

## Three ACA Taxes Suspended

### Cross References

- HR 195

On January 22, 2018, the President signed into law HR 195 which extends funding to federal agencies through February 8, 2018. The law contains a number of other provisions, including the suspension of three taxes imposed under the Affordable Care Act (ACA).

### Medical Device Manufacturers Tax

- IRC §4191

The new law suspends the tax under IRC section 4191 for all sales made through December 31, 2019.

IRC section 4191 imposes a tax equal to 2.3% of the sale price on the sale of any taxable medical device by the manufacturer, producer, or importer of the device. A taxable medical device is any device, defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act, intended for humans. Section 201(h) defines a medical device as an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, which is:

- 1) Recognized in the official National Formulary, or the United States Pharmacopeia, or any supplement to them,
- 2) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or
- 3) Intended to affect the structure or any function of the body of man or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes.

The excise tax does not apply to eyeglasses, contact lenses, hearing aids, and any other medical device determined by the IRS to be of a type that is generally purchased by the general public at retail for individual use. A specific medical device is exempt if the device is generally sold at retail establishments (including over the internet) to individuals for their personal use. The exemption for these items is not limited by device class as defined in section 513 of the Federal Food, Drug, and Cosmetic Act.

For example, items purchased by the general public at retail for individual use include items such as certain bandages and tipped applicators, items such as certain pregnancy test kits and diabetes testing supplies, and items such as certain denture adhesives and snake bite kits. Such items would only be exempt if they are generally designed and sold for individual use. The determination of whether a specific item is a device designed and sold for individual use is generally made on a facts and circumstances basis.

## **High Cost Employer-Sponsored Health Coverage**

- IRC §4980I

The new law delays the implementation of the tax under IRC section 4980I until after December 31, 2021.

Under IRC section 4980I, an excise tax is imposed on insurers if the aggregate value of employer-sponsored health insurance coverage for an employee (including 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 would have been \$10,200 for individual coverage and \$27,500 for family coverage, multiplied by the health cost adjustment percentage and increased by the age and gender adjusted excess premium amount.

The excise tax is imposed pro rata on the issuers of the insurance. In the case of a self-insured group health plan, a Health FSA, or an HRA, the excise tax is paid by the entity that administers benefits under the plan or arrangement. If the employer acts as plan administrator to a self-insured group health plan, a Health FSA, or an HRA, the excise tax is paid by the employer. If an employer contributes to an HSA or an Archer MSA, the employer is responsible for payment of the excise tax, as the insurer.

Employer-sponsored health insurance coverage is health coverage under any group health plan offered by an employer to an employee without regard to whether the employer provides the coverage (and thus the coverage is excludable from the employee's gross income) or the employee pays for the coverage with after-tax dollars. Employer-sponsored health insurance coverage includes coverage under any group health plan established and maintained primarily for the civilian employees of the federal government or any of its agencies or instrumentalities and of any state government or political subdivision thereof or by any agencies or instrumentalities of such government or subdivision.

Employer-sponsored health insurance coverage includes both fully-insured and self-insured health coverage excludable from the employee's gross income, including, in the self-insured context, on-site medical clinics that offer more than a de minimis amount of medical care to employees and executive physical programs. In the case of a self-employed individual, employer-sponsored health insurance coverage is coverage for any portion of which a deduction is allowable to the self-employed individual under IRC section 162(l) (the rule that allows self-employed individuals to deduct 100% of health insurance as an above-the-line deduction).

## **Fee on Health Insurance Providers**

- Section 9010(j) of ACA

The new law suspends the annual fee on health insurance providers for 2019.

Beginning in 2014, the ACA imposes an annual fee on any covered entity engaged in the business of providing health insurance with respect to United States health risks. The aggregate annual fee imposed on all covered entities was \$8 billion during calendar year 2014, \$11.3 billion for calendar years 2015 and 2016, \$13.9 billion for calendar year 2017, and \$14.3 billion for calendar year 2018. This aggregate annual fee is apportioned among the providers based on a ratio designed to reflect relative market share of U.S. health insurance business.

A covered entity is generally an entity that provides health insurance with respect to United States health risks. It does not include an employer that self-insures the health risks of its employees.