

Health Care Legislation News

The House of Representatives passed two bills that reform the health care system and have an impact on most employers and taxpayers. First, the House passed the Patient Protection and Affordable Care Act ("the Act"), which was signed into law by President Obama on March 23, 2010. Second, Congress has approved the Health Care and Education Reconciliation Act of 2010 ("the Reconciliation Act"), which amends the aforementioned health care act. We expect that the President will sign the Reconciliation Act in the near future.

As you are aware, this legislation is intended to result in an extensive overhaul of the health care system. This alert provides a brief overview of its effects on you from both a business and tax perspective. (Additional guidance will be issued as the legislation is further analyzed.)

What does health care reform mean for your business?

Beginning in 2014:

- > If you have 50 or more full-time employees, the Act does not require you to offer health insurance, but without it, you will incur large fees. Here are the rules and some caveats:
 - If you have 50 or more employees, do not offer health insurance, and at least one of your full-time employees gets a subsidy from the federal government to purchase health insurance on his own, under the Reconciliation Act you will be charged a fee of \$2,000 for every full-time employee. You can subtract your first 30 employees from this assessment; so if you have 50 employees, you would be charged based on 20 employees.
 - Even if you offer coverage, you may incur additional costs for workers who opt out of your coverage and choose to buy their own. If you have an employee whose share of the health insurance premium is more than 8 percent of his/her income (but less than 9.8 percent), he has the option of buying insurance on his own through newly created insurance exchanges. Even though he opted out of your plan, you would have to subsidize the plan he purchases from the exchange with an amount equal to what your company would have paid for him if he had remained in your plan.
- > If your company has more than 200 employees and provides health insurance, you must automatically enroll them in your plan.
- > If you have fewer than 50 full-time employees, your business is exempt from penalties if you do not provide health insurance.

What taxes are increasing to pay for this?

- > The Medicare portion of the FICA tax is being increased from 1.45 percent to 2.35 percent for an individual earning more than \$200,000 a year and married couples earning more than \$250,000 a year.
 - *Planning Consideration:* Many companies have deferred compensation plans. The regulations for these plans offer some latitude as to when the value of an employee's deferred compensation is recognized for FICA purposes. If you have such a plan, you should analyze whether it makes sense to accelerate the recognition of income before the effective date of this increase.
- > Under the Reconciliation Act, a new 3.8 percent tax applies to unearned income, again for individuals with more than \$200,000 in modified AGI and married filing joint taxpayers with more than \$250,000 in modified AGI. Unearned income includes items such as interest, dividends, royalties, rents, and capital gains. However, it also includes business income arising from passive activities.
 - *Planning Consideration:* Depending on the structure of your closely held business investment, you may be able to materially participate in the activity without incurring self-employment taxes on the related business income. This may involve regrouping your activities if they are conducted through multiple partnership or LLC interests, or operating through an S corporation.
- > The Act increases the floor for deductible medical expenses from 7.5 percent of AGI to 10 percent of AGI. Individuals age 65 and older are exempt from the increase in limit until 2017.
- > Manufacturers of medical devices will incur a 2.9 percent excise tax on the sale of their products.

The preceding changes will be effective in 2013.

(continued)

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Tax on "Cadillac" plans. Health insurance plans that cost more than \$10,200 annually for individual coverage or \$27,500 for family coverage will be subject to a 40 percent tax based on the cost of the plan. This provision becomes effective in 2018.

Are there any tax benefits available for companies providing coverage?

Small Business Tax Credits will be available. Generally a small employer is one with fewer than 25 employees and average annual wages of less than \$50,000 per employee. In years 2010 through 2013, such employers may qualify for a tax credit of up to 35 percent of their contribution toward an employee's health insurance premium. In 2014 and beyond, eligible small employers that purchase coverage through a state exchange may qualify for a credit for two years for up to 50 percent of the premium/contribution. Any portion of the premium funded by an employee's salary reduction contribution is not included in the amount eligible for the credit.

If you have questions or require further information, please contact your Baker Tilly tax advisor. We will keep you up to date with health care reform as these changes are implemented and guidance is issued.

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