Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Gaines	Analyst:	Jane Raboy	Bill Number:	SB 1376
Related Bills:	See Legislative History	Telephone:	845-5718	Introduced Date:	February 21, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Health Care Coverage Credit

SUMMARY

This bill would create a tax credit under the Personal Income Tax Law for health insurance expenses.

RECOMMENDATION

No position.

REASON FOR THE BILL

The reason for this bill is to provide tax relief to individuals that experienced the cancellation of existing health insurance plans.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2014, and before January 1, 2016.

ANALYSIS

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Existing federal and state laws allow individuals to deduct certain expenses, such as medical expenses, charitable contributions, interest, and taxes, as itemized deductions. Certain other expenses for the production of income and certain employee business expenses are considered miscellaneous itemized deductions.

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FEDERAL LAW

Beginning in 2014, applicable taxpayers[1] who enroll in a qualified health plan through an American Health Benefit Exchange (Exchange) are allowed a refundable premium tax credit. The amount allowed as a credit for a tax year equals a sliding-scale percentage, relating to household income relative to the poverty line, of the amounts paid for qualified health plan coverage for the taxpayer and qualifying members (spouse or dependents) for the year.

Reduction in cost-sharing[2] also applies to qualified health plans purchased on the Exchange, by individuals at or below 400 percent of the poverty line. The cost-sharing subsidy is available to reduce the annual out-of-pocket cost-sharing for low income individuals, in months in which the individual received a premium tax credit.

STATE LAW

There are currently no state credits comparable to the credit this bill would create.

The following sections of state law are referenced in the bill to define certain phrases.

Section 1345 of the Health and Safety Code defines a health care service plan or specialized health care service plan to mean either of the following:

- Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.
- Any person, whether located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who undertakes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee.

Section 106 of the Insurance Code includes the following definition for health insurance:

Disability insurance includes insurance appertaining to injury, disablement, or death resulting to the insured from accidents, and appertaining to disablements resulting to the insured from sickness.

[1] Individual whose household income is at least 100 percent but not more than 400 percent of the federal poverty line who are not eligible for Medicaid, employer-sponsored insurance, or other acceptable coverage.
[2] Title 42 USC Section 18071

In statutes that become effective on or after January 1, 2002, the term “health insurance” for purposes of this code means an individual or group disability insurance policy that provides coverage for hospital, medical, or surgical benefits. The term “health insurance” excludes any of the following kinds of insurance:

- Accidental death and accidental death and dismemberment.
- Disability insurance, including hospital indemnity, accident only, and specified disease insurance that pays benefits on a fixed benefit, cash payment only basis.
- Credit disability, as defined in subdivision (2) of Section 779.2.
- Coverage issued as a supplement to liability insurance.
- Disability income, as defined in subdivision (i) of Section 799.01.
- Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.
- Insurance arising out of a workers’ compensation or similar law.
- Long-term care.

<u>THIS BILL</u>

For each taxable year beginning on or after January 1, 2014, and before January 1, 2016, this bill would allow a qualified taxpayer a credit equal to 50 percent of the annual premium amount paid or incurred during the taxable year for an individual health care service plan contract or an individual policy of health insurance.

This bill would do the following:

- Allow unused credits to be carried over to subsequent tax years for up to eight years.
- Reduce the amount otherwise allowed for a deduction for medical care by the amount of the credit allowed.
- Require the credit to be claimed on a timely filed original return.
- Allow the FTB to prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purpose of this section.
- Exempt the FTB's established or issued standard, criterion, procedure, determination, rule, notice, or guideline from the requirements of the Administrative Procedures Act.[3]
- Repeal the credit on December 1, 2016.

[3] Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

This bill would define the following:

- “Individual health care service plan contract” means a plan contract, as defined in Section 1345 of the Health and Safety Code, issued to an individual.
- “Individual policy of health insurance” means a policy issued to an individual for health insurance, as defined in Section 106 of the Insurance Code.
- "Qualified taxpayer” means an individual, including an individual with dependents whose individual health care service plan contract or individual policy of health insurance was canceled between December 31, 2013, and December 31, 2014, inclusive, pursuant to paragraph (5) or (6) of subdivision (a) of Section 1365 of the Health and Safety Code, or subdivision (d) or (e) of Section 10273.6 of the Insurance Code and, with respect to the purchase of a new individual plan contract or policy, the individual was not eligible for a federal subsidy for reduced cost sharing for individuals enrolling in qualified health plans as described in Section 18071 of Title 42 of the United States Code or a federal health care tax credit as described in Section 36B of Title 26 of the Internal Revenue Code.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems.

TECHNICAL CONSIDERATIONS

The definition of “qualified taxpayer” needs to be amended to be consistent with the definitions for an “individual health care service plan contract or individual policy of health insurance.” Suggested Amendment 1 would remedy this technical consideration.

LEGISLATIVE HISTORY

AB 2367 (Donnelly, 2013/2014) a similar bill, would create a tax credit in an amount equal to the difference in the costs paid or incurred as a result of an increase in a health care service plan or a health insurance annual premium. AB 2367 is currently in the Assembly Revenue and Taxation Committee.

SB 92 (Aanestad, 2009/2010) would have, among other things, provided a tax credit for the amount paid or incurred by a qualified taxpayer for qualified health expenses. SB 92 failed to pass out of the Assembly by the constitutional deadline.

OTHER STATES’ INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit allowed by this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

This bill would impact the department's tax forms and instructions and information systems. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SB 1376 As Introduced February 21, 2014 Assumed Enactment After June 30, 2014 ($ in Millions)		
2014-15	2015-16	2016-17
- $2,000	- $700	- $140

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Supporters may argue that this tax credit is necessary to defray the unanticipated increase in health insurance premiums.

Opponents: Some may argue that this bill would provide a credit to an individual due to an increase in the individual's age, which occurs annually.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1376
AS INTRODUCED FEBRUARY 21, 2014

AMENDMENT 1

On page 2, line 23, strikeout "plan contract or policy" and insert:

"health care service plan contract or individual policy of health insurance"