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# The Affordable Care "Tax" Act

BY JEFFREY B. KRAMER, CPA

Implementation of the Affordable Care Act is well underway. The ACA is voluminous and complicated. Many of the provisions have already been implemented and many will soon become effective.

In general, the ACA uses a 4-pronged approach to increasing the number of Americans covered by health insurance. Key provisions of the ACA include –

- Individual Mandate – Requires almost everyone to obtain coverage or pay a tax
- Employer Mandate – Requires employers with 50 or more employees to provide coverage or pay a tax
- Insurance Exchanges – Establishes insurance exchanges to make purchasing health insurance simpler and more affordable for individuals and small businesses
- Medicaid Expansion – Expands Medicaid to include more individuals

In reviewing the ACA, one might wonder why it was not called The Affordable Care "Tax" Act. Of the ACA's 90 provisions, at least 14 (15%) include tax provisions which for the most part will be regulated and enforced by the Internal Revenue Service.

In a 193 page June 2012 ruling, the Supreme Court deemed the most controversial provision of the ACA, an individual mandate requiring people to have health insurance, valid as a "tax" provision. Chief Justice John Roberts wrote the majority opinion saying "it is reasonable to construe what Congress has done as increasing taxes on those who have a certain amount of income, but choose to go without health insurance. Such legislation is within Congress' power to tax." He later added: "The federal government does not have the power to order people to buy health insurance ... The federal government does have the power to impose a tax on those without health insurance."

And so it goes, the ACA may be considered as much a tax law as a healthcare law. A few of the more onerous tax provisions from the ACA are described below:

**Net Investment Income Tax** – Beginning in year 2013, the ACA imposes a 3.8% tax on investment income for single taxpayers earning more than $200,000 and married taxpayers earning more than $250,000.

**Additional Medicare Tax** – Beginning in year 2013, the ACA imposes an additional .9% Medicare tax on wages that exceed $250,000 for married taxpayers and $200,000 for single taxpayers.

**Individual Shared Responsibility Provision** - Starting in 2014, most individuals will need to have health insurance coverage or pay additional taxes when filing their federal income tax return. The rules are complicated, but in general, the tax is calculated monthly as the greater of a flat dollar amount per family member ($95 in 2014, $325 in 2015, $695 in 2016) or a percentage of income (1% for 2014, 2% for 2015 and 2.5% in 2016). So for example, a family with earnings of $50,000 consisting of 2 adults and 2 kids without health insurance could face additional taxes of $500 in 2014, $1,000 in 2015 and $2,085 in 2016.

**Employer Shared Responsibility Payment** – This seems to be the most controversial of the provisions. Under the Employer Shared Responsibility provisions, also known as the "pay or play" provision, most large companies with more than 50 employees will be required to provide health insurance or be subject to a tax. Many of these companies, already providing health insurance, may find themselves comparing the cost of insurance coverage to the cost of paying the penalty for not providing coverage. In some cases, it may be less expensive to pay the penalty tax than to provide insurance.

In simplified terms, the tax is calculated as the lesser of $2,000 times the number of employees (after the first 30 employees) or $3,000 times the number of employees enrolled in an insurance exchange. When analyzed on a monthly basis, non deductible taxes (i.e., penalties) per employee for not providing insurance coverage could range from $167 to $250.

**Other Tax Provisions** – The ACA contains a number of other tax provisions of equal magnitude. The ACA has supporters and detractors but no one will deny that it will impact most Americans and many businesses. For those where their health care is not impacted, their taxes may very well be.

*Jeffrey B. Kramer, partner at Goldstein Schechter Koch, can be reached at jeff.kramer@gskcpas.com or (954) 989-7462.*