Allen, Gibbs & Houlik, L.C.
CPAs & Advisors

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ALERT: Health care reform act impact phasing in over next four years; information-sharing and small business tax credits effective in 2010

The Patient Protection and Affordable Care Act (PPACA), signed into law Tuesday, March 23, contains sweeping changes in legislation with significant tax impact for both businesses and individuals. Some of the bill's provisions have been modified by the House Reconciliation Act of 2010, which must be voted on in the Senate – expected before the end of the Congressional session March 29.

The new bill will be financed by more than $400 billion in new taxes on employers and individuals in health-related areas. **Although it is not scheduled to take effect until 2013, one of the most significant changes in the bill is an additional Medicare tax on net investment income – outlined in further detail on page two of this alert.** Here's a brief snapshot of some of the PPACA's major points (as modified by the Reconciliation Act), including when they become effective.

Effective for tax years beginning after Dec. 31, 2009:

- Small business tax *credit*
  - Employers with 25 or fewer full-time equivalent employees (FTEs) whose average wage is less than $50,000 will earn tax credits to offset a portion of employer-paid premiums for employees' health care insurance.
  - For tax years 2010 through 2013, the credit would be 35% of employer-paid premiums. Starting in 2014, the credit would be 50% for two years for employers who purchase coverage through the insurance exchange.
  - Employers with 10 or fewer FTEs and an average wage of less than $25,000 will earn tax credits equaling 100% of employer-paid premiums.
- The IRS may provide information from a taxpayer's return to the Secretary of Health and Human Services (HHS) or Commissioner of Social Security upon request.
  - HHS may use IRS information to determine a taxpayer's eligibility for tax credits, cost-sharing reduction or state health subsidy programs.
  - Social Security may use IRS information to adjust a taxpayer's Medicare Part D premium subsidy.

Effective for tax years beginning after Dec. 31, 2010:

- Employers will be required to disclose the value of the employee's health insurance benefit provided by the employer in the employee's W-2 form.
- Over-the-counter medicines will not be reimbursable through a health flexible spending plan (FSA, "cafeteria plan," "Section 125 plan") nor through a tax-free health spending account (HSA).
- The tax on HSA withdrawals before age 65 for non-qualified medical expenses increases from 10% to 20% of the amount withdrawn; the tax on non-qualified Archer MSA withdrawals rises from 15% to 20%.
- A Simple Cafeteria Plan would be created to help small businesses provide tax-free health benefits to their employees. The Simple Cafeteria Plan would not be subject to some of the limitations of larger cafeteria plans and would include self-employed individuals as qualified employees.

Effective for payments made after Dec. 31, 2011:

- Employers are required to file an information return (Form 1099) for all payments totaling $600 or more in a calendar year made to a single payee, including corporations.

Effective for tax years beginning after Dec. 31, 2012:

- *High earners – defined as individuals earning more than $200,000 annually or married couples filing jointly earning more than $250,000 annually – will pay more Medicare tax in two ways:*
  - *The Hospital Insurance portion of Medicare tax has been increased by 0.9% for individuals in these income brackets, and*
  - ***An additional 3.8% Unearned Income Medicare Contribution tax will be placed on net investment income. This includes interest, dividends, royalties, rents, gross income from a trade or business involving passive activities, and net gain from disposition of property other than property held in a trade or business.***
- Cafeteria plans will be capped at $2,500 per year, indexed to inflation after 2013.
- The adjusted gross income threshold for claiming the itemized deduction for medical expenses increases from 7.5% to 10% except for those 65 and older and their spouses – the threshold remains at 7.5% for that age group through 2016.

Effective for tax years beginning after Dec. 31, 2013:

- Employers with an average of at least 50 full-time employees during the preceding calendar year will be penalized *if* a full-time employee purchases health insurance through a state exchange for which a tax credit or cost-sharing reduction is paid to the employee *if* the employer:
  - Does not offer health insurance coverage for all full-time employees, OR
  - Offers minimal essential unaffordable health insurance, OR
  - Offers minimum essential coverage which pays for less than 60% of covered medical costs

In addition to these specific items, the bill contains many more provisions related to areas such as required health insurance coverage for some individuals, taxes and fees on health insurers and some types of health care providers, and taxes on high-cost employer-sponsored health coverage.

If you have any questions about the PPACA, please contact your AGH professional at (316) 267-7231.

NOTE: *Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to inform you that any discussion of tax matters contained herein is not intended or written to be tax advice, and cannot be relied upon as such, nor can it be used for the purpose of: (i) avoiding tax penalties that may be imposed by the IRS or states, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. If you seek definitive tax advice on a matter, please request a written tax memorandum from your AGH tax advisor.*