

Patient Protection and 2010 Reconciliation Acts: Law, Explanation and Analysis, ¶27,015 , CLIENT LETTER #3: Patient Protection and Affordable Care Act: Businesses

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Re: Patient Protection and Affordable Care Act: Businesses

Dear Client:

The Patient Protection and Affordable Care (PPAC) Act, as amended by the Health Care and Education Reconciliation Act of 2010 (Reconciliation Act), was enacted to provide quality, affordable health care for all Americans. Although the primary thrust of the PPAC Act is health insurance reform, the tax law provides a key role in achieving that goal. Employers have many responsibilities to help achieve health insurance reform. These range from providing greater health insurance coverage and helping to pay for that coverage, to providing the information necessary to enforce the requirements of the new legislation. Health insurance providers also have many new requirements imposed by the legislation, including taxes, fees, reporting obligations and limits on executive compensation. The following are highlights of the tax provisions of the PPAC Act relating to businesses.

Shared responsibility assessable payment imposed on certain large employers. Beginning after December 31, 2013, an assessable payment will be imposed on an applicable large employer that

1. fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan for any month, and
2. has at least one full-time employee who has been certified as having enrolled for that month in a state exchange offered plan with respect to which an applicable premium tax credit or cost-sharing reduction is allowed or paid for the employee.

The assessable payment is equal to \$166.67 (adjusted for inflation) times the number of full-time employees for the month.

Additional hospital insurance tax on high-income taxpayers. In addition to the 1.45 percent employee portion of the hospital service insurance tax (HT) imposed on wages, 0.9 percent (HT) will be imposed on every taxpayer who receives wages in excess of \$200,000 (\$250,000 in the case of a joint return, \$125,000 in the case of a married taxpayer filing separately). This provision applies to wages paid after 2012.

Credit for employee health expenses of eligible small employers. For tax years beginning after 2009, an eligible small employer may claim a tax credit if it makes nonelective contributions that pay for at least one-half of the cost of health insurance premiums for the coverage of participating employees.

Free choice vouchers. An employer who offers minimum essential coverage to its employees consisting of coverage through an eligible employer-sponsored plan and pays any portion of the plan's costs shall provide free-choice vouchers to its qualified employees. Qualified employees are those who do not participate in a health plan offered by the employer and meet other requirements. The free-choice voucher amount is generally equal to the monthly portion of the cost of the eligible employer-sponsored plan that would have been paid by the employer if the employee were covered under the plan.

Exchange-participating qualified health plans offered through cafeteria plans. A cafeteria plan may not provide a health plan that is offered through the American Health Benefit Exchange unless the employer is a qualified employer for purposes of the Exchange.

Limitation of FSAs offered as part of cafeteria plans. For tax years beginning after December 31, 2012, a health flexible spending arrangement (FSA) will not be a qualified benefit under a cafeteria plan unless the plan provides for a \$2,500 maximum salary reduction contribution to the FSA. Any excess contributions are subject to tax at the time of the distribution.

Distributions and reimbursements limited to prescribed medicines and insulin. The definition of qualified medical expense for purposes of Health Savings Accounts, Archer Medical Savings Accounts, Health Flexible Spending Arrangements, Health Reimbursement Arrangements, and other accident

and health plans does not include any amounts paid for over-the counter medications. This applies to distributions from such accounts after December 31, 2010.

Small employers can provide simple cafeteria plans. In tax years beginning after December 31, 2010, certain small employers' cafeteria plans may qualify as "simple" cafeteria plans under which the applicable nondiscrimination requirements of a classic cafeteria plan are treated as satisfied.

Deduction repealed for expenses allocable to Medicare Part D subsidy. The provision that allows an employer to disregard the value of any qualified retiree prescription drug plan subsidy in calculating the employer's business deduction for retiree prescription drug costs is repealed for tax years beginning after December 31, 2012.

New limitations on employee remuneration. An individual's remuneration for services in excess of \$500,000 is not deductible by certain covered health insurance providers for tax years beginning after December 31, 2009.

Excise tax on high cost employer-sponsored health coverage. A 40 percent excise tax will be imposed on insurers starting in 2018 to the extent that the aggregate value of employer-sponsored coverage for an employee exceeds a threshold amount. The tax is not deductible for federal income tax purposes.

Annual fee imposed on drug manufacturers and importers and U.S. health insurance providers; excise tax on sales of medical devices. New annual fees apply to manufacturers and importers for U.S. sales of branded prescription drugs beginning in 2011. New annual fees are also imposed on the net premium written by certain health insurance providers beginning in 2014. A new excise tax is imposed on sales of certain medical devices after December 31, 2012.

Credit for investment in qualifying therapeutic discovery project. A tax credit is allowed for 50 percent of an eligible taxpayer's qualified investment for the tax year with respect to any qualifying therapeutic discovery project. This credit is part of the investment credit. An eligible taxpayer is one that has no more than 250 employees.

Excise tax on patrons of indoor tanning salons. A 10 percent excise tax is added to the cost of indoor tanning services performed on or after July 1, 2010.

New disclosure requirements for employers. For tax years beginning after December 31, 2010, employers are required to disclose the total cost of certain health insurance coverage provided to the employee on the employee's Form W-2 regardless of whether the employee or the employer pays for the coverage.

Information reporting required for health insurance coverage. Every employer who provides minimum essential coverage to an individual during a calendar year is required to file a return reporting such coverage.

Reporting requirements for large employers. Large employers that are subject to the new rules for shared responsibility regarding healthcare coverage, and certain employers that offer minimum essential coverage to their employees through an eligible plan are required to file a return reporting such coverage.

Information reporting of payments to corporations. The general information reporting requirement exception for payments to corporations is eliminated. Therefore, if the total of all payments made by a payer in the course of its trade or business to a corporation equals \$600 or more in any tax year, the payer must file the appropriate information return.

This is just a brief summary of highlights of the healthcare legislation. The details of the new provisions including definitions, calculations, procedures and exceptions are too numerous to include in this letter. It is expected that the IRS will issue guidance in the near future. In the meantime, please call our office if you wish to discuss how this may affect you. We will be happy to answer any questions you might have.

Sincerely yours,