



OBAMACARE'S TAX HIKES

Businesses await rising taxes as a result of the Affordable Care Act, which the U.S. Supreme Court ruled as constitutional in June.

BY **MARK E. BATTERSBY**

Like it or not, the U.S. Supreme Court has ruled and the Affordable Care Act (ACA) is now the law of the land and the tax code. By ruling that the ACA is constitutional, the court has approved more than 20 tax hikes, some of them already in play.

On the personal front, looming big is the 3.8 percent Medicare surtax on investment income, and the 0.9 percent Medicare payroll tax hike (from 1.45 percent to 2.35 percent). And then there are the tax hikes for everybody else, including the health savings account withdrawal penalty. Since Jan. 1, 2011, taxpayers who withdraw money from health savings accounts for non-medical expenses before age 65 face a 20 percent penalty, up from 10 percent before.

The employer mandate

The tax most likely to affect landscape contracting and lawn care businesses is the employer mandate tax that goes into effect in January 2014. The ACA requires businesses with more than 50 employees to provide health insurance or face an “assessable payment.” In other words, under ACA, employers are required to provide at least minimal benefits, via a health plan, to their employees.

If an employer does not offer health coverage, and at least one employee qualifies for a health tax credit or a cost-sharing reduction payment, the employer must pay an additional non-deductible tax of \$2,000 for all full-time employees.

Shared responsibility for small businesses

Since 2010, companies with fewer than 25 full-time equivalent employees have been eligible for a unique, under-utilized, tax credit if they provide at least half of the cost of health insurance. Remember, tax credits reduce the tax bill while deductions merely reduce the income upon which the tax bill is computed. And, full-time equivalent employees include both full-time employees plus the number of part-time employees when considered on a full-time basis.

Only companies with fewer than 10 full-time equivalent employees with average salaries of \$25,000 or less are eligible for the full credit. Today, that full credit is 35 percent of the operation's contribution toward an employee's insurance premium. As the size of the business and average wages go up, the amount of the tax credit goes down. And once the business hits 25 full-time equivalent employees, or \$50,000 in average salaries, the credit is completely phased out.

The high-cost health coverage excise tax

Any business that rewards its owners, shareholders or employees with health insurance coverage that exceeds a threshold amount established by lawmakers will face a whopping 40 percent excise tax beginning in 2018. Although the Internal Revenue Service (IRS) has yet to weigh in, the dollar limit for determining the tax thresholds are \$10,200 (for 2018) multiplied by the health cost adjustment percentage for an employee with self-only coverage and \$27,500 (for 2018) for employees with coverage other than self-only coverage.

In addition to a hike in the Medicare payroll

tax on self-employment income (from 2.9 percent to 3.8 percent), an “unearned income Medicare contribution” tax will impose the new 3.8 percent rate on “net investment income.” That includes interest, dividends, annuities, royalties, certain rents and other “passive” business income. Fortunately, only individuals with more than \$200,000 in income and married couples with income greater than \$250,000 will be subjected to the 3.8 percent tax.

Grandfathered plans

Certain plans or coverage existing as of March 23, 2010—when ACA was enacted—are subject to only some provisions. These plans are known as “grandfathered plans.”


The IRS, the Health and Human Services Department and the Department of Labor, which all are involved in ACA enforcement, say a group health plan or group or individual health insurance coverage is considered a grandfathered health plan even when it comes to new employees (just hired or newly enrolled) and their families.

Employers are allowed to maintain a grandfathered plan regardless of necessary administrative changes, even if an insurer stops offering coverage in a market or the business changes hands.

The individual mandate

The impact for sole proprietors will be much like the impact on individuals. For people in this group, the crux of the 2014 rollout is the individual mandate, which requires all U.S. citizens and legal residents to have health coverage or pay a penalty.

There are some exemptions, such as people from certain religious backgrounds or those who are eligible for the so-called “hardship exemption”, when the cost of the annual premium exceeds 8 percent of household income. There also are penalties intended to ensure compliance. The top penalty for individuals, once fully phased in, for not having insurance is \$695 or 2.5 percent of income, whichever is greater.



TO BE CONSIDERED AFFORDABLE UNDER ACA, THE INSURANCE MUST PAY FOR AT LEAST 60 PERCENT OF COVERED HEALTH CARE EXPENSES, AND EMPLOYEES MAY NOT BE FORCED TO PAY MORE THAN 9.5 PERCENT OF THEIR FAMILY INCOME FOR COVERAGE OFFERED BY THEIR EMPLOYERS.



Affordable insurance

There are many references to “affordable insurance” in the ACA. To be considered affordable under ACA, the insurance must pay for at least 60 percent of covered health care expenses, and employees may not be forced to pay more than 9.5 percent of their family income (before deductions and adjustments) for coverage offered by their employers.

And don't forget, companies with at least 50 full-time employees must start providing insurance to workers beginning in 2014. If they don't, and a single worker turns to the government for a health care tax credit or subsidy on the exchanges, then the company can be fined. And it won't be cheap. The employers will have to pay an additional non-deductible tax of \$2,000 for all full-time employees.

If any employee actually receives coverage through the exchange, the penalty on the employer for that employee rises to \$3,000. If the employer requires a waiting period of 30 to 60 days to enroll in coverage, there is a \$400 tax per employee (\$600 if the period is 60 days or longer).

It's a stiff rule that many fear, but it doesn't

affect the majority of the nation's nearly 6 million employers. Government statistics show 200,000 small businesses will face the new rule. The rest, however, have no obligation to cover employees.

The exchanges

The ACA requires each state to establish an American Health Benefit Exchange and Small Business Health Options Program (SHOP) exchange to provide qualified individuals and qualified small business employers access to health plans.

Starting in 2014, sole proprietors and other small businesses can shop for less expensive insurance through exchanges in each state. One-person businesses can turn to exchanges for individuals. Businesses with up to 100 workers may turn to SHOP. Both have a similar approach to

STATE-OPERATED EXCHANGES ARE EXPECTED TO OFFER SMALL BUSINESSES LOWER RATES THAN INSURANCE COMPANIES CHARGE.



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bringing down costs: Increasing the size of the insured pool spreads out risk.

No exchanges are up and running yet. In theory, they will give small businesses the long-awaited ability to buy insurance at rates that once belonged only to large companies. The federal law ordered states to create them, and a dozen already have begun establishing them.

Slimming side-stepping benefits

Many business owners have utilized one of the tax-deferred benefit plans, such as Health Savings Accounts (HSAs), Flexible Savings Accounts (FSAs) and Health Reimbursement Arrangements (HRAs), for themselves and in many cases for workers, thus avoiding the administrative and paperwork burden required of more formal benefit plans.

Last year, for the first time, sole proprietors and small business owners could no longer use the pretax dollars of these plans to purchase non-prescription, over-the-counter medicines (except insulin). What's more, an increased, additional tax on nonmedical early withdrawals from an HSA, from 10 percent to 20 percent, put them at a disadvantage with IRAs and other tax-advantaged accounts, which remained at 10 percent.

Beginning Jan. 1, employees will face a \$2,500 cap on the amount of pretax salary deferrals they can make into a health care flexible spending account. There is no cap under current law. In light of the new cap, employee benefits groups are lobbying Congress to modify the use-it-or-lose-it rule that means employees forfeit unused funds in their accounts at the end of the plan year.

Not all bad news

Fortunately, it's not all bad news. The ACA limits how much premiums can go up each year. Under the law, premiums for some landscape contractors may drop, if the law's proponents are to be believed. The law eliminates the surcharges that insurers impose on businesses that have employees with

serious medical conditions. Plus, the state-operated exchanges are expected to offer small businesses lower rates than insurance companies charge.

Because the law requires all individuals to have health insurance, the smallest businesses—those with fewer than 50 employees—will be able to compete for good workers with larger

companies. And while there is the possibility that lawmakers will completely or partially repeal the ACA, planning to cope with the many tax hikes already in place, as well as those scheduled in the years ahead, is strongly advised. **LM**

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