

Top Federal Tax Issues FOR 2014 | CPE COURSE

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Top Federal Tax Issues FOR 2014 | CPE COURSE

CCH Editorial Staff Publication



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Introduction

Each year, a handful of tax issues typically require special attention by tax practitioners. The reasons vary, from a particularly complicated new provision in the Internal Revenue Code, to a planning technique opened up by a new regulation or ruling, or the availability of a significant tax benefit with a short window of opportunity. Sometimes a developing business need creates a new set of tax problems, or pressure exerted by Congress or the Administration puts more heat on some taxpayers while giving others more slack. All these share in creating a unique mix that in turn creates special opportunities and pitfalls in the coming year and beyond. The past year has seen more than its share of these developing issues.

CCH's *Top Federal Tax Issues for 2014 CPE Course* identifies those recent events that have developed into the current "hot" issues of the day. These tax issues have been selected as particularly relevant to tax practice in 2014. They have been selected not only because of their impact on return preparation during the 2014 tax season but also because of the important role they play in developing effective tax strategies for 2014 and beyond. Some issues are outgrowths of several years of developments; others have burst onto the tax scene unexpectedly. Among the latter are issues directly related to the recent economic downturn and tax legislation designed to assist in a recovery. Some have been emphasized in IRS publications and notices; others are just being noticed by the IRS.

This course is designed to help reassure the tax practitioner that he or she is not missing out on advising clients about a hot, new tax opportunity; or that a brewing controversy does not blindside their practice. In addition to issue identification, this course provides the basic information needed for the tax practitioner to implement a plan that addresses the particular opportunities and pitfalls presented by any one of those issues. Among the topics examined in the *Top Federal Tax Issues for 2014 CPE Course* are:

- IRS Gears Up for Health Care Reform
- Net Investment Income Tax: Issues and Strategies
- Implementing Accounting Method Changes
- Income Tax-Deferral Techniques
- Innocent Spouse Relief
- Identity Theft: Due Diligence and Remedies
- Boomer Retirement Strategies
- FATCA: New Rules for International Disclosure and Account Reporting
- Public Charities and Private Foundations: Current Compliance Issues

Study Questions. Throughout the course you will find Study Questions to help you test your knowledge, and comments that are vital to understanding a particular strategy or idea. Answers to the Study Questions with feedback on both correct and incorrect responses are provided in a special section beginning on page 10.1.

Index. To assist you in your later reference and research, a detailed topical index has been included for this course beginning on page 11.1.

Quizzer. This course is divided into four Modules. Take your time and review all course Modules. When you feel confident that you thoroughly understand the material, turn to the CPE Quizzer. Complete one, or all, Module Quizzers for continuing professional education credit.

October 2013

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COURSE OBJECTIVES

This course was prepared to provide the participant with an overview of specific tax issues that impact 2013 tax return preparation and tax planning in 2014. These are the issues that "everyone is talking about," each impacts a significant number of taxpayers in significant ways.

Upon course completion, you will be able to:

- Discuss some of the continuing legal challenges to PPACA since the 2012 Supreme Court decision;
- Describe the requirements for the individual mandate (individual shared responsibility payment);
- Understand the rationale behind Congress's enactment of the net investment income tax and the IRS' response to writing rules and regulations to implement this new tax;
- Determine the income levels at which the 3.8 percent net investment income tax is triggered;
- Explain what an accounting method is and when it is adopted;
- Articulate the scope limitations that prevent filing for an accounting method change or limit audit protection under the advance and automatic change procedures;
- Understand the asset/liability method of accounting;
- Discuss taxable and deductible temporary differences and understand their significance;
- Compare the different types of innocent spouse relief;
- Identify situations in which innocent spouse relief may and may not be granted;
- Understand the severity of taxpayer identity theft;
- Identify common schemes used by thieves to obtain personal information;
- Understand key considerations in rebalancing assets with an eye toward retirement, including strategies for capital gains within investment portfolios as well as the sale of a residence;
- Describe some of the special rules for retirement savings vehicles applicable to boomers;

- Articulate the connection between the FBAR and FATCA requirements;
- Discuss Intergovernmental Agreements and understand their significance;
- Explain the class of practitioners on which private foundations may rely when determining foreign charitable status; and
- Determine whether an organization improperly intervened in a political campaign.

One **complimentary copy** of this course is provided with certain copies of CCH publications. Additional copies of this course may be downloaded for free from **CCHGroup.com/PrintCPE** or ordered by calling 1-800-248-3248 (ask for product 10024491-0001).

TOP FEDERAL TAX ISSUES FOR 2014 CPE COURSE

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MODULE 1: HEALTH CARE LAW: NEW REQUIREMENTS — CHAPTER 1

IRS Gears Up for Health Care Reform

Health care reform was enacted in 2010 to expand the provision of health insurance to more Americans. Reform comprises two major laws: the *Patient Protection and Affordable Care Act* (PPACA), and the *Health Care and Education Reconciliation Act* (HCERA). Although some provisions of these laws took effect in the years 2010–2013, two important provisions will not take effect until 2014: the individual mandate and the premium tax credit. Another major provision—the employer mandate—was scheduled to take effect in 2014, but the IRS effectively delayed it until 2015. The IRS and other federal agencies (notably the Departments of Labor and Health and Human Services (HHS)) have been issuing important guidance on health care reform. This chapter reviews some of the important tax provisions in PPACA, including these three major provisions, and the IRS guidance.

LEARNING OBJECTIVES

Upon completion of this chapter, you will be able to:

- Discuss some of the continuing legal challenges to PPACA since the 2012 Supreme Court decision;
- Describe the requirements for the individual mandate (individual shared responsibility payment);
- Identify the requirements for the employer mandate (employer shared responsibility payment);
- Determine the eligibility requirements for the health insurance premium assistance tax credit;
- Understand the role of affordable health insurance exchanges;
- Explain other important provisions of PPACA, such as the rules for wellness programs; and
- List and describe important revenue-raising provisions in PPACA, including the tanning services excise tax; the branded prescription drug fee; the medical device excise tax; and the tax on health insurance providers.

INTRODUCTION

PPACA is a lengthy and complex law, with many requirements and features. The IRS has been issuing detailed guidance since the law's enactment in 2010. Some of the law's complexity reflects the law's jumble of effective dates, but by 2014, most of the major provisions of the law will have taken effect, except for the employer mandate and the tax on "Cadillac" health plans. Most individuals and employers are affected by these provisions. They

include the *individual mandate* (individual shared responsibility payment), which requires most individuals and their families to carry health insurance or face a penalty; the health insurance premium assistance tax credit, which the IRS will administer to help low- and middle-income Americans pay for health insurance; and the *employer mandate* (employer shared responsibility payment), which requires most employers to provide essential, affordable health insurance coverage or face a penalty.

SHARED RESPONSIBILITY FOR INDIVIDUALS

Beginning in 2014, PPACA requires individuals to:

- Be covered by a health plan that provides basic health insurance coverage (known as *minimum essential coverage* or MEC);
- Qualify for an exemption from the coverage requirement; or
- Pay a shared responsibility payment.

This shared responsibility provision for individuals is also known as the *individual mandate*.

COMMENT

PPACA gives "shared responsibility" to improve access to health insurance to the federal government, state governments, insurers, employers, and individuals. Nevertheless, the government, citing Congressional Budget Office research, claims that less than 2 percent of Americans will owe a shared responsibility payment.

The provision applies to individuals of all ages, including children and other dependents. U.S. citizens living in the United States or abroad are covered by the requirement, but U.S. citizens living abroad for the entire year are treated as having MEC and therefore do not owe a payment. Foreign nationals who live in the U.S. long enough to qualify as resident aliens are covered. Residents of U.S. territories are treated as having MEC.

The adult or married couple who can claim a dependent is held responsible for making the payment if the child or dependent adult does not have coverage or an exemption. A married couple is jointly liable for the payment. Under the proposed regulations, a taxpayer is liable for an individual who may be claimed as a dependent, whether or not the taxpayer actually claims the dependent.

COMMENT

Who should be responsible for children's coverage is an issue for divorced couples and other adults. Commentators have noted that a divorced noncustodial parent who cannot claim the exemption may be ordered to pay for health insurance for a child, but the current rules hold the custodial parent liable for the payment.

The individual mandate applies on a monthly basis. The amount of the payment is based on the number of months in the calendar year that an individual lacks MEC or an exemption. Under the proposed regulations (NPRM REG-148500-12), an individual is treated as having MEC for the month if the individual is covered for at least one day during the month.

Minimum Essential Coverage

An individual who is covered by health insurance that provides MEC will not owe the payment. MEC includes the following:

- Coverage under a specified government-sponsored program;
- Coverage under an eligible employer-sponsored plan, including COBRA continuation coverage and retiree health coverage;
- Coverage under a health plan offered in the individual market;
- Coverage under a grandfathered health plan; and
- Other health benefit coverage recognized as MEC by the Treasury Department and HHS.

Government programs. Government-sponsored programs that provide MEC include Medicare, Medicaid, the Children's Health Insurance Program (CHIP), the TRICARE program, veterans' health care programs, coverage for Peace Corps volunteers, and certain coverage provided by the Defense Department. The proposed regulations exclude certain programs with limited coverage from MEC. These are similar to programs providing excepted benefits.

Employer programs. An eligible employer-sponsored plan is a group health plan or group health insurance coverage. *Group health plans* include both third-party insured health plans and self-insured health plans. Most employer-provided coverage will qualify as MEC. If an employee enrolls his or her family in an employer-sponsored plan, the covered family members will have MEC.

Marketplaces. The federal government encourages individuals who lack coverage, who may discontinue current coverage, or who may want to look for cheaper coverage, to go to a health insurance marketplace (also known as an *affordable insurance exchange*). These are established at the state level either by the state government or by the federal government acting in place of the state. The federal government advises that marketplaces will help individuals find affordable MEC and can determine whether the individual will qualify for financial assistance, such as the health insurance premium tax credit.

Excepted benefits. MEC does not include coverage that consists of certain excepted benefits, including:

- Accident and disability coverage;
- Supplemental coverage to liability insurance;
- Liability insurance;
- Workers' compensation;
- Automobile medical payment insurance;
- Credit-only insurance;
- Coverage for on-site medical clinics; and
- Other similar insurance coverage under which medical benefits are secondary or incidental to other insurance benefits.

Other excepted benefits are not MEC if offered under a separate policy:

- Long-term care;
- Limited dental and vision benefits;
- Coverage for a disease or specified illness;
- Hospital indemnity or other fixed indemnity insurance; and
- Medicare supplemental health insurance.

Required Contribution

The proposed regulations reiterate that MEC is not affordable if the individual's required contribution (on an annual basis) exceeds 8 percent of the taxpayer's household income for the year. For an individual with employer coverage, the test applies to the cost of the lowest self-only coverage. However, for a related individual eligible for employer coverage, the proposed regulations apply the affordability exemption by looking at the employee's required contribution for the cost of family coverage.

Under the proposed regulations, the taxpayer's household income must be increased by any portion of the required contribution made under a salary reduction arrangement. After 2014, this 8 percent figure will be increased by the excess of the rate of premium growth between the preceding year and 2013, over the rate of income growth for the same period, as determined by HHS.

Health plans are categorized by level (bronze, silver, gold, or platinum), based on their actuarial value, which is the percentage of the plan's share of the full actuarial value of the benefits provided under the plan. The actuarial values are as follow:

- For a bronze plan, 60 percent;
- For a silver plan, 70 percent;
- For gold, 80 percent; and
- For platinum, 90 percent.

For individuals not eligible for employer-sponsored MEC, the minimum required contribution is the premium for the lowest cost bronze plan offered

in the health insurance exchange, reduced by the maximum amount of any premium assistance credit, determined as if the individual were covered by a qualified health plan through the exchange for the entire year

EXAMPLE

The annual premium for the lowest cost bronze plan offered by the exchange is \$10,000. Based on his family size and income, Elliot Campbell, a married taxpayer, would be entitled to a credit of \$3,100. Elliot's required contribution is \$6,900. His household income is \$80,000 for the year. The coverage is not affordable because the required contribution (\$6,900) exceeds 8 percent of his household income (\$6,400). Therefore, he is not liable for the individual shared responsibility payment.

The proposed regulations clarify that if both members of a couple are eligible for employer-sponsored coverage, each individual determines the affordability of coverage using the premium for self-only coverage offered by the individual's employer. Neither individual may use the premium for family coverage. As a result, the IRS stated, each employed individual's self-only coverage may be treated as affordable, even though the aggregate cost of covering all employed individuals may exceed 8 percent of the family's household income. HHS is proposing rules to provide a hardship exemption in these circumstances.

Exemptions

Exemption categories. The statute exempts nine categories of individuals from the requirement to carry MEC or make a payment. These statutory exemptions include the following:

- Religious conscience—members of a religious sect that is recognized as conscientiously opposed to accepting any insurance benefits. The Social Security Administration recognizes these sects;
- Members of a health care sharing ministry;
- Indian tribes—members of a federally recognized Indian tribe;
- No filing requirement—individuals whose household income is below the threshold for filing a tax return;
- Short coverage gap—individuals who go without coverage for three consecutive months or less during the year;
- Hardship—a health insurance marketplace, also known as an affordable insurance exchange, certifies that the individual suffered a hardship and cannot obtain coverage or would have to pay an excessive amount for coverage;
- Unaffordable coverage—the individual cannot afford coverage because the minimum amount owed for premiums is more than 8 percent of the individual's household income;

- Incarceration—the individual is in prison after the disposition of charges; and
- Not lawfully present—the individual is not a U.S. citizen or a resident alien.

An individual is exempt for a month if the individual is exempt for at least one day in the month, such as an incarcerated individual. An individual whose household income is below the return filing threshold is exempt for the entire year.

Claiming an exemption. The health insurance marketplaces will provide exemption certificates for many of the exemption categories, such as religious conscience or hardship. Some individuals will be able to claim an exemption on their federal income tax return (such as the 2014 return filed in 2015), for unaffordable coverage, short coverage gaps, and individuals outside the United States. Some categories of individuals may either go to a marketplace or claim the exemption on their return: members of Indian tribes or health care sharing ministries, and incarcerated individuals.

Calculating the Payment

The required payment is determined on a monthly basis. Under the proposed regulations, it equals the lesser of:

- The monthly penalty amounts for each individual in the family (up to three individuals); or
- The monthly national average bronze plan premiums for the family.

The monthly penalty amounts are the greater of:

- The flat dollar amount; or
- The excess income amount.

The flat dollar amounts are \$95 in 2014, \$325 in 2015, or \$695 in 2016. (After 2016 the amount is to be indexed for inflation.) For individuals under age 18, these amounts are reduced by half. The excess income amounts are the excess of the taxpayer's household income over the taxpayer's filing threshold, multiplied by a percentage:

- 1.0 percent for 2014;
- 2.0 percent for 2015; and
- 2.5 percent for years after 2015.

The monthly national average bronze plan premium is based on the annual national average premium for qualified health plans with a bronze level of coverage, offered through the exchanges.

Reporting of Health Insurance Coverage

Reporting requirements on insurers and employers were scheduled to take effect in 2014 for coverage in 2014, but the IRS has delayed these requirements until 2015. Under Code Sec. 6055, health insurers (which includes employers that self-insure) that provide MEC to any individual during the year must report certain information to the individual and to the IRS. The information includes:

- The name, address and Social Security number of the primary insured, as well as others covered by the plan;
- The dates of coverage;
- Whether the coverage is offered through an exchange; and
- The amount of any premium tax credit or cost-sharing reduction.

For an employer-sponsored plan, the insurer must also report the name, address and employer identification number of the employer, and the portion of the premium paid by the employer.

Reporting the Liability

A taxpayer is supposed to report his or her liability for the payment on the taxpayer's federal income tax return for the year. The payment is payable upon notice and demand by the IRS. However, the IRS cannot seek any criminal penalties and cannot place a lien or levy on the taxpayer's property for nonpayment. Accordingly, the IRS expects to collect the payment primarily through offsets to refunds.

STUDY QUESTION

1. Which of the following is included in MEC for individuals?
 - a. Medicare supplemental health insurance
 - b. Coverage for on-site medical clinics
 - c. COBRA continuation coverage
 - d. Coverage for a disease or specified illness

HEALTH INSURANCE EXCHANGES

Health insurance exchanges, also known as American Health Benefit Exchanges, play an essential role in PPACA's goal of expanding health insurance coverage. Under the health reform laws' plan, exchanges should be established in each state and be up and running by October 1, 2013, so that they can begin offering insurance for 2014 and beyond. Their role is to act as a marketplace for individuals and families who may lack insurance coverage or who are seeking less expensive coverage. Working with private