# Affordable Care Act Tax Provisions

***Effect of Sequestration on Small Business Health Care Tax Credit***

Pursuant to the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, certain automatic cuts took place as of March 1, 2013. These required cuts include a reduction to the refundable portion of the Small Business Health Care Tax Credit for certain small tax-exempt employers under Internal Revenue Code section 45R. As a result, the refundable portion of your claim will be reduced by 8.7 percent. The sequestration reduction rate will be applied until the end of the fiscal year (Sept. 30, 2013) or intervening Congressional action, at which time the sequestration rate is subject to change.

***Update:***

The Health Care Law generally has no new impacts to the Form 1040 series for the 2012 returns that individuals may be currently filing. However, if you received a health insurance premium rebate during 2012, check irs.gov/aca under Medical Loss Ratio to see if you are one of the few people who needs to include it on your 2012 return. If you do not have a tax filing requirement, you do not need to file a 2012 federal tax return to establish future eligibility or qualify for future financial assistance to purchase health care coverage through an exchange. To find out if you have to file a federal tax return for other reasons, use the IRS Interactive Tax Assistant.

If you are seeking information about how to obtain health care coverage or financial assistance to purchase health care coverage for you and your family, visit the Health and Human Services website, HealthCare.gov.

***Información en Español:*** *Disposiciones del Acta del Cuidado de Salud de Bajo Precio*

The Affordable Care Act was enacted on March 23, 2010. It contains some tax provisions that are in effect and more that will be implemented during the next several years. The following is a list of provisions for which the IRS has issued proposed and/or final guidance; additional information will be added to this page as it becomes available.

## IRC §7216, Disclosure or Use of Information by Tax Return Preparers

Final Treasury Regulations on rules and consent requirements relating to the disclosure or use of tax return information by tax return preparers became effective Dec. 28, 2012. For additional information about how these apply to services and education related to the Affordable Care Act, please see our questions and answers.

## Medical Loss Ratio (MLR)

Beginning in 2011, insurance companies are required to spend a specified percentage of premium dollars on medical care and quality improvement activities, meeting a medical loss ratio (MLR) standard. Insurance companies that are not meeting the MLR standard will be required to provide rebates to their consumers beginning in 2012. For information on the federal tax consequences to an insurance company that pays a MLR rebate and an individual policyholder who receives a MLR rebate, as well as information on the federal tax consequences to employees if a MLR rebate stems from a group health insurance policy, see our frequently asked questions.

## Reporting Employer Provided Health Coverage in Form W-2

The Affordable Care Act requires employers to report the cost of coverage under an employer-sponsored group health plan on an employee's Form W-2, Wage and Tax Statement, in Box 12, using Code DD. Many employers are eligible for transition relief for tax-year 2012 and beyond, until the IRS issues final guidance for this reporting requirement.

The amount reported does not affect tax liability, as the value of the employer excludible contribution to health coverage continues to be excludible from an employee's income, and it is not taxable. This reporting is for informational purposes only, to show employees the value of their health care benefits.

More information about the reporting can be found on Form W-2 Reporting of Employer-Sponsored Health Coverage.

## Net Investment Income Tax

A new Net Investment Income Tax goes into effect starting in 2013. The 3.8 percent Net Investment Income Tax applies to individuals, estates and trusts that have certain investment income above certain threshold amounts. The IRS and the Treasury

Department have issued proposed regulations on the Net Investment Income Tax. Comments may be submitted electronically, by mail or hand delivered to the IRS. For additional information on the Net Investment Income Tax, see our questions and answers.

## Additional Medicare Tax

A new Additional Medicare Tax goes into effect starting in 2013. The 0.9 percent Additional Medicare Tax applies to an individual's wages, Railroad Retirement Tax Act compensation, and self-employment income that exceeds a threshold amount based on the individual's filing status. The threshold amounts are $250,000 for married taxpayers who file jointly, $125,000 for married taxpayers who file separately, and $200,000 for all other taxpayers. An employer is responsible for withholding the Additional Medicare Tax from wages or compensation it pays to an employee in excess of $200,000 in a calendar year. The IRS and the Treasury Department have issued proposed regulations on the Additional Medicare Tax. Comments may be submitted electronically, by mail or hand delivered to the IRS. For additional information on the Additional Medicare Tax, see our questions and answers.

## Minimum Value

On April 26, 2012, the Department of the Treasury and IRS issued Notice 2012-31, which provides information and requested public comment on an approach to determining whether an eligible employer-sponsored health plan provides minimum value. Starting in 2014, whether such a plan provides minimum value will be relevant to eligibility for the premium tax credit and application of the employer shared responsibility payment.

## Information Reporting on Health Insurance Coverage

On April 26, 2012, the Department of the Treasury and IRS issued Notices 2012-32 and 2012-33, which invited comments to help inform the development of guidance on annual information reporting related to health insurance coverage. The information reporting is to be provided by health insurance issuers, certain employers that sponsor self-insured plans, government agencies and certain other parties that provide health insurance coverage.

## Disclosure of Return Information

On April 27, 2012, the Department of the Treasury and the IRS issued proposed regulations with rules for disclosure of return information to be used to carry out eligibility determinations for advance payments of the premium tax credit, Medicaid and other health insurance affordability programs. The proposed regulations solicit public comments.

## Small Business Health Care Tax Credit

This new credit helps small businesses and small tax-exempt organizations afford the cost of covering their employees and is specifically targeted for those with low- and moderate-income workers. The credit is designed to encourage small employers to offer health insurance coverage for the first time or maintain coverage they already have. In general, the credit is available to small employers that pay at least half the cost of single coverage for their employees. Learn more by browsing our page on the Small Business Health Care Tax Credit for Small Employers and our news release.

## Health Flexible Spending Arrangements

Effective Jan. 1, 2011, the cost of an over-the-counter medicine or drug cannot be reimbursed from Flexible Spending Arrangements (FSAs) or health reimbursement arrangements unless a prescription is obtained. The change does not affect insulin, even if purchased without a prescription, or other health care expenses such as medical devices, eye glasses, contact lenses, co-pays and deductibles. This standard applies only to purchases made on or after Jan. 1, 2011. A similar rule went into effect on Jan. 1, 2011, for Health Savings Accounts (HSAs), and Archer Medical Savings Accounts (Archer MSAs). Employers and employees should take these changes into account as they make health benefit decisions. For more information, see news release IR-2010-95, Notice 2010-59, Revenue Ruling 2010-23 and our questions and answers. FSA and HRA participants can continue using debit cards to buy prescribed over-the-counter medicines, if requirements are met. For more information, see news release IR-2010-128 and Notice 2011-5.

In addition, starting in 2013, there are new rules about the amount that can be contributed to an FSA. Notice 2012-40 provides information about these rules and flexibility for employers applying the new rules and requests comments about other possible administrative changes to the rules on FSA contributions. The notice provides instructions on how to submit comments.

## Medical Device Excise Tax

On Dec. 5, 2012, the IRS and the Treasury Department issued final regulations on the new 2.3-percent medical device excise tax (IRC §4191) that manufacturers and importers will pay on their sales of certain medical devices starting in 2013. On Dec. 5, 2012, the IRS and the Treasury Department also issued Notice 2012-77, which provides interim guidance on certain issues related to the medical device excise tax. Additional information is available on the Medical Device Excise Tax page and Medical Device Excise Tax FAQs on IRS.gov.

## Health Insurance Premium Tax Credit

Starting in 2014, individuals and families can take a new premium tax credit to help them afford health insurance coverage purchased through an Affordable Insurance Exchange. Exchanges will operate in every state and the District of Columbia. The premium tax credit is refundable so taxpayers who have little or no income tax liability can still benefit. The credit also can be paid in advance to a taxpayer's insurance company to help cover the cost of premiums. On May 18, 2012, the Treasury Department and the IRS issued final regulations which provide guidance for individuals who enroll in qualified health plans through Exchanges and claim the premium tax credit, and for Exchanges that make qualified health plans available to individuals and employers. Additionally, on Jan. 30, 2013, the Treasury Department and IRS released final regulations on the premium tax credit affordability test for related individuals.

The portion of the law that will allow eligible individuals to use tax credits to purchase health coverage through an Exchange is not effective until 2014.

Exchanges will offer individuals a choice of health plans that meet certain benefit and cost standards. The Department of Health and Human Services (HHS) administers the requirements for the Exchanges and the health plans they offer. Additional information about the Exchange can be found at www.healthcare.gov and in IRS REG-131491-10 issued on Aug. 12, 2011.

## Individual Shared Responsibility Provision

Starting in 2014, the Individual Shared Responsibility provision calls for each individual to either have minimum essential health coverage (minimum essential coverage) for each month, qualify for an exemption, or make a payment when filing his or her federal income tax return. On Jan. 30, 2013, the Treasury Department and the IRS issued proposed regulations on the Individual Shared Responsibility provision. Comments may be submitted electronically, by mail or hand delivered to the IRS. For additional information on the Individual Shared Responsibility provision and the proposed regulations, see our questions and answers. Additional information on exemptions and minimum essential coverage is available in proposed regulations issued by the U.S. Department of Health & Human Services.

## Health Coverage for Older Children

Health coverage for an employee's children under 27 years of age is now generally tax-free to the employee. This expanded health care tax benefit applies to various work place and retiree health plans. These changes immediately allow employers with cafeteria plans — plans that allow employees to choose from a menu of tax-free benefit options and cash or taxable benefits — to permit employees to begin making pre-tax contributions to pay for this expanded benefit. This also applies to self-employed individuals who qualify for the self-employed health insurance deduction on their federal income tax return. Learn more by reading our news release or this notice.

## Excise Tax on Indoor Tanning Services

A 10-percent excise tax on indoor UV tanning services went into effect on July 1, 2010. Payments are made along with Form 720, Quarterly Federal Excise Tax Return. The tax doesn't apply to phototherapy services performed by a licensed medical professional on his or her premises. There's also an exception for certain physical fitness facilities that offer tanning as an incidental service to members without a separately identifiable fee. For more information on the tax and how it is administered, see the Indoor Tanning Services Tax Center.

## Adoption Credit

For tax years 2010 and 2011, the Affordable Care Act raised the maximum adoption credit per child and the credit was refundable. For more information related to the adoption credit for tax years 2010 and 2011, see our news release, tax tip, questions and answers, flyer, Notice 2010-66, Revenue Procedure 2010-31, Revenue Procedure 2010-35 and Revenue Procedure 2011-52.

For tax year 2012, the credit has reverted to being nonrefundable, with a maximum amount (dollar limitation) of $12,650 per child. If you adopted a child in 2012, see Tax Topic 607 for more information.

## Transitional Reinsurance Program

The ACA requires all health insurance issuers and self-insured group health plans to make contributions under the transitional Reinsurance Program to support payments to individual market issuers that cover high-cost individuals. For information on the tax treatment of contributions made under the Reinsurance Program, see our frequently asked questions.

## Medicare Shared Savings Program

The Affordable Care Act establishes a Medicare shared savings program (MSSP) which encourages Accountable Care Organizations (ACOs) to facilitate cooperation among providers to improve the quality of care provided to Medicare beneficiaries and reduce unnecessary costs. More information can be found in Notice 2011-20, which solicited written comments regarding what additional guidance, if any, is needed for tax-exempt organizations participating in the MSSP through an ACO. This guidance also addresses the participation of tax-exempt organizations in non-MSSP activities through ACOs. Additional information on the MSSP is available on the Department of Health and Human Services website.

The Centers for Medicare and Medicaid Services has released final regulations describing the rules for the Shared Savings Program and accountable care organizations. Fact Sheet 2011-11 confirms that Notice 2011-20 continues to reflect IRS expectations regarding the Shared Savings Program and ACOs, and provides additional information for charitable organizations that may wish to participate.

## Qualified Therapeutic Discovery Project Program

This program was designed to provide tax credits and grants to small firms that show significant potential to produce new and cost-saving therapies, support U.S. jobs and increase U.S. competitiveness. Applicants were required to have their research projects certified as eligible for the credit or grant. IRS guidance describes the application process.

Submission of certification applications began June 21, 2010, and applications had to be postmarked no later than July 21, 2010, to be considered for the program. Applications that were postmarked by July 21, 2010, were reviewed by both the Department of Health and Human Services (HHS) and the IRS. All applicants were notified by letter dated October 29, 2010, advising whether or not the application for certification was approved. For those applications that were approved, the letter also provided the amount of the grant to be awarded or the tax credit the applicant was eligible to take.

The IRS published the names of the applicants whose projects were approved as required by law. Listings of results are available by state.

Learn more by reading the IRS news release, the news release issued by the U.S. Department of the Treasury, the page on the HHS website and our questions and answers.

## Group Health Plan Requirements

The Affordable Care Act establishes a number of new requirements for group health plans. Interim guidance on changes to the nondiscrimination requirements for group health plans can be found in Notice 2011-1, which provides that employers will not be subject to penalties until after additional guidance is issued. Additionally, TD 9575 and REG-140038-10, issued by DOL, HHS and IRS, provide information on the summary of benefits and coverage and the uniform glossary. Notice 2012-59 provides guidance to group health plans on the waiting periods they may apply before coverage starts. On March 19, 2013, HHS, DOL and IRS issued proposed regulations on the ninety-day waiting period limitation. The proposed regulations solicit public comments to be submitted to DOL.

More information on group health plan requirements is available on the websites of the Departments of Health and Human Services and Labor and in additional guidance.

## Annual Fee on Health Insurance Providers

The Affordable Care Act created an annual fee on certain health insurance providers beginning in 2014. On March 1, 2013, the Treasury Department and IRS issued proposed regulations on this provision. Comments may be submitted electronically, by mail or hand delivered to the IRS.

## Tax-Exempt 501(c)(29) Qualified Nonprofit Health Insurance Issuers

The Affordable Care Act requires the Department of Health and Human Services (HHS) to establish the Consumer Operated and Oriented Plan program (CO-OP program). It also provides for tax exemption for recipients of CO-OP program grants and loans that meet additional requirements under section 501(c)(29). IRS Notice 2011-23 outlined the requirements for tax exemption under section 501(c)(29) and solicited written comments regarding these requirements as well as the application process. Revenue Procedure 2012-11, issued in conjunction with temporary regulations and a notice of proposed rulemaking, sets out the procedures for issuing determination letters and rulings on the exempt status of organizations applying for recognition of exemption under 501(c)(29).

An overview of the CO-OP program is available on the Department of Health and Human Services website.

## Medicare Part D Coverage Gap “donut hole” Rebate

The Affordable Care Act provides a one-time $250 rebate in 2010 to assist Medicare Part D recipients who have reached their Medicare drug plan’s coverage gap. This payment is not taxable. This payment is not made by the IRS. More information can be found at www.medicare.gov.

## Additional Requirements for Tax-Exempt Hospitals

The Affordable Care Act added new requirements for charitable hospitals. (See Notice 2010-39 and Notice 2011-52.) On June 22, 2012, the IRS issued proposed regulations which provide information on the requirements for charitable hospitals relating to financial assistance and emergency medical care policies, charges for emergency or medically necessary care provided to individuals eligible for financial assistance, and billing and collections. On April 3, 2013, the IRS issued proposed regulations on the requirement that charitable hospitals conduct community health needs assessments (CHNAs) and adopt implementation strategies at least once every three years (formal publication on April 5, 2013). The proposed regulations also discuss the related excise tax and reporting requirements for charitable hospitals and the consequences for failure to satisfy the requirements. Comments and requests for a public hearing must be received by July 5, 2013.

## Annual Fee on Branded Prescription Pharmaceutical Manufacturers and Importers

The Affordable Care Act created an annual fee payable beginning in 2011 by certain manufacturers and importers of brand name pharmaceuticals. On Aug. 15, 2011, the IRS issued temporary regulations and a notice of proposed rulemaking on the branded prescription drug fee. The temporary regulations describe the rules related to the fee, including how it is computed and how it is paid.

On Nov. 4, 2011, the IRS issued Notice 2011-92 which provides additional guidance on the branded prescription drug fee for the 2012 fee year. On Nov. 29, 2012, the IRS issued Notice 2012-74 providing similar guidance for the 2013 fee year.

## Modification of Section 833 Treatment of Certain Health Organizations

The Affordable Care Act amended section 833 of the Code, which provides special rules for the taxation of Blue Cross and Blue Shield organizations and certain other organizations that provide health insurance. IRS Notice 2010-79 provides transitional relief and interim guidance on the computation of an organization's taxpayer's Medical Loss Ratio for purposes of section 833, the consequences of nonapplication and changes in accounting method. Notice 2011-04 provides additional information and the procedures for qualifying organizations to obtain automatic consent to change its method of accounting for unearned premiums. Notice 2011-51 extends the transitional relief and interim guidance provided in Notice 2010-79 for another year to any taxable year beginning in 2010 and the first taxable year beginning after Dec. 31, 2010. Notice 2012-37 extends the transitional relief and interim guidance provided in Notice 2010-79 for another year to any taxable year beginning in 2012 and the first taxable year beginning after Dec. 31, 2012.

## Limitation on Deduction for Compensation Paid by Certain Health Insurance Providers (amended section 162(m))

The Affordable Care Act amended section 162(m) of the Code to limit the compensation deduction available to certain health insurance providers. The amendment goes into effect for taxable years beginning after Dec. 31, 2012, but may affect deferred compensation attributable to services performed in a taxable year beginning after Dec. 31, 2009. On April 1, 2013, the Treasury Department and IRS issued proposed regulations on this provision. Comments may be submitted electronically, by mail, or hand delivered to the IRS.

## Employer Shared Responsibility Payment

Starting in 2014, certain employers must offer health coverage to their full-time employees or a shared responsibility payment may apply. On Dec. 28, 2012, the Treasury Department and the IRS issued proposed regulations on the Employer Shared Responsibility provisions. Comments may be submitted electronically, by mail or hand delivered to the IRS. For additional information on the Employer Shared Responsibility provisions and the proposed regulations, see our questions and answers. Other information, much of which has been incorporated into the proposed regulations, may be found in news releases IR-2011-92 and IR-2011-50 and Notices 2011-73, 2011-36, 2012-17 and 2012-58. Additionally, Notice 2012-59 provides related guidance for group health plans on the waiting periods they may apply before starting coverage.

## Patient-Centered Outcomes Research Institute

The Affordable Care Act establishes the Patient-Centered Outcomes Research Institute. Funded by the Patient-Centered Outcomes Research Trust Fund, the institute will assist patients, clinicians, purchasers and policy-makers in making informed health decisions by advancing clinical effectiveness research. The trust fund will be funded in part by fees paid by issuers of certain health insurance policies and sponsors of certain self-insured health plans.

The IRS and the Treasury Department have issued final regulations on this fee.

## Retiree Drug Subsidies

Under § 139A of the Internal Revenue Code, certain special subsidy payments for retiree drug coverage made under the Social Security Act are not included in the gross income of plan sponsors. Plan sponsors receive these retiree drug subsidy payments based on the allowable retiree costs for certain qualified retiree prescription drug plans. For taxable years beginning on or after Jan. 1, 2013, new statutory rules affect the ability of plan sponsors to deduct costs that are reimbursed through these subsidies. See our questions and answers for more information.

## For More Information

For tips, fact sheets, questions and answers, videos and more, see our Affordable Care Act of 2010: News Releases, Multimedia and Legal Guidance page.

*Page Last Reviewed or Updated: 2013-04-03*

http://www.irs.gov/uac/Affordable-Care-Act-Tax-Provisions