Washington Council

Employer Tax Penalties Linked to Employees Receiving Tax Credits

- Employers will face taxes under IRC §4980H if they do not offer minimum essential coverage or if the coverage they offer is unaffordable or not of minimum value to employees with household income between 100% and 400% of the federal poverty level and they receive a tax credit for Exchange coverage.
- If an employee is enrolled in an eligible employer-sponsored plan, regardless of the cost or value of the plan, such employee will be ineligible for a premium tax credit.
- Medicaid-eligible employees will not be eligible for tax credits and therefore, employers will not face tax penalties for those employees. States can expand Medicaid eligibility effectively to 138% of federal poverty level.

Calculation of Non-deductible Excise Taxes Under IRC §4380H

Tax for *no coverage - IRC §4980H(a)*

- If a large employer does not offer minimum essential coverage to full-time employees and their dependents, an employer may face a tax of:
  - $2,000 x the total number of full-time employees (FTE) if at least one FTE is receiving a premium assistance tax credit

Large employers who do not offer coverage may subtract the first 30 workers when calculating their liability for taxes under IRC §4980H(a).

Tax for No Coverage
Under IRC §4380H(a)

- The proposed regulations state that in general, a large employer that is a single entity or a large employer member will not be subject to the penalty under IRC §4980H(a) so long as the employer offers minimum essential coverage under an eligible employer-sponsored plan to its full-time employees and their dependents.
- Such minimum essential coverage (to be defined in a future regulation) does not have to meet the law's affordability and minimum value standards to avoid penalties under IRC §4980H(a). The proposed regulations also state that a large employer that is a single entity or large employer member cannot be liable for tax penalties under both IRC §§4980H(a) and (b) for the same month.
    - Dependents: Defined as an employee's child under age 26 (see IRC §152(f)(1)). Employers will not face tax penalties for not offering coverage to spouses.
    - De minimis rule: A large employer that is a single entity or a large employer member will be treated as offering coverage to full-time employees if they offer coverage to 95% of their full-time employees.
    - Offer of coverage: Proposed regulations do not propose any new specific rules for demonstrating that an offer of coverage was made. The normal rules for substantiation and recordkeeping requirements apply.
    - Nonpayment of premiums: A large employer will not be treated as failing to offer coverage if the coverage is terminated solely due to the employee's failure to pay the employee's share of premium on a timely basis.

Assessment and Administration of Taxes

- Penalty assessment for controlled groups:
    - For purposes of assessing liability, the IRC §4980H tax penalties are applied separately to each member of the controlled group.
    - Each member of the controlled group is liable for its own tax penalties under IRC §4980H and is not liable for the IRC §4980H tax penalties of any member of the controlled group that makes up the large employer.
    - For purposes of calculating penalties under IRC §4980H, only one 30-employee reduction is allowed per controlled group. The reduction is allocated among the members that make up the controlled group on the basis of the number of employees employed by each.

Calculation of Non-deductible Excise Taxes Under IRC §4380H

Tax for *unaffordable coverage - IRC §4980H(b)*

- If a large employer offers minimum essential coverage to full-time employees and their dependents but the coverage is unaffordable to certain employees or does not provide minimum value, an employer may face a tax of:
  - The lesser of $3,000 x the number of FTEs receiving a premium assistance tax credit or $2,000 x the total number of FTEs

Taxes under §4980H(b) are capped not to exceed an employer's potential tax under §4980H(a).

Tax For Coverage That is Unaffordable, Does Not Provide Minimum Value Under IRC §4380H(b)

- Affordability general rule. Employee's share of the self-only premium for the employer's lowest-cost plan that provides minimum value cannot exceed 9.5% of household income or the employee may be eligible for a premium tax credit to purchase Exchange coverage
- Safe harbors. Employers can demonstrate they offer coverage meeting the affordability standard by showing the employee premium share for self-only coverage under their lowest-cost plan that meets the minimum value standard utilizing the following safe harbors:
  - Form W-2 safe harbor. Employee premium share does not exceed 9.5% of the amount required to be reported in Box 1 of Form W-2. The proposed regulations provide guidance for using the W-2 safe harbor for an employee who was not a full-time employee for the entire calendar year. Application of this safe harbor is determined after the end of the calendar year and on an employee-by-employee basis, taking into account the employee's Form W-2 wages from the employer and the employee contribution.
  - Rate of pay safe harbor. Employee premium share does not exceed 9.5% of the product of multiplying the hourly rate of pay (either each employee's individual rate of pay or the lowest rate of pay paid by a large employer that is a single entity or a large employer member) by 130 hours per month (the benchmark for full-time status for a month under IRC §4980H).
  - Federal poverty line safe harbor. Employee premium share does not exceed 9.5% of the Federal poverty line for one person. The calculation could be done using the most recently published federal poverty guidelines as of the first day of the plan year for the plan offered by a large employer that is a single entity or a large employer member.

Estimates for Affordability Safe Harbors

Estimates for Individual Eligibility for Medicaid or Tax Credits and Affordability Safe Harbors[1]					
Scenario	Percent of federal poverty level	Annual income	Hourly wage[4]	Affordability test safe harbor (9.5% of current wages)	Estimated employee premium share for self-only coverage for affordability test safe harbor[5]
In states that expand Medicaid under the ACA to 133% of Federal Poverty level:					
Minimum wage worker[2] eligible for Medicaid	~101%	$11,310	$7.25	Medicaid eligible	n/a
Statutory upper limit for Medicaid eligibility	133%	$14,856	$9.52	$1,411	$118
Effective upper limit for Medicaid eligibility[3]	138%	$15,415	$9.88	$1,464	$122
Upper limit for eligibility for tax credits	400%	$44,680	$28.64	$4,245	$354
In states that do not expand Medicaid under the ACA:					
Minimum wage worker eligible for Exchange credits if employer coverage is not offered/affordable	~101%	$11,310	$7.25	$1,074	$90
Upper limit for eligibility for tax credits	400%	$44,680	$28.64	$4,245	$354

1. The chart is based on the 2012 HHS Federal Poverty Guidelines for one person ($11,170).
2. Federal minimum wage ($7.25 per hour). Note: As of January 1, 2012, minimum wage rates are higher than the federal minimum wage in the District of Columbia and 18 states (Alaska, Arizona, California, Colorado, Connecticut, Florida, Illinois, Massachusetts, Maine, Michigan, Montana, Nevada, New Mexico, Ohio, Oregon, Rhode Island, Vermont and Washington).
3. ACA §2002 (as added by HCERA §1004(e)(2)) requires states to apply an "income disregard" of five percent of the federal poverty level in meeting the income test, resulting in an effective income threshold of 138% of FPL for Medicaid eligibility.
4. Based on the ACA threshold for classification as a full-time employee (average 30 hours per week) multiplied by 52 weeks.
5. 9.5% of current wages divided by 12 months

Tax For Coverage That is Unaffordable, Does not Provide Minimum Value Under IRC §4980H(b)

- Minimum value: A plan fails to provide minimum value (MV) if "the plan's share of the total allowed costs of benefits provided under the plan is less than 60 percent of such costs."
  - Generally understood to be a 60% actuarial value test (percentage of medical expenses -- deductibles, co-insurance, co-payments, etc. -- paid for by the plan for a standard population and set of allowed charges).
- Treasury and HHS have proposed three distinct options for determining MV on a pass/fail basis.
  - Minimum Value (MV) Calculator: Allows an employer to input in-network cost-sharing features of their health plan for different categories of benefits into an online calculator. Employers would not be able to use the MV calculator if they have "non-standard" features, such as atypical quantitative or cost-sharing limits on the four core benefit categories: hospital/ER services, physician/mid-level practitioner care, pharmacy benefits and lab/imaging services
  - Safe-Harbor Checklist: Provides design-based safe harbors that allow an employer to perform an "eyeball test" and see if their plan design features meet one of several design-based safe harbors. Each safe harbor checklist would describe the cost-sharing attributes of a plan that apply to the four core categories.
  - Actuarial Certification: If an employer plan contains non-standard features and neither the MV calculator nor the design-based checklists applies to the plan, an employer could use a certified actuary to determine whether the plan meets the MV standard.

Transition Relief For IRC §4980H

- Employers with non-calendar year plans: Generally, a large employer who currently offers a non-calendar year plan will not be liable for tax penalties for months prior to the first day of their plan year beginning in 2014.
  - This transition relief means that a large employer would not have to make mid-year changes to a non-calendar year plan in order to meet the law's coverage requirements. For example, if an employer maintained a plan with a July 1 through June 30 plan year as of December 27, 2012, that employer would need to ensure that the eligible employees are offered coverage that meets the law's affordability and minimum value standards by June 30, 2014 (the beginning of the 2014 plan year).
- Coverage for dependents: Employers will not face tax penalties relating to the offering of dependent coverage provided that employers take steps during plan years that begin in 2014 toward satisfying the dependent coverage requirements.
- Cafeteria plans: Employers have the option of amending one or more of their cafeteria plans to permit an employee to make a one time mid-year change in election without a qualifying event.
- Multi-employer plans: An employer will not be subject to IRC §4980H tax penalties if
  - The employer is required to make a contribution to a multiemployer plan with respect to a full-time employee pursuant to a collective bargaining agreement or appropriate related participation agreement
  - Coverage under the multiemployer plan is offered to the full-time employee (and the employee's dependents)
  - The coverage offered to the full-time employee meets the law's affordability and minimum value standards

Additional Taxes and Fees Under the ACA

- Plan compliance failure: Excise tax equal to $100 per day, per individual to whom the failure to comply with ACA and HIPAA requirements relates
- PCORI: Plan years ending after September 30, 2012, per capita fee that funds the Patient-Centered Research Outcome Institute (PCORI)
  - $1 per covered life during fiscal year 2013 and $2 thereafter through 2019 applies to both insured and employer self-insured plans
- Transitional reinsurance: Beginning January 2014, per capita fee of $63 that funds a transitional reinsurance fund
- High-cost plans: Beginning in 2018, 40% excise tax on the value of health plan coverage that exceeds certain dollar thresholds under IRC §4980I

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