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HEALTH CARE ACT NEWSLETTER FOR SMALL BUSINESSES

For owners of small businesses and their workers, the recently enacted health reform legislation has some key provisions to pay attention to. The major ones include: tax credits; excise taxes; and penalties. But whether a business will be affected by them depends on a variety of factors, such as the number of employees the business has. We are writing to give you an overview of the provisions in the new law with the biggest impact on small business. Please call our offices for details of how the new changes may affect your specific business.

[Tax credits to certain small employers that provide insurance:](#) The new law provides small employers with a tax credit (i.e., a dollar-for-dollar reduction in tax) for non-elective contributions to purchase health insurance for their employees. The credit can offset an employer's regular tax or its alternative minimum tax (AMT) liability.

Small business employers eligible for the credit: To qualify, a business must offer health insurance to its employees as part of their compensation and contribute at least half the total premium cost. The business must have no more than 25 full-time equivalent employees ("FTE's"), and the employees must have annual full-time equivalent wages that average no more than \$50,000. However, the full amount of the credit is available only to an employer with 10 or fewer FTE's and whose employees have average annual full-time equivalent wages from the employer of less than \$25,000.

Years the credit is available: The credit is initially available for any tax year beginning in 2010, 2011, 2012, or 2013. Qualifying health insurance for claiming the credit for this first phase of the credit is health insurance coverage purchased from an insurance company licensed under state law. For tax years beginning after 2013, the credit is only available to an eligible small employer that purchases health insurance coverage for its employees through a state exchange and is only available for two years. The maximum two-year coverage period does not take into account any tax years beginning in years before 2014. Thus, an eligible small employer could potentially qualify for this credit for six tax years, four years under the first phase and two years under the second phase.

Calculating the amount of the credit: For tax years beginning in 2010, 2011, 2012, or 2013, the credit is generally 35% (50% for tax years beginning after 2013) of the employer's non-elective contributions toward the employees' health insurance premiums. The credit phases out as firm-size and average wages increase. Tax-exempt small businesses meeting these requirements are eligible for payroll tax credits of up to 25% for tax years beginning in 2010, 2011, 2012, or 2013 (35% in tax years beginning after 2013) of the employer's non-elective contributions toward the employees' health insurance premiums.

Special rule: The employer is entitled to an ordinary and necessary business expense deduction equal to the amount of the employer contribution minus the dollar amount of the credit. For example, if an eligible small employer pays 100% of the cost of its employees' health insurance coverage and the amount of the tax credit is 50% of that cost (i.e., in tax years beginning after 2013), the employer can claim a deduction for the other 50% of the premium cost.

Self-employed individuals, including partners and sole proprietors, 2% shareholders of an S corporation, and five percent owners of the employer are not treated as employees for purposes of this credit. Any employee with respect to a self-employed individual is not an employee of the employer for purposes of this credit if the employee is not performing services in the trade or business of the employer. Thus, the credit is not available for a domestic employee of a sole proprietor of a business. There is also a special rule to prevent sole proprietorships from receiving the credit for the owner and their family members. Thus, no credit is available for any contribution to the purchase of health insurance for these individuals and the individual is not taken into account in determining the number of full-time equivalent employees or average full-time equivalent wages.

[Most small businesses exempted from penalties for not offering coverage to their employees:](#) Although the new law imposes penalties on certain businesses for not providing coverage to their employees (so-called “pay or play”), most small businesses won't have to worry about this provision because employers with fewer than 50 employees aren't subject to the “pay or play” penalty. For businesses with at least 50 employees, the possible penalties vary depending on whether or not the employer offers health insurance to its employees. If it does not offer coverage and it has at least one full-time employee who receives a premium tax credit, the business will be assessed a fee of \$2,000 per full-time employee, excluding the first 30 employees from the assessment. So, for example, an employer with 51 employees who doesn't offer health insurance to his employees will be subject to a penalty of \$42,000 (\$2,000 multiplied by 21). Employers with at least 50 employees that offer coverage but have at least one full-time employee receiving a premium tax credit (also allowed under the new law) will pay \$3,000 for each employee receiving a premium credit (capped at the amount of the penalty that the employer would have been assessed for a failure to provide coverage, or \$2,000 multiplied by the number of its full-time employees in excess of 30). These provisions take effect January 1, 2014.

[Limit on reimbursement of over-the-counter medications from HRAs, HSAs, FSAs, and MSAs:](#) The new law excludes the costs for over-the-counter drugs not prescribed by a doctor from being reimbursed through a health reimbursement account (HRA) or health flexible savings accounts (FSAs) and from being reimbursed on a tax-free basis through a health savings account (HSA) or Archer Medical Savings Account (MSA), effective for tax years beginning after December 31, 2010.

[Health flexible spending arrangements \(FSAs\) are limited to \\$2,500:](#) Under current law, there is no limit on the amount of contributions to an FSA. Under the new law, however, allowable contributions to health FSAs will be capped at \$2,500 per year, effective for tax years beginning after December 31, 2012. The dollar amount will be indexed for inflation after 2013.

[H.I.R.E. Act:](#) Provides employment tax savings to employers hiring certain previously unemployed workers hired after February 3, 2010. Additionally, workers retained for over one year will earn the employer up to \$1,000 of additional income tax credit. Please contact us to discuss if you may qualify for this credit.

We hope you find this information helpful. If you would like more details about these provisions or any other aspect of the new law, please do not hesitate to call.

Very truly yours,

Stefforia, Petik & Associates, P.C.