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THE PATIENT PROTECTION AND AFFORDABLE CARE ACT and THE PRESIDENT'S PROPOSAL OF FEB 22, 2009 SELECT TAX AND FEE PROVISIONS[1]

Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
Primary Tax Provisions Implementing "Healthcare Reform"			
Employer penalty fee who do not offer qualified coverage (for employers above small exception threshold)	Employers with more than 50 full time employees who offer no coverage pay $750 per full time employee. Even if only one employee receives a tax credit in the Exchange. Employers with more than 50 full time employees who offer some coverage pay a penalty for the employees who go to the Exchange and get tax credits where the employee share of the employer premium is more than 9.8% of income and/or the employer does not offer	Employers with annual payrolls of $500,000 or more who do not offer qualified coverage pay an 8% payroll tax on wages for all employees (including full-time, part-time and temporary. Employers with annual payroll of more than $500,000 but less than $750,000 pay a lower rate. **(Projected revenue of $135B)** Employers are required to meet (i) financial contribution level (72.5% of premium for individuals/65.5% for	Largely follows Senate version. Employers with less than 50 employees are exempt. Employers with 50 or more workers subtract the first 30 workers for purposes of computing the **penalty** charge**.** The penalty is $2,000 per employee if the employer does not offer affordable coverage (apparently less than half the average employer contribution to health insurance in 2009**) for each employee that goes into an exchange or $750 per**

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[2] This is based on the 11 page White House summary of the President's proposal released on February 22, 2010 (the "President's Proposal"). No legislative language has yet been released although the White House has indicated it is being developed. The only revenue estimates appear to be those provided by the director of White House Office of Health Reform, Nancy Ann DeParle, who said that the President's Proposal would reduce the federal deficit by about $100 billion in its first ten years and by about $1 trillion in the second decade. It would cost about $950 billion over ten years, she said – more than the Senate bill, less than the House bill and more than the President's own target of $900 billion. She estimated the changes to the Senate bill would cost about $75 billion which would be paid for by changing the underlying financing. It is anticipated that this comparison will be updated following the release of specific statutory language and the reader is encouraged to periodically check our dedicated Web Site _____.

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Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
	minimal coverage. The penalty is $3,000 per employee going into the exchange and getting a credit, but a maximum penalty of $750 times the number of full time employees in the workforce. If the employer requires a waiting period for enrollment, the employer must pay a $600 penalty for each full time employee in a 60-plus day waiting period. Waiting periods of 90 days or longer are prohibited. **(Projected revenue of $28 B)**. Permanently grandfathers existing employer plans offering any level of coverage. Generally these plans are not required to adopt insurance "reforms" or "quality standards". Permits a high deductible policy for young adults less than 30 with initial $5,950 deductible that is indexed. Premiums can be 3 to 1 oldest to youngest and tobacco rating can increase premium by 50%. Subsidies do not cover the tobacco rate up difference.	families) (ii) benefit standards, and (iii) consumer protection standards. Five year period for employers offering coverage to meet some of the requirements. Minimum standard benefit is 70% of actuarial value of expected costs/individual covers 30% actuarial value. No special policy for young. No special tobacco rating and premiums cannot vary by more than 2 to 1 between oldest and youngest.	**employee if offer no health insurance.** Applies same firm-sized threshold across the board to all industries and fully eliminates the assessment for workers in a waiting period of up to 90 days (90 day limit starts 2014).
Penalties for individuals without insurance	Beginning 2014, individuals who fail to have health insurance coverage would face fines equal to $95 in 2014, $350 in 2015, $750 in 2016 for each, person in the covered with a family cap of 3x	Beginning 2014, those who fail to have coverage would face a 2.5% tax on their modified AGI above filing threshold ($20,000), not to exceed the cost of the national average premium. **(Projected**	Adopts the Senate approach but lowers the flat dollar assessments (from $495 to $325 in 2015 and from $750 to $695 in 2016 with subsequent years indexed to $695) and raises the percent of

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	regardless of number of dependents. Fine is indexed to inflation. The uninsured under age of 18 penalty is half the penalty amount. Although supposedly collected by the IRS, the IRS can not impose liens or enforce by levy. **(Projected revenue of $15B)**.	**revenue of $33B)**.	income assessment that individuals pay if they choose not to become insured (from .5% to 1.0% in 2014; 1.0% to 2.0%. in 2015; and 2.0 to 2.5% for 2015 and subsequent years (same as House). The imposition is based on income tax filing threshold (House approach) rather than poverty level (Senate approach). Also adopts Senate hardship provision.
Small-business tax credits for providing group health insurance	Provides a non-refundable tax credit to firms with fewer than 25 employees and less than $50,000 in average wages, worth up to 35% of the cost of providing coverage from 2010 to 2013 and worth up to 50% for up to 2 years beginning in 2014. The credit phases out for firms at the rate of 5% for each $1,000 increase in average wages above $20,000 and 6% for each employee over 10. Special rules for charities. **(Projected to cost $40B over 10 year period)**.	Provides a tax credit to firms with fewer than 25 employees that provide employee health coverage. The full credit of 50% of employer cost is available to employers with 10 or less employees and average compensation of $20,000 or less. It phases down and is out with 25 employees and $40,000 average compensation. No credit for persons earning $80,000 or more. **(Projected to cost $25B over 10 years)**.	Small business receives $40 Billion in tax credits to support coverage for their workers beginning this year.
Tax Credits for Health Insurance Premiums – ***Individual Subsidies***	Use of tax credits to make health insurance "affordable". Maximum % of Income Paid for Premiums Income for family of 4 From: To: %	Use of tax credits to make health insurance "affordable". Maximum % of Income Paid for Premiums Income for family of 4 From: To: % $22,000 $29,000 1.5%	Use of tax credits to make health insurance "affordable". Maximum % of Income Paid for Premiums Income for family of 4 From: To: %

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Provisions	Senate-Passed H.R. 3590			House-Passed H.R. 3962			President's Proposal Feb. 22, 2010[2]		
	$22,000	$29,000	2%	$29,000	$33,000	1.5-3.0%	$22,000	$29,000	2.0-3.0%
	$29,000	$33,000	4.0-4.6%	$33,000	$44,000	3.0-5.5%	$29,000	$33,000	3.0-4.0%
	$33,000	$44,000	4.6-6.3%	$44,000	$55,000	5.5-8.%	$33,000	$44,000	4.0-6.3%
	$44,000	$55,000	6.3%-8.1%	$55,000	$66,000	8.0-10.0%	$44,000	$55,000	6.3-8.1%
	$55,000	$66,000	8.1%-9.8%	$66,000	$77,000	10.0-11.0%	$55,000	$66,000	8.1-9.5%
	$66,000	$77,000	9.8%	$77,000	$88,000	11.0-12.0%	$66,000	$77,000	9.5%
	$77,000	$88,000	9.8%				$77,000	$88,000	9.5%

Primary Revenue Provisions

40% non-deductible Excise Tax	Beginning in 2013, imposes a 40% nondeductible excise tax on health insurers offering high-cost insurance plans of more than $8,500 for individuals and $23,000 for families, indexed to the Consumer Price Index for all urban consumers (CPI-U) plus 1 percentage point. For the 17 highest-cost states, the threshold is increased to 120% for 2013, 110% for 2014 and 105% for 2015. The threshold is also increased for non-Medicare retirees older than 55 and	No provision.	Adopts Senate approach but defers the effective date to 2018; raises the amount of exempt premiums from $8,500 for singles to $10,200 and from $23,000 to $27,500 and indexes to general inflation plus 1%. No state specific phase in. The 2018 threshold automatically increases if medical inflation rises unexpectedly quickly between now and 2018. There is an adjustment for firms whose health costs are higher due to the age or gender of their workers. The cost of dental and

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Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
	those persons with high-risk jobs[3] or who repair or install electrical or telecommunication lines. **(Projected revenue of $148.9B over 10 years).**[4]		vision benefits are no longer potentially taxable benefits for determining whether a high-cost insurance plan..
Individual Income Surtax	No provision.	Starting in 2011, imposes a 5.4% surtax on individuals with modified adjusted gross incomes of more than $500,000 ($1 million for joint returns). The surtax threshold is not indexed for inflation. **(Projected revenue of $460.5B over 10 years)**. [5]	No provision.
Medicare tax	In 2013 forward, increases the uncapped Medicare payroll tax by .9% (from 1.45% to 2.35% a 62% increase) for individuals with wages or self-employment income of more than $200,000 ($250,000 for joint returns). Employer withholding required and the employer penalized even if employee pays.[6] *Unlike the existing payroll tax, no portion of this additional tax is deductible which really raises the payroll tax equivalent to about 1.2*	No provision.	Includes the Senate's .9% increase in the uncapped Medicare payroll tax. In addition, it expands the present **2**.9% assessment (i.e. the combined employer and employee share of the existing HI tax) to investment income such as interest, dividends, annuities, royalties and rents, other than such income which is derived in the ordinary course of a trade or business which is not a passive activity. This is imposed on taxpayers with respect to

[3] High risk jobs are specified as law enforcement, fire protection activities, out-of-hospital emergency medical personnel, construction, mining, agriculture (not including food processors), forestry, fishing and longshoremen. The increase is $1,350 for self and $3,000 when more than just self as increased by CPI-U plus 1%.

[4] Unless otherwise specifically stated, all revenue and expense scoring is for the ten (10) year period 2010-2019. Some of the revenue starts in 2011 and subsequent years while most of the expenses do not start until 2013. "B" designates billion.

[5] Id.

[6] Act § 9015(b)(2)

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	percentage point increase for most people that are affected and as income tax rates rise, even higher equivalent. Tax years beginning after December 31, 2012. **(Projected revenue of $86.8B).**		income above $200,000 for singles and $250,000 for married couples filing jointly. **Although not expressly stated, it has been reported the 2.9% tax may apply to capital gains as a form of investment income.**
Health industry fees (characterized as non-deductible Excise taxes) and taxes			
Branded Prescription Drugs	Starting 2010, imposes a $2.3B annual fee on manufacturers and importers of branded prescription drugs (based on proportional market share) with sales of branded prescription drugs of $5 million or more. **(Projected revenue of $22.2 B).**	No provision.	Starting in 2011, imposes a $3.3B annual fee on manufacturers and importers of branded prescription drugs – i.e. a $10 B increase over Senate. Administrative changes to facilitate administration by IRS.
Medical Devices	Starting 2011, imposes a $2.B annual fee until 2017 on medical device manufacturers and importers (based on market share). 2018 and later, $3B annual fee. **(Projected revenue of $19.2B)**.	Imposes a 2.5% excise tax on medical devises at first taxable sale. Effective 2013. **(Projected Revenue of $20 B)**	Adopted the House approach of an excise tax, The effective date is deferred until 2013. Although the rate is unknown, it is supposed to yield approximately the same revenue over the measuring period.
Health Insurance Providers	A $2B fee in 2011; a $4B fee in 2012; a $7B fee in 2013; a $9B fee in 2014-2016; and $10B for 2017 and later on health insurance Providers. Excludes self-insured plans. Also certain IRC 501(c)(4) non-profit entities are exempt	No provision.	Delayed the fee on Health Insurance Providers until 2014 and amended to provide exceptions for certain non-profits receiving more than 80% of their income from government programs targeting low income or

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	and certain mutual insurers with State market share of at least 40% and less than 60%. **(Projected revenue of $59.6B)**.		elderly or those with disabilities. Also exempts VEBAs not established by employees.
Fee on Self-Insured plans for Comparative Effectiveness Research	For plan years ending after September 30, 2012 but not after Sept 30, 2019, a fee of $2 ($1 for plan years ending in 2013) per average number of lives covered. Fee is increased by previous years amount times percentage increase in projected National Health Expenditures as published by the Secretary. Fee is paid by sponsor. Applies to any plan a portion of the coverage is other than by an insurance policy which is established by an employer, 501(c)(6), 501(c)(9), an employee organization for benefit of members, rural electric and rural telephone cooperatives. Governmental plans exempted. **(Projected revenue of $2.6B)**	Similar provision. **(Projected revenue of $2.0B)**	Unclear but presumed to adopt Senate approach[7].
Total health industry fees	**Projected revenue of health industry fees $103.6B.**	**Projected revenue of health industry fees $22B.**	

[7] Since the President's Proposal is based on an 11 page summary which "…includes a targeted setoff changes to the Patient Protection and Affordable Care Act, the Senate-passed health insurance reform bill." It is therefore likely that if the summary is silent on a point, the Senate provision will be in the President's Proposal. Therefore, these provisions (provisions on which there is no commentary in the 11 page summary) are labeled "Unclear but presumed to adopt Senate approach".

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Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
Other Health Related Fees and Taxes			
Tanning services	10% excise tax on tanning services performed on or after July 1, 2010. Excludes phototherapy services performed by licensed medical professional. Statute dictates tax is paid by individual on whom service is performed with secondary liability to person performing service. Tax is remitted quarterly. **(Projected revenue of $2.7B).**	No provision.	Unclear but presumed to adopt Senate approach.
Health insurance provider limitation on officers, directors, consultant, and employee deductible compensation	Limits maximum amount of executive compensation to $500,000 a health insurance company can deduct, starting in 2013. This limitation also applies to consultants. **(Projected revenue of $600 million).**	No provision.	Unclear but presumed to adopt Senate approach.
Medical expense deduction	Beginning in 2013, increases the AGI floor for deductible medical expenses from 7.5% to 10% and provides a temporary carveout (expires in 2016) for those older than 65. **(Projected revenue raised of $15.2B)**.	No provision.	Unclear but presumed to adopt Senate approach.

Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
Flexible spending account (FSA) limitation	Beginning in 2011, *limits contributions* to FSAs at $2,500 indexed to the CPI-U **(Projected revenue of $13.3B)**.	Same as Senate, but effective date of 2013. **(Projected revenue of $13.3B)**[8]	Unclear but presumed to adopt Senate approach.
Definition of medical expenses	Beginning in 2011, effectively limits reimbursement of over-the counter medications from HSAs, FSAs, and MSAs. This is accomplished by conforming the definition of medical expenses for FSAs, health savings accounts, Archer medical savings accounts, health reimbursement arrangements. Over-the-counter medications prescribed by a doctor is exempted. **(Projected revenue of $5B)**.	Similar to Senate.	Unclear but presumed to adopt Senate approach.
Nonqualified HSA distributions	Beginning in 2011, increases the tax penalty for nonqualified HSA distributions from 10% to 20%. **(Projected revenue of $1.3B)**.	Same as Senate.	Unclear but presumed to adopt Senate approach.
Medicare Part D subsidy	Beginning 2011, ends deduction for expenses allocable to Medicare Part D subsidy. **(Projected revenue of $5.4B)**[9].	Same as Senate. **(Projected revenue of $2.2B)**[10]	Unspecified delay to the elimination of the deduction for expenses allocable to the Medicare Part D subsidy.
Therapeutic discovery credit or Grants in lieu of	Creates a new 50% tax credit for "qualified therapeutic discovery	No provision.	Unspecified delay to the effective date of the therapeutic discovery credit.

[8] Projection included interaction with high cost plans.
[9] See Annex 1.
[10] Not clear why different revenue estimates.

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Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
Credit.	projects" undertaken by firms with not more than 250 employees at time of application. Awarded by Secretary of Treasury. Projects paid for in taxable years beginning in 2009 or 2010. Award mechanisms to be developed within 60 days of enactment and applications to be approved or denied within 30 days of submission. Grants in lieu of tax credits may be made. **(Projected to cost not more than $1B)**.		
Research trust fund	Establish a patient-centered outcomes research trust fund, financed with $2.6B in fees on insurers and self-insured healthcare plans ending after September 30, 2012, and before September 30, 2019.	Establishes a comparative effectiveness research trust fund, financed with $2 billion in fees on plans beginning after September 30, 2012.	Unclear but presumed to adopt Senate approach.
Health benefits Provided by Indian Tribal governments	Health benefits, medical reimbursement, or medical insurance premiums paid for by an Indian tribe or tribal organization for member of tribe, including spouse or dependent. Effective upon enactment. **(Projected cost of $50 million).**	Same as Senate.	Unclear but presumed to adopt Senate approach.
Modification of IRC §883 of certain health organizations	For Blue Cross and Blue Shield companies, the percentage of total premium revenue expended on reimbursement of clinical services to Policyholders during tax year of not less than 85% to obtain IRC §833 benefits.	No provision.	Unclear but presumed to adopt Senate approach.

Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
	Projected revenue of $400 million.		
Additional Requirements for exempt hospitals	Requires exempt hospitals to have a community needs assessment every three years. The hospital must explain what it is doing to meet the needs and what needs are not being addressed and why they are not being addressed. Requires IRS to review a hospital's community benefit and community assessment at least once every three years. Has restriction on charges to uninsured and underinsured to amounts generally billed; prohibits gross chargers; requires written and widely disseminated financial assistance (used to be called charity care) policies, policy of emergency medical conditions to individuals regardless of eligibility for financial assistance; restricts extraordinary collection actions (such as lawsuits, liens on residences, etc.) without first making attempts to determine if patient was eligible for financial assistance. In essence this implements a white paper circulated by Senator Grassley a few years ago. This would be effective for taxable years beginning after the date of enactment. **No revenue estimate.**	No provision.	Unclear but presumed to adopt Senate approach.
Exclusion from	Individual shall not have gross income	No provision.	Unclear but presumed to adopt Senate

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income of certain student loan payment assistance	for assistance in repayment of certain student loans or loan forgiveness program intended to provide for increased availability of health care services in underserved or health professional shortage areas. Applies to amounts received by an individual tax years beginning after Dec. 31, 2008.		approach.
Simplify Income Definitions	No provision	No provision.	Conforms income definitions to make the system simpler for beneficiaries to navigate and States and Federal Government to administer by changing definition of income used for assistance from modified gross income to modified adjusted gross income; create a 5% income disregard for certain Medicaid eligibility determinations to ease transition from States' current use of income disregards; streamline income reconciliation process for determining tax credits and reduced cost sharing and clarifying the tax treatment of employer contributions for adult dependent coverage.

Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
Miscellaneous Provisions			
Exclude Black liquor from credit	No provision	Disqualifies unprocessed fuels, such as the so-called black liquor, from the IRC §40(b) cellulosic biofuel credit. **(Projected revenue of $23.9B)**.	Adopts House proposal.
Adoption credit	Extends the adoption credit until 2011, increases the credit from $10,000 to $13,170 with a CPI adjustment, and makes it refundable. **(Projected to cost $1.2B).**	No provision.	Unclear but presumed to adopt Senate approach.
Benefits for domestic partners	No provision.	Starting in 2010, excludes from gross income and wages the cost of employer-based coverage for domestic partners and other eligible designated beneficiaries. **(Projected to cost $4B)**.	Unclear but presumed to adopt Senate approach.
Simple cafeteria plans for small business.	100 or fewer employees in either of 2 preceding years or at time establish a plan. Will cease being a small employer at 200 employees. Certain mandatory contributions and salary reduction contributions with minimum participation and eligibility requirements.	No provision.	Unclear but presumed to adopt Senate appraoch.

Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
Tax Compliance Unrelated to Healthcare			
Corporate information	New information reporting requirements that apply to payments to corporations made after December 31, 2011. **(Projected revenue of $17.1B)**	Same as Senate.	Unclear but presumed to adopt Senate approach.
Worldwide interest allocation	No provision.	Repeals the worldwide interest allocation starting in 2011. **(Projected revenue $6B)**.	Unclear but presumed to adopt Senate approach.
Economic substance doctrine	No provision.	Codifies the economic substance doctrine and imposes 20% strict liability penalty (40% if inadequate disclosure) on underpayments. Effective for transactions entered into after date of enactment. **(Projected revenue of $5.7B).**	Adopts House proposal with minor technical changes.
Treaty benefits	No provision.	Limits tax treaty benefits related to U.S. withholding tax imposed on deductible related-party payments **(Projected revenue of $7.5B)**.	Unclear but presumed to adopt Senate approach.
More likely than not standard for avoiding penalties on underpayments	No provision.	For specified taxpayers (persons required to file SEC reports under 34 Act and any corporation with gross receipts over $100 million for tax year involved) the reasonable belief exception is not available to portion of underpayment attributable to transaction lacking	Unclear but presumed to adopt Senate approach.

Provisions	Senate-Passed H.R. 3590	House-Passed H.R. 3962	President's Proposal Feb. 22, 2010[2]
		economic substance or reportable transactions. For such taxpayers reduction of substantial understatement penalty for substantial authority would not apply. The revenue estimate for this was included in economic substance revision.	

Annex A

Excise Tax on High Cost Employer Sponsored Health Plans

The Excise Tax on High Cost Employer Sponsored Health Plans is projected to be the single largest revenue raiser in the Senate bill. Under the Senate bill it was projected to raise $148.9 Billion over ten years ($29.9 billion in the 10th year alone) with apparently ever increasing annual amounts thereafter). The House bill did not have this tax, instead it imposed a higher income tax on the upper income. While this Excise Tax was retained in the President's Proposal, the effective date has been substantially deferred and the dollar thresholds raised. The prohibitive tax on such employer provided plans was to be a "cost containment measure" to try to " bind the curve".

Under the President's Proposal, a high Cost Employer Sponsored Health Plan is one whose cost of benefits (whether paid all by the employer or partially by the employee) for a one person ("self-only") is over $10,200 or coverage of $27,500 for more than one person ("other than self-only"). Starting in 2018, such threshold amounts are adjusted for inflation plus one percent (1%). The President's Proposal chillingly provides for an automatic increase to the 2018 threshold if health costs rise unexpected quickly between now and 2018. Although it is referred to as an employer sponsored health plan, the Senate statutory language makes it apply to the self-employed if any portion of the premium is deductible.[11] The President's Proposal eliminated differences in phase in of the excise tax among the states. The Senate version provides that employees in certain specified "high-risk" professions (law enforcement, firemen, out of hospital emergency medical care providers, construction, mining, agriculture (not food processing), forestry, fishing industries and longshoremen receive an additional fixed amount to determine the applicable threshold. The President's Proposal maintains the Senate's permanent adjustment in favor of high-risk occupations such as "first responders".

The excise tax is non-deductible[12] and applies to the cost of the health insurance above the applicable threshold. For example, if the health insurance premium was $11,512.50 for a single employee, the non-deductible tax would be $525. That means if an employer is in a 35% tax bracket, the employer will have to earn $1.54 to pay for one dollar ($1.00) of the excise tax on an after tax basis.[13] In the above example, the $11,512.50 annual premium would have a $1,312.50 "excess benefit" and the $525 dollars of tax would require the employer to earn $807.70 to pay the excise tax.[14]

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[11] Interestingly it also applies to State and local government plans as well.

[12] IRC §275(a)(6).

[13] This is because the employer has to pay tax on the funds that are needed to pay the excise tax. There is a tax on tax calculation wherein the 40% after tax becomes a 54% effective tax.

[14] Many states base their state income tax on federal adjusted income with modifications. For those states, unless the excise tax is made deductible by the state statute, the actual cost will be higher for the employer as the excise tax will be nondeductible so the state tax must be paid on such amount plus the state tax on the earnings to pay the state tax, etc.

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This should cause employers who continue to provide group health insurance benefits to their employees to do everything possible to reduce coverage to stay below the confiscatory tax level. Raising the portion paid by the employee does not help as the excise tax considers both employer paid premiums and amounts the employee pays.

Despite the fact that the economics would indicate employers will do everything possible to reduce the insurance premiums to levels below the "excess benefit" level, the government revenue projections for the Senate version show the excise tax rising from $7.1 Billion in 2013 (first year the tax is effective) to $29.9 Billion in 2019 (the end of the ten year measuring period that for these purposes started in 2009). [The CBO has not yet scored the President's Proposal, which will have a lower revenue effect given the deferral, increase in the threshold and exemption of dental and vision coverage from the computation.] It is likely this phenomena of the excise tax generating increasing revenue is the result of health care inflation as the costs of healthcare have historically risen more than the CPI adjustment plus 1%. Therefore, it appears that the revenue estimators believe that medical inflation will substantially more than offset the savings that employers are capable of obtaining (remember the tax is based on the total cost, including insurance payments the employee makes). Again, the Senate version's estimated revenue increases each year from $7.1 Billion in 2013 (first year the tax is effective under the Senate version) to $29.9 Billion in 2019 (the last year in the ten year projection). The ever increasing number of "excess benefit" health insurance plans and probably the ever increasing amount of "excess" brings to mind the alternative minimum tax. That tax was supposed to only impact the "rich" portrayed as clipping coupons on tax exempt bonds. Today it impacts the middle class and computes to a larger number than the income tax. Will the non-deductible tax on "excess benefits" wind up being the major revenue source many years down the road for the "universal care" or will it wind up being a major cause of employers dropping coverage? Indeed, if as the President's Proposal indicates the penalty for employers dropping coverage is When combined with the proposed Health Insurance Rate Authority and the Proposal's provision to offer insurance plans administered by the Office of Personnel Management nationwide to anyone buying coverage through the new insurance exchanges, have those who insisted on a governmental single payor planted the seeds for their ultimate goal to come to rapid fruition?

Employers or, if applicable, plan sponsors, are required to provide information to the insurance carrier as to the single coverage and multi-coverage so the carrier can calculate and pay the excise tax which presumably will be reflected in increased premium costs to the employer. For this purpose, taxable period means the calendar year or such shorter period as the Secretary may provide with different taxable periods for employers (not insurance companies) of varying sizes. (This would indicate that Congress anticipates that the insurance companies will pass the costs through.) Since the excess benefit is computed on a monthly basis, larger employers can probably anticipate making monthly payments.

Under the Senate's version, the excise tax applies to taxable years beginning after December 31, 2012 and under the President's Proposal, after 2017. The cost of the employer-sponsored coverage is to be included as an item on the W-2 for tax years beginning after December 31, 2010. In this manner employees can be aware of the cost of the insurance.

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ANNEX B

The Senate version of the Patient Protection and Affordable Care Act, HR 3590 (the "Act"), provides that each individual and such person's dependent are to carry minimum essential coverage health insurance each month after 2013 or be penalized. Section 5000A of the Act. While there are various exceptions for people below the poverty line (Indians below 300% of the poverty line), the penalty appears to be almost a voluntary payment for the individuals that do not fall within the numerous exceptions to the requirement.

The Act provides that the penalty "…shall be included with a taxpayer's return under chapter 1 for the taxable year which includes such month." It is unknown if a person who is not otherwise required to file a return must do so if the penalty applies to such person. The Act provides that the penalty shall be paid upon notice and demand by the Secretary and shall be assessed and collected in the same manner as an assessable penalty under the Internal Revenue Code. However, the Act then goes and provides (i) failure to pay the penalty shall not give rise to any criminal penalty or prosecution and (ii) the Secretary shall not file notice of lien with respect to property of a taxpayer by reason of failure to pay the penalty or levy on any such property with respect to such failure.

In short, it appears that the penalty may not even required to be reported unless the taxpayer is otherwise required to file a return or files a return and even if reported, how does the IRS require the payment other than perhaps withholding from any income tax refund. There are no criminal penalties and the IRS cannot impose a lien or levy on property.

While the dollar amounts of the penalty appear to pale as compared to the cost of insurance, the failure to push individuals into the system where they have essential coverage and therefore theoretically receive medical attention prior to the emergency rooms may be one of the Achilles heel to the theory of universal coverage as implemented by this Act and maybe even more importantly, cost containment. The downside to an individual not obtaining insurance coverage is minimized because the Act provides for insurance to be obtained without regard to pre-existing conditions. It is anticipated that hospitals will be required, just as they are now, to provide emergency care. Therefore, a largely illusory penalty to enforce the "shared responsibility" may well mean that some of the cost savings envisioned will not materialize and certainly it is an impetus for increased cost of health insurance as those responsibility purchasing health insurance will directly subsidize those who are irresponsible, utilize the emergency room, and then only obtain health insurance after they have serious medical conditions.

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