



2010 HEALTH CARE LEGISLATION BUSINESS AND TAX CHANGES
TOP TEN BUSINESS AND TAX QUESTIONS ABOUT THE 2010 HEALTH CARE LEGISLATION
by David Kozak and Philip Wolman

1. *Do I have to provide health insurance for my employees?* No, health insurance is not mandated under the law. But penalties may be imposed for the failure to provide health insurance. Generally, the more employees you have, the greater the extent of the penalties. And, to encourage smaller employers, a tax credit is available to provide health insurance.

2. *Can I split my medium or large business into multiple smaller businesses to take advantage of the small business tax credits?* No, all businesses with common ownership are treated as a single business for this purpose.

3. *I am a tax-exempt entity without any need for a tax credit; what is the government doing for me?* For tax-exempt businesses, this credit may be applied against payroll taxes.

4. *Can I cancel my existing insurance and not provide any health insurance?* Not if you have 200 or more employees.

5. *Do I have to cover newly hired employees?* You must automatically enroll newly hired employees in your existing plan if you have 200 or more employees.

6. *Is it possible to provide "too much" health insurance?* Yes, generally, insurers who offer employers expensive health insurance plans with costs or benefits greater than government prescribed limits will be subject to an excise tax.

7. *Will I have more administrative costs?* Most likely. The legislation requires employers to provide information concerning health care choices and options to employees. Small employers who do not provide health care insurance are to provide "vouchers" to employees. Also, although unrelated to health care coverage, the legislation requires payors of more than \$600 to corporations or limited liability companies to begin issuing Form 1099's to recipients.

8. *If an employer does not provide health care coverage for its employees or if an individual is self-employed must the employee/individual buy health insurance?* No, no one must purchase health care insurance. But, not obtaining coverage could result in penalties imposed on the individual.

9. *Must employers subsidize the cost of health insurance for their employees?* Small employers are required to subsidize employees' purchase of health insurance. In addition, tax credits are available to low-income employed, self-employed, and unemployed individuals who purchase health insurance.

10. *If I have high income will I have to pay more?* Higher income individuals will have to pay additional Medicare taxes.

The income and other tax ramifications of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010 (the "Act") affect businesses as well as individuals. The underlying premise is that businesses provide health care coverage for employees, and individuals obtain health care coverage for themselves and their dependents. The failure of either to obtain health care coverage results in the imposition of excise taxes or penalties.

SMALL EMPLOYERS Small employers that provide health care coverage are eligible for a federal income tax general business credit for tax years beginning in 2010. A small employer is one that has 25 or fewer full-time employees for the tax year. The average annual wage per employee must be less than \$50,000. The employer must pay a uniform percentage of premiums for all covered employees, which must be at least 50 percent of the premium. Only the premium paid by the employer is eligible for the credit. The maximum credit, which will start at 35 percent of the premium payments applicable to the credit, is available only to employers with 10 or fewer full-time employees whose average annual wage does not exceed \$25,000 per employee. The credit is available on a reducing scale basis to employers with 11 to 25 full-time employees. Controlled groups, affiliated groups, and/or commonly owned groups are treated as a single employer for purposes of this tax credit.

In 2014, the credit will increase to 50 percent of the premiums paid by the employer if the small business employer purchases coverage through or from a state exchange offering health care coverage options to small businesses and individuals. Each state is required to establish an exchange so small businesses and individuals may "pool" purchases within the state exchange to obtain lower rates usually charged to larger group purchasers. Again, the employer must pay a uniform percentage of premiums for all covered employees, which is not less than 50 percent of the premium. The 50 percent credit for acquiring coverage through a state exchange may only be claimed for a maximum of two years.

EMPLOYERS WITH 26-49 EMPLOYEES Employers with between 26 and 49 full-time employees, plus small employers with average annual wage per employee in excess of \$50,000, are not eligible for the small employer credit (see above). Nor will such employers be required to offer minimum essential health care coverage as large employers (see below).

EMPLOYERS WITH 50-200 EMPLOYEES Employers with 50 or more full-time employees are required to offer minimum essential health care coverage to all full-time employees. Employers who do not offer minimum essential coverage will be subject to a per-employee penalty. However, such penalty will not be applied to the first 30 full-time employees. The penalty will be



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applicable on a month-by-month basis for any month in which less than the minimum essential coverage is offered. Employees of these employers who do not offer minimum essential coverage may be eligible for tax credits on the premiums, depending upon income and family size, paid to obtain individual coverage. Employers offering minimum essential coverage will be required to file information returns disclosing the employee, the amount of coverage, and the amount of premium payments.

EMPLOYERS WITH MORE THAN 200 EMPLOYEES Employers with more than 200 full-time employees that offer minimum essential health care coverage must continue the enrollment of current employees in the coverage and must automatically enroll new full-time employees. Automatic enrollment of new full-time employees is required upon completion of any authorized waiting period. The employer must provide adequate notice of the automatic enrollment and the opportunity to opt out of the coverage to applicable employees.

FREE CHOICE VOUCHERS Employers are required to inform employees of the existence of a state exchange and, if the employer pays less than 60 percent of the costs of employer-provided coverage, that the employee may be eligible for a tax credit based upon health care premiums paid by the employee if the employee acquires health care coverage through or from the state exchange. In addition, beginning in 2014, employers paying any portion of the coverage provided by the employer are to offer a "free-choice voucher" to lower income employees. The employee can apply the "free-choice voucher" to coverage purchased from a state exchange. The employer will pay the amount of the "free-choice voucher" to the state exchange on behalf of the employee.

CAFETERIA PLANS AND FLEXIBLE SPENDING ACCOUNTS The rules surrounding "cafeteria plans" that allow employers to offer certain "mix and match" benefits, tax-free, to employees, will be relaxed. This should encourage more use of cafeteria plans offering tax-free benefits to employees. However, the annual contribution limits into flexible spending accounts will be reduced to \$2,500 in 2013. In addition, allowable over-the-counter purchases (other than insulin) are eliminated as reimbursable drugs beginning in 2011. These changes are intended to encourage greater use of uniform health care coverage plans.

"CADILLAC" PLANS Beginning in 2018, insurers that provide coverage to employers with per-employee premium costs in excess of prescribed limits will be subject to an excise tax. This is the so-called tax on "Cadillac" plans imposed upon insurers who provide employers with expensive full coverage plans.

INDIVIDUAL PENALTIES FOR FAILURE TO OBTAIN COVERAGE Beginning in 2014, penalties, referred to as "shared responsibility

payments," are imposed on individuals who do not have essential health insurance for themselves or their dependents. Individuals with religious or moral concerns against the maintenance of health care coverage will be exempt from the requirement to purchase individual coverage if not available from an employer. The penalty assessed against individuals for failing to acquire minimum essential coverage is based upon the individual's modified adjusted gross income. The penalty rates are: the greater of \$95 or 1 percent of income for 2014; the greater of \$325 or 2 percent of income for 2015, and the greater of \$695 or 2.5 percent of income for 2016. Thereafter, the amount will be adjusted for inflation. Family assessments are limited to three times these amounts. As the penalty is assessed only against tax filers, individuals with income below the threshold amount required to file an individual tax return will be exempt from the penalty.

ASSISTANCE FOR LOW-INCOME INDIVIDUALS Premium assistance tax credits and reduced cost sharing will be available to qualified individuals. Qualification is based upon modified adjusted gross income. Such assistance will be available to employees whose employers offer coverage only if the cost to the employee exceeds specified percentages of income. Tax credits are refundable and may be obtained in advance to be used by the taxpayer to pay a portion of premium costs incurred by the taxpayer if the taxpayer individually acquires coverage. Premium tax credits will range from 2% to 9.5% of the premium for households with income limits ranging from 133% to 400% of the federal poverty level. Likewise, premium subsidies, to reduce the premium amount paid by the individual, will be available to individuals based upon modified adjusted gross income, as compared to federal poverty level standards.

NEW TAXES IMPOSED ON HIGH-INCOME TAXPAYERS Beginning in 2013, joint return filers with income greater than \$250,000 (\$125,000 for married filing separately), or \$200,000 for all other filers pay an additional 0.9 percent Medicare Hospital Insurance tax on wages in excess of these amounts. For employees, such additional tax will be withheld from the employee's wages. Self-employed individuals will be responsible for paying such taxes via estimated tax payment installments.

Also, beginning in 2013, a new 3.8 percent Medicare tax will be imposed upon net investment income. This new 3.8 percent investment income Medicare tax will be imposed upon Forms 1040 and 1041 filers as follows: single individuals with modified adjusted gross income in excess of \$200,000 (\$125,000 for married filing separately) and on all other taxpayers, including estates and trusts, with modified adjusted gross income in excess of \$250,000. Net investment income is interest, dividends, annuities, royalties, rents, and capital gains, reduced by the deductions properly allocable to such income.



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Finally, the threshold amount for which individual taxpayers may deduct itemized medical expenses will increase from 7.5 percent to 10 percent of modified adjusted gross income. This will occur in 2013 as well.

NEW BUSINESS TAXES AND OBLIGATIONS Medical device manufacturers, pharmaceutical manufacturers, health insurance providers, and other businesses related to health care and health coverage will be assessed annual nondeductible fees. Further, excise taxes will be imposed upon the sales of certain medical devices. Indoor tanning services will be subject to a 10 percent tax. Tax credits are available for investments in new health therapies. Also, compensation payments in excess of \$500,000 to health insurance executives per year will not be deductible.

The Form 1099 reporting requirements currently applicable to individuals receiving more than \$600 per year from a source are expanded to include payments to corporations, limited liability companies, and partnerships. Corporations with more than \$1 billion in assets are required to make larger estimated tax payments. And, the Internal Revenue Service will begin sharing information with the Department of Health and Human Services respecting Medicare and other health related items.



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