

*Note: This handout is intended only for purposes of facilitating discussion at the Interested Parties Meeting scheduled for September 30, 2020.*

**FRANCHISE TAX BOARD**  
**CALIFORNIA CODE OF REGULATIONS, TITLE 18, DIVISION 3, CHAPTER 4,**  
**SECTIONS 61000, 61005, 61000, 61015, 61020, 61023, 61025**  
**REGARDING THE INDIVIDUAL SHARED RESPONSIBILITY PENALTY**

**Section 61000 is adopted to read:**

§ 61000. Individual Shared Responsibility Penalty – Definitions.

(a) "Age 18" means an individual who attains the age of 18 on the anniversary of the date when the individual was born.

(b) "Annual premium" means the amount paid by an applicable individual during the calendar year for minimum essential coverage.

(c) "Annualized required contribution" means the required contribution for the part-year period times a fraction, the numerator of which is 12 and the denominator of which is the number of months in the part-year period during the responsible individual's taxable year. Only full calendar months are included in this computation.

(d) "Applicable dependent" has the same meaning as defined in section 100710 of the Government Code.

(e) "Applicable dollar amount" has the same meaning as defined in subdivision (c) of section 61015 of the Revenue and Taxation Code.

(f) "Applicable entity" has the same meaning as defined in section 61000 of the Revenue and Taxation Code.

(g) "Applicable household income" has the same meaning as defined in section 61000 of the Revenue and Taxation Code.

(h) "Applicable household member" means the responsible individual, the responsible individual's applicable spouse, or one of the responsible individual's applicable dependents.

(i) "Applicable household members" has the same meaning as defined in section 61000 of the Revenue and Taxation Code.

(j) "Applicable individual" has the same meaning as defined in section 100710 of the Government Code.

(k) "Applicable spouse" has the same meaning as defined in section 100710 of the Government Code.

(l) "Carrier licensed or otherwise authorized to offer health coverage" has the same meaning as defined in section 100501(c) of the Government Code.

- (m) "Dependent" has the same meaning as defined in section 17056 of the Revenue and Taxation Code.
- (n) "Electronic technology" includes, but is not limited to, the Internet, cloud computing, or an electronic information delivery system.
- (o) "Employment-based health plan or eligible employer-sponsored plan" has the same meaning as "eligible employer-sponsored plan" as that term is defined in section 1.5000A-2(c) of the Code of Federal Regulations.
- (p) "Exempt individual" means an individual who is not subject to the Minimum Essential Coverage Individual Mandate under section 100705(c) of the Government Code or is not subject to the penalty prescribed by section 61010 of the Revenue and Taxation Code pursuant to section 61020 or 61023 of the Revenue and Taxation Code.
- (q) "Exchange" means the California Health Benefit Exchange, also known as Covered California, established pursuant to Title 22 (commencing with Section 100500) of the Government Code.
- (r) "Federal shared responsibility penalty" means the payment imposed under Section 5000A of the Internal Revenue Code as of December 15, 2017.
- (s) "Filing threshold" means the amounts specified in Section 18501(a)(1), (2), and (3) of the Revenue and Taxation Code.
- (t) "Qualified health plan" has the same meaning as that term is defined in section 61000 of the Revenue and Taxation Code.
- (u) "Health reimbursement arrangement" means an arrangement that is funded solely by an employer and that reimburses an applicable individual for medical care expenses (as defined under section 213(d) of the Internal Revenue Code) incurred by any applicable household members up to a maximum dollar amount for a coverage period.
- (v) "Lowest cost bronze plan" is the least expensive health plan that offers a "bronze level" of coverage, as defined in section 1367.008 of the Health and Safety Code and section 10112.295 of the Insurance Code.
- (w) "Lowest cost family coverage" means the least expensive employment-based health plan offered to the applicable individual for that individual's applicable household members' health coverage that qualifies as minimum essential coverage.
- (x) "Lowest cost self-only coverage" means the least expensive employment-based health plan offered only to the applicable individual for that applicable individual's health coverage that qualifies as minimum essential coverage.
- (y) "Minimum essential coverage" has the same meaning as defined in Government Code section 100710(g).
- (z) "Month" means calendar month.

(aa) "Penalty" means the Individual Shared Responsibility Penalty imposed pursuant to Section 61010 of the Revenue and Taxation Code.

(bb) "Plan year" means the eligible employer-sponsored plan's regular 12-month coverage period, or for a new employee or an individual who enrolls during a special enrollment period, the remainder of a 12-month coverage period.

(cc) "Required contribution" has the same meaning as defined in section 61020(a)(2) of the Revenue and Taxation Code.

(dd) "Responsible individual" has the same meaning as defined in section 61000 of the Revenue and Taxation Code.

(ee) "Short coverage gap" means a continuous period of three months or less in which the individual is not covered under minimum essential coverage.

(ff) "Technology constraints" means an inability of the tax preparation software used by an applicable entity to electronically file the return required by subdivision (b) of section 61005 of the Revenue and Taxation Code as a result of the complex nature of the return or inadequacy of the software.

(gg) "Wellness program" has the same meaning as defined in 26 C.F.R. 54.9802-1(f) as of December 15, 2017.

Authority cited: Section 61030, Revenue and Taxation Code

Reference: Section 61000, Revenue and Taxation Code

**Section 61005 is adopted to read:**

§ 61005. Information Return Reporting

(a) (1) The Franchise Tax Board's civil authority and procedures for purposes of compliance with notice and other due process requirements imposed by law to collect income taxes shall be applicable to the collection of the penalty imposed pursuant to subdivision (j) of section 61005 of the Revenue and Taxation Code.

(2) The penalty imposed pursuant to subdivision (j) of section 61005 of the Revenue and Taxation Code shall be paid upon notice and demand by the Franchise Tax Board, and shall be assessed and collected pursuant to Part 10.2 (commencing with Section 18401).

(3) Every notice of balance due for the penalty imposed pursuant to subdivision (j) of section 61005 of the Revenue and Taxation Code shall be mailed to the applicable entity within four years after March 31 of the year the return was filed.

(b) (1) An applicable entity must file the return required under subdivision (b) of section 61005 of the Revenue and Taxation Code on or before March 31 of the year

following the calendar year in which it provided minimum essential coverage to an individual.

(2) No penalty will be imposed under subdivision (j) of section 61005 of the Revenue and Taxation Code for returns required to be filed pursuant to subdivision (b) of section 61005 if the return is filed on or before May 31 of the year following the calendar year for which the return is required.

(c) An applicable entity required to file a return with the Internal Revenue Service under Internal Revenue Code sections 6055 or 6056 may submit that same return to the Franchise Tax Board to satisfy the requirement of subdivision (b) of section 61005 of the Revenue and Taxation Code until such time that the Franchise Tax Board prescribes a different form.

(d) (1) Applicable entities submitting 250 returns or more within a calendar year are required to file the information required by section 61005 of the Revenue and Taxation Code using electronic technology.

(2) No applicable entity is required to file returns using electronic technology unless the applicable entity is required to file 250 or more returns during the calendar year. Applicable entities filing fewer than 250 returns during the calendar year may make the returns on the prescribed paper form, or, alternatively, such applicable entities may file returns using electronic technology.

(3) Returns submitted on paper forms shall be in accordance with section 61005 of the Revenue and Taxation Code.

(4) For purposes of subdivision (b) of section 61005 of the Revenue and Taxation Code reporting, if the information reported on a return (including a transmittal required to be filed with the return) is incomplete or incorrect, a failure to timely file or furnish a corrected document is a failure to file or furnish a correct return under subdivision (b) of section 61005 of the Revenue and Taxation Code.

(5) Any applicable entity required to file a return electronically under this section may annually request a waiver of the requirements of this section from the board with respect to a return required by subdivision (b) of section 61005 of the Revenue and Taxation Code filed for a taxable year. The Franchise Tax Board may grant a waiver if it determines the applicable entity is unable to comply with the requirements of this section due to technology constraints or where compliance would result in undue financial burden.

Authority cited: Section 61030, Revenue and Taxation Code

Reference: Section 61005, Revenue and Taxation Code

**Section 61010 is adopted to read:**

§ 61010. Imposition of the Individual Shared Responsibility Penalty

(a) For each month beginning on or after January 1, 2020, an applicable individual shall have minimum essential coverage or pay the penalty for each month an applicable individual is an individual in existence for the entire month who is not an exempt individual.

(b) An applicable individual has minimum essential coverage for a month when that applicable individual is enrolled in and maintains minimum essential coverage for at least one day in the month.

(c) A responsible individual shall pay the penalty for all applicable household members who are not exempt individuals for a month for which—

(1) The responsible individual is without minimum essential coverage; or

(2) An applicable spouse or applicable dependent for whom the responsible individual is liable does not have minimum essential coverage.

(d) Liability for applicable dependents

(1) For a month when an applicable individual does not have minimum essential coverage, if the applicable individual is a dependent of another applicable individual for the other applicable individual's taxable year including that month, the other applicable individual is the responsible individual liable for the penalty attributable to the dependent's lack of coverage if that dependent is an applicable dependent. An applicable dependent is a dependent of an applicable individual for a taxable year if the applicable dependent satisfies the definition of dependent under Revenue and Taxation Code section 17056, regardless of whether the applicable individual claims the applicable dependent as a dependent on a California income tax return for the taxable year.

(2) If an individual may be claimed as a dependent on a California income tax return by more than one applicable individual in the same calendar year, the applicable individual who properly claims the individual as a dependent for the taxable year is liable for the penalty attributable to the individual if that individual is an applicable individual.

(3) If more than one applicable individual may claim an applicable individual as a dependent in the same calendar year but no one claims the applicable individual as a dependent, the applicable individual with priority to claim the applicable individual as a dependent pursuant to Revenue and Taxation Code section

17056 is the responsible individual solely liable for the penalty for the applicable individual if that applicable individual is an applicable dependent.

(e) Special rules for applicable dependents adopted or placed in foster care during the taxable year

(1) If an applicable individual adopts an applicable dependent or fosters an applicable dependent who is an eligible foster child as defined in Internal Revenue Code section 152(f)(1)(C) during the taxable year and is otherwise liable for the penalty for the applicable dependent, the applicable individual is the responsible individual liable for the penalty for the applicable dependent only for the full months in the taxable year that follow the month in which the adoption or acceptance occurs.

(2) If an applicable individual who is otherwise liable for the penalty for an applicable dependent places (or, by operation of law, must place) the applicable dependent for adoption or foster care during the taxable year, the applicable individual is the responsible individual liable for the penalty for the applicable dependent only for the full months in the taxable year that precede the month in which the adoption or foster care placement occurs.

(f) Special rules for applicable individuals that have been appointed as a legal guardian of a dependent during the taxable year

(1) If an applicable individual is appointed as a legal guardian of an applicable dependent during the taxable year and is otherwise liable for the penalty for the applicable dependent, the applicable individual is the responsible individual liable for the penalty for the applicable dependent only for the full months in the taxable year that follow the month in which the legal guardian was appointed.

(2) If an applicable individual who is otherwise liable for the penalty for an applicable dependent is provided notice of hearing for an appointment of guardianship of the applicable dependent and a legal guardian other than the applicable individual is appointed during the taxable year, the applicable individual is the responsible individual liable for the penalty for the applicable dependent only for the full months in the taxable year that precede the month in which the legal guardian was appointed.

Authority cited: Section 61030, Revenue and Taxation Code

Reference: Section 61010, Revenue and Taxation Code

**Section 61015 is adopted to read:**

§ 61015. Indexing of applicable dollar amount.

- (a)(1) In any calendar year after 2019, the applicable dollar amount is \$695 as increased or decreased by the product of \$695 and the cost-of-living adjustment determined under paragraph (2) of subdivision (d) of section 61015 of the Revenue and Taxation Code for the calendar year.
- (2) If the applicable dollar amount as increased or decreased by this regulation is not a multiple of \$50, the applicable dollar amount is rounded down to the next lowest multiple of \$50.

Authority cited: Section 61030, Revenue and Taxation Code

Reference: Section 61015, Revenue and Taxation Code

**Section 61020 is adopted to read:**

§ 61020. Exemptions

(a) A responsible individual shall not be liable for a penalty for any applicable household member for a month that includes a day on which the applicable household member is an exempt individual.

(b) A penalty will not be imposed on an applicable individual who lacks affordable coverage.

(1) An applicable individual lacks affordable coverage in a month if the applicable individual's required contribution (determined on an annual basis) for minimum essential coverage for the month exceeds the required contribution percentage 8.3 percent of the applicable household income. For purposes of this section, an applicable individual's household income is increased by any amount of the required contribution made through a salary reduction arrangement that is excluded from gross income.

(2) For plan years beginning in any calendar year after 2019, the required contribution percentage is the percentage determined by the Department of Health and Human Services that reflects the excess of the rate of premium growth between the preceding calendar year and 2013 over the rate of income growth for the period.

(3) Eligible employer-sponsored plans

(A) A responsible individual or applicable spouse or applicable dependent of the responsible individual is treated as eligible for coverage under an eligible employer-sponsored plan for a month during a plan year if the responsible individual or applicable spouse or applicable dependent of the responsible

individual could have enrolled in the plan for any day in that month during an open or special enrollment period, regardless of whether the responsible individual or their applicable spouse or applicable dependent is eligible for any other type of minimum essential coverage.

(B) An applicable individual eligible for coverage under an eligible employer-sponsored plan offered by the applicable individual's employer is not treated as eligible for coverage as an applicable dependent or applicable spouse of the applicable individual under an eligible employer-sponsored plan (for example, an eligible employer-sponsored plan offered by the employer of the applicable individual's spouse) for any month included in the plan year of the eligible employer-sponsored plan offered by the applicable individual's employer.

(C) An applicable individual who was formerly employed or a formerly employed applicable individual's applicable dependent or applicable spouse, who may enroll in continuation coverage required under Federal law or a state law that provides comparable continuation coverage, or in retiree coverage under an eligible employer-sponsored plan, is eligible for coverage under an eligible employer-sponsored plan only if the applicable individual enrolls in the coverage.

(D) In the case of an applicable individual who is eligible to purchase coverage under an eligible employer-sponsored plan sponsored by the applicable individual's employer, the required contribution is the portion of the annual premium that the applicable individual would pay (whether through salary reduction or otherwise) for the lowest cost self-only coverage.

1. In the case of an applicable household member who is eligible for coverage under an eligible employer-sponsored plan because of a relationship to a responsible individual, the required contribution is the portion of the annual premium that the responsible individual would pay (whether through salary reduction or otherwise) for the lowest cost family coverage that would cover the responsible individual and the responsible individual's applicable household members who are not otherwise exempt individuals.

2. For each responsible individual and applicable household member described in this subsection, affordability is determined separately for each employment period that is less than a full calendar year or for the portions of an employer's plan year that fall in different taxable years of the responsible individual. Coverage under an eligible employer-sponsored



plan is affordable for a part-year period if the annualized required contribution for self-only coverage (in the case of the responsible individual) or family coverage (in the case of an applicable household member) under the plan for the part-year period does not exceed the required contribution percentage of the responsible individual's applicable household income for the taxable year.

3. Amounts newly made available for the current plan year under a health reimbursement arrangement that a responsible individual may use to pay premiums, or may use to pay cost-sharing or benefits not covered by the primary plan in addition to premiums, are counted toward the responsible individual's required contribution if the health reimbursement arrangement would be integrated, as that term is used in Internal Revenue Service Notice 2013-54 (2013-40 IRB 287), with an eligible employer-sponsored plan for a responsible individual enrolled in the plan. The eligible employer-sponsored plan and the health reimbursement arrangement must be offered by the same employer. Employer contributions to a health reimbursement arrangement count toward a responsible individual's required contribution only to the extent the amount of the annual contribution is required under the terms of the plan or otherwise determinable within a reasonable time before the responsible individual must decide whether to enroll in the eligible employer-sponsored plan.
4. Amounts made available for the current plan year under a cafeteria plan, within the meaning of Internal Revenue Code section 125, are taken into account in determining a responsible individual's or their applicable household members' required contribution if all of the following apply:

  - a. The responsible individual may not opt to receive the amount as a taxable benefit;
  - b. The responsible individual may use the amount to pay for minimum essential coverage; and
  - c. The responsible individual may use the amount exclusively to pay for medical care, within the meaning of Internal Revenue Code section 213.
5. Nondiscriminatory wellness program incentives, within the meaning of 26 C.F.R. 54.9802-1(f) as it reads as of December 15, 2017, offered by an eligible employer-sponsored plan that affect premiums are treated as earned in determining a responsible individual 's required contribution for

purposes of affordability of an eligible employer-sponsored plan to the extent the incentives relate exclusively to tobacco use. Wellness program incentives that do not relate to tobacco use or that include a component unrelated to tobacco use are treated as not earned for this purpose.

(4) A responsible individual is treated as ineligible for coverage under an eligible employer-sponsored plan for a month that is not described in this subparagraph.

(A) The required contribution for an applicable individual who is only eligible to purchase minimum essential coverage in the individual market is the annual premium for the lowest cost bronze plan available in the individual market through the Exchange serving the rating area in which the applicable individual resides (without regard to whether the applicable individual purchased a qualified health plan through the Exchange), reduced by the maximum amount of any credit or subsidy allowable under Internal Revenue Code section 36B and Title 25 of the Government Code for the taxable year determined as if the individual was covered for the entire taxable year by a qualified health plan offered through the Exchange. All applicable household members who have not otherwise been granted an exemption through the Exchange and who are not treated as eligible to purchase coverage under an eligible employer-sponsored plan shall be included to determine the required contribution.

(B) For each applicable household member, affordability under this subsection is determined separately for each period that is less than a 12-month period. Coverage under a plan is affordable for a part-year period if the annualized required contribution for coverage under the plan for the part-year period does not exceed the required contribution percentage of the responsible individual's applicable household income for the taxable year.

(c)(1) A responsible individual and any applicable household members are exempt individuals for any taxable year for which the applicable household income is less than the filing threshold.

(2) A responsible individual is not required to file a California income tax return solely to claim the exemption described in this subsection. If a responsible individual has an applicable household income below the filing threshold and nevertheless files a California income tax return, the taxpayer may claim the exemption described in this subsection on the return.

Authority cited: Section 61030, Revenue and Taxation Code

Reference: Section 61020, Revenue and Taxation Code

**Section 61023 is adopted to read:**

§ 61023. Short Coverage Gaps

(a) An applicable individual is an exempt individual for a month the last day of which is included in a short coverage gap.

(b) If the applicable individual does not have minimum essential coverage for a continuous period of more than three months, none of the months included in the continuous period are treated as included in a short coverage gap.

(c) If a calendar year includes more than one short coverage gap, the exemption provided by this subsection only applies to the earliest short coverage gap.

(1) Except as provided in paragraph (2), the number of months included in a continuous period is determined without regard to the calendar years in which months included in that period occur. For purposes of this section, a continuous period begins no earlier than January 1, 2020.

(2) If an applicable individual does not have minimum essential coverage for a continuous period that begins in one taxable year and ends in the next, for purposes of applying this subsection to the first taxable year, the months in the second taxable year included in the continuous period are disregarded. For purposes of applying this section to the second taxable year, the months in the first taxable year included in the continuous period are taken into account.

Authority cited: Sections 61023 and 61030, Revenue and Taxation Code

Reference: Section 61023, Revenue and Taxation Code

**Section 61025 is adopted to read:**

§ 61025. Collection of Penalty

(a) Except in the case of a false or fraudulent return and except as otherwise expressly provided in Part 10.2, no penalty shall be assessed or collected with respect to the year for which the return was filed unless the notice of tax return change or statement of tax due is mailed within four years after the return was filed.

Authority cited: Section 61030, Revenue and Taxation Code

Reference: Section 61025, Revenue and Taxation Code