

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

Explanation of Draft Language for Proposed Amendments to California Code of Regulations, Title 18, Sections 61000, 61005, 61010, 61015, 61020, 61023, and 61025

Part 32 of California's Revenue and Taxation Code provides the law regarding the Individual Shared Responsibility Penalty (Penalty). On December 3, 2019, the Franchise Tax Board (FTB) approved staff's request to proceed with the informal regulatory process to explore the promulgation of regulations for implementation of the Penalty. The focus of this Interested Parties Meeting (IPM) is to receive comments on draft language adding chapter 4 to division 3 of title 18 of the California Code of Regulations (CCR), clarifying provisions for implementation of the Penalty. This will be the first IPM for this regulatory project.

Available to the public for this IPM are the following three documents: (1) the IPM Notice; (2) the IPM Draft Language (Draft Language); and (3) this Explanation of Draft Language.

The following contains an explanation of the Draft Language. A summary of the proposed adoptions is provided after each Section is introduced. All page references are to the page number of the Draft Language document.

Explanation of Draft Language

1. Adopt CCR Section 61000 on pp. 1-3

Staff proposes to add definitions to clarify terms used throughout the proposed regulations.

2. Adopt CCR Section 61005 on pp. 3-4

Staff proposes the inclusion of a statute of limitations for imposition of the penalty on applicable entities for a failure to file an information return with the FTB. Specifically, this language proposes that any penalty be assessed within four years after March 31 of the year the return was filed. In addition, the Draft Language explains that no penalty will be imposed on an applicable entity, as defined, that files an information return on or before May 31 of the year following the calendar year for which the return is required.

Staff proposes to include an electronic filing requirement for applicable entities that file 250 or more information returns each year, and provides a process for requesting a waiver from this requirement.

Staff also proposes to clarify that the FTB will accept returns filed with the Internal Revenue Service for purposes of reporting health insurance coverage for individuals.

3. Adopt CCR Section 61010 on pp. 4-6

Staff proposes to add language to clarify that no Penalty will apply to an applicable individual for a month in which that individual has minimum essential coverage for at least one day in that month. Staff also proposes language clarifying who is responsible for payment of the Penalty, including in situations regarding adoption and guardianship.

4. Adopt CCR Section 61015 on p. 7

Staff proposes to add language to clarify the calculation of the index to inflation for the applicable dollar amount.

5. Adopt CCR Section 61020 on pp. 7-10

Staff proposes the addition of language clarifying the exemption from the Penalty for applicable individuals without affordable health coverage. This language is substantially similar to the federal regulations implementing a similar provision under the federal Patient Protection and Affordable Care Act (Public Law 111-148). In addition, staff proposes language to clarify that applicable individuals whose income is below the income tax return filing threshold do not need to file a return to claim the Penalty exemption for those with income below the filing threshold.

6. Adopt CCR Section 61023 on p. 11

Staff proposes language clarifying the exemption from the Penalty for a gap in coverage that is three months or less. This proposed draft language, includes the addition of rules regarding gaps that span more than one taxable year and for years in which more than one gap in coverage occurs.

7. Adopt CCR Section 61025 on p. 11

Staff proposes to include language clarifying a statute of limitation on imposition of the Penalty for applicable individuals who fail to obtain and maintain minimum essential coverage. Specifically, this language proposes that any Penalty be assessed within four years after the date the return was filed.