



## **TAX CHANGES INCLUDED IN THE PATIENT PROTECTION AND AFFORDABLE HEALTH CARE ACT**

This new law makes a number of changes to existing income tax laws and adds some new taxes as well. It is important to note that many of the provisions for both tax and nontax related changes in our medical care system have delayed effective dates. In fact, it is likely that many of the provisions of the law with delayed effective dates will be affected by future changes in the law prior to their effective dates.

### Effective 2010

The most immediately effective tax provision (effective date March 31, 2010) is completely unrelated to health care. This tax provision is a statutory enactment of a judicial doctrine known as economic performance, which is designed to limit the use of "tax shelter type" of transaction which claim to show a tax loss, but have no economic substance.

Also in 2010, there will be a SMALL EMPLOYER HEALTH INSURANCE TAX CREDIT, available for employers with up to 25 full time employees and average wages up to \$50,000 per employee. The credit (for the years 2010-2013) is a maximum of 35% of employer premiums, provided that employer pays a least 50% of premiums. The 35% credit requires an employer of up to 10 employees and average wages per fulltime employee of not more than \$25,000, and phases out as the number of employees/average wages increase. For the years 2014 & 2015, insurance must be purchased through the exchanges to be setup, and then a 50% credit will be available. Smaller credit will be available for tax-exempt employers, as payroll tax credits. For the purposes of this tax credit, 5% owners of a business, 2% or more shareholders of an "S" corporation, and self-employed individuals are not counted as employees and their wages/earnings are excluded from the computation of average wages.

### Effective 2011

Employers will be required to report on W-2 forms (as a memo amount, not taxable) the amount of employer health insurance premiums paid for an employee and dependents. Also effective in 2011, there will be a 20% penalty for non-medical withdrawals from FSA, HAS, HRA and MSA accounts. Also, those accounts will no longer be permitted to treat as medical withdrawals non-prescription medication. SIMPLE CAFETERIA PLANS will be allowed starting in 2011, and will permit participation by self-employed individuals (something not previously permitted).

### Effective 2012

Payments to corporations will be required to be reported on 1099 forms if they exceed \$600 to a recipient corporation in a calendar year. A new 5% tax on cosmetic medical & surgical procedures will be collected by the provider, beginning in 2012.

### Effective 2013

The employee portion of the Medicare tax will be increased by .9% for wages exceeding \$200,000 for an single employee and \$250,000 for married employees filing a joint return. Also, a 3.8% Medicare tax will be imposed on the investment income exceeding \$200,000 single, \$250,000 married taxpayers. For this purpose, investment income will include interest, dividends, rents annuities and other passive income, but not municipal bond interest or pension and IRA withdrawals. Oslo, beginning in 2013, FSA contributions will be limited to \$2500, and the itemized deduction for medical expenses will need to exceed 10% (currently 7.5%) of adjusted gross income, except that for taxpayers 65 or over, or married to a 65+ spouse, this provision will be delayed to 2017. Further, business deductions for retirees' drug insurance, if eligible for Part D of Medicare, will no longer be allowed.

### Effective 2014

There will be a Refundable Tax Credit for individuals not covered by an employer plan and whose income is between 100% and 400% of the federal poverty line. The credit will be a percentage of premiums, and cost sharing by individuals (co-pays, deductibles) will be reduced for those below 400% of the federal poverty line. Also, beginning in 2014, Cafeteria plans cannot cover individual health policies, except for employers under 100 employees with all full time employees eligible for the small group market.

Effective in 2014, an employer of 50 or more full time employees which does not offer "minimum essential coverage" to its employees, and in which any full time employee is receiving "healthcare assistance" (excluding Medicaid) will be subject to a penalty of \$166.67 per month per full time employee (with the first 30 employees excluded).

Further effective in 2014, for individuals not covered by an employee plan and who do not purchase insurance in the individual market, there will be a penalty. This will be waived for those whose income is below the tax filing threshold, or if the premium would exceed 8% of household income. The penalty will be a percentage of income over the tax filing threshold, 1% in 2014, 2% in 2015, and 2.5% thereafter, or a dollar amount monthly, \$95 in 2014, \$325 in 2015 and \$695 thereafter. The larger of the two penalty calculations will be applied.

Effective 2018

Beginning in 2018, there will be an excise tax on employer paid medical insurance (excluding dental, vision and long term care) premiums exceeding \$10,200 for single coverage or \$27,500 for family coverage, as adjusted for inflation. The employer will pay a 40% excise tax on the excess premiums.