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HOUSE BILL 2110

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State of Washington

64th Legislature

2015 Regular Session

By Representatives Tharinger and Schmick

Read first time 02/13/15. Referred to Committee on Appropriations.

1 AN ACT Relating to taxes and service charges on certain stand-  
2 alone dental plans offered through the health benefit exchange;  
3 amending RCW 48.14.020 and 48.14.0201; adding a new section to  
4 chapter 43.71 RCW; and adding a new section to chapter 82.04 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 48.14.020 and 2013 2nd sp.s. c 6 s 6 are each  
7 amended to read as follows:

8 (1) Subject to other provisions of this chapter, each authorized  
9 insurer except title insurers (~~shall~~) must on or before the first  
10 day of March of each year pay to the state treasurer through the  
11 commissioner's office a tax on premiums. Except as provided in  
12 subsection (3) of this section, such tax (~~shall~~) must be in the  
13 amount of two percent of all premiums, excluding amounts returned to  
14 or the amount of reductions in premiums allowed to holders of  
15 industrial life policies for payment of premiums directly to an  
16 office of the insurer, collected or received by the insurer under RCW  
17 48.14.090 during the preceding calendar year other than ocean marine  
18 and foreign trade insurances, after deducting premiums paid to  
19 policyholders as returned premiums, upon risks or property resident,  
20 situated, or to be performed in this state. For tax purposes, the  
21 reporting of premiums (~~shall~~) must be on a written basis or on a

1 paid-for basis consistent with the basis required by the annual  
2 statement. For the purposes of this section the consideration  
3 received by an insurer for the granting of an annuity (~~shall not~~  
4 ~~be~~) is not deemed to be a premium.

5 (2)(a) The taxes imposed in this section do not apply to amounts  
6 received by any life and disability insurer for health care services  
7 included within the definition of practice of dentistry under RCW  
8 18.32.020 except amounts received for pediatric oral services that  
9 qualify as coverage for the minimum essential coverage requirement  
10 under P.L. 111-148 (2010), as amended.

11 (b) Beginning January 1, 2014, moneys collected for premiums  
12 written on qualified health benefit plans (~~and stand-alone dental~~  
13 ~~plans~~) offered through the health benefit exchange under chapter  
14 43.71 RCW must be deposited in the health benefit exchange account  
15 under RCW 43.71.060.

16 (c) Beginning January 1, 2016, moneys collected for premiums  
17 written on stand-alone dental plans for pediatric oral services that  
18 qualify as coverage for the minimum essential coverage under P.L.  
19 111-148 (2010), as amended, offered through the health benefit  
20 exchange under chapter 43.71 RCW must be deposited in the health  
21 benefit exchange account under RCW 43.71.060.

22 (3) In the case of insurers which require the payment by their  
23 policyholders at the inception of their policies of the entire  
24 premium thereon in the form of premiums or premium deposits which are  
25 the same in amount, based on the character of the risks, regardless  
26 of the length of term for which such policies are written, such tax  
27 (~~shall~~) must be in the amount of two percent of the gross amount of  
28 such premiums and premium deposits upon policies on risks resident,  
29 located, or to be performed in this state, in force as of the thirty-  
30 first day of December next preceding, less the unused or unabsorbed  
31 portion of such premiums and premium deposits computed at the average  
32 rate thereof actually paid or credited to policyholders or applied in  
33 part payment of any renewal premiums or premium deposits on one-year  
34 policies expiring during such year.

35 (4) Each authorized insurer (~~shall~~) must with respect to all  
36 ocean marine and foreign trade insurance contracts written within  
37 this state during the preceding calendar year, on or before the first  
38 day of March of each year pay to the state treasurer through the  
39 commissioner's office a tax of ninety-five one-hundredths of one  
40 percent on its gross underwriting profit. Such gross underwriting

1 profit (~~shall~~) must be ascertained by deducting from the net  
2 premiums (i.e., gross premiums less all return premiums and premiums  
3 for reinsurance) on such ocean marine and foreign trade insurance  
4 contracts the net losses paid (i.e., gross losses paid less salvage  
5 and recoveries on reinsurance ceded) during such calendar year under  
6 such contracts. In the case of insurers issuing participating  
7 contracts, such gross underwriting profit (~~shall~~) does not include,  
8 for computation of the tax prescribed by this subsection, the amounts  
9 refunded, or paid as participation dividends, by such insurers to the  
10 holders of such contracts.

11 (5) The state does hereby preempt the field of imposing excise or  
12 privilege taxes upon insurers or their appointed insurance producers,  
13 other than title insurers, and no county, city, town or other  
14 municipal subdivision (~~shall have~~) has the right to impose any such  
15 taxes upon such insurers or these insurance producers.

16 (6) If an authorized insurer collects or receives any such  
17 premiums on account of policies in force in this state which were  
18 originally issued by another insurer and which other insurer is not  
19 authorized to transact insurance in this state on its own account,  
20 such collecting insurer (~~shall be~~) is liable for and (~~shall~~) must  
21 pay the tax on such premiums.

22 **Sec. 2.** RCW 48.14.0201 and 2013 2nd sp.s. c 6 s 5 are each  
23 amended to read as follows:

24 (1) As used in this section, "taxpayer" means a health  
25 maintenance organization as defined in RCW 48.46.020, a health care  
26 service contractor as defined in chapter 48.44 RCW, or a self-funded  
27 multiple employer welfare arrangement as defined in RCW 48.125.010.

28 (2) Each taxpayer must pay a tax on or before the first day of  
29 March of each year to the state treasurer through the insurance  
30 commissioner's office. The tax must be equal to the total amount of  
31 all premiums and prepayments for health care services collected or  
32 received by the taxpayer under RCW 48.14.090 during the preceding  
33 calendar year multiplied by the rate of two percent. For tax  
34 purposes, the reporting of premiums and prepayments must be on a  
35 written basis or on a paid-for basis consistent with the basis  
36 required by the annual statement.

37 (3) Taxpayers must prepay their tax obligations under this  
38 section. The minimum amount of the prepayments is the percentages of  
39 the taxpayer's tax obligation for the preceding calendar year

1 recomputed using the rate in effect for the current year. For the  
2 prepayment of taxes due during the first calendar year, the minimum  
3 amount of the prepayments is the percentages of the taxpayer's tax  
4 obligation that would have been due had the tax been in effect during  
5 the previous calendar year. The tax prepayments must be paid to the  
6 state treasurer through the commissioner's office by the due dates  
7 and in the following amounts:

8 (a) On or before June 15, forty-five percent;

9 (b) On or before September 15, twenty-five percent;

10 (c) On or before December 15, twenty-five percent.

11 (4) For good cause demonstrated in writing, the commissioner may  
12 approve an amount smaller than the preceding calendar year's tax  
13 obligation as recomputed for calculating the health maintenance  
14 organization's, health care service contractor's, self-funded  
15 multiple employer welfare arrangement's, or certified health plan's  
16 prepayment obligations for the current tax year.

17 (5)(a) Except as provided in (b) and (c) of this subsection,  
18 moneys collected under this section are deposited in the general  
19 fund.

20 (b) Beginning January 1, 2014, moneys collected from taxpayers  
21 for premiums written on qualified health benefit plans and stand-  
22 alone dental plans offered through the health benefit exchange under  
23 chapter 43.71 RCW must be deposited in the health benefit exchange  
24 account under RCW 43.71.060.

25 (c) Beginning January 1, 2016, moneys collected for premiums  
26 written on stand-alone dental plans for pediatric oral services that  
27 qualify as coverage for the minimum essential coverage under P.L.  
28 111-148 (2010), as amended, offered through the health benefit  
29 exchange under chapter 43.71 RCW must be deposited in the health  
30 benefit exchange account under RCW 43.71.060.

31 (6) The taxes imposed in this section do not apply to:

32 (a) Amounts received by any taxpayer from the United States or  
33 any instrumentality thereof as prepayments for health care services  
34 provided under Title XVIII (medicare) of the federal social security  
35 act.

36 (b) Amounts received by any taxpayer from the state of Washington  
37 as prepayments for health care services provided under:

38 (i) The medical care services program as provided in RCW  
39 74.09.035; or

1 (ii) The Washington basic health plan on behalf of subsidized  
2 enrollees as provided in chapter 70.47 RCW.

3 (c) Amounts received by any health care service contractor as  
4 defined in chapter 48.44 RCW, or any health maintenance organization  
5 as defined in chapter 48.46 RCW, as prepayments for health care  
6 services included within the definition of practice of dentistry  
7 under RCW 18.32.020, except amounts received for pediatric oral  
8 services that qualify as coverage for the minimum essential coverage  
9 requirement under P.L. 111-148 (2010), as amended.

10 (d) Participant contributions to self-funded multiple employer  
11 welfare arrangements that are not taxable in this state.

12 (7) Beginning January 1, 2000, the state preempts the field of  
13 imposing excise or privilege taxes upon taxpayers and no county,  
14 city, town, or other municipal subdivision has the right to impose  
15 any such taxes upon such taxpayers. This subsection is limited to  
16 premiums and payments for health benefit plans offered by health care  
17 service contractors under chapter 48.44 RCW, health maintenance  
18 organizations under chapter 48.46 RCW, and self-funded multiple  
19 employer welfare arrangements as defined in RCW 48.125.010. The  
20 preemption authorized by this subsection must not impair the ability  
21 of a county, city, town, or other municipal subdivision to impose  
22 excise or privilege taxes upon the health care services directly  
23 delivered by the employees of a health maintenance organization under  
24 chapter 48.46 RCW.

25 (8)(a) The taxes imposed by this section apply to a self-funded  
26 multiple employer welfare arrangement only in the event that they are  
27 not preempted by the employee retirement income security act of 1974,  
28 as amended, 29 U.S.C. Sec. 1001 et seq. The arrangements and the  
29 commissioner must initially request an advisory opinion from the  
30 United States department of labor or obtain a declaratory ruling from  
31 a federal court on the legality of imposing state premium taxes on  
32 these arrangements. Once the legality of the taxes has been  
33 determined, the multiple employer welfare arrangement certified by  
34 the insurance commissioner must begin payment of these taxes.

35 (b) If there has not been a final determination of the legality  
36 of these taxes, then beginning on the earlier of (i) the date the  
37 fourth multiple employer welfare arrangement has been certified by  
38 the insurance commissioner, or (ii) April 1, 2006, the arrangement  
39 must deposit the taxes imposed by this section into an interest  
40 bearing escrow account maintained by the arrangement. Upon a final

1 determination that the taxes are not preempted by the employee  
2 retirement income security act of 1974, as amended, 29 U.S.C. Sec.  
3 1001 et seq., all funds in the interest bearing escrow account must  
4 be transferred to the state treasurer.

5 (9) The effect of transferring contracts for health care services  
6 from one taxpayer to another taxpayer is to transfer the tax  
7 prepayment obligation with respect to the contracts.

8 (10) On or before June 1st of each year, the commissioner must  
9 notify each taxpayer required to make prepayments in that year of the  
10 amount of each prepayment and must provide remittance forms to be  
11 used by the taxpayer. However, a taxpayer's responsibility to make  
12 prepayments is not affected by failure of the commissioner to send,  
13 or the taxpayer to receive, the notice or forms.

14 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.71  
15 RCW to read as follows:

16 (1)(a) Beginning January 1, 2016, the exchange may require each  
17 issuer writing premiums for stand-alone adult and family dental plans  
18 offered through the exchange to pay a service charge in an amount  
19 necessary to fund the stand-alone adult and family dental operations  
20 of the exchange. The service charge may be required only if the  
21 expected amount of taxes collected under section 4 of this act and  
22 other funds deposited in the health benefit exchange account in the  
23 current calendar year are insufficient to fund the stand-alone adult  
24 and family dental operational costs incurred beginning January 1,  
25 2016.

26 (b) The service charge is not an exchange user fee as that term  
27 is used in 45 C.F.R. 156.80.

28 (2) The board, in collaboration with the issuers, the health care  
29 authority, and the commissioner, must establish a fair and  
30 transparent process for calculating the service charge amount. The  
31 process must meet the following requirements:

32 (a) The service charge only applies to issuers that offer stand-  
33 alone adult and family dental coverage in the exchange and must be  
34 based on the number of enrollees in stand-alone adult and family  
35 dental plans in the exchange for a calendar year;

36 (b) The service charge must be established on a flat dollar and  
37 cents amount per member per month;

38 (c) Issuers must be notified of the service charge amount by the  
39 exchange on a timely basis;

1 (d) An appropriate service charge reconciliation process must be  
2 established by the exchange that is administratively efficient;

3 (e) Issuers must remit the service charge to the exchange in  
4 quarterly installments after receiving notification from the exchange  
5 of the due dates of the quarterly installments;

6 (f) A procedure must be established to allow issuers subject to  
7 the service charge under this section to have grievances reviewed by  
8 an impartial body and reported to the board; and

9 (g) A procedure for enforcement must be established if an issuer  
10 fails to remit its service charge amount to the exchange within ten  
11 business days of the quarterly installment due date.

12 (3) The exchange must deposit proceeds from the service charges  
13 in the health benefit exchange account under RCW 43.71.060.

14 (4) The service charge described in this section is considered a  
15 special purpose obligation in connection with coverage described in  
16 this section for the purpose of funding the operations of the  
17 exchange, and may not be applied by issuers to vary premium rates at  
18 the plan level.

19 (5) The exchange must monitor stand-alone adult and family dental  
20 plan enrollment and provide reports at least annually which must be  
21 available on its web site.

22 (6) For the purposes of this section, "stand-alone adult and  
23 family dental plans" means coverage for a set of benefits limited to  
24 oral care excluding pediatric oral services that qualify as coverage  
25 for the minimum essential coverage under P.L. 111-148 (2010), as  
26 amended.

27 NEW SECTION. **Sec. 4.** A new section is added to chapter 82.04  
28 RCW to read as follows:

29 (1) Upon every person engaging within this state in the business  
30 of providing stand-alone adult and family dental plans offered  
31 through the health benefit exchange under chapter 43.71 RCW; as to  
32 such persons the amount of tax is equal to the gross income from such  
33 adult and family dental plans multiplied by the rate of 1.5 percent.

34 (2) The money collected under subsection (1) of this section must  
35 be deposited in the health benefit exchange account under RCW  
36 43.71.060.

37 (3) The definitions in this subsection apply throughout this  
38 section unless the context clearly requires otherwise.

1 (a) "Gross income from such adult and family dental plans" does  
2 not include premiums received for pediatric oral services that  
3 qualify as coverage for the minimum essential coverage under P.L.  
4 111-148 (2010), as amended.

5 (b) "Stand-alone adult and family dental plans" means coverage  
6 for a set of benefits limited to oral care which may or may not  
7 include pediatric oral services that qualify as coverage for the  
8 minimum essential coverage under P.L. 111-148 (2010), as amended.

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