STATE OF CALIFORNIA
Franchise Tax Board

Summary Analysis of Amended Bill

Author: Friedman, et al.	Sponsor:	Bill Number: AB 2459
Analyst: Davi Milam	Phone: (916) 845-2551	Amended: August 6, 2018
Attorney: Bruce Langston	Related Bills: See Prior Analysis	

Subject: Health Insurance Premiums Refundable Credit

Summary

This bill, under the Personal Income Tax Law (PITL), would create a refundable credit for health insurance premiums, subject to an appropriation in the annual Budget Act, and as certified by Covered California under the Government Code (GC).

This analysis only addresses the provisions of the bill that would impact the department's programs and operations.

Recommendation – No position.

Summary of Amendments

The August 6, 2018, amendments moved several defined terms from the PITL to the GC, specified requirements for the certifying agency, eliminated the contingent operative date language, added limitations on the refundability of the credit, added regulatory authority for the Franchise Tax Board (FTB), and made additional changes to the credit proposed by this bill.

As a result of the amendments, one of the department's implementation concerns discussed in the department's analysis of the bill as amended May 16, 2018, and May 25, 2018, was recast, and one additional implementation concern and one technical concern were identified. Except for the "Effective/Operative Date," "This Bill," "Implementation Considerations," "Technical Considerations," "Fiscal Impact," and "Support/Opposition" sections, the remainder of the department's analysis of the bill as amended May 16, 2018, and May 25, 2018, still applies. The "Economic Impact" and "Policy Concerns" sections have been restated for convenience. The "Support/Opposition" section has been updated to reflect currently available information.

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, 2019, and before January 1, 2026.

This Bill

For each taxable year beginning on or after January 1, 2019, and before January 1, 2026**,** this bill, under the PITL, would allow a qualified individual a health insurance premium credit.

The credit would be equal to the portion of the cost of health insurance premiums of the lowest cost bronze plan for the qualified individual or the qualified individual's dependent that exceeds eight percent of the qualified individual's modified adjusted gross income.

This bill would require that the credit be claimed on a return filed for the taxable year in which the health insurance premium was purchased, regardless of the year in which the health insurance plan is operative.

This bill, under the PITL, would define the following terms and phrases:

- "Bronze plan" has the same meaning as "bronze level," under the Health and Safety Code (HSC),[1] which is a health care service plan contract that provides a level of coverage that is actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan contract.
- "Lowest cost bronze plan" means the lowest cost bronze plan available to the qualified individual or the qualified individual's dependent, given the age and geographic region of the individual covered by the health care coverage.
- "Modified adjusted gross income" has the same meaning as in Section 36B(d)(2)(B) of the Internal Revenue Code (IRC), relating to modified adjusted gross income.
- "Qualified individual" means a person who received a certification from Covered California.[2]

This bill, under the GC, would define the following terms and phrases:

- "Bronze plan" has the same meaning as "bronze level," under the HSC,[3] which is a health care service plan contract that provides a level of coverage that is actuarially equivalent to 60 percent of the full actuarial value of the benefits provided under the plan contract.
- "Dependent" has the same meaning as in the HSC,[4] which includes the spouse or registered domestic partner, or child, of an individual, subject to applicable terms of the health benefit plan*.*
- "Individual market" means an individual market for health insurance benefits plans described in either the HSC or the Insurance Code (IC).[5]

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[1] HSC section 1367.008.
[2] Pursuant to Section 100504.1 of the GC.
[3] HSC section 1367.008.
[4] Refer to subdivision (b) of Section 1399.845 of the HSC.
[5] Article 11.8 (commencing with Section 1399.845) of Chapter 2.2 (commencing with Section 1340) of Division 2 of the HSC or Chapter 9.9 (commencing with Section 10965) of Part 2 of Division 2 of the IC.

- "Public programs" has the same meaning as an applicable state health subsidy program as defined in the federal Patient Protection and Affordable Care Act.[6]
- "Qualified individual" means a person who purchased health care coverage in the individual market for himself or herself or for a dependent, if that coverage is a standardized benefit design approved by Covered California,[7] and whose household income is 400 percent to 600 percent, inclusive, of the federal poverty level and who is not an applicable taxpayer eligible for the federal premium assistance credit.[8] A "qualified individual" would exclude an individual who, or whose dependent for which the credit is claimed, is otherwise eligible for minimum essential coverage through employment, Medicare, Medicaid, or other public programs. "Minimum essential coverage through employment" means affordable employer coverage of minimum value, as provided under the federal law.[9]
- "Standardized benefit design" has the same meaning as a standardized product described in the HSC.[10]

The calculation of the credit would be based on the lowest cost bronze plan regardless of the qualified individual's cost to purchase health care coverage. If the amount allowable as a credit under this section exceeds the tax liability for the taxable year, the excess would be credited against other amounts due, if any, and the balance, if any, subject to the limitation below and upon appropriation by the Legislature, would be refunded to the taxpayer.

This bill states that the refundable amount paid to the taxpayer would be $0 unless otherwise specified in the annual Budget Act or any bill providing appropriations related to the Budget Act.

This bill, under the PITL, would provide that Covered California[11] would be the certifying agency for the proposed credit. Under the GC, the board (of Covered California) would certify qualified individuals and would provide to the qualified individual and the FTB the certification including the following:

- The individual's name and address.
- The individual's social security number or taxpayer identification number.
- Whether the individual is a qualified individual.

[6] Refer to Section 1413(e) of Public Law 111-148.
[7] Pursuant to subdivision (c) of Section 100504 of the GC.
[8] "Applicable taxpayer" as defined under IRC section 36B(c)(1).
[9] Patient Protection and Affordable Care Act (Public Law 111-148), as amended by the federal Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), and any rules and regulations promulgated thereunder.
[10] Refer to subdivision (e) of Section 1366.6 of the HSC.
[11] The Health Benefit Exchange, known as Covered California, pursuant to Title 22 (commencing with Section 100500) of the GC. Section 100500 also provides that Covered California shall be governed by an executive board.

- The cost of the second lowest bronze plan available to the qualified individual for the calendar year in excess of eight percent of the qualified individual's estimated adjusted gross income.
- The date of enrollment or renewal of coverage.
- The calendar year for which the coverage is obtained.

The FTB would have the authority to adopt regulations necessary or appropriate to carry out the purposes of this bill, including any regulations to prevent improper claims from being made. The FTB would be exempt from the Administrative Procedure Act (APA) when prescribing rules, guidelines, or procedures to administer the credit that would be enacted by this bill. Additionally, the FTB would have authority to adopt any regulations as emergency regulations in accordance with the rulemaking provisions of the APA. The regulations would become effective immediately upon filing with the Secretary of State, and would remain in effect until revised or repealed by the FTB.

This credit would be exempted from the requirements of Section 41 of the Revenue and Taxation Code (R&TC).[12]

The Legislative Analyst's Office would be required to submit a report to the Legislature on or before January 1, 2024, that includes the following information:

- The number of qualified individuals who claimed the credit.
- The average and median credit amounts claimed.
- The effectiveness of the credit in reducing health care costs.

This credit would remain in effect until December 1, 2026, and would be repealed as of that date.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill lacks administrative details necessary to implement the credit. For example:

- The cost of the insurance eligible for the credit and whether the cost would be capped. Additionally, the credit in the PITL would be based on the "lowest cost bronze plan" as defined; however, Covered California would certify the cost of the "second lowest bronze plan," as specified in GC section 100504.1(b)(4), an undefined phrase.

[12] Under R&TC section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

- The taxable year in which the credit would be claimed. For example, when would the credit be considered "purchased"? Would the credit be considered "purchased" in the calendar year coverage it is obtained, the year the premiums are paid in full, or if the health plan coverage period spans portions of two taxable years would the credit be claimed ratably in the two taxable years?

The bill provides that Covered California would certify qualified individuals for purposes of the credit proposed by this bill and the certifications would be provided to both the qualified individual and the FTB. However, the certification lacks details, which could lead to disputes between taxpayers and the department. For clarity and ease of administration, the author may wish to consider amending the bill to also require that the certificate include the following:

- A certificate number.
- For each individual covered by the health care plan provide the name, social security numbers, and relationship to the purchaser.
- The certified credit amount.
- The date of the certification.

Additionally, the author may wish to require:

- The taxpayer to include the certificate number and credit amount with their timely filed original tax return, and upon request of the FTB, provide a copy of the certificate.
- The certifying agency provide to the FTB information appropriate to administer the credit in the form and manner specified by the FTB.

The credit would be based on an individual's purchase of a health care plan for the individual or the individual's dependent. If the author intends that the credit be available for the purchase of "family plans," the bill should be amended.

This bill would require regular annual appropriations by the Legislature to pay for the refundable portion of this credit. Disallowance of the credit to some taxpayers could result if the amount of credits claimed exceeds the amount of appropriated funds. This concern could be alleviated by providing a continuous appropriation.

This bill would set the "amount paid" to the taxpayer at zero for years without an appropriation, thereby making the refund provision intermittently operative. Thus, this provision makes it unclear how the department would effectively employ resources necessary to administer this credit. This concern could be alleviated by providing that the refund authorized by this section would only be operative for taxable years for which resources are authorized in the annual Budget Act for the FTB to oversee and audit returns associated with this credit.

Technical Considerations

For consistency of terminology, the following changes are recommended:

- On page 3, line 15, the term "adjusted gross income" should be replaced with "modified adjusted gross income."
- On page 3, line 31, the term "person" should be replaced with "individual."

- On page 4, line 36, the term “purchased” should be replaced with “paid.”
- On page 6, line 24, the term “premium” should be replaced with “plan.”

For clarity, on page 3, line 36, it is recommended that the phrase “is 400 percent to 600 percent, inclusive,” be replaced with “is at least 400 percent but does not exceed 600 percent,”

Fiscal Impact

Staff estimates startup cost of approximately $1.4 million in fiscal year 2019-2020 and ongoing costs of approximately $1.4 million each fiscal year thereafter to develop, program and test revisions to existing systems, and ongoing staffing costs. The department will pursue a budget change proposal if necessary.

Economic Impact

Revenue Estimate

Estimated Revenue Impact of AB 2459 as Amended August 6, 2018
Assumed Enactment after June 30, 2018

($ in Millions)

Fiscal Year	Revenue*
2018-2019	- $40
2019-2020	- $70
2020-2021	- $75

*This estimate assumes annual appropriations are made by the Legislature to pay for the refundable portion of the credit.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Based on data from Covered California, the Kaiser Family Foundation, the California Health Care Foundation, and the U.S. Census Bureau, the number of health exchange enrollments and premium costs were calculated. The bill specifies that the credit recipient must be an individual or the individual’s dependent with income between 400 and 600 percent of federal poverty level. Using the FTB data, it is estimated that approximately 400,000 single filers would meet the income requirements specified in the bill and could purchase a single person plan. However, according to published statistics, approximately 93 percent of individuals either receive health benefits through their employer, other federal or state managed options, or do not purchase health insurance. This results in an estimated 26,000 qualified individual taxpayers. Merging data from Covered California on the lowest cost[13] Bronze plan by region, family size, and age with the FTB income data, it is estimated that the average individual would receive a premium credit of $2,600, resulting in an estimated $67 million in credits generated. It is assumed that the elimination of the federal insurance mandate would reduce this amount by 10 percent. This results in an estimated $60 million in refundable health care premium credit. The estimate is then adjusted to reflect changes in health care premiums over time.

This estimate does not include any behavioral changes that may result from the credit. The tax-year estimates are converted to fiscal-year estimates, and then rounded to arrive at the amounts reflected in the above table.

Support/Opposition[14]

Support: Alameda County Board of Supervisors; Alliance of Californians for Community Empowerment; American Federation of State, County, and Municipal Employees; Asian Law Alliance; California Immigrant Policy Center; California Labor Federation; Community Health Councils; Congress of California Seniors; Consumers Union; Courage Campaign; Consumers Union; Health Access; National Association of Social Workers, California Chapter; Silicon Valley Leadership Group.

Opposition: None provided.

Policy Concerns

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited either on a per-expenditure or per-taxpayer basis.

The department is concerned that another refundable credit could increase the trend in refund fraud and identity theft. Historically, both the IRS and the FTB have experienced fraud and improper claims with refundable credits. These concerns are heightened because if a refund is determined to be fraudulent, the refund commonly cannot be recovered.

Legislative Staff Contact

Davi Milam
Legislative Analyst, FTB
(916) 845-2551
davi.milam@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Diane Deatherage
Legislative Director, FTB
(916) 845-6333
diane.deatherage@ftb.ca.gov

[13] The estimate shown above is based on the cost of lowest cost bronze plans available to qualifying individuals. Although, the August 6, 2018, amendment requires Covered California to certify “the cost of the second lowest bronze plan available to the qualified individual for the calendar year in excess of eight percent of the qualified individual’s estimated adjusted gross income,” the PITL states that the amount of the tax credit should be calculated based on the cost of lowest cost bronze plan available to the qualified individual or the qualified individual’s dependent that exceeds eight percent of the qualified individual’s modified adjusted gross income.
[14] As noted in the Senate Governance and Finance Committee analysis, dated August 6, 2018.