



## The Tax Provisions of the New Health Care Reform Law May Affect Your Business

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The new health care reform law, the Patient Protection and Affordable Care Act ("PPACA"), makes numerous changes to the tax law, including creating new taxes and credits, increasing other taxes, making insured health benefits taxable to the extent that they are discriminatory, modifying certain deductions, and changing the tax rules that apply to health savings accounts and spending arrangements. This article provides an overview of some of the major tax provisions of PPACA that may affect your business.

### NEW TAXES

- **Cadillac Tax** - Beginning in 2018, an excise tax of 40% will be imposed on the total value of employer-sponsored health insurance coverage that exceeds \$10,200 for individuals and \$27,500 for families.
- **Employer Responsibility Tax** - Beginning in 2014, businesses with 50 or more employees who do not offer health care insurance or offer insufficient coverage may be subject to a penalty tax.
- **Annual Tax on Pharmaceutical and Health Insurance Providers** - Beginning in 2011, an annual tax will be imposed on manufacturers and importers of branded prescription drugs. Likewise, beginning in 2014, a similar annual tax will be levied on health insurance providers.
- **Tax on Medical Device Sales** - Beginning in 2013, a 2.3% excise tax will be imposed on any sale of taxable medical devices by a manufacturer, producer, or importer.

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### PRACTICE AREAS

Business Law

Health Care

Tax Law



- **Medicare Contribution Tax on Unearned Income** - Beginning in 2013, a new tax will be imposed on the lesser of: (a) an individual's net investment income, or (2) an individual's income greater than \$200,000 (\$250,000 for joint returns and \$125,000 for married taxpayers filing separately). Net investment income includes items such as: income from interest, dividends, trading of financial interests and commodities, proceeds from the sale of personal property, and other income from passive trades or businesses.

#### **NEW TAX CREDIT**

- **Small Business Tax Credit** - Beginning in 2010, businesses with 25 or fewer full-time equivalent employees whose average annual earnings are less than \$50,000 will be eligible for a two-year tax credit for health care premiums paid.

#### **INCREASED TAXES**

- **Increase in Medicare Tax on High Income Individuals** - Beginning in 2013, in addition to the current 1.45% Medicare tax, PPACA imposes a 0.9% Medicare tax on taxpayers with annual wages greater than \$200,000 (\$250,000 for joint returns and \$125,000 for married taxpayers filing separate).
- **Tax on Discriminatory Health Benefits.** For plan years that commence after September 23, 2010, the benefits that a health plan provides to a "highly compensated individual" will be taxable if the benefits or the plan discriminates in favor of such an individual. Previously, such discriminatory benefits were tax free so long as the plan was commercially insured (but not if the plan was "self insured"). "Grandfathered" plans may avoid this new rule.

#### **CHANGES IN DEDUCTIONS**

- **Limits on Medications** - Beginning in 2011, only prescribed medicine and insulin will be eligible for reimbursement by health savings accounts and health spending arrangements. Previously, non-prescribed, over-the-counter medicine was eligible for reimbursements.
- **Additional Taxes on Non-Medical Expenditures** - Beginning in 2011, the tax imposed on medical savings accounts for non-qualified medical expenses will be increased to 20% (previously the tax ranged between 10-15%).
- **Simple Cafeteria Plan for Small Businesses** - Beginning in 2011, certain employers with less than 100 employees may provide simple cafeteria plans.

#### **CHANGES IN REPORTING**

- **Increased Corporate Estimated Tax Payments** - For companies with \$1 billion in assets, estimated tax payments for July, August, or September 2014 are increased to 173.50% of the amount otherwise due. Subsequent tax payments are reduced accordingly.
- **W-2 Reporting of Health Coverage Costs** - Starting in 2011, employers must disclose the cost of employer-sponsored health coverage.



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**MEANINGFUL PURPOSE TO A TRANSACTION**

- **Codification of the Economic Substance Doctrine** - As of March 30, 2010, transactions must have a substantial non-federal income tax purpose before the tax benefits of the transaction are permitted. If a transaction does not, then there will be a penalty of up to 40% for tax underpayments arising from the transaction.

