

**The 2010 Healthcare Reform Law**  
*and other important updates to employment  
and tax law*

PRESENTED BY

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## **THE NEW HEALTHCARE REFORM LAW AND HIRING INCENTIVES LAW – TAX IMPLICATIONS**

### ***Provisions Affecting Individuals***

Public Law 111-148, the Patient Protection and Affordable Care Act (as amended by Public Law 111-152, the Health Care and Education Reconciliation Act of 2010):

- Creates a complex “shared responsibility penalty” in the form of an excise tax after 2013 for certain individuals (exempt are those whose income is below the filing requirement, whose contributions would exceed 8 percent of income, other hardship cases, individuals outside of the United States and religious objectors) who fail to maintain health insurance for themselves and their dependants payable with the individual tax return but IRS may not charge interest on unpaid penalties or file notices of liens or conduct levies; when fully phased in by 2016, the penalty per uninsured adult is the greater of 2.5 percent of income over the filing threshold or \$695 (one-half of this amount for a child under 18) with the total household penalty not exceeding the lesser of 300 percent of the adult penalty or a national average annual premium offered through a “health insurance exchange.”
- Creates a refundable tax credit after 2013 of between 2 percent and 9.5 percent of income generally (which credit may be payable directly to insurers) for individuals whose household income including that of dependants was between 100 percent and 400 percent of the federal poverty level in the second preceding tax year and who are not eligible to receive health insurance under an employer plan or Medicaid and do not receive employer-provided “free choice vouchers” but who participate in a “health insurance exchange”; illegal aliens and individuals who can be claimed as dependants on another’s tax return are not eligible and married taxpayers must file a joint return to receive the credit.
- Affirms that the exclusion for employer-paid health insurance extends to non-dependant children under age 27 effective March 23, 2010.
- Provides that “free choice vouchers,” deductible to the employer and required to be offered by certain employers after 2013, are taxable income to the employee only if not expended on health insurance.
- Increases the floor on medical expense deductions to 10 percent after 2012 (2017 where the taxpayer or spouse is age 65 by yearend, even if separate returns are filed).
- Reduces maximum health benefits under a cafeteria plan to \$2,500 indexed effective 2013.
- Eliminates reimbursements under medical reimbursement plans, cafeteria plans, health savings accounts and Archer medical savings accounts for over-the-counter drugs unless prescribed by a medical care provider effective 2011.

- Increases the penalty on nonqualified distributions from health savings accounts and Archer medical savings accounts to 20 percent effective 2011.
- Allows health care providers to exclude reimbursements under any state program intended to increase the availability of providers in areas of shortage effective 2009.
- Imposes a 10 percent consumer excise tax on indoor tanning services effective July 1, 2010.
- Creates an additional Medicare liability for individuals on wages and self-employment income in excess of \$200,000 (\$250,000 combined wages on a joint return, \$125,000 on a married filing separate return) in the amount of 0.9 percent effective 2013. Withholding of the additional 0.9 percent begins at \$200,000 of wages for all individuals to be “settled up” on the tax return.
- Imposes additional Medicare liability of 3.8 percent effective 2013 on unearned income of citizens, residents, estates and non-charitable trusts to the extent of modified adjusted gross income in excess of \$200,000 (\$250,000 on a joint return, \$125,000 on a married filing separate return and the threshold of the highest marginal bracket for an estate or trust). Such income is generally defined as the sum of: (1) net investment income from interest, dividends, private annuities, royalties and rents not in the ordinary course of business; (2) passive income derived from a business; and (3) net gain on the disposition of property.
- Increases the maximum exclusion on employer-provided adoption benefits and the maximum adoption credit (neither still applicable to upper income individuals) by \$1,000 to \$13,170 in 2010 indexed, extending both the exclusion and credit through 2011 and making the credit refundable.

### ***Provisions Affecting Business***

Public Law 111-148, the Patient Protection and Affordable Care Act (as amended by Public Law 111-152, the Health Care and Education Reconciliation Act of 2010):

- Permits qualified retirement plans and VEBA's to pay health benefits for a retiree's child under age 27 effective March 23, 2010.
- Creates a nondeductible excise tax effective 2014 payable as prescribed by IRS on employers with at least 50 full-time employees during the preceding calendar year not offering “affordable” coverage of at least 60 percent of the cost or “free choice vouchers.” The tax is in the amount of \$166.67 per month indexed, multiplied by the number of full-time (30 hours per week) workers less 30 or, if less, the amount of the credits received by employees to subsidize their insurance costs.
- Creates an excise tax of 40 percent of the excess cost on “high-cost” employer-sponsored health coverage effective 2018 with the current threshold amount (subject to adjustment by 2018) \$10,200 per annum for individual coverage and \$27,000 for family coverage.

- Creates a general tax credit against regular and alternative minimum tax with loss of deduction effective 2010 for companies with up to 25 full-time equivalent employees (and a credit against payroll taxes for tax-exempts), which is not available for the coverage of certain owners and family members whose average wages do not exceed \$50,000 (indexed effective 2014) and who pay at least 50 percent of single premium coverage in the amount of the lesser of 35 percent (25 percent for tax-exempts) of cost or a “benchmark” premium determined on a state-by-state basis but with the maximum credit available to employers with 10 or fewer employees having average wages of \$25,000 or less. The credit is available for only two years after 2012 and is then limited to coverage through a “health insurance exchange,” but the maximum percentage rises to 50 percent (35 percent for tax-exempts).
- Denies a deduction for the reimbursed portion of retiree prescription drug coverage under Medicare Part D effective 2013.
- Allows “self-employed individuals” to include children under age 27 in the “above the line” deduction for health insurance effective March 23, 2010.
- Provides that Health and Human Services (HHS) subsidies to employers through 2013 for health insurance coverage for early retirees and their spouses are not taxable income.
- Adds to the investment tax credit for 2009 and 2010 tax years, for employers with less than 250 employees, a credit for 50 percent of a qualified investment in any therapeutic discovery project.
- Effective 2011, permits an employer with an average of 100 or fewer employees during the current or preceding year to avoid otherwise applicable nondiscrimination rules by creating “simple” cafeteria plans valid through the year in which it reaches 200 employees under which the employer must contribute for all rank and file employees age 21 or older, and with a year of service, either a uniform percentage of compensation of not less than 2 percent, or twice employee reductions, to a maximum of 6 percent of compensation.
- Prohibits health insurance as a cafeteria plan benefit after 2013 when offered through a “health insurance exchange,” except for qualified small employers (generally with no more than 100 employees).
- Imposes a 2.3 percent excise tax effective 2013 on manufacturers, producers or importers of medical devices except glasses, contact lenses, hearing aids and other devices purchased by the general public at retail with IRS required to provide such a list.
- Codifies the “economic substance doctrine” for transactions entered into after March 30, 2010, recognizing a transaction only if it changes a taxpayer’s economic position in a meaningful way or if the taxpayer has a substantial purpose for entering into the transaction (in each case aside from federal or conforming state tax reasons).

***Provisions Affecting Procedure***

Public Law 111-148, the Patient Protection and Affordable Care Act (as amended by Public Law 111-152, the Health Care and Education Reconciliation Act of 2010):

- Requires inclusion of employer-provided health coverage information on Forms W-2 for 2011 and succeeding years and requires information reporting by insurers to plan participants and the IRS after 2013.
- Requires businesses to issue Forms 1099 to corporate recipients of \$600 or more effective 2012.
- Increased the accuracy penalty from 20 percent to 40 percent for non-disclosed transactions without economic substance effective for such transactions and all “reportable transactions” after March 30, 2010; the provision also takes away the “reasonable cause” defense.



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Mr. Schweighofer is a member of the Firm's Tax Group and specializes in providing transactional tax advice in matters ranging from entity formation to business sales and reorganizations. Additionally, Mr. Schweighofer advises clients on the implementation of various employee incentive plans, including incentive stock options, nonqualified stock options, synthetic equity and other nonqualified deferred compensation arrangements. He believes that outstanding communication is crucial to providing superior legal representation and takes pride in being accessible to his clients. Mr. Schweighofer received a B.S. from Penn State University in International Business and Marketing. He received J.D. (cum laude) and an LL.M. in Taxation degrees from the University of San Diego School of Law. Prior to joining the Firm, Mark practiced law in Palo Alto, California where he participated in the Bay Area Young Tax Lawyers Section of the California State Bar.