

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Assembly Revenue and Taxation Committee Analyst: Scott McFarlane Bill Number: AB 242
 Related Bills: See Legislative History Telephone: 845-6075 Introduced Date: February 3, 2011
 Attorney: Patrick Kusiak Sponsor:

SUBJECT: Conformity To Federal Health-Care Reform

SUMMARY

This bill would conform to seven provisions of the 2010 federal health-care reform acts.

PURPOSE OF THE BILL

The general purpose of conforming to changes in federal law is to simplify both the preparation of California income tax returns and the administration of California income tax laws.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately. The operative dates of conformity to the seven provisions of the Patient Protection and Affordable Care Act (PPACA) would be as follows:

	Act Section	Description	Operative Date
1	PPACA 9023	Exclusion of grants provided in lieu of therapeutic discovery project credits	For taxable years beginning on or after January 1, 2009
2	PPACA 10908	Health professional's student loan repayment program exclusion and student loan forgiveness exclusion	For amounts received on or after January 1, 2010
3	PPACA 10909	Adoption assistance exclusion increase	For taxable years beginning on or after January 1, 2010
4	PPACA 9021	Indian tribal government health benefits exclusion	For benefits/coverage provided after March 23, 2010
5	PPACA 9022	Safe harbor for small employer cafeteria plans	For taxable years beginning on or after January 1, 2011
6	PPACA 9015	Additional hospital insurance tax deduction	For taxable years beginning on or after January 1, 2013
7	PPACA 10108	Free Choice Voucher exclusion and deduction	For taxable years beginning on or after January 1, 2014

Board Position:	Department Director	Date
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POSITION

Pending.

BACKGROUND

The PPACA¹ and the Health Care and Education Reconciliation Act of 2010² (herein the “health-care reform acts”) were enacted in March, 2010, to effectuate fundamental reforms to the United States health-care system. A universal-coverage requirement begins in 2014, when almost all individuals not covered by Medicaid or Medicare will be required to obtain health-care coverage or pay penalties.³ Lower-income individuals, as well as some middle-class families, will receive a credit or voucher to help pay for health insurance, which can be used at one of the American Health Benefits Exchanges (herein “Exchanges”) that are required to be established by every state. Employers electing not to offer qualifying coverage will be subject to an additional tax to help finance the health-care coverage for their employees. Exceptions will be made for small businesses.

Pursuant to the health-care reform acts, the IRS is responsible for overseeing a significant part of health-care reform, including new taxes, credits, deductions, and exclusions. Many of the new requirements have phased-in and delayed effective dates, giving the IRS and taxpayers a window of time to prepare.

SUMMARY OF SUGGESTED AMENDMENTS

Amendment one would conform California law to PPACA section 1515 that allows small employers to offer Exchange-participating health plans through cafeteria plans beginning in 2014. Amendment five would provide an employer deduction for Free Choice Vouchers under the Corporation Tax Law (CTL) to parallel the employer deduction for such vouchers that this bill would provide under the Personal Income Tax Law (PITL). Amendment eight would exclude therapeutic discovery project grants from income under the CTL to parallel the income exclusion for such grants that this bill would provide under the PITL.

Amendments two through four, six, seven, and nine through eleven are suggested to make non-substantive technical modifications.

ANALYSIS

FEDERAL/STATE LAW

See the Franchise Tax Board’s (FTB’s) report titled [“Summary of March, 2010, Federal Health Care Acts”](#) for a detailed discussion of federal and state laws affected by this bill.

¹ Public Law 111-148.

² Public Law 111-152.

³ Employer-provided coverage will generally satisfy the universal-coverage requirement.

THIS BILL

This bill would conform to the following seven provisions of the PPACA:

	Act Section	Description
1	PPACA 9023	Exclusion of grants provided in lieu of therapeutic discovery project credits
2	PPACA 10908	Health professional's student loan repayment program exclusion and student loan forgiveness exclusion
3	PPACA 10909	Adoption assistance exclusion increase
4	PPACA 9021	Indian tribal government health benefits exclusion
5	PPACA 9022	Safe harbor for small employer cafeteria plans
6	PPACA 9015	Additional hospital insurance tax deduction
7	PPACA 10108	Free Choice Voucher exclusion and deduction

LEGISLATIVE HISTORY

AB 36 (Perea, Blumenfield, and Padilla, 2011/2012) would conform to the federal health-care reform exclusion and deduction for the medical care expenses of a child under 27. That bill passed the Assembly Appropriations Committee on February 24, 2011.

AB 1178 (Portantino, 2009/2010) would have conformed to certain provisions of the health-care reform acts. That bill failed to pass the Senate Appropriations Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. *Illinois, Michigan, and New York* automatically conform each year to the Internal Revenue Code (IRC); thus, these states automatically conform to the health-care reform IRC provisions.

Massachusetts, Minnesota, and Florida conform to the IRC as of a specified date, similar to California. *Massachusetts* conforms to the IRC as amended through January 1, 2005, and *Minnesota* conforms to the IRC as amended through March 18, 2010; thus, neither state conforms to the health-care reform IRC provisions. *Florida* conforms to the IRC as of January 1, 2010; however, *Florida* imposes corporate income tax, but does not impose personal income tax. Thus, to the extent that they would affect corporate tax, *Florida* does not conform to the health-care reform IRC provisions.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

	Act Section	Description	2010/11	2011/12	2012/13	2013/14
1	PPACA 9023	Exclusion of grants provided in lieu of therapeutic discovery project credits	-\$2,100,000	-\$50,000	-\$31,000	-\$16,000
2	PPACA 10908	Health professional's student loan repayment program exclusion and student loan forgiveness exclusion	-\$400,000	-\$500,000	-\$350,000	-\$350,000
3	PPACA 10909	Adoption assistance exclusion increase	-\$1,500,000	-\$1,200,000	No Impact	No Impact
4	PPACA 9021	Indian tribal government health benefits exclusion	-\$50,000	-\$1,300,000	-\$80,000	-\$80,000
5	PPACA 9022	Safe harbor for small employer cafeteria plans	Negligible Loss	Negligible Loss	Negligible Loss	Negligible Loss
6	PPACA 9015	Additional hospital insurance tax deduction	No Impact	No Impact	No Impact	No Impact
7	PPACA 10108	Free Choice Voucher exclusion and deduction	No Impact	No Impact	No Impact	-\$55,000,000
Totals			-\$4,050,000	-\$3,050,000	-\$461,000	-\$55,446,000

POLICY CONCERN

This bill would conform to the health-care reform provision that provides a safe harbor for small employer cafeteria plans beginning in 2011,⁴ but would not conform to the provision that allows small employers to offer Exchange-participating health plans through cafeteria plans beginning in 2014.⁵ Amendment one would conform to the small-employer cafeteria plan provision.

LEGISLATIVE STAFF CONTACT

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⁴ PPACA section 9022. An eligible small employer is provided with a safe harbor from the nondiscrimination requirements for cafeteria plans as well as from the nondiscrimination requirements for specified qualified benefits offered under a cafeteria plan.

⁵ PPACA section 1515.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 242
As Introduced February 3, 2011

AMENDMENT 1

On page 2, strikeout line 3, and insert:

17131.10. (a) For taxable years beginning on or after January 1, 2014, Section 125(f) of the Internal Revenue Code, relating to qualified benefits defined, as amended by Section 1515 of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

(b) For taxable years beginning on or after January 1,

AMENDMENT 2

On page 2, strikeout lines 23 to 27, inclusive, and insert:

(c) Nothing in the amendments made by this section shall be construed to create an inference with respect to the exclusion from gross income of:

(1) Benefits provided by an Indian tribe or tribal organization that are not within the scope of this section, and

(2) Benefits provided prior to the date of the enactment of this Act.

AMENDMENT 3

On page 2, line 30, strikeout "taxable years beginning", and insert:

vouchers provided

AMENDMENT 4

On page 3, lines 6 and 7, strikeout "the provisions of federal law referred to in subdivision (a) apply", and insert:

Section 48D(f)(3) of the Internal Revenue Code, as added by Section 9023(a) of the Patient Protection and Affordable Care Act (Public Law 111-148), relating to treatment of grants, applies

AMENDMENT 5

On page 3, after line 16, insert:

SEC. 7. Section 17202.1 is added to the Revenue and Taxation Code, to read:

17202.1. For taxable years beginning on or after January 1, 2014, Section 162(a) of the Internal Revenue Code, as amended by Section 10108(g) of the Patient Protection and Affordable Care Act (Public Law 111-148), shall apply, except as otherwise provided.

AMENDMENT 6

On page 3, line 17, strikeout "SEC. 7", and insert:

SEC. 8

AMENDMENT 7

On page 3, lines 33 and 34, strikeout "Sections 9015(b) and 10906(b)", and insert:

Section 9015(b)

AMENDMENT 8

On page 3, after line 36, insert:

SEC. 9. Section 24304 is added to the Revenue and Taxation Code, to read:

24304. (a) Any grant made in any year by the Secretary of the Treasury under Section 9023(e) of the Patient Protection and Affordable Care Act (Public Law 111-148), to a person that places in service qualified therapeutic discovery project property, shall not be included in the gross income or the alternative minimum taxable income of the taxpayer.

(b) This section shall apply in the same manner and to the same periods as Section 48D(f)(3) of the Internal Revenue Code, as added by Section 9023(a) of the Patient Protection and Affordable Care Act (Public Law 111-148), relating to treatment of grants, applies for federal purposes, except as otherwise provided.

AMENDMENT 9

On page 3, line 37, strikeout "SEC. 8", and insert:

SEC. 10

AMENDMENT 10

On page 3, line 39, strikeout "taxable years beginning", and insert:

vouchers provided

AMENDMENT 11

On page 4, line 4, strikeout "SEC. 9", and insert:

SEC. 11