

PREZIOSI NICHOLSON & ASSOCIATES, CPAS

1101 Wheaton Avenue, Suite 100

Millville, NJ 08332

(856) 794-8400 Fax (856) 794-8411

TAX AND BUSINESS *Alert*™

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The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010 (together, the Affordable Care Act), was landmark legislation that dramatically affects how health care is delivered in the United States. Provisions of the legislation affect not only those directly involved in providing health care, but also most individuals and employers.

The health care reform legislation is extremely complex, and many items in the legislation change rules and regulations that were already in place. The IRS, Department of Labor (DOL), Department of Health and Human Services (HHS), and other agencies have the monumental task of interpreting the legislation and providing guidance. Many temporary and proposed regulations, as well as some final regulations, have been issued.

The purpose of this legislation was to provide affordable minimum health care benefits to all individuals. With that in mind, the legislation provides for the establishment of qualified health plans that must provide essential health benefits consisting of minimum essential coverage.

Caution: Some of the rules originally enacted have already been repealed and the effective date of other rules has been modified. It is possible that more changes will occur as these rules are implemented. This information is current as of July 11, 2013.

Employer Responsibility

Beginning in 2015, certain applicable large employers (i.e., generally those who had an

The Affordable Care Act

average of at least 50 full-time employees in the previous calendar year) that do not offer health insurance

coverage to their full-time employees (and their dependents), or employers that offer health insurance coverage that is unaffordable or does not provide a certain minimum value, must

pay a penalty if the employer is notified that any full-time employee receives a premium assistance credit to purchase health insurance in the individual market through a state insurance exchange or a cost-sharing-reduction subsidy to help with out-of-pocket expenses. Any penalty paid under this provision is not deductible as a business expense for federal income tax purposes.

To determine if an employer is an applicable large employer, the full-time equivalent value of the hours worked by part-time employees must be calculated and added to the employer's number of full-time employees. This calculation can be challenging. Although part-time employees must be considered when determining applicable large employer status, applicable large employers only need to offer full-time employees (and their dependents) adequate health insurance coverage to avoid paying a penalty. However, the rules for determining full-time status can be complicated for certain variable-hour employees.



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(Continued on Page 2.)

The Affordable Care Act

(Continued from Page 1.)

Employers will be subject to many new notice and reporting requirements.

Individual Mandate for Health Coverage

The health care reform legislation requires most U.S. citizens and legal residents (i.e., applicable individuals) to have minimum essential health insurance coverage every month beginning on or after January 1, 2014. Those who do not have such health insurance will be subject to



a penalty for each month they do not have minimum essential coverage. The penalty will be the greater of a flat fee amount (for each individual not covered by health

insurance) or a percentage of household income over a threshold amount. For applicable individuals who are at least age 18, the maximum applicable annual dollar amount is \$95 for 2014, \$325 for 2015, and \$695 for 2016 and later years. An inflation adjustment will be applied in calendar years beginning after 2016. For individuals under age 18, the maximum applicable penalty is 50% of these amounts.

Individuals who meet certain financial or hardship criteria are exempt from the mandate. In addition, members of an Indian tribe and individuals who are members of certain religious sects or members of certain health care sharing ministries are exempt from the mandate.

Premium Assistance Credits and Cost-sharing-reduction Subsidies

To assist individuals in meeting the mandate for having minimum essential health insurance coverage, the legislation also provides for premium assistance credits and cost-sharing-reduction subsidies. Beginning in 2014, some individuals will qualify for a premium assistance credit to help them pay the premiums on health insurance purchased in the individual market through the state

insurance exchanges that will be operational beginning October 1, 2013. Individuals can elect to have this credit payable in advance directly to the insurer.

The premium assistance credit will be available (on a sliding scale basis) for individuals and families with incomes up to 400% of the federal poverty level (\$45,960 for an individual or \$94,200 for a family of four, using 2013 poverty level figures) who are not eligible for Medicaid, CHIP, a state or local public health program, employer-sponsored insurance that is both affordable and provides a certain minimum value, or other acceptable coverage.

Excise Tax on High-cost Employer-sponsored Health Coverage (Cadillac Plans)

Beginning in 2018 under the current law, a nondeductible 40% excise tax will be levied on so-called Cadillac plans. These plans are employer-sponsored health plans with annual premiums (i.e., excess benefits) exceeding \$10,200 for self-only coverage and \$27,500 for any other coverage. Slightly higher premium thresholds apply for retired individuals age 55 and older who are not eligible for enrollment in Medicare or entitled to Medicare benefits, and for plans that cover employees engaged in high-risk professions. For coverage under a group health plan, the 40% excise tax will be imposed on insurance companies, but it is expected that employers (and their employees) will ultimately bear this tax in the form of higher premiums passed on by insurers. Employers will be responsible for the tax if coverage is provided by employer contributions to HSAs or Archer MSAs.

Employers will be responsible for calculating the excess benefit amounts and reporting those amounts to the applicable insurer. Employers that currently offer generous health benefits (especially if the benefits are to the owners and related persons) should carefully analyze their plans to see if changes are needed to avoid having plans that will be subject to this tax. Additional guidance will be issued on this excise tax (additional legislation may change some of these provisions).

One unique aspect of owning your business is the ability to hire your children.

Whether doing so makes sense for you and your business is more than a business decision. For your children, the answer depends a great deal on your intentions for passing the business to future generations, the child's interest and aptitude, and your feelings about how much a parent should "help" a child and how much they should "make it on their own." However, some real benefits are available when you employ your children.

Usually, children (especially minors) are subject to lower tax rates than their parents. In this case, shifting taxable income away from the parents and to their children is an effective way to lower the family's tax burden. Although the "kiddie tax" potentially taxes the unearned income of children under age 24 at their parent's marginal rate, wages are earned income, so they are not subject to the kiddie tax. Also, dependents usually are limited to a standard deduction of \$1,000 (for 2013). However, the standard deduction for a dependent with earned income equals his or her earned income plus \$350 (up to \$6,100 for 2013). Thus, up to \$6,100 of earned income can be completely sheltered from tax. The next \$8,925 of wages will be taxed at only 10%.

Paying a child wages also means an IRA can be funded for that child (the funds can actually come from you as a gift). Thus, paying your child wages of \$5,500 this year will allow the maximum amount to be contributed to your child's traditional or Roth IRA. A Roth IRA, which potentially allows all earnings and distributions to be tax-free, may be the best option if your child has a low current tax rate, a long horizon for saving, and will likely be in a higher tax bracket when distributions are made. It may also be a good way to fund some college costs since Roth distributions are tax-free up to the amount of contributions that have been made to it. In any case, the ability to compound income either tax-deferred or tax-free for many years is a powerful way to build wealth.

If your business is operated as a sole proprietorship (or partnership where you and your spouse are the only partners), employing your children under age 21 can reduce payroll

Employing a Business Owner's Children

taxes. This is because wages paid to a child under age 21 are exempt from the FUTA tax.

They are also exempt from FICA tax if the child is under age

18. Furthermore, the wages reduce your self-employment (SE) income, and thus

reduce SE tax. (This exemption does not


apply if your business is operated as a C or S corporation, or as a partnership with partners other than your spouse.)



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It's never too early to start planning to transition ownership of your business to the next generation. The business's continued success depends on the existence of a capable and experienced successor to the owner. Furthermore, it's important for your key employees to be confident in the abilities of your successor. Thus, if your children are your intended successors, it is critical that they become involved in the business several years before the ownership transition is made.

Employing your family members can have many benefits other than those we've described. Often, working together in the family business strengthens the family bond. Of course, aspects such as wanting children to learn to work for an unrelated employer and the reality of spending a great deal of time together also come into play. In many situations, employing family members makes good tax and business sense.

Wages paid to your child should be comparable to what would be paid to a nonfamily member for the same work; otherwise, the IRS is likely to question them. Also, the tasks performed should be reasonable for your child's age and skill level. While 12-year-olds can likely work a few hours a week, it's probably not realistic to pay them more than minimum wage. Older children could likely be expected to work more hours and command a higher wage. However, fair labor laws must be considered. 

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Alert

August 2013

2014 HSA Amounts

Health savings accounts (HSAs) were created as a tax-favored framework to provide health care benefits mainly for small business owners, the self-employed, and employees of small-to medium-sized companies who do not have access to health insurance.



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The tax benefits of HSAs are quite substantial. Eligible individuals can

make tax-deductible (as an adjustment to AGI) contributions to HSA accounts. Funds in the account may be invested (somewhat like an IRA), so there is opportunity for growth. The earnings inside the HSA are free from federal income tax, and funds withdrawn to pay eligible health care costs are tax free.

An HSA is a tax-exempt trust or custodial account established exclusively for paying

qualified medical expenses of the participant who, for the months for which contributions are made to an HSA, is covered under a high-deductible health plan. Consequently, an HSA is not insurance; it is an account that must be opened with a bank, brokerage firm, or other provider (i.e., insurance company). It is therefore different from a flexible spending account in that it involves an outside provider serving as a custodian or trustee.

The 2014 inflation-adjusted deduction for individual self-only coverage under a high-deductible plan is limited to \$3,300, while the comparable amount for family coverage is \$6,550. This is an increase of 1.5% and 1.6%, respectively, from 2013. For 2014, a high-deductible health plan is defined as a health plan with an annual deductible that is not less than \$1,250 for self-only coverage and \$2,500 for family coverage, and the annual out-of-pocket expenses (including deductibles and copayments, but not premiums) must not exceed \$6,350 for self-only coverage or \$12,700 for family coverage.