California Enacts “Minimum Essential Coverage Individual Mandate”

Introduction and Background

In June of 2019, the California legislature enacted an individual health coverage mandate. Governor Gavin Newsome signed the law on June 27, 2019. The legislation is in response to the Trump Administration’s decision to eliminate the Affordable Care Act’s (ACA) individual mandate tax penalty through the Tax Cuts and Jobs Act (TCJA). California’s state individual mandate is effective January 1, 2020. As discussed below, the law includes a requirement that providers of Minimum Essential Coverage or MEC make annual reports to the state Franchise Tax Board. Notably, the law also extends Exchange premium assistance subsidy eligibility to individuals with modified adjusted household incomes at or below 600% of the federal poverty level (a significant increase to the ACA’s 400% eligibility threshold) through 2022.1

Individual Coverage Mandate

Effective January 1, 2020, California residents must have minimum essential health insurance or pay a state tax penalty. The state law mirrors individual mandate penalties under the ACA that were repealed under TCJA, currently $695 or 2.5 percent of household income (as indexed), whichever is greater, for state residents who do not obtain coverage or qualify for exemptions or a hardship waiver.2 The law also contains a safeguard in the event that the ACA’s tax penalty is reinstated that would reduce any state tax penalty by the amount due under federal law. The penalty amount would be assessed by taxpayers preparing their state income tax forms similarly to how the federal tax penalty was assessed and paid through 2018 (prior to its elimination under TCJA).

Employer Reporting

Under the new law, there is also a state reporting obligation for all providers of Minimum Essential Coverage, including insurance carriers and employers sponsoring health plans. Although the law grants the state Franchise Tax Board the authority to create reporting forms it explicitly provides that federal MEC reporting forms (Forms 1095-B and 1095-C with the completion of Part III) satisfy reporting obligations under the law. Like federal ACA reporting, providers of MEC must provide forms to the

1 For 2019 400% of the federal poverty level for an individual is $49,960 and for a family of four is $103,000. For 2019 600% of the federal poverty level for an individual is $74,940 and for a family of four is $154,500.

2 The hardship waiver cost threshold under the California law that exempts taxpayers from the individual mandate penalty is the same as the federal threshold, 8.3% of an individual’s household income. However, the California law provides that for individuals eligible for an employer sponsored plan the cost of the employer’s plan at the tier of coverage required to cover any dependents that would trigger a penalty is used to determine whether the hardship cost threshold is met.
primary covered individual on or before January 31 of the following calendar year. Forms must be provided to the state Franchise Tax Board on or before March 31 of the following calendar year. The law does not include details on the transmittal process which will likely be provided in future regulatory or sub-regulatory guidance. The penalty for failure to report to the Franchise Tax Board is $50 per covered individual.

Again, the reporting provided to the state Franchise Tax Board largely mirrors existing federal ACA reporting. This means that employers who sponsor health coverage that is self-funded will submit Form 1095-Cs (which will include dependent information) to the Franchise Tax Board in a yet to be determined process. The law, however, is unclear on whether employers sponsoring insured plans would also need to report to the Franchise Tax Board, duplicating information provided by its insurance carriers. The law does state that reporting is limited to information already required to be reported under federal law but confirmation that small employers and employers sponsoring insured plans do not have any additional obligations would be welcome.

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