

Understanding and Navigating Business Tax Changes Resulting From Health Care Reform Legislation

The Patient Protection and Affordable Healthcare Act contains a host of tax changes and over \$400 billion in revenue raisers, including new taxes on businesses. Portions of the new law are effective immediately while others loom on the horizon and will be phased in over the next several years. Tax planning activities for 2010 and beyond should consider both the immediate and substantial forthcoming changes as a result of the new legislation, many of which have been highlighted below.

Tax Changes Retroactively Effective for 2009	
Business Provision	Description
Credit for Investment in New Therapies	Companies with 250 or fewer employees can receive a 50% nonrefundable investment tax credit for investments in qualified therapeutic discovery projects. A qualified project is one designed to develop a product, process, or therapy to diagnose, treat, or prevent diseases and afflictions by (1) conducting pre-clinical activities, clinical trials, clinical studies, and research protocols, or (2) developing technology or products designed to diagnose diseases and conditions. It is available for qualifying investments made in 2009 and 2010.

Tax Changes Taking Effect in 2010	
Business Provisions	Description
Small Employer Health Insurance Credit	An eligible small employer (ESE) is entitled to a tax credit of up to 35% for the cost of health insurance provided to its employees. An ESE is an employer who employs no more than 25 full-time employees with average annual wages per employee not exceeding \$50,000. In addition, the employer must contribute at least half of the premium cost of a qualifying plan offered to employees. The full credit amount is only available to employers with 10 or fewer full-time employees with average annual wages per employee not exceeding \$25,000. The credit is available beginning in 2010 through 2013. In 2014 and 2015 the maximum credit is increased to 50% and to qualify, insurance must be purchased through a state insurance exchange. Self-employed individuals (partners and sole proprietors), two percent shareholders of S corporations and five percent owners of the employer are not considered employees for purposes of this credit. Family members of ineligible employees are not deemed employees for purposes of the credit. Any employee of the self-employed individual is not an employee for purposes of this credit if the employee is not performing services in the trade or business of the employer. The employer is entitled to an ordinary and necessary business expense deduction equal to the amount of the employer contribution minus the dollar amount of the credit. For example, if an eligible employer pays 100% of the cost of its employees' health insurance coverage and receives a credit of 35%, the employer can claim a deduction for the other 65% of the premium cost.

Excise Tax on Indoor Tanning	As of July 1, 2010, a 10% excise tax will be imposed on recipients of indoor tanning services. The person receiving payment will be responsible for collecting and remitting the tax.
------------------------------	---

Tax Changes Taking Effect in 2011

Business Provisions	Description
Health Coverage Cost Reported on Employees' Forms W-2	Employers must disclose the value of an employee's health insurance coverage sponsored by the employer beginning with 2011 Forms W-2. The cost of the coverage is not included in taxable income.
"SIMPLE" Cafeteria Plans for Small Employers	Small employers with an average of 100 or fewer employees during either of the two preceding years may set up a "simple" cafeteria plan to provide tax-free benefits to employees. These plans eliminate or reduce many of the restrictions required by traditional cafeteria plans.
Pharmaceutical Manufacturers and Importers Fee	Imposes an annual, non-deductible fee on each manufacturer or importer of branded prescription drugs with gross receipts from sales of these drugs of more than \$5 million which are sold to any specific government program or pursuant to coverage under any such program. The annual flat fee (\$2.5 billion 2011) is apportioned among all entities based on each entity's relative share of branded prescription drug sales during the previous calendar year. The fee will be credited to the Medicare Part B trust fund.

Tax Changes Taking Effect in 2012

Business Provisions	Description
Information Reporting for Payments to Corporations	Beginning January 1, 2012, payments greater than \$600 to non-tax-exempt corporate providers of property and services must be reported on an information report filed with each provider and the IRS.

Tax Changes Taking Effect in 2013

Business Provisions	Description
Excise Tax on Medical Device Manufacturers	Manufacturers, producers, and importers of taxable medical devices will pay a 2.3% excise tax. The tax will not apply to eyeglasses, contacts, hearing aids and any other medical device determined by the IRS to be of a type that is generally purchased by the general public for individual use.
Limit on Compensation Deduction for Health Insurance Issuers	Covered health insurance providers will not be allowed a deduction in excess of \$500,000 for services performed during the year by an applicable individual, such as officers, employees, directors, consultants and other workers or service providers. The provision is effective beginning in 2013 with respect to service performed after 2009.

Tax Changes Taking Effect in 2014	
Business Provisions	Description
Accelerated Estimated Tax Payments for Large Corporations	Large corporations with assets of at least \$1 billion in the prior year will pay an increased estimated tax payment in July, August, or September 2014. The payment is increased from 157.75% to 173.5% of the payment otherwise due. The required amount of the subsequent installment is appropriately reduced.
Excise Taxes for Employers Not Offering Affordable Health Insurance Coverage	Large employers (with at least 50 full-time employees during preceding calendar year) must pay a penalty, in the form of a non-deductible excise tax, if they do not offer healthcare coverage, or affordable or adequate healthcare coverage to full-time employees and one or more full-time employees purchased health insurance through a state exchange and received tax credit or cost-sharing reduction. The penalty may still apply even if the employer does offer affordable coverage but one or more full-time employees still purchase coverage through a state exchange and are entitled to tax credit or cost-sharing reduction. The annual penalty is equal to \$2,000 per full-time employee, assessed on a monthly basis at \$166.67 per month. The first 30 employees are excluded from the penalty calculations.
Health Coverage Information Reporting	Employers employing 50 or more employees will be required to submit information to the IRS reporting the nature of coverage offered to employees, detailed information as to which employees are covered and other information required by IRS.

Tax Changes Taking Effect in 2018	
Business Provisions	Description
Excise Tax on High Cost Employer-Provided Health Plans	The most significant business tax-related provision becoming effective after 2014 mandates that, subsequent to 2017, a 40% non-deductible excise tax will be levied on insurance companies and or plan administrators for employer-sponsored health coverage where the annual premiums exceed \$10,200 and \$27,500 for single and family coverage, respectively. There are additional thresholds for retired individuals over age 55 and those employed in high risk professions.

For additional information on any of the tax-related issues referenced on this page, please contact Michael A. Gillen, director of the Tax Accounting Group, or the Duane Morris attorney with whom you are regularly in contact.

As required by United States Treasury Regulations, you should be aware that this communication is not intended by the sender to be used, and it cannot be used, for the purpose of avoiding penalties under United States federal tax laws.