AFFORDABLE CARE ACT

INTRODUCTION

Last summer, the United States Supreme Court upheld the constitutionality of the ***"Affordable Care Act" (ACA)*** removing most of the ***"constitutional"*** issues surrounding health care reform. Consequently, with *ACA's* health insurance rules ***generally becoming effective in 2014,*** efforts by health insurance companies and health care providers to comply with these upcoming health care requirements are in full swing. In addition to changing the rules for the health care industry, *ACA* contains several critically-important ***"tax provisions"*** that are designed to serve as the ***"enforcement mechanisms"*** for *ACA's* health insurance mandates.

More specifically, these *ACA "tax provisions"* generally: **1)** require individuals to maintain qualified health insurance coverage, or pay an excise tax on their individual income tax returns (the ***"Individual Mandate"***); **2)** allow certain low-and-middle income individuals a refundable income tax credit to help pay for health insurance premiums, that will also be reported on an individual's income tax return (the ***"Premium Assistance Credit"***); and **3)** require employers that employ at least 50 employees to offer qualified health care coverage to employees, or pay an excise tax (the ***"Employer Mandate"***).

To help you understand these upcoming ***"tax provisions,"*** we are sending you this letter generally outlining how these new tax provisions work, and the impact they could have on you or your business.

CAUTION!

The *"Affordable Care Act"* (ACA) states that the three *"tax provisions"* discussed in this letter are to become effective in 2014. However, with 2014 rapidly approaching, the IRS and the Department Of Health and Human Services (HHS) have recently identified several implementation problems involving these *ACA* tax provisions. Consequently, the IRS and HHS have decided to delay the effective date of certain aspects of these tax provisions by one year. More specifically, the IRS announced that it will postpone its enforcement of the ***"excise tax"*** under the ***"Employer Mandate"*** provisions of ACA until ***2015.*** The IRS has also announced that it will delay certain ***ACA insurance information reporting requirements*** until ***2015.*** In addition, HHS recently announced that, ***for 2014 only,*** it will loosen certain documentation requirements for individuals applying for the ***"Premium Assistance Credit."*** **Planning Alert!** As we complete this letter, the IRS has not indicated that it intends to postpone the effective date of the ***"Individual Mandate"*** or the availability of the ***"Premium Assistance Credit"*** beyond 2014.

We have included a discussion of this late-breaking transition relief in this letter. However, due to the difficulty in implementing this massive new health care legislation, it is quite possible that additional guidance, clarifications, and relief provisions could be released later this year. Feel free to contact us if you want a status report.

TABLE OF CONTENTS

We have included a *Table of Contents* with this letter that will help you locate items of interest. The Table begins on the next page.

TABLE OF CONTENTS

BACKGROUND **1**

OVERVIEW 1

STATE INSURANCE EXCHANGES/MARKETPLACES 1

EXCISE TAX ON UNINSURED INDIVIDUALS (THE “INDIVIDUAL MANDATE”) **1**

OVERVIEW 1

“QUALIFIED HEALTH PLAN” COVERAGE 2

INDIVIDUALS “EXEMPT” FROM THE EXCISE TAX 2

AMOUNT OF EXCISE TAX 4

REPORTING THE EXCISE TAX 4

PLANNING OBSERVATIONS 4

REFUNDABLE “PREMIUM ASSISTANCE CREDIT” **4**

OVERVIEW 4

WHO QUALIFIES FOR THE “PREMIUM ASSISTANCE CREDIT” (PAC)? 5

HOW THE “PREMIUM ASSISTANCE CREDIT” (PAC) IS COMPUTED AND PAID 6

HOW THE PAC IS REPORTED ON A PERSON'S INCOME TAX RETURN 7

PLANNING OBSERVATIONS 7

POTENTIAL EXCISE TAX ON “APPLICABLE LARGE EMPLOYERS” (THE “EMPLOYER MANDATE”) **7**

IRS DELAYS EFFECTIVE DATE OF EMPLOYER MANDATE EXCISE TAX AND CERTAIN HEALTH INSURANCE INFORMATION REPORTING. 7

BACKGROUND 8

DETERMINING WHETHER AN EMPLOYER IS AN “APPLICABLE LARGE EMPLOYER” WITH 50 OR MORE EMPLOYEES 9

COMPUTATION OF THE EMPLOYER MANDATE EXCISE TAX 11

WHICH EMPLOYEES MUST BE OFFERED HEALTH PLAN COVERAGE BY “APPLICABLE LARGE EMPLOYERS”? 13

DO “SMALL EMPLOYERS” (BELOW THE 50-EMPLOYEE THRESHOLD) FACE HEALTH CARE COVERAGE REQUIREMENTS? 13

FINAL COMMENTS **13**

BACKGROUND

Overview. One of the primary objectives of the ***"Affordable Care Act"*** **(ACA)** is to dramatically expand health insurance coverage for individuals who are currently uninsured. *ACA* attempts to accomplish this by creating the following interrelated tax provisions:

- **Excise Tax On Uninsured Individuals** ***- Starting in 2014,*** *ACA* generally requires you to pay an excise tax with your individual income tax return, unless you have "qualified health plan coverage" for yourself and your dependents, or you meet a specific exemption.

- **Refundable "Premium Assistance Credit" -** ***Starting in 2014,*** *ACA* allows certain low-and-middle income individuals a "refundable" tax credit (which will be reported on Form 1040) that subsidizes the cost of health insurance premiums.

- **Potential Excise Tax On "Applicable Large Employers" -** *ACA* generally requires certain employers with 50 or more employees to offer "qualified health plan" coverage to its full-time employees, or face an excise tax.

  - **IRS Delays Employer Mandate Excise Tax.** As discussed in more detail later in this letter, *ACA* stipulates that this *"employer mandate"* becomes effective in 2014. However, the ***IRS has recently announced that it will not impose the excise tax on employers until 2015.***

These three tax provisions are designed to collectively ***"encourage"*** a major expansion of health care coverage for individuals.

State Insurance Exchanges/Marketplaces. Another major component of *ACA's* expansion of health care coverage is the creation of state-by-state health insurance "exchanges" (also referred to as "marketplaces"). Each state is supposed to have its insurance exchange operational and ready to accept insurance applications ***by October 1, 2013.*** These state exchanges are also critically important to the effective administration and enforcement of the tax provisions listed above. For example, the refundable *"premium assistance credit"* is only available for insurance coverage purchased at a state exchange. In addition, the exchanges will have ***significant reporting requirements*** that will assist enrollees when they prepare their income tax returns. Moreover, certain exemptions from the excise tax imposed on uninsured individuals will be allowed only if the individual gets an "exemption certification" from the exchange. **Planning Alert!** Presently, approximately 17 states have committed to set up and run their own state health insurance exchanges. Each of the remaining 33 states has opted to either have the Department of Health and Human Services (HHS) set up and run the state's exchange, or has agreed to form a partnership with the HHS to establish and operate the state's exchange. **Tax Tip.** HHS has set up a consumer website at ***www.healthcare.gov*** designed to provide information on health insurance coverage available on the state exchanges in each individual state. If this website works as planned, you should be able to get the latest information regarding your state's health insurance exchange at this website.

EXCISE TAX ON UNINSURED INDIVIDUALS (THE "INDIVIDUAL MANDATE")

Overview. ***Starting in 2014,*** you may have to pay an excise tax with your individual income tax return (Form 1040) if you or your dependents are not covered by a ***"qualified health plan,"*** unless you or your dependents qualify for a ***specific exemption.*** Also, unless an exemption applies, if you are married and file a joint return, you could owe an excise tax if either your spouse or your dependents are not covered by a *"qualified health plan."* For example, if you and your spouse file a joint return and you each have qualified self-only employer-provided health insurance, you would still be liable for any excise tax applicable to a child you can claim as a dependent who is not covered. Furthermore, the IRS says that you cannot avoid the excise tax simply by failing to claim the uninsured person as a dependent on your tax return. Consequently, to avoid this excise tax, an individual generally must either: **1)** have ***"qualified health plan"*** coverage, or **2)** qualify for a specific ***"exemption"*** from the tax. **Planning Alert!** If you think that you may be exposed to this excise tax, pay special attention to the types of **"*qualified health plan"*** coverage or specific ***"exemptions"*** described below that may allow you to avoid the tax.

“Qualified Health Plan” Coverage. The excise tax ***does not apply*** for the period during which an individual has any of the following types of ***“qualified health plan”*** coverage:

- **Government Plans.** These include ***Medicare Part A***, ***Medicaid, CHIP*** (Children's Health Insurance Program), ***TRICARE*** for life, a program established by the **Secretary of *Veterans Affairs*,** a Nonappropriated Fund Health Benefits Program of the ***Department of Defense*** and, the government health plan for ***Peace Corps*** volunteers.

- **“Eligible Employer Health Plans”** include any health insurance coverage (including COBRA coverage) under your employer’s group health plan or group health insurance program that is either: **1)** a governmental plan, **2)** any other plan or coverage offered in the small or large group market within a state, or **3)** *a “grandfathered employer health plan”* (as described below) offered in a group market. **Tax Tip.** In most cases, individuals covered under an employer’s health insurance plan (whether a private or government employer) will likely have “qualified health care plan” coverage. **Planning Alert!** Don’t forget, even if you have health insurance coverage under your employer’s eligible health plan, you will still generally be liable for the excise tax for your spouse (if filing jointly) and for any person you are entitled to claim as a dependent who does not have some type of *“qualified health plan”* coverage.

- **Insurance Obtained From “State Health Insurance Exchange.”** As mentioned previously, *ACA* requires that each state establish a new health insurance exchange where individuals may shop for health insurance in a single location. The excise tax generally does not apply to an individual while the individual is covered by insurance purchased from any of these state health insurance exchanges.

- **“Grandfathered” Health Plan.** The excise tax does not apply to an individual who has health insurance coverage under a “grandfathered” health plan. A ***“grandfathered” health plan*** generally includes a group health plan that existed ***as of March 23, 2010***, and that has not been modified since that date as to cause it to lose its “grandfathered” status. **Planning Alert!** The *“grandfathered* “ status of a health plan ceases if the health plan has made certain modifications after March 23, 2010 (e.g., raised co-payments or deductibles beyond certain amounts). If you are covered by your employer’s health plan, either your employer or the health insurance carrier should be able to tell you whether the plan is “grandfathered.”

- **Other Health Care Plans Recognized By HHS.** *ACA* provides that there may be additional *“qualified health plans”* **designated by HHS** in the future. **Planning Alert!** HHS recently announced that ***state high risk pools*** and ***self-funded health care coverage offered to students by colleges or universities*** are included in *“qualified health plans”* for plan or policy years ***beginning before January 1, 2015.*** ***Caution!*** HHS also says that these programs ***will not qualify*** for plan or policy ***years beginning after 2014,*** unless the specific program applies for and receives approval from HHS.

- **Planning Alert!** If you have any question whether the health care coverage you expect for 2014 constitutes *“qualified health plan”* coverage, you should contact the health care plan sponsor (e.g., your employer), and/or the health insurance company that is underwriting the coverage.

Individuals “Exempt” From The Excise Tax. Certain individuals who are not covered under a *“qualified health plan”* will be ***exempt*** from the excise tax if included in any of the following groups:

- **Certain Individuals Who Are Not Citizens.** The excise tax for failing to have *“qualified health plan”* coverage does not apply to an individual who is **not** a U.S. citizen or a U.S. national **and** who is either **1)** a nonresident alien, or **2)** is not lawfully present in the United States.

- **Religious Exemption.** *ACA* exempts any person who has a *“religious conscience exemption certificate”* from a state exchange certifying that he or she is a member of a recognized religious sect that is conscientiously opposed to accepting private or public insurance. Also, **a member of a *qualified* health care sharing ministry,** in existence since 12/31/99, is exempt from the excise tax.

- **Members Of Federally-Recognized Indian Tribes.** Members of Federally-recognized Indian tribes are exempt from the excise tax. A ***"Federally-recognized Indian tribe"*** is any Indian tribe, band, nation, pueblo, or other organized group or community (including any Alaska Native village or regional or village corporation established under the Alaska Native Claims Settlement Act) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

- **Incarcerated Individuals.** Individuals confined in a jail, prison, or similar penal institution or correctional facility are generally exempt from the excise tax (unless the individual is incarcerated pending the disposition of the charges).

- **U.S. Citizens Living Abroad.** A U.S. citizen will generally be exempt from the excise tax for any ***month the citizen lives outside the U.S.,*** provided he or she satisfies either of the following requirements: **1)** the U.S. citizen was a resident of a foreign country for the entire tax year, or **2)** the U.S. citizen was present in a foreign country for at least 330 days during any period of 12 consecutive months. In addition, an individual is exempt from the excise tax for any month the individual is a bona fide resident of a U.S. possession.

- **"Household Income" Below Threshold For Filing Income Tax Return.** You are exempt from the excise tax if your *"household income"* is less than the income threshold that requires the filing of an income tax return. Your *"household income"* for purposes of this exemption is generally your modified adjusted gross income (generally, adjusted gross income plus tax-exempt interest and the foreign earned income exclusion), plus the modified adjusted gross income of any person who is your dependent and who is also required to file an income tax return. <u>**Planning Alert!**</u> Although the filing thresholds for 2014 have not yet been published, ***for 2013*** a married couple (each under age 65) filing jointly is not required to file an income tax return unless their gross income is at least $20,000 (or, at least $10,000 for a single individual under age 65).

- **Lack Of "Qualified Health Plan" Coverage For Less Than 3 Months.** Generally, failing to have *"qualified health plan"* coverage for ***less than 3 consecutive months*** will not trigger the excise tax. <u>**Planning Alert!**</u> Let's assume that you do not currently have health insurance, but you plan to purchase *"qualifying health plan"* coverage in 2014 (the first year the *ACA* requires coverage). This "3-month" rule should allow you to avoid the excise tax ***for 2014*** so long as you obtain qualifying coverage <u>***before the end of March, 2014***</u> and such coverage continues through the remainder of 2014. <u>**Caution!**</u> Generally, this "less than 3-month exemption" is available only once during the same calendar year.

- **Available "Qualified Health Plan" Coverage Is Too Expensive.** Generally, the excise tax will not apply to an individual where the individual's annual out-of-pocket cost of the premiums for available *"qualified health plan"* coverage exceeds 8% of the individual's "*household income*."

- **Transition Relief For Individuals Eligible For Coverage Under A <u>Fiscal Year</u> *"Eligible Employer Health Plan."*** The IRS says that any individual (or family member) who was "eligible" to enroll in an *"eligible employer health plan"* with a fiscal plan year beginning in 2013 and ending in 2014, will not be liable for the excise tax for any month included in the 2013-2014 plan year. ***For example,*** assume Betty is unmarried and has a 5-year-old daughter, Joyce. Betty and Joyce were ***eligible to enroll*** in Betty's <u>**fiscal year**</u> *"eligible employer health plan"* for the plan year beginning on August 1, 2013 and ending on July 31, 2014. The IRS says that neither Betty nor Joyce is subject to the excise tax for January, 2014 through July, 2014, even if they failed to enroll in the employer's plan for the plan year ending July 31, 2014.

- **Economic Hardships.** The excise tax will not apply to individuals who would incur *economic hardship*, as determined by HHS, in order to purchase qualified health insurance coverage. This exemption applies if you apply for and obtain a *"hardship exemption certificate"* from an exchange.

Amount Of Excise Tax. ***Beginning in 2014,*** an excise tax will apply for ***each month*** that you, your spouse, or your dependents do not have *"qualified health plan"* coverage (and do not otherwise meet an exemption). Although the excise tax is determined on a monthly basis, the ***maximum excise tax*** for the ***entire 2014 tax year*** is the ***greater of***: **1)** ***$95*** per uninsured ***adult member*** of the household, plus ***$47.50*** per uninsured member of the household ***under age 18, not to exceed $285,*** or **2)** ***1% of "household income"*** in excess of the income threshold required for filing a Form 1040 return. However, the overall penalty under this formula cannot exceed the national average premium of the applicable "bronze" level health insurance offered through the state insurance exchanges. Your *"household income"* for purposes of computing this excise tax is your modified adjusted gross income (generally, adjusted gross income plus tax-exempt interest and the foreign earned income exclusion), plus the modified adjusted gross income of any person who is your dependent and who is also required to file an income tax return.

- **Example.** Assume that for the ***entire 2014 year,*** Bob is an uninsured, single 30-year old professional who earned $71,000 (also assume that this represents Bob's "*household income*"). Assume that the income filing threshold for a single taxpayer in 2014 is $11,000. If Bob does not have *qualified health care* coverage and does not qualify for an exemption, his excise tax for the entire 2014 tax year would be the *greater of*: **1)** $95, or **2)** $600 (1% of $60,000 [i.e., $71,000 less $11,000]). Therefore, Bob's ***penalty for the entire year of 2014 would be $600,*** provided the national average premium for "bronze" level health insurance for a single individual offered through the state insurance exchanges was at least $600.

- **Excise Tax Increases In 2015 And 2016.** The excise tax automatically increases for 2015, and increases again in **2016** (indexed for inflation for years after 2016)**.** For 2016, the maximum annual penalty will *generally* be the greater of **$695** per uninsured adult or **2.5%** of the "*household income*" (not to exceed the national average cost of "bronze" level health insurance coverage).

Reporting The Excise Tax. Beginning with the 2014 tax year, the excise tax is reported on your income tax return (Form 1040). **Planning Alert!** Spouses filing a joint return are jointly liable for the excise tax even if the penalty applies to only one spouse. You are also liable for the excise tax attributable to any person who you are eligible to claim as a dependent. **Tax Tip.** The IRS will presumably issue a new form to report and calculate this penalty. It is expected that the IRS will be receiving information from third party sources (e.g., insurance providers, employers, and state health insurance exchanges). This reporting information will be used, in part, to identify individuals who are not listed on IRS records as having health insurance or health plan coverage.

- **Enforcement And Collection Of Excise Tax.** The IRS ***will not be allowed*** to collect the ***unpaid excise tax*** by using IRS ***liens or seizures*** (which are generally available to collect unpaid income taxes). In addition, an individual who fails to pay the excise tax ***is not subject*** to ***criminal prosecution or civil penalties.*** However, the IRS may offset any unpaid excise tax against an individual's tax refund.

Planning Observations. ***Starting in 2014,*** you may be exposed to this excise tax if you, your spouse, or any individual who is eligible to be claimed as your dependent fails to have *"qualified health plan"* coverage. When exploring ways to avoid this excise tax, it's important that you consider the new ***"premium assistance credit"*** (discussed in the immediately following segment) when evaluating the ***"affordability"*** of *"qualified health plan"* coverage for 2014.

REFUNDABLE "PREMIUM ASSISTANCE CREDIT"

Overview. To make health care coverage more affordable for low-and-middle income individuals, ***beginning in 2014,*** *ACA* provides for a tax credit (the ***"premium assistance credit"*** or ***"PAC"***) for eligible individuals and families who purchase health insurance through the new state health insurance exchanges. The PAC is "refundable." This generally means that, to the extent the credit exceeds the taxes that you would otherwise owe without the credit, the IRS will actually send you a check for the excess. However, unlike the classic refundable credit which is paid directly to the taxpayer, the PAC will generally be payable ***in advance directly to the insurer.*** You will, however, have the option to "elect" to pay the *entire* insurance premium to the

insurance company directly (without reducing the premium by the credit), which will allow you to receive the *entire* refundable *PAC* when you file your Form 1040. **Planning Alert!** The *PAC* is ***only available*** for premiums paid for health insurance coverage purchased through the new state health insurance exchanges. However, the IRS says that the credit is available whether the insurance is purchased through an exchange operated exclusively by a state, operated by a state/HHS partnership, or operated exclusively by the HHS.

Who Qualifies For The "Premium Assistance Credit" (PAC)? An individual generally qualifies for the *"premium assistance credit"* (PAC) ***only if*** the individual's ***"household income"*** is ***at least 100%*** and ***not more than 400%*** of the "Federal poverty line" (FPL) for the individual's family size. In addition, a qualifying individual's *PAC* is allowed ***only with respect*** to premiums for insurance ***purchased from the insurance exchanges*** for the individual and/or the individual's "family." The "family" includes the individual's spouse, and anyone the individual properly claims as a dependent. **Planning Alert!** An individual who otherwise qualifies, will ***not qualify for the PAC*** if the person is married and files a separate return (i.e., married individuals must file a joint return to qualify for the PAC). Also, a person who is ***"eligible"*** to be claimed as a dependent of another individual will not qualify.

- **"Household Income" Exceeds 400% Or Falls Below 100% Of The FPL.** If your "*household income*" exceeds 400% of the "Federal poverty line" (FPL), or falls below 100% of the FPL, you ***do not qualify*** for the PAC. For this purpose, your **"*household income"*** starts with your ***adjusted gross income*** on your income tax return (plus the adjusted gross income of any person who you properly claim as a dependent and who is also required to file an income tax return), and then certain add backs are included. For example, tax-free social security benefits, tax-exempt interest, and the foreign earned income exclusion are ***added back*** to ***adjusted gross income.*** **Planning Alert!** If your "*household income*" falls below 100% of the FPL, although you will generally not qualify for the *PAC*, you will typically qualify for ***Medicaid.***

  - **Federal Poverty Line (FPL) For 2013.** The *"Federal poverty line"* (FPL) is based on a sliding scale dependent on the number of individuals in the family. For example, ***for 2013***, if living in any state (other than Alaska or Hawaii), the FPL for a ***single-member family*** is ***$11,490*;** for a ***4-member*** family is ***$23,550*;** and for an ***8-member*** family is ***$39,630.*** The PAC ***phases out completely*** once an individual is a member of a family with *"household income"* ***exceeding 400%*** of the FPL as applied to that family. For example, ***using the FPL for 2013,*** the PAC would be phased out completely where *"household income"* exceeds the following thresholds: ***single-member family - $45,960*** ($11,490 x 4); ***4-member family - $94,200*** ($23,550 x 4); and ***8-member family - $158,520*** ($39,630 x 4). **Tax Tip.** Using the 2013 FPL, a family of four could qualify for the *PAC* even if it had ***"household income" as high as $94,200!***

- **Premiums For Individuals Who Are "Eligible" For Coverage Under Other Qualifying Health Programs Do Not Qualify For The PAC.** The PAC is ***generally not available*** to the extent it is attributable to health insurance purchased through a state exchange for a person who is ***"eligible"*** for qualifying health care coverage available through other programs. For example, otherwise qualifying premiums for a person who is "eligible" to enroll in Medicare, Medicaid, or an *"eligible employer health plan,"* generally ***will not qualify*** for the *PAC*.

  - **Special Rule For *"Eligible Employer Health Plans."*** If an employee ***chooses not to enroll*** in his or her ***"eligible employer health plan"*** (as previously defined in this letter), and the employer's health plan fails certain employee ***"affordability"*** requirements or the plan does not provide the employee a certain ***"minimum value,"*** the employee's qualifying premiums for insurance purchased through a state exchange may still qualify for the *PAC.* **Caution!** The rules for determining whether an employer-sponsored health plan satisfy these employee *"affordability"* and "*minimum value"* tests are detailed. Please call us if you want additional information.

  - **What Constitutes *"Eligibility"* For Other Qualifying Health Programs?** The IRS has recently released guidance as to whether an individual is considered ***"eligible"*** for certain government health plans. For example, the IRS says that an individual who was terminated

from ***Medicaid*** or ***CHIP*** (Children's Health Insurance Program) coverage for failure to pay the premiums, ***is treated*** as *"eligible"* for those programs (and, therefore, will not qualify for the PAC) during any period the individual would have been eligible except for the failure to pay premiums. However, an individual is ***not treated*** as *"eligible"* for CHIP during any pre-enrollment waiting period. In addition, the IRS says that for purposes of qualifying for the *PAC*, an individual will be considered *"eligible"* for the following government health programs ***only if*** the individual is ***"actually enrolled"*** in that program: Medicare Part A (only if a premium payment is required); Coverage available under a state qualified high risk pool; Self-funded health coverage offered by a college or university to its students; and any of the following TRICARE programs - Continued Health Care Benefit program, Retired Reserve program, Young Adult program, or Reserve Select program. Therefore, for purposes of qualifying for the *PAC*, an individual will not be considered *"eligible"* for coverage in any of the health care programs listed in the previous sentence, unless the individual is ***"actually enrolled"*** in that program.

- **Other PAC Restrictions.** There are several other restrictions regarding the *PAC*, including:

  - **Individuals Unlawfully In U.S.** Individuals *in the U.S. unlawfully* are generally not allowed to purchase insurance on the state exchanges and, therefore, the *PAC* ***is not available.***

  - **Incarcerated Individuals.** Incarcerated individuals are generally not allowed to purchase insurance on the state exchanges (unless the individual is incarcerated pending the disposition of the charges) and, therefore, generally cannot qualify for the *PAC.*

How The "Premium Assistance Credit" (PAC) Is Computed And Paid. The *PAC* is computed based on a qualifying individual's ***"household income"*** in relation to the ***"Federal poverty line"*** **(FPL).** The amount of the *PAC* is reduced on a sliding scale as an individual's *"household income"* increases from 100% to 400% of the FPL. The PAC is not available to anyone whose "*household income*" exceeds 400% of the FPL.

- **PAC Calculators.** Several health care providers have developed on-line interactive calculators for estimating the amount (if any) of your *PAC* based on your ***projected "household income" for 2014.*** For example, the Kaiser Family Foundation has an interactive online calculator at www.kff.org which you can use to estimate your *PAC.*

- **State Insurance Exchanges Will Compute PAC "Advance Payments."** If you otherwise qualify, the IRS will generally pay your *PAC* (as an ***"Advance Payment"***) *directly to* your health insurance company as a partial premium payment, and you will personally pay the remaining portion. *ACA* charges the *Secretary of Health and Human Services (HHS)* with the responsibility of establishing procedures for determining whether an individual who is applying for coverage in a state's ***health insurance exchange*** meets the eligibility requirements for the *PAC*. If the exchange works as proposed, your eligibility for the *PAC* will be determined as part of the evaluation process when you apply for health insurance coverage through your state's exchange. As part of this evaluation process, the exchange: **1)** must verify whether you are *eligible* for *"qualified health plan"* coverage through another source (e.g., Medicare, Medicaid, an "eligible employer health plan"), **2)** must determine whether your *"projected household income"* for the period to which the *PAC* applies satisfies the criteria for the *"advance payment"* of your *PAC*, and **3)** must calculate the *amount* of the *"advance payment."* To project your "*household income*" for the applicable year, the exchange (through HHS) will have access to certain information from the IRS regarding your income tax return for the most recent tax year available, and will use that information to calculate your *"projected household income."*

  - **Exchanges Required To Screen Applicants Before Enrolling.** A state health insurance exchange will be required to first screen applicants for eligibility for Medicaid, the Children's Health Insurance Program (CHIP), or any other state or local health benefits program. If the applicant is eligible for any of those programs, the exchange coordinator is supposed to assist the applicant to enroll. **Planning Alert!** Otherwise qualifying health insurance premiums for individuals ***eligible for*** Medicaid, Medicare, or CHIP ***do not qualify*** for the *PAC.*

- ●● **HHS Allows Expanded Reliance On Applicants' Representations *"For 2014 Only."*** HHS recently announced that, ***for 2014 only,*** state exchanges may rely on certain representations by applicants (without further confirmation) in determining whether the applicant qualifies for PAC "advance payments." For example, HHS says that in certain situations state exchanges may rely on an applicant's representation of projected "household income" or "eligibility" to enroll in an eligible employer sponsored health plan, without requiring outside confirmation.

<u>How The PAC Is Reported On A Person's Income Tax Return.</u> Any person who qualifies for an ***"Advance Payment"*** of the *PAC* ***must file*** an income tax return for the year the *"advanced payments"* were paid to the health insurance carrier. The individual will then be required to reconcile **1)** the amount of the ***"actual"*** *PAC* based on the individual's ***actual*** *"household income"* from the current tax year's information, with **2)** the amount of the individual's ***advance payments*** (which were ***"projected"*** based on the individual's *"household income"* as *projected* by the state exchange). The reconciliation will be reflected on the individual's income tax return for the taxable year of the *PAC* (presumably the IRS will develop a new form for this reconciliation). The result of this reconciliation will be reported as follows:

- **Treatment Of PAC Reconciliation.** If a person's***"actual"*** PAC for the current taxable year ***exceeds*** the ***"advance payments"*** of the ***"projected"*** *PAC* made to the insurance company, the excess is treated as a "refundable" credit (i.e., to the extent the credit exceeds the taxes that you would otherwise owe without the credit, the IRS will actually send you a check for the excess). On the other hand, if a person's ***"advanced payments"*** of the **"projected"** *PAC* for the taxable year ***exceed*** the individual's ***"actual"*** *PAC* (based on the individual's current year *"household income"*), the person will generally owe the excess as an ***"additional income tax liability."*** In this latter situation, there may be a dollar cap on the "additional income tax liability," depending on the individual's "*household income*" for the current year. **<u>Planning Alert!</u>** The IRS has released extensive guidance for situations where individual's "tax" status changes between the tax year used for computing the ***projected*** *"advance payments,"* and the current tax year used for computing the ***"actual"*** *PAC* (e.g., individual either marries or divorces between the two years).

- **Individuals Who Elect Out Of "Advance Payment" Of The PAC.** An individual who otherwise qualifies, ***may elect out*** of the ***"advance payments,"*** and personally pay the ***entire premium*** to the health insurance company. If this election is made, the individual computes and receives benefit for the *PAC* when the individual files his or her income tax return for the year.

<u>Planning Observations.</u> The *PAC "advance payments*" should be particularly beneficial to individuals with *"household income"* below 400% of the Federal Poverty Line who don't have access to affordable *"qualified health plan"* coverage from other programs. If you or your family are in that situation, you should consider *applying for* health insurance through a state exchange. As part of the application process, the exchange is required to determine whether you qualify for *PAC "advance payments*." If you do qualify, the exchange is also required to determine how much your out-of-pocket premiums will be after the *PAC "advance payments"* are applied. This information should go a long way in helping you determine whether the exchange's health insurance coverage is affordable based on your specific financial situation.

<u>POTENTIAL EXCISE TAX ON "APPLICABLE LARGE EMPLOYERS"
(THE "EMPLOYER MANDATE")</u>

<u>IRS Delays Effective Date Of Employer Mandate Excise Tax And Certain Health Insurance Information Reporting.</u> ***ACA*** generally provides that ***"applicable large employers"*** must offer an ***"eligible employer health plan"*** to its full-time employees, or face a ***nondeductible excise tax*** (the so-called *play-or-pay* penalty). Although *ACA* states that this provision becomes effective in 2014, the ***IRS has recently announced that it will not impose this excise tax on employers until 2015.*** The IRS also says that it will delay, ***from 2014 to 2015,*** the *ACA* requirement that employers must file certain annual health insurance information returns with the IRS and their employees. **<u>Planning Alert!</u>** This delay essentially gives an additional year to prepare for the health care mandate imposed by *ACA* on *"applicable large employers."* However, it is not too early for employers to become familiar with how these rules could impact their business

operations. Indeed, even though employers will not face a penalty until 2015, there are certain actions employers should consider well before 2015 in order to minimize exposure to this excise tax. Consequently, ***based on current IRS guidance,*** the following is a summary of how the employer mandate is scheduled to operate.

Background. Generally, *ACA* provides that an *"applicable large employer"* that fails to offer an *"eligible employer health plan"* to its employees will be required to pay a nondeductible excise tax. *"Applicable large employers"* include not only "for profit" private businesses, but also tax-exempt organizations and government entities. Furthermore, as discussed in more detail later in this letter, even if an ***"applicable large employer"*** offers its employees coverage in an ***"eligible employer health plan,"*** it may still face an excise tax if the health plan does not satisfy certain employee *"affordability"* tests, or does not satisfy certain *"minimum value"* requirements. **Planning Alert!** This excise tax applies *only to* employers that meet the technical definition of an *"applicable large employer"* (i.e., generally, employers with 50 or more employees). However, before we discuss the technical rules for determining whether an employer meets the 50-employee threshold, the following are several *special rules* that are critical to the potential application of this excise tax to an "*applicable large employer*."

- **Employees Of Certain Affiliated Employers Must Be Aggregated.** For purposes of determining whether the 50-employee threshold has been met, *ACA* provides rules requiring the aggregation of the employees of separate businesses under common control and separate affiliated service groups. Generally, these aggregation rules require all employees of trades or businesses (whether or not incorporated) which are under common control and affiliated service groups to be added together in determining if any member of the group is an "*applicable large employer*" and, therefore, subject to this excise tax. For example, these aggregation rules require the aggregation of the employees of parent-subsidiary groups where a group of corporations or unincorporated trades or businesses are controlled through at least 80% ownership by a common parent corporation or business. In addition, the employees of a brother-sister group of businesses must be aggregated in determining if any member of the group is an "*applicable large employer*." Generally, a group of businesses constitutes a "brother-sister group" if **1)** the same five or fewer persons own at least 80% of each trade or business; and **2)** taking into account the ownership of each such person only to the extent the person's ownership is identical with respect to each of the trades or businesses, these persons own more than 50% of the trades or businesses. **Planning Alert!** There are complex rules for determining whether the 80% ownership test is met for parent-subsidiary groups and whether the 80%/50% ownership test is met for brother-sister groups. For example, an individual is **generally** considered as owning any interest in a business owned by the individual's **1)** spouse, **2)** children under age 21, and **3)** children age 21 and older if the individual otherwise owns more than 50% of the business.

- **No Employer Excise Tax Unless At Least One Employee Claims The PAC.** An *"applicable large employer"* is ***exempt from the excise tax*** unless ***at least one of its employees*** has been certified to have purchased health insurance on a state health insurance exchange and was allowed a ***"premium assistance credit" (PAC),*** or a cost-sharing reduction. ***For example,*** if every employee of an *"applicable large employer"* has *"household income"* in excess of 400% of the Federal poverty line (FPL), generally none of the employees should qualify for the *PAC* or a cost sharing reduction (i.e., the *PAC* is only available to individuals with "*household income*" of 400% of FPL, or below). Therefore, the employer should generally be exempt from the excise tax even if it offered no health plan coverage at all to its employees. However, if even one employee's *"household income"* was 400% of the FPL or below, the *"applicable large employer"* could be subject to the excise tax if that employee obtained health insurance from the state exchange and was ***certified*** as claiming the *PAC* or cost sharing reduction.

- **"Eligible Employer Health Plan."** An "*applicable large employer"* may generally avoid the excise tax if the employer offers its full-time employees coverage in an *"eligible employer health plan."* An ***"eligible employer health plan"*** generally includes any ***governmental plan,*** any health plan coverage offered in the ***small or large group market*** within a state, and any ***"grandfathered"*** health plan. **Planning Alert!** A "grandfathered" health plan is generally an employer-sponsored health plan that had at least one enrolled employee ***as of March 23, 2010,*** which has not been modified since that date as to cause the plan to lose its "grandfathered" status. For example, the *grandfathered*

status of a health plan ceases if the plan is modified ***after March 23, 2010*** to raise co-payments or deductibles beyond certain amounts. **Tax Tip.** Employers should check with their health insurance carriers to determine if the current plan satisfies the "granfathered" plan requirements. If you think that your business currently sponsors a "grandfathered" health plan, you should check with your insurance carrier before making any plan changes to determine whether the changes jeopardize the plan's grandfathered status. Once the health plan is no longer grandfathered, it will be subject to the new *ACA* requirements, including changes relating to coverage, claims appeals, co-pays, deductibles, etc.

- **95% Coverage Safe Harbor.** To avoid an excise tax, an *"applicable large employer"* must generally offer *"eligible employer health plan*" coverage to full-time employees. The IRS says that an "*applicable large employer*" will satisfy this requirement if it offers the health care coverage to all but 5% (or if greater, all but 5) of its otherwise qualifying full-time employees. Therefore, generally, if an *"applicable large employer*" offers *"eligible employer health plan*" coverage to at least 95% of its *Full-Time Employees*, it will be deemed to have satisfied its coverage requirement. **Tax Tip.** This safe harbor provides relief for *"applicable large employers"* that may inadvertently fail to offer health care to certain eligible employees. **Note!** For purposes of determining if an employer offers a plan to *"dependents"* of an employee, ***"dependent"*** means a child of the employee under age 26.

- **Not Required To Offer Coverage To Employees' Spouses.** An "*applicable large employer*" is not required to offer health care coverage to employees' spouses.

Determining Whether An Employer Is An *"Applicable Large Employer"* With 50 Or More Employees. The employer ***"excise tax"*** for failure to offer an *"eligible employer health plan"* to employees applies only to *"applicable large employers*." An ***"applicable large employer"*** for a calendar year is generally an employer that employed **an average of at least 50 full-time employees** on business days during the ***preceding calendar year.*** Consequently, an employer that is below the 50-employee threshold is exempt from the employer *"excise tax."*

An employer that is either well above or well below the 50-employee threshold will generally have little problem determining whether it is an "*applicable large employer."* However, for employers that maintain a workforce near the 50-employee threshold, the rules for determining *"applicable large employer"* status become critically important.

The IRS recently issued extensive guidelines for determining whether an employer has 50 or more full-time employees. ***Solely for purposes of determining whether the 50-employee threshold has been met***, the IRS requires an employer to count not only its *"Full-Time Employees" (FTs)* (i.e., employees that worked at least 30 hours a week) but also its *"Full-Time Equivalent Employees."* The *"Full-Time Equivalent Employees" (FTEs)* calculation is essentially a formula for converting "part-time" employees' hours into hypothetical full-time employees. **Planning Alert!** Even if an employer is classified as an *"applicable large employer,"* the employer is ***only required to offer*** health plan coverage to its ***"Full-Time Employees."*** It is ***not required to offer*** coverage to ***its "part-time" employees*** (i.e., employees who work less than 30 hours per week). The hours of the "part-time employees" are used ***solely for purposes of*** determining whether an employer meets the 50-employee threshold for *"applicable large employer"* status.

To determine whether an employer is an *"applicable large employer"* (and therefore required to offer an "*eligible employer health plan*," or face an excise tax), the IRS guidelines require us to apply the following rules:

- **Testing Period.** Generally, to determine whether an employer is an *"applicable large employer"* for the ***current year***, the ***"Testing Period"*** for applying the ***"50-employee threshold"*** is the ***entire preceding calendar year.*** Under this rule, an employer would be classified as an "*applicable large employer"* for ***2015*** (i.e., the first year the IRS will enforce the employer mandate excise tax) if it employed a monthly average of at least 50 full-time employees *("Full-Time Employees"* plus *"Full-Time Equivalent Employees"*) during the ***entire 2014 calendar year.***

- **Calculating Whether The "50 Or More Employees" Threshold Has Been Met.** As mentioned above, to compute the "average" number of full-time employees, the IRS requires an employer to first compute its number of *"Full-Time Employees"* and then separately compute the number of *"Full-Time Equivalent Employees"* ***for each month*** of the previous year. A ***"Full-Time Employee"*** **(FT)** for ***any calendar month*** is an employee who is paid on average ***for at least 30 hours per week during the month.*** The IRS says that if an employer does not want to apply the 30-hour test on a weekly basis, it may choose instead to classify an employee who is paid for at least ***130 hours during the month*** as an *FT.* ***"Full-Time Equivalent Employees"*** **(FTEs)** for a calendar month are computed by: **1)** determining the ***total hours*** of all employees ***who are <u>not</u> "Full-Time Employees" during a month*** (i.e., employees who fall under the 30-hour-per-week threshold), and **2)** dividing that total ***by 120.*** For this computation, no more than 120 hours of any part-time worker is included in the monthly total.

  After an employer has computed the number of *FTs* and *FTEs* for ***each month*** of the ***preceding year,*** the employer must then: **1)** compute the sum of the monthly *FTs* and *FTEs* for the entire previous year, and **2)** divide that sum ***by 12.*** If the result is ***50 or more*****,** the employer is an ***"applicable large employer"*** (if the resulting number ends with a fraction, the number is rounded down to the lowest whole number).

- **Example.** Motor Company has ***40 "Full-Time Employees"*** (i.e., employees who are paid for at least 30 hours per week) for ***each month*** in 2014. In addition, for 2014, Motor Company employs ***40 "part-time" employees*** (i.e., those who are paid on average for less than 30 hours per week). Each part-time employee works 90 hours ***each month.*** Assume all 80 employees work the entire 2014 calendar year. Motor Company will determine whether it is an *"applicable large employer"* ***for 2015*** (based on its 2014 employment information), as follows: ***<u>Step #1</u>*** **-** Determine the number of ***"Full-Time Employees"*** **(FTs)** for ***each month*** of 2014 (Motor Company had ***40 FTs*** for ***each month***). ***<u>Step #2</u>*** **-** Determine the number of ***"Full-Time Equivalent Employees"*** **(FTEs)** for ***each month*** of 2014 (Motor Company's 40 part-time workers each worked 90 hours each month for total part-time hours of 3,600 per month). 3,600 hours divided by 120 equals ***30 FTEs*** for ***each month***. ***<u>Step #3</u>*** **-** Compute the sum of the monthly *FTs* and *FTEs* for the entire 2014 calendar year (40 FTs each month plus 30 FTEs each month equals 70 each month). 70 times 12 months ***equals 840 for the year.*** ***<u>Step #4</u>*** **-** Divide the sum computed in ***Step #3*** (i.e., 840) by 12 (840 divided by 12 ***equals 70****).*

  Conclusion. Motor Company is an ***"applicable large employer" for 2015*** because its combined average of ***FTs and FTEs*** during the 2014 ***"Testing Period"*** was ***70,*** which exceeds the 50-employee threshold.

  - **Planning Alert!** Motor Company is an "*applicable large employer*" even though it actually had only 40 *"Full-Time Employees"* (the inclusion of the FTEs caused it to meet the 50-employee threshold). However, Motor Company is not required to offer health plan coverage to its 40 part-time employees (i.e., employees that are paid for less than 30 hours per week).

- **Special Rule For Certain "Seasonal Workers."** In certain situations, if an employer exceeds the ***50-employee threshold*** during the *"Testing Period"* because it uses *"seasonal employees"* for part of the calendar year, it may qualify for relief from the *"applicable large employer"* classification. For this purpose, ***"seasonal employees"*** generally include workers who are employed at certain seasons or periods of the year to perform services that, due to the nature of the services being rendered, may not be continuous or carried on throughout the year. For example, seasonal agricultural workers and retail workers who work during holiday seasons could qualify. To qualify for this relief, the employer must *generally* satisfy the following conditions: **1)** the sum of the employers *FTs* and *FTEs* (including "seasonal workers") exceeded the 50-employee threshold for ***no more than 120 days*** (which need not be consecutive days) during the *"Testing Period,"* ***and*** **2)** the employees causing the employer's *FTs* and *FTEs* to exceed the 50-employee threshold during that 120-day (or less) period were qualified *"seasonal workers."* Thus, if the employer satisfies both of those conditions, it will not be classified as an *"applicable large employer."* **<u>Planning Alert!</u>** For purposes of determining whether this relief is available, the IRS says that an employer may use ***four calendar months*** (which need not be consecutive) in lieu of a 120-day period.

- **New Employers.** An employer ***not in existence*** throughout the ***preceding calendar year*** (i.e., the *"Testing Period"*) is an *"applicable large employer"* for the current calendar year if: **1)** it *"reasonably expected"* to employ an average of at least 50 full-time employees (taking into account *"Full-Time Equivalent Employees")* on the business days during the current calendar year, and **2)** the employer *"actually"* employs an average of at least 50 full-time employees (taking into account *"Full-Time Equivalent Employees")* on business days during the calendar year. ***For example,*** if an employer began business during 2015, it would be an ***"applicable large employer"*** for 2015 if it *"reasonably expected"* to average at least 50 full-time employees (taking into account *"Full-Time Equivalent Employees")* during the remaining business days of 2015, and it "actually" averaged at least 50 full-time employees (taking into account *"Full-Time Equivalent Employees*") during those business days.

Computation Of The Employer Mandate Excise Tax. There are ***two different situations*** where an *"applicable large employer"* may be subject to a *"nondeductible"* monthly excise tax under the *Affordable Care Act.* The excise tax is computed differently under each situation. **Planning Alert!** Whether an *"applicable large employer"* falls under *the* ***"First Situation"*** (described below) or *the* ***"Second Situation"*** *(described below)*, the employer ***will not be subject to any excise tax*** unless a state exchange certifies that ***at least one of its "Full-Time Employees"*** has obtained health insurance coverage from the exchange and also ***certifies*** that the employee received the **"*premium assistant credit"* (PAC)** or a cost-sharing reduction subsidy.

- ***"First Situation"*** **Causing Excise Tax.** The ***"First Situation"*** that would subject an "*applicable large employer*" to an excise tax is where **1)** the employer ***fails to offer*** an*"eligible employer health plan"* (as defined previously in this letter) for a calendar month to all but 5% (or 5 if greater) of its *"Full-Time Employees"* and their dependents, **and 2)** the employer has received a certification from an exchange that at least one employee has obtained health insurance coverage from the exchange and has received the **"*premium assistant credit"* (PAC)** or a cost-sharing reduction subsidy for that month.

  - **Amount Of Excise Tax.** In this ***"First Situation,"*** the *"applicable large employer"* is subject to an excise tax of ***$166.67 per month*** for each "*Full-Time Employee"* ***in excess of a 30-employee*** threshold. Therefore, for 2015, the maximum "annual" penalty for each *"Full-Time Employee"* in excess of the 30-employee threshold is $2,000 ($166.67 x 12 months). **Note!** This $166.67 per month penalty amount is to be adjusted for inflation after 2014.

  - **Example.** For each month of 2015, Electric Company (an *"applicable large employer"*) has 55 *"Full-Time Employees"* and fails to offer an "*eligible employer health plan*." Also, for each month of 2015, at least one of Electric Company's employees was enrolled in an exchange and received a *"premium assistance credit*" (PAC) for the year. ***For 2015,*** Electric Company will owe an excise tax of $166.67 per month for each "*Full-Time Employee"* over the 30-employee threshold. Therefore, an excise tax of ***$4,166.75*** [$166.67 x 25 (55 minus 30)] will apply ***for each month*** Electric Company fails to offer an *"eligible employer health plan."* **Planning Alert!** Please note that determining whether an employer is an *"applicable large employer"* is based on the average number of *"Full-Time Employees"* plus *"Full-Time Equivalent Employees"* during the *"preceding"* calendar year. However, for purposes of determining the excise tax, *only* ***"Full-Time Employees"*** for the *"current"* year are counted (i.e., the *"Full-Time Equivalent Employees"* ***are not included*** in the excise tax computation).

- ***"Second Situation"*** **Causing Excise Tax.** The ***"Second Situation"*** that would subject an *"applicable large employer"* to an excise tax is where **1)** the employer ***does offer*** *"eligible employer health plan"* coverage to its *"Full-Time Employees"* and their dependents for a calendar month, **and 2)** the employer has received certification from a state insurance exchange that at least one employee obtained health insurance coverage from the exchange that qualified the employee for the **"*premium assistant credit"* (PAC),** or a cost-sharing reduction subsidy. **Planning Alert!** Generally, as previously discussed in the ***"premium assistance credit"*** **(PAC)** segment of this letter, an otherwise qualifying individual who ***is offered*** *"eligible employer health plan"* coverage could qualify for the PAC ***only if*** the *"eligible employer health plan*" coverage failed to satisfy either the ***"affordability"*** test or the ***"minimum value"*** test with respect to that individual. The ***"affordability"*** test is generally violated with respect to an employee if the employee's required contribution to the plan (e.g.,

employee's share of health insurance premiums) for self-only coverage ***exceeds 9.5%*** of the employee's *"household income."* The ***"minimum value"*** test is generally violated if the employer's health plan does not cover ***at least 60%*** of the cost of the benefits provided under the plan. In other words, for this ***"Second Situation"*** to occur, the employer's *"eligible employer health plan*" would have to fail either the *"affordability"* test or the *"minimum value"* test with respect to at least one employee, allowing the employee to qualify for the *"premium assistance credit" for* health insurance purchased on the state exchange.

●● **Amount Of Excise Tax.** In this **"Second Situation,"** the "*applicable large employer"* is subject to an excise tax of ***$250 per month*** for ***each "Full-Time Employee"*** who is certified as enrolled in a state health insurance exchange and ***who received a "premium assistance credit" (PAC)*** or a cost sharing reduction subsidy. **Note!** This $250 penalty amount is to be adjusted for inflation after 2014.

●● **Example.** For ***each month*** of 2015, Electric Company (an *"applicable large employer"*) offered *"eligible employer health plan" coverage* to all of its 55 *"Full-Time Employees."* However, five of the lower-paid *"Full-Time Employees"* chose not to enroll in the employer-sponsored health plan because their required contribution would have exceeded 9.5% of their "*household income*." One of the five chose to remain uninsured throughout 2015, while the remaining four enrolled in a state health insurance exchange and each received a *"premium assistance credit"* (PAC) for each month of 2015. Electric Company would be subject to an excise tax **each month** of ***$1,000.*** This is computed by multiplying the number of *"Full-Time Employees"* enrolled in a state exchange and receiving a PAC (i.e., 4 employees) by $250. The maximum penalty per employee for an entire year is $3,000 ($250 x 12 months). **Planning Alert!** The excise tax in this ***"Second Situation"*** (i.e.,where the employer offers an "*eligible employer health plan*") can never exceed the excise tax that would have been imposed had the *"applicable large employer"* been subjected to an excise tax in the ***"First Situation"*** (i.e., where the *"applicable large employer"* failed to offer an *"eligible employer health plan"*). In other words, the total monthly excise tax for 2015 in this example cannot exceed an amount equal to the number of "*Full-Time Employees"* for the month in excess of 30 multiplied by $166.67 (i.e., 25 x 166.67 or $4,166.75).

●● **IRS Provides Employer Safe Harbor For "Affordability" Test For Purposes Of *"Second Situation"* Only.** In the previous example (illustrating the ***"Second Situation"),*** Electric Company was subject to the excise tax because four of its *"Full-Time Employees"* qualified for and received a *"premium assistance credit."* These four employees were able to receive the *"premium assistance credit"* because the employer's plan was not *"affordable"* (i.e., each employee's required contribution to the cost of self-only coverage under the plan would have been more than 9.5% of each employee's *"household income"*). Since most employers will have no basis for knowing the "*household income*" of any employee, the IRS recognizes that employers could unknowingly fail the *"affordability"* test (which is based on a threshold of 9.5% of an employee's *"household income").* Therefore, the IRS has provided employers several optional "affordability" safe harbors for employers in the ***"Second Situation"*** (i.e., where the employer offers an "eligible employer health plan"). ***For example,*** the IRS says that the employer's health plan will be considered to satisfy the *"affordability"* test with respect to an employee so long as the employee's required contribution for self-only coverage does not exceed 9.5% of the employee's ***wages reported on Box #1 of Form W-2*** (instead of the employee's *"household income"*). **Tax Tip.** Under this safe harbor, an "*applicable large employer"* will not be subject to the excise tax with respect to an employee, if: **1)** the employer offers *an "eligible employer health plan"* to its *"Full-Time Employees"* and their dependents, **2)** the plan generally covers at least 60% of the cost of the employees' benefits (i.e., the plan meets the "minimum value" test), and **3)** the employee's required contribution to the health plan for the employer's lowest cost self-only coverage does not exceed 9.5% of the employee's W-2 wages. **Planning Alert!** If an employer qualifies for this "affordability" safe harbor with respect to an employee, the employer will not be subject to the excise tax even if the employee purchases insurance from an exchange and receives a premium assistance credit or cost

sharing allowance. ***Caution!*** These "affordability" safe harbors **do not apply** to "applicable large employers" that are subject to the excise tax in the **"First Situation"** (i.e., where the "applicable large employer" failed to offer an "eligible employer health plan").

Which Employees Must Be Offered Health Plan Coverage By "Applicable Large Employers"? Once an "*applicable large employer"* decides to offer its employees "*eligible employer health plan*" coverage, the employer still must satisfy certain *ACA* requirements for the *"administration"* of the plan. The IRS has recently issued detailed guidance dealing with various administrative requirements, including: **1)** ***which*** *"Full-Time Employees"* must be offered coverage, **2)** ***when*** a *"Full-Time Employee's"* coverage must begin, and **3)** ***how long*** a *"Full-Time Employee's"* coverage must last. **Planning Alert!** This IRS guidance provides extensive rules defining the allowable *"measurement period"* (for determining whether an employee is a *"Full-Time Employee"* for mandatory health care coverage purposes) and the required *"coverage period"* (for determining when health care coverage for a *"Full-Time Employee"* must begin, and how long it must last). The rules are complex. For example, the *"measurement period"* for determining *"Full-Time Employee"* status for required health plan coverage purposes, may be different for ongoing employees, new employees, and seasonal employees. We suggest that you review these administrative rules with your company's health insurance representative.

Do "Small Employers" (Below The 50-Employee Threshold) Face Health Care Coverage Requirements? Generally, only ***"applicable large employers"*** (using the 50-employee threshold) are subject to the excise taxes for failure to offer employee health care coverage required by the *"Affordable Care Act"* (ACA). Therefore, smaller employers that fall below the 50-employee threshold are generally exempt from the excise taxes that we have discussed in this letter. However, *ACA* also contains a new nondiscrimination requirement for ***insured group health plans*** that potentially applies to ***all employers,*** regardless of the number of employees. Under this new nondiscrimination rule, any employer that sponsors an ***insured group health plan*** for its employees could be subject to substantial monetary penalties if the insured plan improperly **"*discriminates"*** (as to eligibility, contributions, benefits, etc.) in favor of certain highly-paid employees. As enacted under *ACA*, this nondiscrimination rule was to be effective for plan years beginning on or after September 23, 2010. However, in a 2011 Announcement, the IRS, DOL, and HHS collectively stated that they ***would not require compliance*** with this rule ***"until after regulations or other administrative guidance of general applicability has been issued.... ."*** [emphasis added]. As we complete this letter, no such regulations or administrative guidance have been issued.

FINAL COMMENTS

Please contact us if you are interested in a topic relating to the *Affordable Care Act* that we did not discuss. In addition, please call us before implementing any planning ideas discussed in this letter, or if you need additional information. **Caution!** The information contained in this material represents a general overview of *selected* tax provisions of the *Affordable Care Act* and should not be relied upon without an independent, professional analysis of how any of these provisions may apply to a specific situation.

Circular 230 Disclaimer: Any tax advice contained in the body of this material was not intended or written to be used, and cannot be used, by the recipient for the purpose of **1)** avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions, or **2)** promoting, marketing, or recommending to another party any transaction or matter addressed herein.