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The Patient Protection and Affordable Care Act (H.R. 3590), passed by Congress on Sunday, contains numerous tax provisions.

The Reconciliation Act of 2010 (H.R. 4872), which also passed the House on Sunday, contains many other tax items, including extending the general exclusion for reimbursements for medical care expenses under an employer-provided accident or health plan to any child of an employee who has not attained age 27 as of the end of the tax year and codifying the economic substance doctrine. The reconciliation bill has not yet passed the Senate.

Among the many tax provisions in the Patient Protection and Affordable Care Act are the following:

Premium Assistance Credit

The act provides for refundable tax credits that eligible taxpayers can use to help cover the cost of health insurance premiums for individuals and families who purchase health insurance through a state health benefit exchange (which each state is required to establish under section 1311 of the act). Under new IRS § 36B, an eligible individual will enroll in a plan offered through an exchange and report his or her income to the exchange. Based on the information provided to the exchange and his or her income, the individual will receive a premium assistance credit. Treasury will pay the premium assistance credit amount directly to the insurance plan in which the individual is enrolled. The individual will then pay to the plan in which he or she is enrolled the dollar difference between the premium tax credit amount and the total premium charged for the plan.

Eligibility for the premium assistance credit is based on the individual's income for the tax year ending two years prior to the enrollment period. The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100% and 400% of the federal poverty level (for the family size involved) who do not receive health insurance through an employer or a spouse's employer. The credit amount is determined by the Secretary of Health and Human Services, based on the percentage of income the cost of premiums represents, rising from 2% of income for those at 100% of federal poverty level for the family size involved to 9.5% of income for those at 400% of federal poverty level for the family size involved.

The premium assistance credit will be available for years ending after Dec. 31, 2013.

Small Business Tax Credit

The act provides tax credits for small businesses and individuals designed to increase levels of health insurance coverage, as part of the IRC § 38 general business credit. Small businesses—defined as businesses with 25 or fewer employees and average annual wages of less than \$40,000—would be eligible for a credit of up to 50% of nonelective contributions the business makes on behalf of their employees for insurance premiums (new IRC § 45R). Tax-exempt organizations would get a 35% credit against payroll taxes.

Employers with 10 or fewer employees and average wages of less than \$20,000 would get 100% of the credit; it would be phased out, up to the 25-employee limit. The \$20,000 average annual wages figure will be indexed for inflation after 2013. Five-percent owners under the section 416 top-heavy plan rules and 2% S corporation shareholders are not included in the definition of employee, but leased employees are counted.

This credit is available for tax years beginning after Dec. 31, 2009.

Excise Tax on Uninsured Individuals

The act creates new IRC § 5000A, which requires U.S. citizens and legal residents to maintain minimum amounts of health insurance coverage. Minimum essential coverage includes various government-sponsored programs, eligible employer-sponsored plans, plans in the individual market, grandfathered group health plans and other coverage as recognized by the Secretary of Health and Human Services in coordination with the Secretary of the Treasury. This requirement would not apply to individuals who are incarcerated, not legally present in the United States or maintain religious exemptions.

Individuals who fail to maintain minimum essential coverage will be subject to a penalty equal to \$750. The fee for an uninsured individual under age 18 is one-half of the adult fee. The total household penalty may not exceed 300% of the per-adult penalty.

The penalty amount will be phased in over the years 2014–2016 and will be indexed for inflation after 2016. However, liens and seizures are not authorized to enforce this penalty, and noncompliance will not be subject to criminal penalties.

This provision is effective for tax years beginning after Dec. 31, 2013. The reconciliation bill if enacted would change the amount of the penalty.

Tax-Exempt Health Insurers

The act provides for a program administered by the Department of Health and Human Services that will foster the creation of qualified nonprofit health insurance issuers to offer health insurance. Insurers receiving federal grants or loans under the program would be exempt from federal tax (under IRC § 501(a)) for periods when the insurer complies with the terms of the program.

Reporting Requirements

The act requires insurers (including employers who self-insure) that provide minimum essential coverage to any individual during a calendar year to report certain health insurance coverage information to both the covered individual and to the IRS (new IRC § 6055).

The information required to be reported includes: (1) the name, address, and taxpayer identification number of the primary insured, and the name and taxpayer identification number of each other individual obtaining coverage under the policy; (2) the dates during which the individual was covered under the policy during the calendar year; (3) whether the coverage is a qualified health plan offered through an exchange; (4) the amount of any premium tax credit or cost-sharing reduction received by the individual with respect to such coverage; and (5) such other information as the Secretary may require.

This requirement is effective for calendar years beginning after 2013.

Medical Care Itemized Deduction Threshold

The threshold for the itemized deduction for unreimbursed medical expenses is increased from 7.5% of AGI to 10% of AGI for regular income tax purposes. This is effective for tax years beginning after Dec. 31, 2012, except that for 2013, 2014, 2015 and 2016, if either the taxpayer or the taxpayer's spouse turns 65 before the end of the tax year, the increased threshold does not apply and the threshold remains at 7.5% of AGI.

Cafeteria Plans

The act makes premiums for coverage under a qualified health plan offered through an exchange a qualified benefit under a cafeteria plan. This provision applies only to cafeteria plans established by a small employer that elects to make all its full-time employees eligible for one or more qualified plans offered in the small group market through an exchange.

This provision is effective for tax years beginning after Dec. 31, 2013.

Additional Hospital Insurance Tax on High-Income Taxpayers

Under the act, the employee portion of the hospital insurance tax part of FICA, currently amounting to 1.45% of covered wages, is increased by 0.9% on wages that exceed a threshold amount. The additional tax is imposed on the combined wages of both the taxpayer and the taxpayer's spouse, in the case of a joint return. The threshold amount is \$250,000 in the case of a joint return or surviving spouse, \$125,000 in the case of a married individual

filing a separate return, and \$200,000 in any other case.

For self-employed taxpayers, the same additional hospital insurance tax applies to the hospital insurance portion of SECA tax on self-employment income in excess of the threshold amount.

The provision applies to remuneration received and tax years beginning after Dec. 31, 2012.

Employer Responsibility

Under new IRC § 4980H, an “applicable large employer” that does not offer coverage for all its full-time employees, offers minimum essential coverage that is unaffordable, or offers minimum essential coverage that consists of a plan under which the plan’s share of the total allowed cost of benefits is less than 60%, is required to pay a penalty if any full-time employee is certified to the employer as having purchased health insurance through a state exchange with respect to which a tax credit or cost-sharing reduction is allowed or paid to the employee.

An employer is an applicable large employer with respect to any calendar year if it employed an average of at least 50 full-time employees during the preceding calendar year.

An applicable large employer who fails to offer its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an employer-sponsored plan for any month is subject to a penalty if at least one of its full-time employees is certified to the employer as having enrolled in health insurance coverage purchased through a state exchange with respect to which a premium tax credit or cost-sharing reduction is allowed or paid to such employee or employees. The penalty for any month is an excise tax equal to the number of full-time employees over a 30-employee threshold during the applicable month (regardless of how many employees are receiving a premium tax credit or cost-sharing reduction) multiplied by one-twelfth of \$2,000.

An applicable large employer who offers, for any month, its full-time employees and their dependents the opportunity to enroll in minimum essential coverage under an employer-sponsored plan is subject to a penalty if any full-time employee is certified to the employer as having enrolled in health insurance coverage purchased through a state exchange with respect to which a premium tax credit or cost-sharing reduction is allowed or paid to such employee or employees.

This provision is effective for months beginning after Dec. 31, 2013.

Fees on Health Plans

Under new section 4375, a fee is imposed on each specified health insurance policy. The fee is equal to two dollars (one dollar in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the policy. The issuer of the policy is liable for payment of the fee.

For any policy year beginning after September 30, 2014, the dollar amount is equal to the sum of: (1) the dollar amount for policy years ending in the preceding fiscal year, plus (2) an amount equal to the product of (A) the dollar amount for policy years ending in the preceding fiscal year, multiplied by (B) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year.

The issuer of the policy is liable for payment of the fee.

In the case of an applicable self-insured health plan, new IRC § 4376 imposes a fee equal to two dollars (one dollar in the case of policy years ending during fiscal year 2013) multiplied by the average number of lives covered under the plan. For any policy year beginning after September 30, 2014, the dollar amount is equal to the sum of: (1) the dollar amount for policy years ending in the preceding fiscal year, plus (2) an amount equal to the product of (A) the dollar amount for policy years ending in the preceding fiscal year, multiplied by (B) the percentage increase in the projected per capita amount of National Health Expenditures, as most recently published by the Secretary before the beginning of the fiscal year. The plan sponsor is liable for payment of the fee.

The fee is effective with respect to policies and plans for portions of policy or plan years beginning on or after Oct. 1, 2012.

Excise Tax on High-Cost Employer Plans

New IRC § 4980I imposes an excise tax on insurers if the aggregate value of employer-sponsored health insurance coverage for an employee (including, for purposes of the provision, any former employee, surviving

spouse and any other primary insured individual) exceeds a threshold amount. The tax is equal to 40% of the aggregate value that exceeds the threshold amount. For 2018, the threshold amount is \$10,200 for individual coverage and \$27,500 for family coverage, multiplied by the health cost adjustment percentage (as defined in the act) and increased by the age and gender adjusted excess premium amount (as defined in the act).

The provision is effective for tax years beginning after Dec. 31, 2017.

Tax on HSA Distributions

The additional tax on distributions from a health savings account (HSA) or an Archer medical savings account (MSA) that are not used for qualified medical expenses is increased to 20% of the disbursed amount, effective for disbursements made during tax years starting after Dec. 31, 2010.

Tax on Indoor Tanning Services

The act imposes a 10% tax on amounts paid for indoor tanning services (new IRC § 5000B). Like a sales tax, the tax will be collected from the person tanning when payment for the tanning services is made. The provision applies to services performed on or after July 1, 2010.

Flexible Spending Account

The act mandates that the maximum amount available for reimbursement of incurred medical expenses of an employee, the employee's dependents, and any other eligible beneficiaries with respect to the employee, under a health flexible spending account for a plan year (or other 12-month coverage period) must not exceed \$2,500. The provision is effective for tax years beginning after Dec. 31, 2012.

SIMPLE Cafeteria Plans for Small Business

The act establishes a SIMPLE cafeteria plan for small businesses. Under the provision, an eligible small employer is provided with a safe harbor from the nondiscrimination requirements for cafeteria plans as well as from the nondiscrimination requirements for specified qualified benefits offered under a cafeteria plan, including group term life insurance, benefits under a self insured medical expense reimbursement plan, and benefits under a dependent care assistance program. Under the safe harbor, a cafeteria plan and the specified qualified benefits are treated as meeting the specified nondiscrimination rules if the cafeteria plan satisfies minimum eligibility and participation requirements and minimum contribution requirements.

The provision is effective for tax years beginning after Dec. 31, 2010.

Expansion of Adoption Credit, Adoption Assistance Programs

For 2010, the maximum adoption credit is increased to \$13,170 per eligible child (a \$1,000 increase). This increase applies to both non-special needs adoptions and special needs adoptions. Also, the adoption credit is made refundable. The new dollar limit and phase-out of the adoption credit are adjusted for inflation in tax years beginning after Dec. 31, 2010. Also, the scheduled sunset of EGTRRA provisions relating to the adoption credit is delayed for one year (i.e., the sunset becomes effective for tax years beginning after Dec. 31, 2011).

For adoption assistance programs, the maximum exclusion is increased to \$13,170 per eligible child (a \$1,000 increase). The new dollar limit and income limitations of the employer-provided adoption assistance exclusion are adjusted for inflation in tax years beginning after Dec. 31, 2010. The EGTRRA sunset of provisions relating to adoption assistance programs is also delayed for one year (i.e., the sunset becomes effective for tax years beginning after Dec. 31, 2011).

Charitable Hospitals

The act establishes new requirements applicable to section 501(c)(3) hospitals, regarding conducting a community health needs assessment, adopting a written financial assistance policy, limitations on charges, and collection activities.

Information Reporting

The act requires employers to disclose on each employee's annual Form W-2 the value of the employee's health insurance coverage sponsored by the employer, effective for tax years beginning after Dec. 31, 2010.

The act requires businesses to file an information return (e.g., a Form 1099) for all payments aggregating \$600 or more in a calendar year to a single payee, including corporations (other than a payee that is a tax-exempt corporation). The provision is effective for payments made after Dec. 31, 2011.

Return Information Disclosure

The act allows the IRS, upon written request of the Secretary of Health and Human Services, to disclose certain taxpayer return information if the taxpayer's income is relevant in determining the amount of the tax credit or cost-sharing reduction, or eligibility for participation in the specified state health subsidy programs.

Upon written request from the Commissioner of Social Security, the IRS may disclose the certain limited return information of a taxpayer whose Medicare Part D premium subsidy, according to the records of the Secretary, may be subject to adjustment.

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