



Tax Provisions in the Patient Protection and Affordable Care Act

June 29, 2012

The Supreme Court decision to uphold the legality of the Patient Protection and Affordable Care Act has now ratified the provisions of the Act and, with it, the revenue-increasing provisions and changes to the IRS Code to help finance health care reform. Set forth below is a list of tax-related items from the Act and the year which such provisions will take effect:

ALREADY IN EFFECT:

- **Small business tax credit (Sec. 45R):** Small businesses—defined as businesses with 25 or fewer employees and average annual wages of \$50,000 or less—would be eligible for a credit of up to 50% of nonelective contributions the business makes on behalf of their employees for insurance premiums. (Effective 2010.)
- **Tax on health savings account (HSA) distributions (Sec. 223):** Additional tax on distributions from an HSA or an Archer medical savings account (MSA) that are not used for qualified medical expenses is increased to 20% of the disbursed amount. (Effective 2011.)
- **Tax on indoor tanning services (Sec. 5000B):** 10% tax on amounts paid for indoor tanning services. (Effective 2010.)
- **SIMPLE cafeteria plans for small business (Sec. 125):** An eligible small employer is provided with a safe harbor from the nondiscrimination requirements for cafeteria plans as well as from the nondiscrimination requirements for specified qualified benefits offered under a cafeteria plan. (Effective 2011.)
- **Return information disclosure (Sec. 6103):** Allows the IRS, upon written request of the secretary of Health and Human Services, to disclose certain taxpayer return information if the taxpayer's income is relevant in determining the amount of the tax credit or cost-sharing reduction, or eligibility for participation in the specified state health subsidy programs. (Effective March 2010.)
- **Annual fee on pharmaceutical manufacturers and importers:** Fee on each covered entity engaged in the business of manufacturing or importing branded prescription drugs for sale to any specified government program or pursuant to coverage under any such program. (Effective 2011.)
- **Codification of the economic-substance doctrine (Sec. 7701(o)):** Codifies the judicially created economic-substance doctrine and makes underpayments due to transactions that do not have economic substance subject to the Sec. 6662 accuracy-related penalty. (Effective 2010.)
- **Change to cellulosic biofuel producer credit (Sec. 40):** Excludes from the definition of cellulosic biofuel any fuels that (1) are more than 4% (determined by weight) water and sediment in any combination or (2) have an ash content of more than 1% (determined by weight) (so-called black liquor). (Effective 2010.)
- **Adult dependent insurance coverage:** Changes the definition of "dependent" for purposes of Sec. 105(b) (excluding from income amounts received under a health insurance plan) to include amounts expended for the medical care of any child of the taxpayer who has not yet reached age 27. The same change is made in Sec.

162(l)(1) for purposes of the self-employed health insurance deduction, in Sec. 501(c)(9) for purposes of benefits provided to members of a VEBA, and in Sec. 401(h) for benefits for retirees. (Effective 2010.)

- **Restrictions on use of HSA and FSA Funds (Sec. 223):** Amounts paid for over-the-counter medications will no longer be reimbursable from HSAs, Archer MSAs, health FSAs, or health reimbursement arrangements. (Effective 2011.)
- **Expanded 1099 reporting:** This change was repealed by the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, P.L. 112-9
- **Tax-exempt health insurers:** Program administered by the Department of Health and Human Services that will foster the creation of qualified nonprofit health insurance issuers to offer health insurance.

BEGINNING IN 2012:

- **Fees on health plans (Sec. 4375):** Fee is imposed on each specified health insurance policy. (Effective Oct. 2012.)
- **Expansion of adoption credit, adoption-assistance programs:** Maximum adoption credit was increased and, for adoption-assistance programs, the maximum exclusion was increased. (Effective 2010; scheduled to expire at end of 2012.)
- **Charitable hospitals (Secs. 501(r) and 6033(b)(15)):** New requirements applicable to Sec. 501(c)(3) hospitals, regarding conducting a community health needs assessment, adopting a written financial-assistance policy, limitations on charges, and collection activities. (Effective March 2010; community health needs assessment effective March 2012.)
- **Information reporting (Sec. 6051(a)(14)):** Requires employers to disclose on each employee's annual Form W-2 the value of the employee's health insurance coverage sponsored by the employer. (Effective 2012.)

BEGINNING IN 2013:

- **Additional hospital insurance tax on high-income taxpayers (Sec. 3101):** Employee portion of the Medicare hospital insurance tax part of FICA is increased by 0.9% on wages that exceed a threshold amount. (Effective 2013.)
- **Health flexible spending arrangements (FSAs) (Sec. 125(i)):** Maximum amount available for reimbursement of incurred medical expenses under a health FSA for a plan year (or other 12-month coverage period) must not exceed \$2,500. (Effective 2013.)

BEGINNING IN 2014:

- **Premium-assistance credit (Sec. 36B):** Refundable tax credits that eligible taxpayers can use to help cover the cost of health insurance premiums for individuals and families who purchase health insurance through a state health benefit exchange. (Effective 2014.)
- **Reporting requirements (Sec. 6055):** Requires insurers (including employers who self-insure) that provide minimum essential coverage to any individual during a calendar year to report certain health insurance coverage information to both the covered individual and to the IRS. (Effective 2014.)
- **Medical care itemized deduction threshold (Sec. 213):** Threshold for the itemized deduction for unreimbursed medical expenses is increased from 7.5% of

adjusted gross income (AGI) to 10% of AGI for regular income tax purposes. (Effective 2013 generally, 2017 for certain taxpayers.)

- **Cafeteria plans (Sec. 125):** A qualified health plan offered through a health insurance exchange is a qualified benefit under a cafeteria plan of a qualified employer. (Effective 2014.)
- **Employer responsibility (Sec. 4980H):** An "applicable large employer" that does not offer coverage for all its full-time employees, offers minimum essential coverage that is unaffordable, or offers minimum essential coverage that consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60%, is required to pay a penalty if any full-time employee is certified to the employer as having purchased health insurance through a state exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee. (Effective 2014.)
- **Medicare tax on investment income (Sec. 1411):** Imposes a tax on individuals equal to 3.8% of the lesser of the individual's net investment income for the year or the amount the individual's modified AGI exceeds a threshold amount. (Effective 2013.)
- **Excise tax on medical device manufacturers (Sec. 4191):** Tax equal to 2.3% of the sale price is imposed on the sale of any taxable medical device by the manufacturer, producer, or importer of the device. (Effective 2013.)
- **Deductions for federal subsidies for retiree prescription plans (Sec. 139A):** Eliminates the rule that the exclusion for subsidy payments is not taken into account for purposes of determining whether a deduction is allowable for retiree prescription drug expenses. (Effective 2013.)
- **Time for payment of corporate estimated taxes for 2014:** For corporations with assets of at least \$1 billion (determined as of the end of the preceding tax year), estimated tax payments due in July, August, or September 2014 were increased.

AFTER 2014:

- **Excise tax on high-cost employer plans (Sec. 4980I):** Excise tax on coverage providers if the aggregate value of employer-sponsored health insurance coverage for an employee (including, for purposes of the provision, any former employee, surviving spouse, and any other primary insured individual) exceeds a threshold amount. (Effective 2018.)

The many tax changes, including new taxes that becoming effective in 2012 and years after will need to be carefully considered as you commence tax planning for 2012 and after.

Please call us if we can help you analyze the impact of the above changes on your personal, unique, tax situation.

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