SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Thomson and Campbell | Analyst: Kimberly Pantoja | Bill Number: AB 1734

Related Bills: See Prior Analysis | Telephone: 845-4786 | Amended Date: 03/13/2000

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: Employer Provided Health Insurance Premiums Refundable Credit/Small Employee Health Coverage Incentive Act of 2000

____	DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _________.
____	AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
X	AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced January 6, 2000.
X	FURTHER AMENDMENTS NECESSARY.
____	DEPARTMENT POSITION CHANGED TO _________________________.
X	REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED January 6, 2000 STILL APPLIES.
____	OTHER - See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would provide a refundable credit for amounts paid or incurred by an eligible employer to provide health coverage for covered individuals with incomes below 250% of the federal poverty level.

SUMMARY OF AMENDMENT

The March 13, 2000, amendment added legislative findings and declarations regarding the need for making health insurance coverage more available by providing a tax credit to small employers to encourage them to provide health coverage.

The department's analysis of the bill as introduced January 6, 2000, still applies, which includes the implementation concerns restated below.

Implementation Considerations

The department has not administered a refundable tax credit under the Personal Income Tax Law (PITL) since the refundable renter's credit was suspended in 1993. The department has never administered a refundable tax credit under the B&CTL. Establishing a refundable tax credit program would have a significant impact on the department's programs and operations and would require extensive changes to forms and systems.

This bill does not modify the hierarchy of B&CTL tax credits (Section 23036), thus the order in which credits would be applied before this credit would be refunded is unclear. The existing hierarchy under PITL includes refundable credits (Section 17039).

Board Position:			Legislative Director	Date
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The bill uses terms that are undefined, i.e., "full-time permanent employee," "covered individual," "health insurance premium," and "health plan." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of the credit.

Since this bill lacks a definition for "covered individual," it is unclear whether this bill would apply to dependents of the employee or just the employee. For example, if the employer paid 80% of the health insurance premium for a family of four (consisting of the employee, the employee's spouse, and two children), the employer could potentially receive a credit of $3,120 ($65 x 4 x 12). In addition, many health insurance plans do not establish the amount of premiums on a per person basis. In many cases, premiums are determined on the basis of family size (i.e., single employee, employee plus one additional person, and employee plus more than one additional person). As a result, it is unclear when an employer would satisfy the 80% requirement. For example, if an employer paid 75% of the cost of the premium for a family of four, but that amount was more than 80% of the cost of premiums for a family of two, would the employer be entitled to a credit based on two covered individuals or zero credit because, on an equal pro rata basis, the employer paid only 75% of the cost of each family member covered under the plan.

The bill specifies "covered individuals with incomes below 250% of the federal poverty level." According to the 1999 U.S. Department of Health and Human Services Federal Poverty Guidelines, the poverty guidelines are sometimes loosely referred to as the "federal poverty level" (FPL), but that term is ambiguous and should be avoided in situations (e.g., legislative or administrative) where precision is important. There are no universal administrative definitions of "family," "family unit," or "household" that are valid for all programs that use the poverty guidelines. The absence of a definition that identifies the author's intent complicates the administration of this credit.

The 1999 U.S. Department of Health and Human Services Poverty Guidelines indicate the following (not including Alaska and Hawaii):

Size of Family Unit	48 Contiguous States and D.C.	x250%
1	$8,240	$20,600
2	11,060	27,650
3	13,880	34,700
4	16,700	41,750
5	19,520	48,800

For each additional person add $2,820.

Since the “federal poverty level” generally refers to more than an individual, it is unclear how the taxpayer or the department would determine eligibility for the credit. For example, it is unclear whether the employer would be eligible for the credit if the covered individual has more than one source of income (i.e., second employment or covered individual's community property interest in a spouse's income), which would raise the covered individual's income level above the threshold. In addition, if covered individuals include household members, it's unclear how the income of these covered individuals would affect the employer's eligibility for the credit. Each covered individual might be required to disclose to the employer personal information regarding second employment, spouse's income, family or household income, and possibly family size.

The department has no ability to verify household or family income. Tax benefits, such as the renters’ credit, generally are tied to the adjusted gross income (AGI) amount, with a maximum AGI for qualifying married couples filing a joint return and heads of household and a lower maximum AGI for qualifying single filers.

This bill specifies that for an employer to qualify for this credit, participation in a health plan shall be made available to all full-time employees at least annually and to all newly hired individuals within 30 days of the date of employment. The FTB has no basis to verify that the employer has fulfilled this requirement.

The bill provides a $65 per month per covered individual credit provided that the eligible employer pays or incurs at least 80% of the covered individual's health insurance premium during the taxable or income year. The bill further provides that the credit shall be in lieu of any deduction that the eligible employer may otherwise be entitled to claim for the same expenses. However, since the credit is not computed as a percentage of the expenses paid or incurred, it is unclear how the provision dealing with the disallowed deduction is to be interpreted. Namely, does it disallow a deduction for **any** expenses that qualify the eligible employer for the credit (i.e., those expenses necessary to satisfy the 80% threshold requirement), or does it only disallow the $65 per month per covered individual amount for which the credit is allowed each month? The authors may want to clarify their intent on this issue.

BOARD POSITION

Pending.