

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 13, 2013

TO: Honorable Byron Cook, Chair, House Committee On State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB649 by Stickland (Relating to tax reimbursement for businesses that refuse to comply with certain federal health care coverage requirements based solely on the religious convictions of the owners of the businesses; authorizing tax refunds and credits.), **As Introduced**

Depending upon the businesses that have chosen or will choose to not comply with the Patient Protection and Affordable Care Act mandate and upon the amount of potential refunds or credits of Texas state taxes paid against federal penalties incurred, there could be significant fiscal implications to the state.

The bill would amend Chapter 111 of the Tax Code, regarding tax collection procedures, to add new Subchapter H to provide for tax refunds or credits for certain businesses that incur a fine or penalty for failure to comply with the federal requirement to include coverage for emergency contraception in their employee health benefit plan.

A qualified business would be entitled to a refund of or credit against state sales and use tax, franchise tax, or any other tax paid by the business to the state. The total amount of refund or credit in a calendar year would be equal to the lesser of: 1) the net amount of state sales and use, franchise, and other state taxes paid by the business in the calendar year after any other applicable credit; or 2) the total amount of fines and penalties assessed for specified reasons and paid by the business.

A business would qualify for a tax refund or credit if: 1) the business makes available to its employees a health benefit plan; 2) the business refuses to include emergency contraception coverage as required by Section 1001(a)(5) of the federal Patient Protection and Affordable Care Act, based solely on the religious convictions of the owners of the business; 3) on or after January 1, 2013 the business is assessed a federal fine or penalty for failure to comply with that requirement; and 4) the business has paid the fine or penalty.

A qualified business would be required to establish an entitlement to the refund or credit and to apply for the refund or credit before August 1, of the year after the calendar year for which the refund or credit request is made, or in the case of a request for credit against the franchise tax must claim the credit on or with the report for the accounting period on which the report is based.

The Comptroller would be required to adopt rules and forms for administration of this new subchapter, and could conduct any audit determined necessary for enforcement or administration of the subchapter.

The new Subchapter H of Chapter 111 of the Tax Code would expire January 1, 2016.

The bill would take effect September 1, 2013, except that new Section 111.405 of the Tax Code, regarding Comptroller powers and duties, would take effect immediately if the bill were passed by two-thirds of the members of each house. Otherwise it would take effect on the 91st day after the last day of the legislative session.

It is not known which or how many businesses, if any, have chosen or will choose to not comply with the Patient Protection and Affordable Care Act mandate regarding emergency contraception coverage and thus might incur fine or penalty liabilities refundable or creditable under the provisions of this bill. One firm with a substantial presence in the state has indicated it does not include contraceptives it deems as abortion-causing in its employee health plan, and has filed suit challenging the Affordable Care Act contraception mandate. This firm, however, appears to be in compliance with applicable federal law at the current time. While the fiscal implications of this bill accordingly cannot be determined, the fiscal implications could be very significant.

The bill would provide refunds or credits of Texas state taxes paid against federal penalties incurred by a firm nationwide. As an illustration, a firm with 20,000 employees in the United States—employees on a health plan—and which is in noncompliance with the provisions that are the subject of this bill would be liable (federally) for an assessment of \$100 per day per person on the health plan. In this hypothetical case, the annual federal assessment would be \$730 million for this one company. Even allowing for a potentially large reduction of this assessment through, perhaps, legal or administrative processes, the impact on the State of Texas from subsequent refunds or credits could be very significant.

It is not clear whether state sales and use tax remitted by the firm would be included as tax paid by the business for purposes of calculating the extent of refund or credit under the proposed new Section 111.402 of the Tax Code. The potential fiscal implications would be significantly greater if sales taxes remitted by a business were eligible for refund or credit than if only sales and use taxes paid on purchases by the business were eligible.

Local Government Impact

The fiscal implications of the bill cannot be determined at this time

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, AG, SD, KK