

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Thomson and Campbell Analyst: Kimberly Pantoja Bill Number: AB 39

Related Bills: See Prior Analysis Telephone: 845-4786 Amended Date: 03/14/2001

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer Provided Health Insurance Premiums Refundable Credit

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced December 4, 2000.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE ALL OF THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced December 4, 2000.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED December 4, 2000. STILL APPLIES.
- OTHER - See comments below.

SUMMARY

This bill would allow a refundable tax credit for an employer that provides health coverage for certain employees and their dependents.

SUMMARY OF AMENDMENT

The March 14, 2001, amendments resolved some of the department's implementation and technical concerns by accepting the amendments suggested in the department's analysis of the bill as introduced December 4, 2000. Except for the considerations resolved by these amendments, the remainder of the department's analysis of the bill as introduced still applies. The remaining policy, implementation, and technical considerations have been included below.

POSITION

Pending.

IMPLEMENTATION CONCERNS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Board Position:

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Legislative Director

Date

Brian Putler

03/27/01

The department has never administered a refundable tax credit under the Bank and Corporation Tax Law (B&CTL). Establishing a refundable tax credit program would have a significant impact on the department's programs and operations and require extensive changes to forms and systems.

This bill specifies that in order for an employer to qualify for this credit, participation in a health plan must be made available to all eligible individuals at least annually. The FTB has no practical way to verify that the employer has fulfilled this requirement.

This bill would require regular appropriations by the Legislature to pay for the refundable portion of this credit. If sufficient funds were not appropriated to cover all of the refunds due, the department would suspend payment of the refunds until additional funds were appropriated. Interest would have to be paid to refund recipients for the period of time the refund was delayed. This delay would result in additional contacts to the department by refund recipients, which would likely increase departmental costs.

Since the proposed credit is refundable, the credit calculation would need to be shown in the payment section on all personal income tax (PIT) returns except the Form 540 2EZ. This would increase PIT return Forms 540, 540NR, 540X, and potentially the 540A by one page. This would result in a significant impact on FTB's operations and costs. Adding a page to these returns will slow the processing of the returns and require additional storage space. While the department would work within available space to the extent possible, leasing additional office and file storage space may be necessary.

The bill limits the credit to the cost of health care coverage provided to an employee who works for an average of at least 30 hours per week. However, it does not specify the period for which the average hours worked is to be determined. The bill also allows the credit for the cost of health care coverage provided to an employee who works less than 30 hours per week. This suggests that the intent is to allow the credit for any health coverage provided, regardless of the number of hours an employee works.

The bill specifies that an eligible employer must not employ more than 15 employees and provides a calculation to establish the average number of employees. The calculation is based on a 30-hour week and would eliminate employers with 12 or more full-time employees. The authors' staff has indicated that this is not the intent and will amend the bill accordingly.

An undetermined number of fraud investigators may be required by the department to verify this credit. Administrative costs of such investigators have not been determined at this time.

TECHNICAL CONSIDERATIONS

This bill requires the employer to pay at least 75% of the monthly premium for the individual or individual's dependent or dependents to be eligible for the credit. However, only the language on dependents (subdivision (c)) makes reference to when two or more eligible employers share in the expenses, leaving it unclear whether the 75% requirement applies when two or more employers share in the costs for an individual (subdivision (b)). Also, if several taxpayers share costs but none individually pays at least 75%, the possibility exists that there would be no "eligible" taxpayers. The language needs modification to ensure that the authors' intent is achieved.

ARGUMENTS/POLICY CONCERNS

Historically, refundable credits (such as the prior state renter's credit and the federal Earned Income Credit) have had significant problems with invalid and fraudulent returns. These problems are aggravated because a refund that is later determined to be fraudulent commonly cannot be recovered. However, fraud concerns are somewhat reduced with this credit due to the narrow criteria regarding who is eligible to claim the credit and the fact that the department will have a list of health care services and plans for use in auditing.

This credit would be determined on an "employee-by-employee" basis. It appears that the intent is to require self-employed people to pay for coverage for both themselves and their employees. However, it would be possible for an employer to offer participation without paying for coverage for the employees but still claim the credit for their own coverage. If this is not the author's intent, clarification is needed in the bill.

This bill does not specify a repeal date. Credits typically are enacted with a repeal date to allow the Legislature to review the effectiveness of the credit.

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