

Tax Changes Enacted By The Patient Protection And Affordable Care Act Of 2010 And The American Taxpayer Relief Act Of 2012

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ABSTRACT

Close to three years ago, Congress enacted legislation that overhauls the U.S. health care system and at the same times affects nearly all taxpayers, many employers, and many elements of the health care industry. The sweeping new health reform law embodied in this legislation pays for its cost through tax increases in a number of ways. The American Taxpayer Relief Act of 2012 similarly affects many taxpayers with numerous changes in the tax law which either increase or decrease a taxpayer's burden depending on income levels.

Keywords: ObamaCare; Patient Protection and Affordable Health Care Act; Health Care and Education Reconciliation Act; American Taxpayer Relief Act; Hospital Insurance Tax

INTRODUCTION

The Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act of 2010 (HCERA), sometimes referred to as “ObamaCare,” contain numerous changes to the tax law, many of which are both complex and novel. Some already have gone into effect, some go into effect this year, and still others will be in place in 2014 and 2018. The sweeping new health reform law embodied in this legislation pays for its cost through these tax increases in a number of ways.

BACKGROUND

On Jan. 1, 2013, Congress passed the American Taxpayer Relief Act of 2012 (2012 Act), which the President quickly signed into law on Jan. 2, 2013. The 2012 Act will prevent many of the tax hikes that were scheduled to go into effect in 2013 and will retain many favorable tax provisions that were scheduled to expire. It will also increase income taxes for certain high-income individuals and slightly increase transfer tax rates from 2012 levels for others. Further, it extends many significant expired and expiring tax breaks for businesses and individuals and adds a number of new provisions as well.

Certain taxpayer-friendly provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) were set to sunset and no longer apply to tax years beginning after 2010. These favorable provisions included the income tax rate structure for individuals; marriage penalty relief; and liberal education-related deductions. However, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the 2010 Act) extended the EGTRRA provisions for two additional years, through 2012. The 2012 Act eliminated the provision in EGTRRA that calls for its provisions to sunset entirely. Accordingly, the provisions in EGTRRA, except as modified by other provisions in the new law, are made permanent and no longer automatically sunset in future years.

TAX CHANGES UNDER THE 2012 TAXPAYER RELIEF ACT

Changes Taking Effect in 2013

Reduced Individual Tax Rates Except for Higher-Income Taxpayers

Under EGTRRA, the income tax rates for individuals were 10%, 15%, 25%, 28%, 33% and 35% for tax years beginning in 2010. In addition, in a provision referred to as the marriage penalty relief, the amount of income taxed in the 15% tax bracket for joint filers and qualified surviving spouses was twice that of the comparable amount for individual filers. The 2010 Tax Relief Act extended these and the marriage penalty relief through 2012. Under pre-Act law, for tax years beginning after Dec. 31, 2012, the rates were scheduled to rise to 15%, 28%, 31%, 36% and 39.6%, and the 15% tax bracket for joint filers and qualified surviving spouses was scheduled to drop to 167% of the 15% tax bracket for individual filers.

For tax years beginning after 2012, the 2012 Taxpayer Relief Act provides that the income tax rates for most individuals will stay at 10%, 15%, 25%, 28%, 33% and 35% (instead of moving to 15%, 28%, 31%, 36% and 39.6% as would have occurred under the EGTRRA sunset). However, a 39.6% rate will apply to taxable income above \$450,000 for joint filers and surviving spouses; \$425,000 for heads of household; \$400,000 for single filers; and \$225,000 for married taxpayers filing separately. These dollar amounts are inflation-adjusted for tax years after 2013.¹ In addition, with the elimination of the EGTRRA sunset, the size of the 15% tax bracket for joint filers and qualified surviving spouses remains at 200% of the 15% tax bracket for individual filers.²

Hospital Insurance Tax

For tax years beginning after December 31, 2012, an additional 0.9% Hospital Insurance (HI) tax applies under Code Sec. 3101(b)(2) to wages received with respect to employment in excess of \$250,000 for joint returns and \$200,000 for single taxpayers. Under Code Sec. 1401(b)(2), the additional 0.9% HI tax also applies to self-employment income for the tax year in excess of the above figures.³

FICA imposes two taxes on employees on wages received with respect to employment: 1) the Old Age, Survivors and Disability Insurance (OASDI) tax, imposed at a 6.2% rate on wages up to an annually-adjusted wage base of \$113,700 in 2013 and 2) the Medicare Hospital Insurance (HI) tax, imposed at a 1.45% rate on all wages without limitation. These same taxes are imposed on wages paid by employers. Self-employed individuals pay both the amounts designated as the employee share and as the employer share, with minimal modifications. For tax years beginning after 2012, an additional 0.9% HI tax is imposed under Code Sec. 3101 on employees on wages received with respect to employment in excess of threshold amounts. Thus, for 2013, an employee pays: (a) 6.2% Social Security tax on the first \$113,700 of wages (maximum tax is \$7,049.40), plus (b) 1.45% Medicare tax on the first \$200,000 of wages (\$250,000 for joint returns), and (c) 2.35% Medicare tax (regular 1.45% Medicare tax + 0.9% additional HI tax) on all wages in excess of the amounts in (b). Employer pays - i.e., matches - the employees' Social Security tax and the Medicare tax, but only at the 1.45% rate on all wages. Thus, these new rules do affect employers. Self-employed individuals pay the employee share as stated above and their employer share is exempt from this new increase. These rules, while relatively straight forward, have caused complications for employers, as well as employees and self-employed individuals.

The IRS has issued long-awaited guidance for employers, employees and self-employed individuals on these new rules; the guidance comes in the form of proposed reliance Treasury Regulations and 47 questions and answers (Q&As).⁴

The 0.9% additional Medicare tax applies only to employees, not employers. Employers must begin withholding the additional Medicare tax once an employee's wages exceed \$200,000, even if the employee may not ultimately be liable for the additional tax (e.g., employee earns \$210,000, his spouse earns \$25,000, and they file a joint return).⁵ Any excess additional Medicare tax withheld will be credited against the total tax liability shown on the employee's income tax return.

Conversely, the 0.9% additional Medicare tax may be owed on the employee's income tax return where withholding is not collected for it (e.g., employee earns \$175,000 and her spouse earns \$150,000, or employee earns more than \$200,000 and employer fails to withhold).⁶ If an employer fails to withhold the 0.9% additional Medicare tax and the tax is subsequently paid by the employee, IRS will not collect the tax from the employer. However, the employer will remain subject to any applicable penalties or additions to tax for failure to withhold the 0.9% additional Medicare tax as required.⁷

The proposed regs merely say that the additional Medicare tax applies to “wages” in excess of the \$250,000/\$200,000 thresholds, but the Q&A’s make it clear that tax applies to the following types of payments:

- Fringe Benefits: The employer must withhold additional Medicare tax on total wages, including taxable noncash fringe benefits, in excess of \$200,000. (Q&A 31)
- Group-Term Life: The imputed cost of group-term life insurance coverage in excess of \$50,000 is subject to social security and Medicare taxes; and to the extent that, in combination with other wages, it exceeds \$200,000, it is also subject to additional Medicare tax withholding. (Q&A 33)
- Non-qualified Deferred Compensation (NQDC): Wages for purposes of withholding additional Medicare tax from NQDC are calculated in the same way as for withholding the existing Medicare tax from NQDC. (Q&A 35)
- Third-Party Sick Pay: Wages paid by an employer and by the third party need to be aggregated to determine whether the \$200,000 withholding threshold has been met. (Q&A 34)
- Tips: To the extent that tips and other wages exceed \$200,000, an employer applies the same withholding rules for additional Medicare tax as it does currently for Medicare tax. An employer withholds additional Medicare tax on the employee's reported tips from wages it pays to the employee. (Q&A 32)⁸

Net Investment Income Tax

For tax years beginning after December 31, 2012, a 3.8% Unearned Income Medicare Contribution Tax under Code Sec. 1411 is imposed on individuals, estates, and trusts. For an individual, the tax is 3.8% of the lesser of (1) net investment income (NII) or (2) the excess of modified adjusted gross income (MAGI) over a threshold amount (\$250,000 for joint filers and \$200,000 for single taxpayers).⁹ Net investment income is investment income reduced by the deductions properly allocable to such income. Investment income is the sum of (1) gross income from interest, dividends, annuities, royalties, and rents (other than income derived from any trade or business), (2) other gross income derived from any trade or business to which the tax applies (i.e., from a passive activity or the trading of financial instruments or commodities), and (3) net gain attributable to the disposition of property, other than property held in a trade or business to which the tax does not apply. While incorporating familiar terms, these rules, taken together, provide new and difficult tax concepts, rules and exceptions.

As an illustration for 2013, a single taxpayer has NII of \$100,000 and MAGI of \$220,000. He pays the surtax only on the \$20,000 amount by which his MAGI exceeds his threshold amount of \$200,000 because that is less than his NII of \$100,000. Thus, the surtax is \$760 ($\$20,000 \times 3.8\%$).

As a further illustration, an unmarried individual has MAGI of \$190,000, which includes \$50,000 of net investment income. He has a zero tax imposed under section 1411 because the threshold amount for a single individual is \$200,000 and no tax is imposed unless his MAGI exceeds this amount. If during Year 2 he has MAGI of \$220,000, which includes \$50,000 of net investment income, then the individual has a section 1411 tax of \$760 ($\$20,000 \times 3.8\%$).¹⁰

It is important to note that the tax rate on capital gains will rise to 23.8% (including the 3.8% surtax), the highest rate since 1996, and at a time when business investment is mediocre.

Reduced Capital Gains & Qualified Dividends Rate – Except for Higher-Income Taxpayers

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, favorable tax treatment was provided for long-term capital gain and qualified dividends. However, JGTRRA provided that this treatment was to end after 2010.

For tax years beginning in 2010, under JGTRRA, the maximum rate of tax on the adjusted net capital gain of an individual was 15%. If the adjusted net capital gain, plus ordinary income, would otherwise be taxed at a rate below 25%, the capital gain was taxed at a 0% rate. Other specific types of net capital gains had tax rates of 25% and 28%. Under pre-Act law, for tax years beginning after December 31, 2012, the maximum rate of tax on an individual's adjusted net capital gain was to be 20%. Other specific types of net capital gains had tax rates of 10%, 18%, 25%, and 28%. For tax years beginning in 2010, under JGTRRA, an individual's qualified dividend income was taxed at the same rates that apply to net capital gain. Under pre-Act law, for tax years beginning after December 31, 2012, dividends received by an individual were to be taxed at ordinary income tax rates.

For tax years beginning after 2012, the 2012 Taxpayer Relief Act eliminates the provision in JGTRRA that calls for its provisions to sunset. Accordingly, the provisions in JGTRRA, except as modified by other provisions in the new law, are made permanent and no longer automatically sunset in future years.

For tax years beginning after 2012, the 2012 Taxpayer Relief Act provides that the top rate for capital gains and dividends will permanently rise to 20% (up from 15%) for taxpayers with taxable incomes exceeding \$450,000 for joint filers and surviving spouses, \$425,000 for heads of household, \$400,000 for single filers, and \$225,000 for married taxpayers filing separately,¹¹ as amended by Act Sec. 102(b) When accounting for Code Sec. 1411's 3.8% surtax on investment-type income and gains for tax years beginning after 2012, the overall rate for higher-income taxpayers will be 23.8%.

For taxpayers whose ordinary income is generally taxed at a rate below 25%, capital gains and dividends will permanently be subject to a 0% rate,¹² as amended by Act Sec. 102(c)(2). Taxpayers who are subject to a 25%-or-greater rate on ordinary income, but whose taxable income levels fall below the applicable threshold—\$450,000 for joint filers and surviving spouses; \$425,000 for heads of household; \$400,000 for single filers; and \$225,000 for married taxpayers filing separately—will continue to be subject to a 15% rate on capital gains and dividends. The rate will be 18.8% for those subject to Code Sec. 1411's 3.8% surtax (i.e., those with modified adjusted gross income (MAGI) over \$250,000 for joint filers or surviving spouses, \$125,000 for a married individual filing a separate return, and \$200,000 in any other case).

Phase-Out of Personal Exemptions for Higher-Income Taxpayers

Personal exemptions generally are allowed for the taxpayer, his or her spouse, and any dependents. For tax years beginning in 2010, under EGTRRA, there was no overall reduction in the personal exemption amount based on the taxpayer's AGI. For tax years beginning after December 31, 2010, the total amount of exemptions that could be claimed by a taxpayer was to be reduced (personal exemption phaseout by 2% for each \$2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold. However, the 2010 Tax Relief Act provided that a higher-income taxpayer's personal exemptions weren't phased out for two additional years (2011 and 2012) when AGI exceeds an inflation-adjusted threshold.

For tax years beginning after 2012, PEP, which had previously been suspended, is reinstated with a starting threshold of \$300,000 for joint filers and a surviving spouse, \$275,000 for heads of household, \$250,000 for single filers, and \$150,000 (one-half of the amount for joint filers) for married taxpayers filing separately. Under the phaseout, the total amount of exemptions that can be claimed by a taxpayer subject to the limitation is reduced by 2% for each \$2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold. These dollar amounts are inflation-adjusted for tax years after 2013.¹³

3%/80% Limitation on Itemized Deductions for Higher-Income Taxpayers

In lieu of taking the standard deduction, a taxpayer may take itemized deductions (generally those deductions which aren't allowed in computing adjusted gross income (AGI)). For tax years beginning in 2010, there was no overall limitation on itemized deductions based on the taxpayer's AGI, although separate limitations (floors) might apply to the particular deduction. For tax years beginning after December 31, 2010, the total amount of itemized deductions was to be reduced by 3% of the amount by which the taxpayer's AGI exceeds a threshold amount, with the reduction not to exceed 80% of the otherwise allowable itemized deductions. However, the 2010

Tax Relief Act provided that the itemized deductions of higher-income taxpayers are not reduced for two additional years, through 2012.

For tax years beginning after 2012, the 2012 Taxpayer Relief Act provides that the limitation on itemized deductions, which had previously been suspended, is reinstated with a starting threshold of \$300,000 for joint filers and a surviving spouse, \$275,000 for heads of household, \$250,000 for single filers, and \$150,000 (one-half of the otherwise applicable amount for joint filers) for married taxpayers filing separately. Thus, for taxpayers subject to the limitation, the total amount of their itemized deductions is reduced by 3% of the amount by which the taxpayer's AGI exceeds the threshold amount, with the reduction not to exceed 80% of the otherwise allowable itemized deductions. These dollar amounts are inflation-adjusted for tax years after 2013.¹⁴

Higher Threshold for Deducting Medical Expenses

For tax years beginning after December 31, 2012, unreimbursed medical expenses are deductible by taxpayers under age 65, only to the extent they exceed 10% of adjusted gross income (AGI) for the tax year (Code Sec. 213(a)). Under prior law, this floor was 7.5% of AGI. If the taxpayer or his or her spouse has reached age 65 before the close of the tax year, the 7.5% floor applies through 2016 and the 10% floor applies for tax years ending after December 31, 2016.¹⁵

Dollar Cap on Contributions to Health FSAs

For tax years beginning after December 31, 2012, for a health FSA (flexible spending account) to be a qualified benefit under a cafeteria plan, the maximum amount available for reimbursement of incurred medical expenses of an employee (and dependents and other eligible beneficiaries) under the health FSA for a plan year can't exceed \$2,500. Prior allowed had no such dollar cap.¹⁶

Deduction Eliminated for Retiree Drug Coverage

Sponsors of qualified retiree prescription drug plans are eligible for subsidy payments from the Secretary of Health and Human Services (HHS) for a portion of each qualified covered retiree's gross covered prescription drug costs ("qualified retiree prescription drug plan subsidy"). These qualified retiree prescription drug plan subsidies are excludable from the plan sponsor's gross income. For tax years beginning before 2013, a taxpayer was able to claim a business deduction for covered retiree prescription drug expenses, even though it excluded qualified retiree prescription drug plan subsidies allocable to those expenses. However, for tax years beginning after December 31, 2012, the amount of the allowable deduction for retiree prescription drug expenses must be reduced by the amount of the excludable subsidy payments received.¹⁷

Information Reporting of Health Insurance Coverage

Employers filing 250 or more Forms W-2 for 2011 were required to report the aggregate cost of the applicable employer-sponsored health insurance coverage (as defined in Code Sec. 4980I(d)(1)) provided to employees during 2012 on the Form W-2. The reporting to employees is for their information only. It is intended to inform them of the cost of their health care coverage and doesn't cause excludable employer-provided health care coverage to become taxable.¹⁸

Changes Taking Effect in 2014

Penalty on Larger Employers Not Offering Affordable Health Insurance Coverage

For months beginning after December 31, 2013, an applicable large employer is liable for an annual assessable payment if any full-time employee is certified to the employer as having bought health insurance through a state exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee, and either the employer (1) offers to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage (MEC) under an eligible employer-sponsored plan¹⁹ or (2) offers its full-time

employees (and their dependents) the opportunity to enroll in MEC under an eligible employer-sponsored plan that for a full-time employee, who has been certified for the advance payment of an applicable premium tax credit or cost-sharing reduction, either is unaffordable or does not provide minimum value as these terms are defined in Code Sec. 36B(c)(2)(C) (Code Sec. 4980H(b) liability).

The payment under Code Sec. 4980H(a) is based on all (excluding the first 30) full-time employees, while the payment under Code Sec. 4980H(b) is based on the number of full-time employees who are certified to receive an advance payment of an applicable premium tax credit or cost-sharing reduction. A full-time employee for any month is one who is employed, on average, at least 30 hours of service per week.

An applicable large employer for a calendar year is one who employed an average of at least 50 full-time employees on business days during the preceding calendar year. For determining whether an employer is an applicable large employer, full-time equivalent employees (FTEs), which are determined based on the hours of service of employees who are not full-time, are taken into account.²⁰

Code Sec. 4980H ties into Code Sec. 36B which is designed to use a subsidy/tax credit mechanism to make health insurance affordable for individuals with modest incomes. Under Code Sec. 36B(c)(2)(B), a coverage month for an individual (i.e., a month for which the health care subsidy is available) does not include a month in which he is eligible for MEC, as defined in Code Sec. 5000A(f), other than coverage offered in the individual market. MEC may be government-sponsored coverage, such as Medicare or Medicaid, or certain employer-sponsored plans.

An individual is eligible for employer-sponsored MEC only if the employee's share of the premiums is "affordable" and the coverage provides "minimum value" (i.e., at least 60% of the plan's total allowed cost of benefits provided). In general, under Code Sec. 36B(c)(2)(C)(i), an employer-sponsored plan is not affordable if the employee's required contribution, with respect to the plan, exceeds 9.5% of his *household income* for the tax year. This percentage may be adjusted after 2014.

Penalty on Individuals Not Carrying Health Insurance

For tax years beginning after December 31, 2013, non-exempt U.S. citizens and legal residents must pay a penalty if they do not maintain minimum essential coverage, which includes government-sponsored programs (e.g., Medicare, Medicaid, Children's Health Insurance Program), eligible employer-sponsored plans, plans in the individual market, certain grandfathered group health plans, and other coverage as recognized by HHS in coordination with IRS.²¹

The maximum tax penalty gradually increases between 2014 and 2016 and is fully phased-in in 2016. For years after 2016, the penalties are indexed for inflation based on the Consumer Price Index. Any criminal penalty against a taxpayer for failure to pay the penalty is waived and no liens or levies may be imposed to collect it. For each month during which a non-exempt taxpayer fails to maintain minimum essential coverage in 2014, the applicable penalty is equal to 1/12th of the greater of \$95 for each household member age 18 or older and \$47.50 per child (up to three household members), or 1% of household income for the taxable year in excess of the threshold amount for filing a tax return. The comparable dollar amounts for 2015 are \$325 and \$162.50; for 2016, \$695 and \$347.50; and the comparable percentages for 2015 and 2016 are 2% and 2.5%, respectively. In 2016, the minimum tax penalty for failing to maintain minimum essential coverage for the entire year for a three-person family whose members are all at least 18 years old is \$2,085 ($\$695 \times 3 = \$2,085$).

Refundable Tax Credit for Low- or Moderate-Income Families Buying Certain Health Insurance

For tax years ending after December 31, 2013, a new refundable tax credit (the "premium assistance credit") under Code Sec. 36B applies to qualifying taxpayers who get health insurance coverage by enrolling in a qualified health plan through a state-established American Health Benefit Exchange.

Qualified Health Plans May Be Offered Through Cafeteria Plans by Qualified Employers

For tax years beginning after December 31, 2013, a reimbursement (or direct payment) for the premiums for coverage under any “qualified health plan” through a health insurance exchange is a qualified benefit under a cafeteria plan if the employer is a qualified employer (generally, smaller businesses) (Code Sec. 125(f)(3)(B)). In very broad terms, a qualified health plan is one that meets certain certification requirements, provides “an essential health benefits package,” and is offered by an insurer meeting detailed requirements, and a health insurance “exchange” is a federally supervised marketplace for health insurance policies meeting specific eligibility and benefit criteria, to be made available not later than January 1, 2014, to qualifying individuals and employer groups of graduated sizes.

New Information Reporting of Employer-Provided Health Coverage

For periods beginning after December 31, 2013, new information reporting and related statement obligations apply under Code Sec. 6056 for (1) certain applicable large employers required to offer their full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an eligible employer-sponsored plan and (2) employers who offer minimum essential coverage to employees and paying any portion of such coverage, but only if the required employer contribution of any employee exceeds 8% of the employee's wages.

Excise Tax on Health Insurance Providers

For calendar years beginning after December 31, 2013, an annual fee applies to health insurance providers. The aggregate annual flat fee for the industry (e.g., \$8 billion for 2014) will be allocated based on a health provider's market share of net premiums written for a U.S. health risk for calendar years beginning after December 31, 2012. The fee will not apply to companies whose net premiums written are \$25 million or less. For purposes of the fee, health insurance does not include coverage only for a specified disease or illness, hospital indemnity or other fixed indemnity insurance, insurance for long-term care, or any Medicare supplemental health insurance.²²

Change Taking Effect in 2018

Excise Tax Applies to High-Cost Employer Provided Health Insurance Coverage

For tax years beginning after December 31, 2017, a 40% non-deductible excise tax will be levied on insurance companies and plan administrators for employer-sponsored health coverage to the extent that annual premiums exceed \$10,200 for single coverage and \$27,500 for family coverage (Code Sec. 4980I). An additional threshold amount of \$1,650 for single coverage and \$3,450 for family coverage will apply for retired individuals age 55 and older and for plans that cover employees engaged in high risk professions.

CONCLUSION

The overhaul of the U.S. health care system by The Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 involves a significant cost to the government. This cost is expected to be recouped through widespread changes in the tax law which will affect most taxpayers. Revised and altogether new tax provisions will affect individuals as well as businesses, higher income individual taxpayers as well as lower income taxpayers, investors as well as blue collar workers, and mom and pop businesses as well as multinational companies. Although many of the tax changes will not take effect now but will become operative over the next several years, familiarity with the changes to come enables taxpayers to plan presently for these new financial burdens.

AUTHOR INFORMATION

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- ⁵ Code Sec. 3102(f)(1)
- ⁶ Code Sec. 3102(f)(2)
- ⁷ Code Sec. 3102(f)(3)
- ⁸ Prop Reg § 31.3101-2(b)(2)(i)
- ⁹ Code Sec. 1411(a)(1)
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