



Major Health Care and Tax Changes: The HIRE, PPACA and HCERA Acts

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On March 18th, 2010 President Obama signed into law the Hiring Incentives to Restore Employment (HIRE) Act. This was followed on March 23rd by the Patient Protection and Affordable Care Act (PPACA). Finally, on March 30, 2010, the Health Care and Education Reconciliation Act (HCERA), which modified certain revenue provisions of the PPACA, was signed into law.

Though largely lacking in bipartisan support¹, the Acts constitute the most far-reaching legislation of recent times as, in addition to significant tax changes, extensive changes to the current system of health care were promulgated creating new programs, shifting numerous responsibilities along with associated costs, and imposing significant penalties for noncompliance. Due to provisions such as mandatory elimination of caps and increased health insurance coverage, current estimates project average health care costs to increase by at least 9% next year alone. Businesses and individuals need to become familiar with these new rules not only to avoid penalties but also to properly plan and structure in order to minimize the potential financial impact of these new mandates.

The provisions impact all taxpayers both at the entity and individual levels. Health insurance is now mandated for all U.S. residents. Various subsidies for certain taxpayers and penalties for all taxpayers who fail to comply were enacted to both facilitate and ensure compliance. Existing Medicare and Medicaid programs have been modified and new programs have been enacted. Some tax provisions were passed to partially offset health care reform costs, others to reward compliance, and yet others as part of previously proposed Code revisions. The Acts also reflect the current administration's focus on closing potential loopholes for offshore investment activity by increasing reporting requirements and penalty provisions. In addition, significant tax revisions focusing primarily on individual taxpayers are pending before Congress with enactment in the near future anticipated.

Among the revenue raisers in the Acts are increased payroll taxes for higher income taxpayers (which are in addition to the increased Clinton-era income tax rates due to take effect in 2011 topping out at 39.6%), new taxes on net investment income (interest, dividends, royalties and rental income) for higher-income individual taxpayers, a per-employee penalty excise tax for employers with 50 or more deemed full-time employees

¹ At least eighteen state Attorneys General filed suit alleging that the PPACA violates state sovereign powers.



failing to meet the heightened health insurance coverage requirements, an annual nondeductible excise tax on businesses manufacturing or importing certain prescription drugs, an annual 40% nondeductible excise tax on insurance companies and plan administrators offering certain higher-cost health insurance plans.

Turning to offshore investment activity, a 30% withholding tax on income from U.S. assets held in banks that have not agreed to disclose U.S. account-holder financial information is imposed. In addition, if the assets in such accounts are worth more than \$50,000, owners must disclose these amounts or be subject to a 40% penalty. A significant non-health care tax provision is the codification of the economic substance doctrine imposing specific criteria for the deductibility of expenses and penalties for noncompliance.

The legislative provisions are staggered with some taking effect retroactively, others taking effect at signing, and still others taking effect over a period of years. While a number of significant income tax increases take effect the year following presidential elections, in 2013, mandatory universal health insurance coverage is slated to take effect in 2014. This document provides an overview of the more salient provisions and the years in which they take effect.

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2009

Tax Credit for Investments in Therapeutic Discoveries.

An extraordinarily large 50% tax credit is authorized as part of the investment tax credit for qualified investments involving therapeutic discovery projects made in tax years beginning in 2009 or 2010. Eligible taxpayers must employ no more than 250 employees. Qualifying projects are those designed to treat or prevent diseases by conducting pre-clinical activities, clinical trials or research protocols for the purpose of security FDA or Public Health Service Act approval of a product; projects to diagnose diseases or conditions to determine molecular factors impacting them by developing molecular diagnostics; or projects involving the development of a product, process, or technology to further the delivery or administration of "therapeutics." The credit is not automatic; a certification process is involved as the credits allowed cannot exceed one billion. In the alternative, if a nonprofit is not an investor, a grant can be issued in lieu of the credit. On June 18th, the Service released new Form 8942 "Application for Certification of Qualified Investments Eligible for Credits and Grants Under the Qualifying Therapeutic Discovery Project Program." The Form must be filed by July 21st for eligible credit or grant requests.

Health Professionals With Student Loan Debt

Student loan debt incurred by health care professionals that agree to work in certain underserved locations for certain employers may be deemed repaid or forgiven under certain federal or state programs. Such abatement normally creates taxable income to the recipient health professional in the amount of the debt forgiven or abated. The Act provides that such debt forgiveness would not result in taxable income to the health professionals involved.

Code Section 179 Expense Limitations

Higher expense thresholds effective during 2008 and 2009 have been extended through December 31, 2010 for business assets purchased and placed into service. The deductibility limits continue at 250,000 but are reduced dollar for dollar for cumulative annual purchases over 800,000. Overall deductibility continues to be limited to taxable income levels, but any amounts disallowed on this basis can be carried forward. After 2010, expense limits return to 25,000 and the phase-out starts at 200,000

2010

Credit for Small Employers Providing Employee Health Insurance



A new credit initially in the amount of 35% of premiums paid by Eligible Small Employers ("ESEs") is created. ESEs can be any employer regardless of form (C corp., S corp., LLC, LP, or sole proprietorship) satisfying certain very narrow parameters. The maximum amount of credit goes to employers with ten or less full time equivalent employees (FTEs) with average annual wages of \$25,000 or less. The credit begins to phase out for employers with more than ten FTEs having average annual wages exceeding \$10,000 and is completely phased out for (i) employers with more than 25 FTEs or (ii) FTEs with average wages of more than \$50,000. (The number of FTEs is calculated by dividing total employee hours worked for all employees by 2,080 hours. Average FTE wages are determined by divided employer's aggregate wages for the year by the number of FTEs. There are special rules that define eligible hours that must be included in the calculation.)

Qualifying ESEs that offer health insurance, pay at least 50% of its cost, and contribute a uniform percentage for all employees may for tax years beginning in 2010 through 2013 claim a tax credit of up to 35%. The credit is reduced, specifically by 6.667%, for each FTE over ten. The credit is similarly reduced for average wages over \$25,000 in increments of 4% per each thousand. For years 2014 and 2015, the credit increases to a maximum of 50% but ESEs must participate in an insurance exchange to claim the credit.

The credit will reduce the amount of deduction an employer can take for health insurance premiums by the amount of credit claimed. The credit is not available for owners (more than 2% shareholders of an S corporation, more than 5% owners of a C corporation, partners, LLC members, sole proprietors), or their families. Wages paid to this excluded group are not included in the FTE wage calculations. There is no minimum age for an eligible employee. Aggregation rules (counting close-held ownership interest together) apply.

Hiring and Benefits Incentives.

Employers hiring unemployed workers this year (after Feb. 3, 2010 up to year-end) may qualify for a 6.2% payroll tax incentive. This incentive in effect exempts them from the employer's share of Social Security tax on wages paid to these workers after March 18th. In addition, employers may claim for each qualified employee retained at least a year without a significant decrease in wages, a new hire retention credit of up to \$1,000 per worker. Family members and relatives generally are not eligible for this incentive.

Employers must get a signed statement from each eligible new hire, certifying under penalties of perjury, that he or she was not employed for more than 40 hours during the 60 days before beginning employment with that employer. IRS Form W-11 can be used to meet this requirement.

It should be noted that the work opportunity tax credit (WOTC) remains in effect. This credit offers tax savings to businesses that hire employees belonging to various targeted



groups. These groups include people ages 18 to 39 living in designated communities in 43 states and the District of Columbia, recipients of various types of public assistance, certain veterans, ex-felons and certain youth workers. Certification by the state workforce agency is generally required within 28 days after the eligible worker begins work.

An eligible employer can claim both the WOTC and the new hire retention credit for the same employee. However, an employer may not claim both the payroll tax exemption and the WOTC for the same employee. Hence any employer choosing to apply the exemption to a certain employee's wages may not receive the WOTC on any wages paid to the same employee during the one-year period beginning on the employee's hiring date.

It should also be noted that employers providing a 65% COBRA premium subsidy to laid off employees can claim a credit for this subsidy on their quarterly or annual payroll tax returns. Affected employers can reduce their payroll tax deposits by the amount of the credit.

Codification of the Economic Substance Doctrine.

As part of its ongoing effort to curb abusive tax shelters, Congress has codified a case law concept that was first introduced for consideration over ten years ago. The provisions are contained in New Code Section 7701(o). Now, for transactions where "economic substance" is relevant to be recognized for tax purposes, (i) the transaction must change in a meaningful way (apart from federal income tax effects) the taxpayer's economic position, and (ii) the taxpayer must have a substantial purpose (apart from federal income tax effects) for entering into such transaction." Ironically, while the statutory provision was enacted to clarify the ambiguities and variances found in court decisions interpreting it, certain statutory terms in IRC Sec. 7701(o), such as the term "relevant" will yet require further interpretation by the courts. Under new Code Sec. 6662(b)(6), a 20% penalty will be imposed for any tax underpayment attributable to any disallowance of claimed tax benefits by reason of a transaction lacking economic substance.

Restrictions on Medical Insurers; High Risk Coverage, Caps.

Effective June 21, 2010, adults with pre-existing conditions will be eligible to join a temporary high-risk pool, which will be superseded by health care insurance exchanges taking effect in 2014. Commencing September 23, 2010, medical insurers must allow dependent children to remain on their parents' insurance plan until they are twenty-six; they may not charge co-payments for certain preventive care; they may not drop policy holders once they get sick; and coverage caps are to be phased out over a period of years. Children with pre-existing conditions may not be excluded. (Protection for adults starts in 2014.) Nonprofit medical insurance providers such as Blue Cross will have to maintain a ratio of money spent on procedures over income money of 85% or more to continue to



remain tax-exempt. Lifetime caps on insurance are eliminated. Given the foregoing restrictions which obviously impact actuarial projections, it is reasonable to expect that health insurance rates will appreciably increase

Temporary Early Retiree Reinsurance Program.

A temporary reinsurance program for younger retirees who are over the age of 55 and carrying a \$5 million cap was also enacted. To be eligible, plans must meet four requirements: (1) implement programs and procedures to generate cost savings for participations with chronic and high-cost conditions, (2) actual documentations of claims must be provided; (3) the Secretary of the Department of Health and Human Services must certify the program and (4) timely applications for this reinsurance program participation must be completed. If the foregoing criteria are met, an employer may be reimbursed for up to 80% of costs between \$15,000 and \$90,000. This program will be phased out at the earlier of (1) \$5 billion set aside for it is paid out or (b) January 1, 2014.

Tax Credit Eliminated For Unprocessed Fuels

In 2008, Congress enacted a \$1.01 per gallon tax credit for the production of biofuel from cellulosic feedstocks in order to encourage the development of new production capacity for biofuels that are not derived from food source materials. Congress became aware that some taxpayers were claiming the cellulosic biofuel tax credit for unprocessed fuels containing significant amounts of water, sediment or ash content, such as black liquor. The provision would limit eligibility for the tax credit to processed fuels such as fuels that could be used in a car engine or in a home heating application.

Nondiscriminatory Provisions for Nonprofit Hospitals

For tax years beginning after May 23, 2010, detailed new requirements focusing on nondiscriminatory emergency health care, community health needs assessments, and financial assistance policies will need to be implemented in order for hospitals currently exempt from taxation under IRC Section 501(c)(3) to retain their exemption.

Tax on Indoor Tanning

A 10% excise tax is imposed on indoor tanning tax services rendered after June 30, 2010 per newly enacted Code Section 5008B.

Medicare Revisions

The PPACA has dramatically impacted Medicare Parts C and D (the Medicare Advantage Program and the Medicare Prescription Drug program). Medicare Part D (the prescription drug program) has a coverage gap for expenditures above \$2,830 and below



\$4,550. If you participate in a Medicare prescription drug plan, you may have to pay up to the first \$310 of your drug costs.

Above this amount, the drug plan pays 75% of the covered prescription drug costs until \$2,830. Once \$2,830 in total drug costs is reached, a participant will be in a coverage gap and the participant must pay the full cost of prescription drugs until total out-of-pocket costs reach \$4,550. (The annual out-of-pocket spending amount includes annual deductible and co-pay amounts.) Once more than \$4,550 is spent out-of-pocket, the coverage gap ends and the drug plan pays most of the covered drug costs for the remainder of the year.

Beginning in 2010, PPACA provisions commence eliminating this coverage gap over a ten-year period. In 2010, individuals with expenses in the coverage gap will receive a \$250 rebate from Medicare. In 2011, a Gap Discount Program becomes effective with the goal of providing those with expenses in the coverage gap will be given a 50% discount on the total cost of brand name drugs while incurring expenses within the coverage gap. The 50% discount actually is a legislative mandate that manufacturers of brand name drugs enter into agreements to discount brand name drugs by that amount. Failure of pharmaceutical companies to enter into such agreements will exclude the drugs from Part D coverage. With respect to generic drugs, a phase-in of coverage also commences in 2011 such that additional discounts on both brand name and generic drugs will be phased in until 2020 when the changes will effectively close the coverage gap with coverage at 75% of all costs. Part D premiums for high-income individuals (e.g. married couples with incomes over \$170,000) will be increased commencing in 2011. Also commencing in 2011 is a three-year phased in reduction to Medicare Advantage plan capitation payments.

The PPACA reduces the deduction that employers participating in the retiree drug subsidy (RDS) program are able to claim for their retiree health plan costs. This change, which may have a significant impact on employer participation in the RDS program, is effective for taxable years beginning after December 31, 2012. Effective 2014, an annual fee on non-exempt health insurers is implemented. This fee will cost the insurance industry \$60.1 billion over the six-year period from 2014 through 2019. The annual fee is applicable to Medicare Advantage and Part D sponsors.

Increased Tax Credit for Adoptions

The Adoption Tax Credit, which was first effective January 1, 2002 has been gradually increased through the years. In 2009, it was increased to \$12,150 and is now being increased to \$13,170 and the Adoption Assistance Exclusion is increased likewise by \$1,000 to \$13,170. There is a phase-out of the credit for higher-income levels. Qualified adoption expenses include reasonable and necessary adoption fees, court costs, attorney fees, travel expenses, and other reasonable expenses incurred for the principal purpose of adopting a child.



Tax Treatment of Blue Cross and Blue Shield Organizations

Commencing in 2010, favorable tax treatment for health insurance organizations, including treatment as a stock insurance company, are eliminated in years where medical loss ratios fall below 85%.

Tax Reporting for Offshore Investments

Effective March 18th, New Code Section 6038D imposes reporting requirements that are in some ways duplicative of existing FBAR reporting but significantly expand the scope of required reporting. Now, individuals who hold any interest in certain foreign financial assets during the tax year must attach to their tax return additional information with respect to each asset if the aggregate value of all assets exceeds \$50,000 (or as may be adjusted by Treasury). A significant departure from existing rules is that now the triggering event requiring reporting is strictly value and not percentage-of-ownership. Hence, if the value of an interest held in a foreign entity, even a passthrough such as a trust, is greater than \$50,000, even if a small fractional interest is held, disclosure must still be made.

The penalty for failure to disclose starts at \$10,000 and may increase up to \$50,000 if there is a failure to comply within 90 days of notification by IRS. In addition, a 40% accuracy-related tax penalty can be imposed for underpayments of tax attributable to undisclosed foreign assets.

Under new Code Section 1298(f), added by the HIRE Act, all shareholders of passive foreign investment companies (PFICs) must now file a new annual information return. While PFICs are subject to an anti-deferral regime, such that U.S. shareholders must file a Form 8621 disclosing information under specific conditions relating to taxable events, this filing will be required regardless of PFIC financial activity or taxpayer elections.

Tax Reporting For Foreign Trusts

While many offshore trusts, like PFICs, are subject to a separate anti-deferral tax regime, trusts that are created by a U.S. person transferring property to a foreign trust with a U.S. beneficiary are taxed as grantor trusts. The HIRE Act has modified this rule creating a rebuttable presumption that the trust has a U.S. beneficiary and thus be a grantor trust where trust income or corpus may be paid or accumulated to or for the benefit of a U.S. person or such person has discretion to make distributions from the trust.

Beneficiaries of such presumptive grantor trusts must supply annual information regarding the trust to the IRS. The penalties for failure to comply with such reporting are the greater of \$10,000 to 35% of the gross reportable amount.

2011



Limitations On HSAs, FSAs, HRAs, MSAs

The cost of over-the counter medicines (other than insulin) will no longer be allowed to be reimbursed with excludible income deposited in a health flexible spending arrangement (FSA), health reimbursement account (HRA), health savings account (HSA) or Archer medical savings account (MSA). Disbursements made for nonqualified medical expenses will be subject to a penalty of 20% (increased from prior penalty levels of 10%).

Annual Fee For Drug Manufacturers and Importers

Manufacturers or importers with gross receipts from branded prescription drug sales that manufacture or import drugs for sale to any specified government program must pay an annual nondeductible fee which will be credited to the Medicare Part B trust fund. The annual flat fee which is targeted for example at \$2.5 billion in 2011 is to be prorated among the targeted entities based on the relative share of sales of each entity.

Small Employer Cafeteria Plans

Employers with an average of 100 or fewer employees may provide employees with a "simple cafeteria plan" which accord eligible employers a safe harbor from the nondiscrimination requirements that typically apply.

Miscellaneous:

- Commencing in 2011, employers will have to disclose health care benefits provided to employees on Form W-2.
- Grants will be available for small employers for wellness programs.
- Grants will be made available to states for developing alternatives to tort litigation.
- There will be no co-pay for Medicare part D for preventive care.
- A 10% bonus payment is established for physicians practicing in certain shortage areas.
- A Community Living Assistance Services and Support Program (CLASS) is established. This program involves voluntary participation to provide long-term care.

2012

1099 Reporting

As of January 1, 2012, 1099 reporting is greatly expanded to now include mandatory issuance by all taxpayers for receipt of more than \$600 in property or services. For many businesses, this will exponentially increase the amount of 1099s that will need to be prepared, filed and issued.

2013



Individual Income Tax Increases

In the year following presidential election, significant individual income tax increases are slated to take effect. In contrast to a decades-long trend equalizing tax rates between married and single taxpayers, both the hospital insurance tax and unearned income surtax carry significant marriage penalties.

An additional .9% hospital insurance tax will be imposed for all joint returns with earned taxable income in excess of \$250,000 for taxpayers married filing jointly, \$125,000 for married taxpayers filing separately and \$200,000 for all other taxpayers.

In addition, new Code Section 1411 imposes a surtax of 3.8% for "unearned" income of higher income taxpayers. The tax applies to individuals, estates and trusts. "Unearned" income includes dividends, annuities, rents, capital gains, rents and royalties not derived in the ordinary course of a trade or business. If a taxpayer is passive as to a stream of trade or business income, the income will be considered "unearned" or if the taxpayer's business is trading in financial instruments or commodities, such income will likewise be considered "unearned."

New Code Section 1411 imposes the 3.8% surtax on the lesser of (1) net investment income or (2) the excess of modified adjusted gross income over the threshold amount. As with the hospital insurance tax, the threshold amount is \$250,000 for taxpayers married filing jointly, \$125,000 for married taxpayers filing separately and \$200,000 for all other taxpayers.

Medical Expenses

Unreimbursed medical expenses currently deductible by all taxpayers if they are in excess of 7.5% of adjusted gross income (AGI), will be deductible by taxpayers under the age of 65 only to the extent such expenses are in excess of 10% of AGI. If the taxpayer or the taxpayer's spouse has reached age 65 before 2013, the 7.5% floor will apply through 2016 after which it will increase for all taxpayers to 10%.

Health Flexible Spending Arrangements

In order for a flexible spending arrangement to remain a qualified benefit under a cafeteria plan, the maximum amount available for reimbursement of medical expenses per year cannot exceed \$2,500.

Limits on Compensation For Insurance Executives

The PPACA has added a new Code Section 162(m)(6), which limits compensation for executives in the same "controlled group" as a health insurance company, capping tax-



deductible compensation to \$500,000. This includes deferred compensation. Unlike current IRC Section 162(m), which sets a one million dollar cap for the top five executives of publicly traded companies, this provision applies to all employees. It is not limited to companies whose stock is publicly traded. Section 162(m)(6) includes commissions and any performance-based compensation. This cap is generally applicable to years after 2012, however certain nuances could conceivably cause the rule to apply as early 2010.

For years prior to 2013, receipt of health insurance premiums by a company will cause it to fall within the definition of a health insurance company for purposes of Section 162(m)(6). For years after 2012, the definition is more restrictive. A company in those years would be a "covered health insurance provider" if at least 25% of the premiums it receives from providing health insurance coverage are from providing "minimum essential coverage" as defined by PPACA. For example, dental coverage would cause a company to be within the definition only for years prior to 2014.

Tax on Manufacturers of Medical Devices

An excise tax in the amount of 2.3% is imposed on the sales price of "medical devices." Exempt from the definition are hand-held surgical devices, eyeglasses, contact lenses, hearing aids, blood pressure monitors, pregnancy tests, bandages, and any other device deemed by the Secretary to be the type available for regular retail purposes. The excise tax is graduated. Companies with less than \$5 million in sales are exempt; those with sales up to \$25 million pay 50% of the tax. Over \$25 million, 100% of the tax will be taken into account.

2014

State Health Insurance Exchanges

Commencing in 2014, states are required to institute and administer health insurance exchanges for eligible individuals and small businesses. These programs are intended to supplant similar temporary programs for high-risk adults with pre-existing conditions coming into effect with the passage of the PPACA.

Until 2016, small businesses are defined as employers with less than 100 employees. After 2016, eligible small business employers can be limited to businesses with 50 or fewer employees. At their option, states may allow large businesses with over 1000 employees to participate in these exchanges. In addition, states may, but are not required to, extend eligibility for participation to any and all state residents and businesses.

The Exchanges are intended to serve as forums for consumers to obtain health insurance coverage that will comply with applicable federal standards.

Employer Health Insurance Coverage

Under newly enacted Code Section 4980H, large employers (defined as businesses employing more than fifty employees meeting certain criteria) that (a) do not offer appropriate health care coverage for all full-time employees; (b) offer minimum essential coverage that is not considered "affordable" per government standards (such as premiums in excess of 9.5% of household income); or (c) offer minimum essential coverage that consists of a plan which plan's share of total allowed cost of benefits is less than 60%; must pay a per-employee penalty if any full-time employee is certified to the employer as having purchased health insurance through a state exchange to which a tax credit or cost-sharing reduction is allowed or paid to the employee.

Large employers who fail to meet these requirements will be assessed a \$2,000 per employee penalty. For example, an employer with 70 deemed full-time employees would face an annual fine of \$140,000. A difficulty with compliance may be that along with potentially elevated health care coverage costs, the legislation leaves employers with the obligation of having to find out what the applicable state provides in order to meet the health care coverage requirement that hinges on state health insurance exchange options, notably, any employee at four times the poverty level (close to \$90,000 in earnings) is eligible to shop for health insurance at the state exchange.

A corollary program taking effect is the Small Business Health Options Program. This program is open to self-employed individuals and small business with up to 100 employees (although it can be limited by states to 50 through 2016 although companies that were once eligible can continue to be if they increase in size.) The Program allows such eligible parties to participate in pools to obtain lower insurance rates.

Individual Health Insurance Coverage

Under New Code Section 5000A, U.S. citizens and legal residents who do not fall within certain exemptions (such as for lower-income individuals) will be assessed a penalty if they do not maintain minimum government-mandated health care insurance. For 2014, the penalties for individuals failing to comply are set at \$95. They graduate to \$325 in 2015; \$695 in 2016, and thereafter are indexed for inflation.

General Health Insurance Reform Measures

Commencing in 2014, health insurance companies cannot:

- Refuse to renew coverage based on health conditions;
- Refuse coverage based on pre-existing conditions;
- Charge higher rates due to gender, health status, or other factors;
- Impose limits on coverage; or
- Drop coverage due to participation in clinical trials or deny coverage.



Individual Health Tax Credits

New Code Section 36B establishes refundable tax credits making them available through exchanges for individuals up to 400% of the poverty level, or more specifically incomes of up to approximately \$90,000. Individuals cannot be eligible for Medicaid or employer insurance.

Retiree Prescription Drug Costs

Companies may no longer deduct prescription drug subsidies. This especially impacts larger employers that are self-insured. It will also impact tax provision reporting on financial statements.

2018

Excise Tax on High-Cost ("Cadillac") Health Plans

A 40% excise tax will be imposed on health coverage providers on the amount of "excess benefit," which is the amount that the value of employer-sponsored health coverage exceeds a designated threshold amount set by the government. In general, the excise tax is imposed on the cost of coverage in excess of \$27,500 for families; \$10,200 for individuals. The dollar thresholds are indexed with inflation.

Insurance Copayments

Health insurance plans are required to provide preventive care (including checkups) without copayment.

Increased Corporate Estimated Payments for Large Corporations

Corporations with one billion or more in assets during the prior year's return due July, August or September of 2014 are required to increase their estimated payment from 157.7% of the payment otherwise due to 173.50% with the amount of the next required payment is appropriately reduced.

Allocated Excise Tax On Health Insurance Providers

An aggregate annual fee (\$8 billion in 2014) for all non-exempt health insurance providers will be allocated based on each provider's market share of net premiums. Exempt providers are companies with \$25 million or less in assets.

Section 125 Cafeteria Plans

Under new Code Section 125(f)(3)(B), direct payments, reimbursements, etc. from a cafeteria plan paid under plans meeting specific criteria of smaller businesses is extended to include plans obtained through exchanges.

2020

Worldwide Interest Allocation

Implementation of world-wide interest allocation for purposes of determining the foreign tax credit allocation is delayed until the year 2020.

Pending Bills Before Congress

The foregoing are just some of the more salient provisions enacted in March. The bills are complex and will take years to fully interpret and implement. In addition to this legislation, two other tax acts carrying significant changes are pending before Congress with passage in some form anticipated in the near future.

The first of these is the *American Jobs and Closing Tax Loopholes Act* which passed the House just before Memorial Day 2010. Two very significant tax provisions in the bill as originally proposed are: (1) extending payroll taxes to all S corporation service income including net profits passing to individual taxpayers on the K-1; and (2) earned income tax treatment of carried interests (income passing through to partners in a partnership).

A separate bill addressing estate taxes, currently in an uncertain state of technical repeal, is also working its way through Congress. Agreement between the House and Senate on estate tax rates and exemption amounts is still to be reached by the publication date of this update.

Given all of the current and ongoing changes, it is essential that businesses and individuals become acquainted with these rules as early as possible, so that appropriate planning and compliance measures be devised and implemented.

The tax planning team at Konowitz, Kahn & Company, P.C. is ready to assist you. Call 203-239-6888 to speak with our professionals.

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