more inclusive. Ms. Miller asked how long does staff anticipate gathering the information before using it as a decision-making tool.

Mr. Allen responded stating given our budget schedule and the requirements that I alluded to earlier by the legislative analyst's office to continue to provide rationale and justification to continue general fund loans that we will look at this on an annual basis but monitor this by this group quarterly and at the end of year we should have an opportunity to look at potential trends.

Mr. Mendoza asked questions about language access with third party language service providers at the call center. Mr. Allen noted that there is a concerted effort to ensure there is support for additional languages on each call center shift. Ms. Tsai stated that is more immediate similar to a three way call between the call center rep and caller and third party. Mr. Mendoza suggested broadening the languages spoken within the call

center. Mr. Mendoza also suggested the option of including data on working people who work full time and part time.

Chairperson Jopanda asked for public comment. There was none. Ms. Jopanda noted Mr. Allen's request to change agenda item orders and introduced next item on agenda.

Agenda Item 4 – Review of Board Fiduciary and Governance Training and Best Practices – AKF Consulting. (INFORMATION ITEM)

Ms. Andrea Feirstein and Mark Chapleau review and discuss Board Fiduciary and Governance Training and best practices with CalABLE Act Board members. Ms. Feirstein explained that this training and its regular updates provides protection for Board members by establishing sound and consistent procedures that govern their decision-making.

Ms. Feirstein provided overview of the training. Ms. Feirstein and Mr. Chapleau reminded Board members of why they are deemed to be fiduciaries and reviewed what being a fiduciary means.

Ms. Feirstein explained and emphasized co-fiduciary liability of the Board. Mr. Chapleau discussed the appropriate venue to talk about such issues and the right venue would be a board meeting.

Ms. Feirstein and Mr. Chapleau summarized the rules and best practices that fiduciaries should follow.

Ms. Feirstein stated that is important that the board understands their duties and how to mitigate by continuing education on fiduciary responsibility. Ms. Feirstein noted that the investment policy statement is a good example of good governance practice and the importance of getting outside advice.

Ms. Feirstein provided guidance and checklists on how to follow those rules.

Chairperson Jopanda asked for questions from the board. There was none.
Chairperson Jopanda asked for public comment. There was none.

**Agenda Item 5 – 529A Program Consultant Update: AKF Consulting.
(INFORMATION ITEM)**

Ms Jopanda introduced the agenda item.

Mr. Allen stated that the objective here in the interest of time this is a deck the board is familiar with and the one notable change is that California's data is included and he will allow Ms. Feirstein to talk about it in limited detail, but there is one particular element he has enjoyed in his briefings and that is on slide 7 of the deck. Mr. Allen noted a remarkable achievement when looking at the tiny view of the market where CalABLE has achieved a lot of progress in accounts and assets in one quarter when compared to New York.

Ms. Feirstein thanked Mr. Allen and reported that she also was going to draw the board's attention to. She stated that catching up with New York in one quarter is remarkable growth and something the board should be extremely proud of.

Ms. Feirstein noted that the numbers in her report are different than the ones shared by Meketa and Jeremy Thiessen from TIAA and she is going to go back and check Strategic Insights to make sure that the numbers aren't just the net new accounts because they are inconsistent but the key point is that it's still remarkable growth.

Ms. Feirstein also noted that during the very first roll outs that there is an important part of the population that wants to use these accounts for transactional purposes and this can be seen here in California and nationwide and it's also a testament to program managers like TIAA have delivered exactly what this very deserving pool of investors asked for and wanted.

Chairperson Jopanda reported that Treasurer Ma's intention is to support CalABLE and always talks about it to the public especially when asked about her priorities.

Agenda Item 6 – Strategic Marketing Program Update – Sagent. (INFORMATION ITEM)

Chairperson Jopanda introduced next item on marketing program update.

Mr. Allen provided an overview of the early work that has taken place between Sagent and CalABLE staff. Mr. Allen reported that CalABLE staff and Sagent are in the process of developing the marketing plan. Mr. Allen introduced Sagent team to the board.

Ms. Elizabeth Merwin introduced herself, Account Supervisor with Sagent and Lynn Wallace, Director at Sagent Marketing. Ms. Merwin reported that Lynn would be providing an Executive Summary recap on the stakeholder interviews that were conducted in the recent weeks and the insights gained that will inform their marketing strategy and marketing plan that they will then create a core marketing strategy for the program.

Ms. Wallace discussed key findings, importance of crafting key messaging to reach target audiences, and the understanding of who are the influencers and advocates. Ms. Wallace gave an overview of key pain points and needs. Ms. Wallace stated that the use of storytelling and testimonials will be key in increasing enrollments.

Ms. Wallace reported that the team will be looking at how to build storytelling into their messaging to increase awareness and build trust.

Ms. Miller asked for names of the stakeholders interviewed and if Sagent planned on doing anymore outreach. Ms. Wallace directed Miller to information provided in the report. Ms. Miller suggested Sagent team reach out to special education department.

Mr. Mendoza thanked Sagent team for taking the time to listen when they conducted the interview with him.

Chairperson Jopanda asked for public comment. There was none

Chairperson Jopanda congratulated Ms. Miller on her recent appointment at Department of Finance.

Public Comment

Chairperson Jopanda asked for public comment. There was one member from the public with a request to comment.

A mother with a daughter who was diagnosed with Down syndrome came from Auburn, CA to share her story and experience with Social Security Administration. She stated that her daughter's benefits were disrupted because staff at SSA were not educated about CalABLE accounts. She stated she is a fan of CalABLE and requested that CalABLE develop an education toolkit as parents are left with responsibility to step up and be educated when dealing with agencies.

Chairperson Jopanda offered to exchange contact information and assist her with resolution. Mr. Allen also offered his assistance to help clear up the problem.

Mr. Mendoza stated that this is an example of an important systemic issue where more work needs to be done which may include getting connected with contacts at the State and National level.

Mr. Oppenheim asked if there were SSA contacts in place to reach out to when these continue to occur. Mr. Allen stated he didn't believe so and this has been the first time he is aware of this issue. Chairperson Jopanda reported that there is a member of the External Affairs team who handles these type of issues and keeps track of them and follows up.

The meeting adjourned at 3:30 p.m.

OCTOBER 2, 2019

**AGENDA ITEM 2
INFORMATION ITEM**

CALIFORNIA ABLE ACT BOARD

Executive Director's Report

Background

The Executive Director's Report includes an overview on the following items:

- CalABLE staffing update
- AchievABLE Corner Partnership with National Institute on Disability
- CalABLE enrollments and assets/Performance
- Strategic Insight 529 Conference
- Strategic Planning RFP
- CalABLE Act Board Annual Independent Audit
- Technical Advisory Consultant RFP
- AB 91 Rollover from 529 to 529 ABLE Account Tax Conformity
- CalABLE Visa Prepaid Debit Card Update

Attachments

- AchievABLE Comer
- Presentations Report
- PPT CalABLE 2019 Q2 Board Pages
- AB 91

Presenter:

Dante Allen, Executive Director, California ABLE Act Board

IMMEDIATE RELEASE

PR 19: XX

[DeSio](#)

September 17, 2019

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Contact: [Mark](#)

(916) 651-

Treasurer Fiona Ma Announces New Financial Education Website Connected to CalABLE Website

SACRAMENTO – California State Treasurer Fiona Ma today announced the launch of a new website and partnership with the National Disability Institute (NDI), called the AchievABLE Corner, which brings a new level of financial education to people with disabilities.

“The Achievable Corner tools provide practical financial information to one of California’s most vulnerable populations – people with disabilities. It can help new and experienced savers gain the confidence to make wise decisions that assist them in building and maintaining their financial health, and quality of life,” Treasurer Ma said.

CalABLE allows people with disabilities to save money and invest like never before. NDI is one of the nation’s premier advocacy organizations and a recognized leader in promoting the benefits of the federal ABL Act for people with disabilities. AchievABLE can be accessed through the CalABLE website at <https://www.treasurer.ca.gov/able/index.asp>.

The tools and information available on AchievABLE corner cover everything from the eligibility requirements to open a CalABLE account, to setting and achieving financial goals.

CalABLE is housed in the State Treasurer’s office. It gives Californians and out-of-state residents the ability to save for disability-related expenses by putting money in a tax-advantaged savings or investment account, while protecting their eligibility for means-tested public benefits programs. After-tax contributions to a CalABLE account can grow tax-free when withdrawals are used for a broad range of Qualified Disability Expenses.

Until recently, individuals receiving federal benefits like SSI have been restricted to saving only \$2,000, which prevented them from planning for the future and in many cases, kept them in poverty.

“The AchievABLE Corner is the first initiative of its kind to provide financial resources and tools for current and potential ABLE account holders to help them make informed decisions about how their funds will be used to pay for disability-related expenses,” Michael Morris, Executive Director of the National Disability Institute, said. “Our intention is to replicate this pilot across the nation so all ABLE account holders will have access to helpful financial education resources.”

Visitors to the CalABLE website will find a direct link to the AchievABLE Corner on the NDI website. Resources and tools are divided into three categories: 1) Thinking about opening a CalABLE account, 2) Ready to open a CalABLE account and 3) Currently using my CalABLE account.

The AchievABLE Corner was created by NDI with funding support from the Wells Fargo Foundation.

In California, more than 2,000 people have signed up for CalABLE securing more than \$7 million in assets. Across the country nearly 46,000 individuals have opened ABLE accounts and nearly \$260 million is invested in those accounts.

National Disability Institute (NDI) is a national nonprofit organization dedicated to building a better financial future for people with disabilities and their families. To learn more, visit www.nationaldisabilityinstitute.org. Engage with NDI on Facebook: @NationalDisability or follow NDI on Twitter: @NatDisability.

Fiona Ma is California's 34th State Treasurer. She was elected on November 6, 2018 with more votes (7,825,587) than any other candidate for treasurer in the state's history. She is the first woman of color and the first woman Certified Public Accountant (CPA) elected to the position. The State Treasurer's Office was created in the California Constitution in 1849. It provides financing for schools, roads, housing, recycling and waste management, hospitals, public facilities, and other crucial infrastructure projects that better the lives of residents. California is the world's fifth-largest economy and Treasurer Ma is the state's primary banker. Her office processes more than \$2 trillion in payments within a typical year. She provides transparency and oversight for the government's investment portfolio and accounts, as well as for the state's surplus funds. Treasurer Ma oversees an investment portfolio of more than \$102 billion, approximately \$20 billion of which are local government funds. She serves as agent for sale for all State bonds, and is trustee on over \$100 billion of outstanding debt.

For more news about the State Treasurer's Office, please follow Treasurer Ma on Twitter at [@CalTreasurer](https://twitter.com/CalTreasurer), Instagram at [caltreasurer](https://www.instagram.com/caltreasurer), and on Facebook at [California State Treasurer's Office](https://www.facebook.com/CaliforniaStateTreasurersOffice).

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External Presentations since the Last Board Meeting

- ✓ **1.** June 1 | Central Valley Down Syndrome Summit; Bakersfield
- ✓ **2.** June 3 | Autism Society LA Summit; Los Angeles
- ✓ **3.** June 11 | DDS Consumer Advisory Council; Sacramento
- ✓ **4.** June 12 | San Gabriel Regional Center; Pomona
- ✓ **5.** June 12 | Economic Empowerment Personal Finance and Disability; Los Angeles
- ✓ **6.** June 13 | Sacramento County Human Services Coordinating Council; Sacramento
- ✓ **7.** June 20 | DOR Deaf and Hard of Hearing Advisory Committee; Sacramento
- ✓ **8.** June 24 | North State-SCDD and Far Northern RC; Chico and Redding
- ✓ **9.** July 18 | CA Youth Leadership Forum; Sacramento
- ✓ **10.** July 29 | Filipino Association for Developmental Disabilities; San Diego
- ✓ **11.** August 1 | FREED CalABLE Presentation; Grass Valley
- ✓ **12.** August 3 | Congreso Familiar; Hayward
- ✓ **13.** August 8 | Service Coordination and Accounting Staff at Lanterman Regional Center; Los Angeles
- ✓ **14.** August 8 | Harbor Regional Center; Long Beach
- ✓ **15.** August 14 | DOR Blind Advisory Committee; Sacramento
- ✓ **16.** August 15-16 | Central Valley Regional Center; Fresno
- ✓ **17.** August 17 | Central Valley Breaking Barriers Conference; Clovis
- ✓ **18.** August 21 | South Central Los Angeles Regional Center; Davis
- ✓ **19.** August 24 | San Andreas Regional Center African American Conference; San Jose
- ✓ **20.** September 11 | Department of Social Services; Sacramento
- ✓ **21.** September 13 | ACSED Symposium; Sacramento
- ✓ **22.** September 25 | My Ears 2 Hear Support Group; Roseville
- ✓
- ✓

Upcoming External Presentations

- 1.** October 11 | Supported Life Conference with Attorney Steve Dale; Sacramento
- 2.** October 12 | San Mateo County Transition Fair; San Francisco
- 3.** October 19 | Lanterman Regional Center Housing Fair; Los Angeles
- 4.** October 22 | Jobtoberfest; San Diego
- 5.** November 2 | 2019 Resource & Technology Fair at Society for the Blind; Sacramento

Assembly Bill No. 91
CHAPTER 39

An act to amend Sections 17052, 17140, 17140.3, 17140.4, 17276, 17276.21, 17276.22, 17560.5, 17564, 19131.5, 23711, 23711.4, 24343, 24416, 24416.21, 24416.22, 24422.3, 24652, 24654, 24673.2, and 24701 of, to add Sections 17052.1, 17144.8, 17201.2, 17271, 17563.51, 17859, 24343.1, 24451.1, and 24652.6 to, and to repeal and add Sections 18031.5 and 24941.5 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 1, 2019. Filed with Secretary of State July 1, 2019.]

legislative counsel's digest

AB 91, Burke. Income taxation: Loophole Closure and Small Business and Working Families Tax Relief Act of 2019.

(1) The Personal Income Tax Law, beginning on or after January 1, 2015, in modified conformity with federal income tax laws, allows an earned income tax credit against personal income tax, and a payment from the Tax Relief and Refund Account for an allowable credit in excess of tax liability, to an eligible individual that is equal to that portion of the earned income tax credit allowed by federal law as determined by the earned income tax credit adjustment factor, as specified. The law provides that the amount of the credit is calculated as a percentage of the eligible individual's earned income and is phased out above a specified amount as income increases. The law deems, for each taxable year beginning on or after January 1, 2018, and before January 1, 2019, the California Consumer Price Index as the greater of 3.1% or the percentage change in the California Consumer Price Index for the recomputation of specified earned income amounts, phaseout amounts, and the amount of disqualified income that would disallow this credit.

This bill, for taxable years beginning on or after January 1, 2019, and before January 1, 2020, would deem the California Consumer Price Index as the greater of 3.5% or the percentage change in the California Consumer Price Index for the recomputation of those specified amounts. The bill, for taxable years on and after January 1, 2019, would revise the calculation factors to increase the credit amount for specified taxpayers. The bill, for taxable years beginning on or after January 1, 2020, and until and including the taxable year in which the minimum wage is set at \$15 per hour, would require specified, revised calculation factors to be recomputed annually in the same manner as the recomputation of income tax brackets for eligible individuals, but would require the Franchise Tax Board to recalculate the

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revised phaseout percentage in a manner that any eligible individual with an earned income of \$30,000 per year would get credit equal to \$0.

This bill would allow a refundable young child tax credit against the taxes imposed under the Personal Income Tax Law, for each taxable year beginning on or after January 1, 2019, in an amount equal to \$1,176 multiplied by the earned income tax credit adjustment factor, not to exceed \$1,000 per each qualified taxpayer per taxable year. The bill would require amounts of this credit in excess of the qualified taxpayer's tax liability to be paid to the qualified taxpayer from the Tax Relief and Refund Account.

Existing law establishes the continuously appropriated Tax Relief and Refund Account and provides that payments required to be made to taxpayers or other persons from the Personal Income Tax Fund are to be paid from that account, including any amount to be paid as an earned income tax credit in excess of any tax liabilities.

By increasing the amount of the California Earned Income Tax Credit and allowing a refundable young child tax credit to be paid with funds from the Tax Relief and Refund Account, and thus, authorizing new payments from that account for additional amounts in excess of personal income tax liabilities, this bill would make an appropriation.

(2) 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

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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.

(3) The Personal Income Tax Law provides an exclusion from gross income for the amount of student loan indebtedness repaid or canceled pursuant to a specified federal law.

This bill would exclude from an individual's gross income the amount of student loan indebtedness discharged on or after December 31, 2011 due to the death or disability of the student, as provided.

(4) The Personal Income Tax Law and the Corporation Tax Law, in modified conformity with federal income tax laws, allow various deductions from gross income in computing adjusted gross income under those laws, including a deduction, as trade or business expense, of the premiums paid pursuant to an assessment by the Federal Deposit Insurance Corporation.

This bill would conform to the federal Tax Cuts and Jobs Act, by disallowing or limiting the amount specified taxpayers may deduct for these premiums depending on the amount of total consolidated assets, as defined, of the taxpayer.

(5) The Personal Income Tax Law and the Corporation Tax Law, in modified conformity with federal income tax laws, allow a deduction from gross income in computing adjusted gross income of ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. Existing law prohibits a deduction from being allowed with respect to any covered employee of a publicly held corporation if the amount of applicable employee remuneration exceeds \$1,000,000.

This bill would conform to the federal Tax Cuts and Jobs Act, by revising the definitions of covered employee and publicly held corporation to limit the amount those specified taxpayers may deduct for ordinary and necessary expenses. The bill would also disallow the performance-based compensation and commission exceptions with respect to the deduction limitation relating to covered employees.

(6) The Personal Income Tax Law and the Corporation Tax Law allow net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided.

This bill would disallow the use of net operating loss carrybacks by individual and corporate taxpayers.

(7) The federal Tax Cuts and Jobs Act allows a small business to use the cash method of accounting if its average annual gross receipts for the 3 taxable years ending with the prior taxable year do not exceed \$25,000,000.

The Personal Income Tax Law and the Corporation Tax Law allows a small business to use the cash method of accounting if its average annual gross receipts for the 3 taxable years ending with the prior taxable year do not exceed \$5,000,000.

This bill, for taxable years beginning on or after January 1, 2019, would conform the Personal Income Tax Law and the Corporation Tax Law to the

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increase to \$25,000,000 made by the federal Tax Cuts and Jobs Act in the allowable amount of annual gross receipts of a small business allowed to use the cash method of accounting. The bill would allow a taxpayer to elect to have this conformity apply to taxable years beginning on or after January 1, 2018, and before January 1, 2019.

(8) The federal Tax Cuts and Jobs Act exempts a corporation engaged in farming that has average annual gross receipts for the 3 taxable years ending with the prior taxable year not exceeding \$25,000,000 from computing its taxable income by using the accrual method of accounting.

The Personal Income Tax Law and the Corporation Tax Law exempt a corporation engaged in farming that has average annual gross receipts for the 3 taxable years ending with the prior taxable year not exceeding \$5,000,000 from computing taxable income by using the accrual method of accounting.

This bill, for taxable years beginning on or after January 1, 2019, would conform the Personal Income Tax Law and the Corporation Tax Law to the increase to \$25,000,000 made by the Tax Cuts and Jobs Act in the amount of average annual gross receipts of a farming corporation that is exempt from using the accrual method of accounting. The bill would allow a taxpayer to elect to have this conformity apply to taxable years beginning on or after January 1, 2018, and before January 1, 2019. The bill would also make conforming changes related to suspense allowances, as provided.

(9) The federal Tax Cuts and Jobs Act exempts a taxpayer with average annual gross receipts for the 3 taxable years ending with the prior taxable year of \$25,000,000 or less from the provisions that preclude the deduction of certain direct and indirect costs and determine whether those property costs are inventory costs or are capitalized.

The Personal Income Tax Law and the Corporation Tax Law exempts a taxpayer with average annual gross receipts for the 3 taxable years ending with the prior taxable year of \$10,000,000 or less from the provisions that preclude the deduction of certain direct and indirect costs and determine whether those property costs are inventory costs or are capitalized.

This bill, for taxable years beginning on or after January 1, 2019, would conform the Personal Income Tax Law and the Corporation Tax Law to the increase to \$25,000,000 made by the Tax Cuts and Jobs Act in the amount of average annual gross receipts of a taxpayer exempt from those provisions precluding the deductibility of certain property costs and determining whether those costs are inventory costs or are capitalized. The bill would allow a taxpayer to elect to have this conformity apply to taxable years beginning on or after January 1, 2018, and before January 1, 2019.

(10) The federal Tax Cuts and Jobs Act exempts a small business with average annual gross receipts for the 3 taxable years ending with the prior taxable year not exceeding \$25,000,000 from the provisions that require a taxpayer to take inventories to clearly determine their income.

The Personal Income Tax Law and the Corporation Tax Law conforms to the provisions of the Internal Revenue Code relating to the requirement

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that a taxpayer take inventories to clearly determine their income, but does not allow an exemption. This bill, for taxable years beginning on or after January 1, 2019, would conform the Personal Income Tax Law and the Corporation Tax Law to the exemption in the Tax Cuts and Jobs Act of a small business with average annual gross receipts for the 3 taxable years ending with the prior taxable year not exceeding \$25,000,000 from the provisions that require a taxpayer to take inventories to clearly determine their income. The bill would allow a taxpayer to elect to have this conformity apply to taxable years beginning on or after January 1, 2018, and before January 1, 2019.

(11) The federal Tax Cuts and Jobs Act exempts construction contracts entered into by a taxpayer with average annual gross receipts not exceeding \$25,000,000 from the requirement that the taxable income from a long-term contract be determined by the percentage of completion method.

The Personal Income Tax Law and the Corporation Tax Law exempts construction contracts entered into by a taxpayer with average annual gross receipts for the 3 taxable years ending with the prior taxable year not exceeding \$10,000,000 from the requirement that the taxable income from a long-term contract be determined by the percentage of completion method.

This bill would conform the Personal Income Tax Law and the Corporation Tax Law to the exemption in the Tax Cuts and Jobs Act of construction contracts entered into by a taxpayer with average annual gross receipts not exceeding \$25,000,000 from the requirement that the taxable income from a long-term contract be determined by the percentage of completion method. This conformity would apply to contracts entered into on or after the effective date of this act, as provided, and would allow, where applicable, a taxpayer to elect to have the conformity apply to contracts entered into on or after January 1, 2018, and before the effective date of this act.

(12) The Personal Income Tax Law generally allows a noncorporate taxpayer to deduct business losses from a pass through entity, like an “S” corporation.

Under the federal Tax Cuts and Jobs Act, for taxable years beginning after December 31, 2017, and before January 1, 2026, excess business losses, as defined, of a noncorporate taxpayer are not allowed as a deduction and instead those losses must be carried forward and treated as a net operating loss in subsequent taxable years, as provided.

This bill, for taxable years beginning after December 31, 2018, would provide modified conformity to the above-described limitation, including not conforming to the federal sunset date.

(13) The Personal Income Tax Law conforms as of a specified date to federal income tax laws, January 1, 2015, and therefore allows for the termination of a partnership by the sale or exchange of 50% or more of the interest in a partnership within a 12-month period. The federal Tax Cuts and Jobs Act repealed that provision of federal income tax law for taxable years beginning on or after January 1, 2018.

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This bill would conform to federal income tax law with regard to the termination of partnerships described above and would additionally allow a partnership to elect to have this conformity apply to partnership taxable years beginning after December 31, 2017, and before January 1, 2019.

This bill would make findings as to the public purpose served by the bill in this regard.

(14) The Personal Income Tax Law and the Corporation Tax Law, in modified conformity with federal income tax laws, exclude the recognition of any gain or loss on the exchange of property held for productive use in a trade or business or for investment, if that property is exchanged solely for property of a like kind that is to be held either for productive use in a trade or business or for investment, unless an exception applies.

This bill would conform to federal income tax law, as amended by the Tax Cuts and Jobs Act, by limiting that exclusion to the recognition of any gain or loss on the exchange of real property, except as otherwise provided.

(15) The Corporation Tax Law, in conformity with federal income tax laws, and when a taxpayer does not elect otherwise for purposes of state income tax law, allows a purchasing corporation to make an election that its qualified stock purchase, as defined, from a target corporation may be treated as an asset acquisition resulting in a step up in the basis of the stock.

This bill would provide that if the above-described election for federal income tax purposes has been made or deemed to have been made, or not made or not deemed to have been made, by a taxpayer, a separate state election shall not be allowed.

(16) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. This act shall be known, and may be cited, as the “Loophole Closure and Small Business and Working Families Tax Relief Act of 2019.”

SEC. 2. Section 17052 of the Revenue and Taxation Code is amended to read:

17052. (a) (1) For each taxable year beginning on or after January 1, 2015, there shall be allowed against the “net tax,” as defined by Section 17039, an earned income tax credit in an amount equal to an amount determined in accordance with Section 32 of the Internal Revenue Code, relating to earned income, as applicable for federal income tax purposes for the taxable year, except as otherwise provided in this section.

(2) (A) The amount of the credit determined under Section 32 of the Internal Revenue Code, relating to earned income, as modified by this section, shall be multiplied by the earned income tax credit adjustment factor for the taxable year.

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(B) Unless otherwise specified in the annual Budget Act, the earned income tax credit adjustment factor for a taxable year beginning on or after January 1, 2015, shall be 0 percent.

(C) The earned income tax credit authorized by this section shall only be operative for taxable years for which resources are authorized in the annual Budget Act for the Franchise Tax Board to oversee and audit returns associated with the credit.

(b) (1) In lieu of the table prescribed in Section 32(b)(1) of the Internal Revenue Code, relating to percentages, the credit percentage and the phaseout percentage shall be determined as follows:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
No qualifying children	7.65%	7.65%
1 qualifying child	34%	34%
2 qualifying children	40%	40%
3 or more qualifying children	45%	45%

OCTOBER 2, 2019

**AGENDA ITEM 3
INFORMATION ITEM**

CALIFORNIA ABLE ACT BOARD

Review of CalABLE Investment Performance for Second Quarter 2019

Background

The CalABLE Act Board and its investment consultant, Meketa Investment Group, Inc. (Meketa) monitor all portfolios in the CalABLE (Plan). In this item, CalABLE will review and “Investment Performance Report” (Exhibit A) for the Plan for second quarter 2019, provided by TIAA Tuition Financing, Inc. , and the “Investment Performance Status Report” (Exhibit B) for second quarter 2019, provided by Meketa. Exhibit B provides comparisons for each underlying fund allocated to the portfolios used in the Plan to applicable benchmark criteria and labels the current status of the funds as “positive,” “acceptable,” “caution,” or “watch.”

Presenters

Glenn Friedman, Manager, TIAA Tuition Financing Inc.
Eric Which, Principal, Meketa Investment Group, Inc.

- CalABLE Performance 2Q19
- CalABLE Meketa Investment Report

OCTOBER 2, 2019

**AGENDA ITEM 4
INFORMATION ITEM**

CALIFORNIA ABLE ACT BOARD

Strategic Marketing Program Update - Sagent

The California ABLE Act Board will review and discuss an overview of the strategic marketing plan and collateral marketing materials and publishing calendar provided by Elizabeth Merwin, Sagent Marketing. Materials provided to the Board include:

Attachments

- Attachment #1 – CalABLE Board Presentation Sagent 9-18-19

