2013 Gear Up

Health Care Reform

Tim Sundstrom & Gary Steinberg
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- Sponsor’s name
- Date(s) of seminar
- Location of seminar

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Acknowledgements

The authors wish to acknowledge the valuable source materials of PPC that were used in developing certain topics of this manual.
Research studies have shown that if you don't use an idea within 24 hours of hearing it, you probably never will. So, if you hear something in this program that you'd like to try, write it down on this note sheet immediately. Keep this page handy and at the end of the course you'll have all of your new ideas in one place and ready to put into action in your office.

<table>
<thead>
<tr>
<th>Action Notes</th>
<th>Page Reference</th>
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</table>

Things you 'gotta do!
PLEASE SUBMIT QUESTIONS IN WRITING

Ask Questions as appropriate
Health expenditure as a share of GDP, OECD countries, 2010

% GDP

United States | 17.6
Netherlands (1) | 12.0
France | 11.6
Germany | 11.0
Canada | 11.4
Sweden (2009) | 11.1
Austria | 11.0
Belgium | 10.7
Spain (2009) | 10.5
United Kingdom | 10.1
New Zealand | 9.6
OECD | 9.6
Japan (2009) | 9.5
Norway | 9.4
Italy | 9.3
Ireland | 9.2
Slovenia | 9.1
Finland | 9.0
Chile | 8.9
Israel (2009) | 8.0
Mexico (2009) | 7.9
Slovak Republic | 7.9
Czech Republic | 7.8
Poland | 7.5
Estonia | 7.1
Turkey (2008) | 6.3

THOMSON REUTERS
Chart 1: Health expenditure per capita, public and private, 2009 (or nearest year)

USD PPP

Public expenditure on health
Private expenditure on health

Canada
U.K.
Legislation

Patient Protection and Affordable Care Act (March 23, 2010)

Health Care and Education Reconciliation Act of 2010 (March 30, 2010)

Supreme Court Rules (June 28, 2012)

Effects Everyone!
Good for Tax Preparers!

Insurance Coverage Advertised to Cover 30 Million More People

Adds Zero New Physicians, Yet

Provides for 16,000 New IRS Agents
Health Care: Overview of Presentation

- General comments- (Review of Marketplace)
- Various tax issues
- .9% Additional Medicare Surtax
- 3.8% Net Investment Income Tax
- Individual Mandate
- Premium Assistance Credit
- Employer Mandate
## American Taxpayer Relief Act

<table>
<thead>
<tr>
<th></th>
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<th>2013</th>
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<tr>
<td>Individual tax rates</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td></td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td></td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td></td>
<td>28%</td>
<td>28%</td>
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<tr>
<td></td>
<td>33%</td>
<td>33%</td>
</tr>
<tr>
<td></td>
<td>35%</td>
<td>35%</td>
</tr>
<tr>
<td>Capital gains – max</td>
<td>15%</td>
<td>20%</td>
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<tr>
<td>Qualified dividends – max</td>
<td>15%</td>
<td>20%</td>
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<tr>
<td>Estate/Gift tax rate</td>
<td>35%</td>
<td>40%</td>
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## American Taxpayer Relief Act

### Individual tax rates 2013

On taxable income over these amounts:

<table>
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<th>Joint</th>
<th>HOH</th>
<th>Single</th>
<th>MFS</th>
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<tr>
<td>10%</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>15%</td>
<td>17,850</td>
<td>12,750</td>
<td>8,925</td>
<td>8,925</td>
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<tr>
<td>25%</td>
<td>72,500</td>
<td>48,600</td>
<td>36,250</td>
<td>36,250</td>
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<tr>
<td>28%</td>
<td>146,400</td>
<td>125,450</td>
<td>87,850</td>
<td>73,200</td>
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<tr>
<td>33%</td>
<td>223,050</td>
<td>203,150</td>
<td>183,250</td>
<td>111,525</td>
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<tr>
<td>35%</td>
<td>398,350</td>
<td>398,350</td>
<td>398,350</td>
<td>199,175</td>
</tr>
<tr>
<td>39.6%</td>
<td>450,000</td>
<td>425,000</td>
<td>400,000</td>
<td>225,000</td>
</tr>
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As usual these numbers have been indexed for inflation for 2013. However the 39.6% brackets will not be indexed until after 2013.
## Capital Gains / Qualified Dividends rates after 2012

On taxable income over these amounts:

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<th>Joint</th>
<th>HOH</th>
<th>Single</th>
<th>MFS</th>
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<td>0%</td>
<td>0</td>
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<tr>
<td>0%</td>
<td>17,850</td>
<td>12,750</td>
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<td>15%</td>
<td>72,500</td>
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<td>425,000</td>
<td>400,000</td>
<td>225,000</td>
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</tbody>
</table>

As usual these numbers have been indexed for inflation for 2013. However the 20% bracket will not be indexed until after 2013.
Return of the Phase-outs

Phase-out of personal exemptions

• Starting after 2012

• 2% for each $2,500 or part thereof adjusted gross income in excess of new thresholds:
  • Joint $300,000
  • Head of Household 275,000
  • Single 250,000
  • Married filing separate 150,000

• Can be completely phased out

• Adjusted for inflation after 2013
Return of the Phase-outs

Limitation of itemized deductions starting after 2012

• 3% of excess of adjusted gross income in excess of new thresholds:
  • Joint $300,000
  • Head of Household 275,000
  • Single 250,000
  • Married filing separate 150,000

• Adjusted for inflation after 2013
• Reduction not to exceed 80% of Sch A
• Medical, investment interest, casualty and gambling losses not reduced by limitation
Introduction

- Individuals have never before been required to have health insurance
- Most will now be required for selves and dependents starting 2014
- Don’t comply and be penalized
- States were supposed to set up insurance exchanges to assist in obtaining affordable coverage
- Financial assistance for low and moderate income individuals
  - Tax credits
  - Cost-sharing subsidies
Health Care: Overview

- Largest social program since Medicare and Medicaid
- A goal of the law was to make certain that people would have an opportunity to obtain insurance providing essential benefits with minimal essential coverage
- Big opportunity for practitioners:
  - Be proactive in avoiding penalties or taking the penalties, minimizing tax liability, planning for the tax credit, explaining how all this works
Health Care: Overview

- The individual mandate penalty will be enforced via the 1040.
- For Health Care and the Marketplace (Exchanges) you will see storefronts, kiosks in malls, call centers, counselors, multi-lingual translation
- Choices (competition) will vary between exchanges
- The exchanges will have SHOPS (Small Business Health Options Program)
Health Care: Status of Reform

- By a 5:4 ruling the U.S. Supreme Court upheld most of the provisions of the Affordable Care Act.
- The key provision not upheld was the requirement that the states participate in the Medicaid expansion which was expected to cover 17 million.
- Other key issues left to address: Malpractice reform, end of life costs, continuing escalation and more.
- Recent Oregon study.. Is it too late to change?
Health Care: Insurance Options

- Insurance will be offered by:
  1. Employers
  2. The Marketplace (Exchanges)
  3. Public programs like Medicare and Medicaid

- There are special rules for grandfathered and self-insured plans

- Standalone plans not covered include long-term care, nursing home assistance, home health care and disability.

- Standalone Medicare supplemental insurance (Medigap) is generally not covered.
Figure 1: Health Insurance Exchange Arrangements for 2014, as of May 10, 2013

[Map showing states with different exchange arrangements]
www.healthcare.gov

The Health Insurance Marketplace is coming soon

A new way to get affordable coverage launches October 1.

Answer a few questions to learn if you qualify for lower costs.

START NOW
The Health Insurance Marketplace is coming soon

A new way to get affordable coverage launches October 1.

Answer a few questions to learn if you qualify for lower costs.

SEE YOUR OPTIONS ➔
www.healthcare.gov

Individual and Families for individuals and self-employed with no employees
Small Business Health Options Program (SHOP)
Small Business - with 50 or few employees.

A new way to get affordable coverage launches October 1.
Answer a few questions to learn if you qualify for lower costs.

SEE YOUR OPTIONS
SHOP Employer Enrollment

- Employer picks the plan
- Employees are notified either by the employer or the website
- Employee can elect to select coverage or choose other coverage. If they don’t select the employer plan, employer not responsible for employer portion.
- Employer is then notified and can choose to go with the plan or modify.
Health Care: Grandfathered Plans

- A plan that has existed since March 23, 2010 (the date of enactment of the ACA)
- Subject to only certain portions of the ACA including:
  - No lifetime limits
  - Cannot rescind coverage
  - Extension of dependent coverage (some difference)
  - Prohibits pre-existing condition exclusions
  - Cannot have excessive waiting periods for coverage
  - Must provide a summary of benefits
Health Care: Self-Insured Plans

- Stop loss insurance is purchased to cover claims over a specified amount
- Self-insured plans are becoming attractive to small employers
Catastrophic Health Care Plans

- Some Can Still Meet QHP Requirements
  - Offered only in the individual market
  - Provide for 3 primary care visits per plan year
  - Provides essential benefits > HDHP limits
  - *For individuals < 30 years old with unaffordable or hardship certification*
Health Care: Individual Plans

- The insurance price is determined by only four criteria

1. Age – Older people won’t pay more than three times the amount younger people pay
2. Premium Rating Area – High cost areas will have more expensive insurance
3. Number of family members covered
4. Tobacco use

Observation: Young adults and men may see an increase in premiums
Health Care: Essential Health Benefits

- Generally, the following (ten) benefits must be provided with no annual or lifetime limits:
  - Ambulatory services
  - Emergency services
  - Hospitalization
  - Maternity and newborn care
  - Mental health and substance abuse
  - Prescription drugs
  - Rehabilitative services
  - Laboratory services
  - Pediatric services including oral and vision care
  - Preventative and wellness services and chronic disease mgmt
Health Care: Deductibles and Limits

- The following deductibles and out-of-pocket limits do not apply to large group plans offered outside the marketplace or self-funded plans.

- Deductibles:
  - Self-only: $2,000
  - Other: $4,000

- Out-of-Pocket limits (2013)
  - Matches HSA limits:
    - Self-only: $6,250
    - Other: $12,500

Note: These limits may be adjusted annually
Cost-Sharing Requirements

- Starting 2014, health plans cannot require participant cost sharing to be more than dollar amount under IRC 223 for high deductible health plan
  - 2014 = $6,350 Self-only Coverage
  - 2014 = $12,700 Family Coverage

- Cost sharing includes deductibles, co-pays, etc.

- Cost sharing doesn’t include premiums or spending for non-covered services
Deductible Limitation for Employer-Sponsored Plan

➤ Starting 2014, employer-sponsored plans in small group market cannot have deductible exceeding:
  ➤ $2,000  Self-only Coverage
  ➤ $4,000  Family Coverage

➤ Starting 2015 limitations indexed
Health Care: Insurance Plans

- Non-grandfathered plans must meet the Platinum, Gold, Silver, or Bronze actuarial levels of benefits and coverage.
- Platinum 90%, Gold 80%, Silver 70% and Bronze 60% of Actuarial Value
- Actuarial Value refers to a percentage of costs expected to be covered by the plan.

Memo: Grandfather plan is a plan that was in existence as of 3/23/2010- not subject to all the provisions.
Health Care: Observations

- We have a disease care system that encourages procedures (fee for service)
- We are seeing movement towards a system that rewards outcomes (managed care)
- Example: Hospitals cannot readmit Medicare patients within 30 days for the same issue and expect to be paid
- The government has been paying on volume but now is wanting to pay for quality of care
- The military is experimenting with alternative health care that, if successful, is less expensive and then could go mainstream
Health Care: Observations

- Health Care spending in the U.S. was $2.67 trillion last year, about 17% of our GDP.
- Medicaid covers 56 million poor people, up about 10 million from 5 years ago. It is expected to add about 20 million to its rolls next year.
- Many employers are putting a cap on employees working over 30 hours per week so the employer does not have to provide health care
- Employers are renewing plans before 1/1/2014 to delay implementation for a year
- Employers are rewarding employees who are healthier and/or participating in healthy activities
Health Care: Observations

- Employers may not pay for spousal coverage. Why? Because employers are required to cover dependents and a spouse is not considered a dependent.

- The new health insurance subsidy (Premium Assistance Credit) could result in surprise tax bills.

- Health Care costs are not increasing as fast as they were. How much of this slowdown is due to the economy, health care efficiency and/or the lack of new expensive drugs?
Health Care: Physicians

- There is a shortage of primary care physicians
- Small physician practices are being acquired by hospitals—this could create local monopolies
- Physician assistants are doing more
- More retail health care (1400 clinics now)
- The virtual doctor
- Computers are being used more to make decisions
Health Care: Observations

- In June the federal government is supposed to establish call centers.
- The government is creating a computer network to verify income and citizenship for purposes of the Premium Assistance Credit. Each state will be allowed to exchange data with the IRS, HHS, SSA and other agencies.
- October 1, 2013 the exchanges are open for enrollment in 2014 insurance plans.
- The administration announced that some small businesses will not have choices on the exchange until 2015. They will be limited to a single plan... not good news for small business.
Health Care: Observations

❖ Many people will not be able to pay for insurance with credit cards
❖ Employers will have to inform employees of their insurance coverage by 10/1/2013?
❖ Will legislators and congressional staff members leave if they lose their subsidized plans because of Obamacare?

❖ Update: Disclosures for plans can be found at www.dol.gov.
New Health Insurance Marketplace Coverage Options and Your Health Coverage

PART A: General Information

When key parts of the health care law take effect in 2014, there will be a new way to buy health insurance: the Health Insurance Marketplace. To assist you as you evaluate options for you and your family, this notice provides some basic information about the new Marketplace.

What is the Health Insurance Marketplace?
The Marketplace is designed to help you find health insurance that meets your needs and fits your budget. The Marketplace offers "one-stop shopping" to find and compare private health insurance options. You may also be eligible for a new kind of tax credit that lowers your monthly premium right away. Open enrollment for health insurance coverage through the Marketplace begins in October 2013 for coverage starting as early as January 1, 2014.

Can I Save Money on my Health Insurance Premiums in the Marketplace?
You may qualify to save money and lower your monthly premium, but only if your employer does not offer coverage, offers coverage that doesn't meet certain standards. The savings on your premium that you're eligible for depends on your household income.

Does Employer Health Coverage Affect Eligibility for Premium Savings through the Marketplace?
Yes. If you have an offer of health coverage from your employer that meets certain standards, you will not be eligible for a tax credit through the Marketplace and may wish to enroll in your employer's health plan. However, you may be eligible for a tax credit that lowers your monthly premium, or a reduction in certain cost-sharing if your employer does not offer coverage to you at all or does not offer coverage that meets certain standards. If the cost of a plan from your employer that would cover you (and not any other members of your family) is more than 9.5% of your household income for the year, or if the coverage your employer provides does not meet the "minimum value" standard set by the Affordable Care Act, you may be eligible for a tax credit.
PART A: General Information

When the rules of the healthcare marketplace go into effect in 2014, these rules will be important to help healthcare employers and employees participating in the HealthCare Market Place.

- Employer Notice to Employees of The New Healthcare Market Place.
- Employers covered by Fair Labor Standards Act (FLSA).
- Firms with at least one employee and at least $500,000 in business volume.
- Copies of notices available at [www.dol.gov](http://www.dol.gov)
- I see this more of a benefits issue!
Health Care: Key Terms

- **Guaranteed Issue**: The requirement that health insurance be sold to anyone regardless of their health status.
- **Community Rating**: The requirement that people in the same age group pay the same premiums regardless of their health status.
- **Employer Responsibility**: The requirement that all companies with more than 50 full-time equivalent employees offer minimum health care.
Health Care: Observations

- 80% rebate rule for small employers, 75% for large employers – $1.1 billion refunded in 2012
- Is my insurance agent going away?
May 2012

SMALL EMPLOYER
HEALTH TAX
CREDIT

Factors Contributing
to Low Use and
Complexity
GAO Findings

Estimated Number of Small Businesses Eligible to Claim Credit – 1.4 Million to 4 Million
Small Employers Claiming Credit for 2010 – 170,300
Initial Cost of Credit Estimates - $2 Billion
Actual Credits Claimed - $468 Million
Most Claims Limited to Partial Credit – UP TO!
Only 28,100 Employers Claimed Full Credit
Main Factor Limiting Credit – Most (83% estimated) Very Small Employers offer NO Health Insurance
Credit Wasn’t Large Enough to Incentivize to Offer Insurance
Introduction

• Phase One – 2010 to 2013
  • Up To 25 Employees
  • Up To $50K in Average Wages
  • Up To 35% (25% for Non-profits)

• Phase Two – 2014 to 2015
  • Up To 25 Employees
  • Up To $50K in Wages
  • Insurance Purchased from State Insurance Exchange
  • Up To 50% (35% for non-profits)
• **Example:** For the 2013 taxable year, a taxable eligible small employer has 15 FTE’s and average annual wages of $41,000. The employer pays $60,000 in health insurance premiums for its employees (which does not exceed the average premium for the small group market in the employer's State) and otherwise meets the requirements for the credit.
• Initial amount of credit determined before any reduction: (35% x $60,000) = $21,000

• Credit reduction for FTEs in excess of 10: ($21,000 x 5/15) = $7,000

• Credit reduction for average annual wages in excess of $25,000: ($21,000 x $16,000/$25,000) = $13,440

• Total credit reduction: ($7,000 + $13,440) = $20,440

• Total 2010 tax credit equals $560 ($21,000 – $20,440).
GAO Findings – From Interviews

- Complexity Deterred Small Employers from Claiming Credit:
- Eligibility Requirements
- Data Recording and Collection
- Number of Worksheets to Complete
- Hours Worked Info Unavailable for Calculation of FTE’s and Avg. Annual Wages
- Required Health Insurance Info for Each Employee Not Readily Available
Small Business Health Care Credit

• Employer contribution must be at least 50% of the premiums paid for single (employee-only coverage)
• Tax-exempt employers can qualify
• Any unused credit is carried forward
• Qualified premiums are those paid in a uniform percentage for all employees
Small Business Health Care Credit

- 2014 Budget – Expand the coverage to include employers providing health insurance with up to 50 full-time equivalent employees, and begin the phase-out at 20 full-time equivalent employees.
Health Care – Review

• Increased tax on nonqualifying HSA and MSA distributions
  — HSA from 10%–20%
  — MSA from 15%–20%
Over-the-Counter Drug Limitations

- Unless prescribed by the doctor OTCD (other than insulin) are no longer treated as an allowable expense for FSA, HSA, HRA and MSA.
  - *A written prescription for over the counter drug works*
  - *For OTC reimbursements need Rx and receipt*
  - Debit cards for OTC now at any pharmacy, but must follow substantiation requirements in IRS Notice 2011-5
Codification of Economic Substance Doctrine

- Has been common law developed through courts
- Now codified for transactions post 3/30/2010
- Penalty 20% if transaction disclosed
- Penalty 40% if transaction not disclosed
Health Care – Review

- Medicare Part D—Subsidy is reduced for those with incomes above $170,000 (couples)/$85,000 (single)
- Disclosure of nutritional content at fast food restaurants and vending machines
- Grants for small employers who set up wellness programs
- Free preventative care (No co-pays, no-deductible)
- Grants to states for developing alternative programs to current tort litigation
SE Health Insurance Deduction

Starting March 30, 2010 can deduct premiums paid for child under 27

- *Doesn’t have to be dependent (but not deductible on Sch. A)*

- Child includes: son, daughter, stepchild, foster child, legally adopted, or placed for adoption with taxpayer
Cabela's

Total: $279.67
Debit Card: $279.67

Acct#: **********0001
Auth#: 743489
Cash Back: $0.00

General Sales and Use: $20.87
Medical Excise Tax: $5.82

Would have earned $5.59 in CLUB points
Ask how to Join Cabela's CLUB!

# ITEMS SOLD: 2
# Part II

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<th>Patient-Centered Outcomes Research Fee (see instructions)</th>
<th>(a) Avg. number of lives covered</th>
<th>(b) Rate for avg. covered life</th>
<th>Col. (a) x Col. (b)</th>
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<td>133</td>
<td>Specified health insurance policies</td>
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<td>41</td>
<td>Sport fishing equipment (other than fishing rods and fishing poles)</td>
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<td>10% of sales price</td>
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<td>10% of sales price</td>
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<td>Electric outboard motors</td>
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<td>Bows, quivers, broadheads, and points</td>
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<td>LUST tax on inland waterways fuel use (see instructions)</td>
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<td>51</td>
<td>Alcohol and cellulosic biofuel sold as but not used as fuel</td>
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<td></td>
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<tr>
<td>117</td>
<td>Biodiesel sold as but not used as fuel</td>
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Health Care 2013

• Medical device manufacturers and importers
  — 2.3% tax is imposed on the sale of any medical device
  — The tax is paid by the manufacturers
  — New tax bites pet owners
  — Not imposed on bows and arrows
Medical Expense Deduction

- Increased threshold for claiming medical expenses on schedule A – Goes to 10% for both regular and AMT after 2012
  - *Medicine or drugs prescribed or insulin*
  - *No FDA unapproved drug imports*
  - *Medical expenses are in 213(d) and must be legally procured (TC Memo 2009-204 Halby v. Comm. and $121K)*
  - *Long-term care premiums are age limited*
Medical Expense Deduction

- Temporary relief for 65 year olds for years 2013 – 2016 @ 7.5% floor
  - If either spouse is over 65
  - MFS younger spouse still gets 7.5%
  - Some will go to 10% and back to 7.5% and Back to 10% (e.g., born in 1949)

After 2013 – Deduction for insurance is net of premium assistance credits
Health Care 2013

- New limit on FSA contributions
  - $2,500 per year

- Medicare Part D
  - Phase-in of federal subsidies for brand-name prescriptions begins
  - By 2020, the discount is 75% until the catastrophic coverage kicks in
  - Information reporting for large employers (over 250 ee) – Box 12 Code DD
ATTENTION FSA AND HRA OWNERS

- Patient Centered Outcomes Research Institute (PCORI)
- Tax assessed on health plans including certain Self-insured plans.
- $1 per head, increases for plan years ending after 9/30/13 to $2 per head.
- 3 methods to calculate the participants in plan.
- Must be paid by second quarter Form 720.
- First payment was due 7/31/13.
ATTENTION FSA AND HRA OWNERS

Quarterly Federal Excise Tax Return

See the Instructions for Form 720.
Information about Form 720 and its separate instructions is at www.irs.gov/form720.

Check here if:
- [ ] Final return
- [ ] Address change

Name
Number, street, and room or suite no. (If you have a P.O. box, see the instructions.)
City, state, and ZIP code. (If you have a foreign address, see the instructions.)
Quarter ending
Employer identification number

FOR IRS USE ONLY

T
FF
FD
FP
I
T

<table>
<thead>
<tr>
<th>IRS No.</th>
<th>Environmental Taxes (attach Form 6627)</th>
<th>Tax</th>
<th>IRS No.</th>
</tr>
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<tbody>
<tr>
<td>18</td>
<td>Domestic petroleum oil spill tax</td>
<td></td>
<td>18</td>
</tr>
<tr>
<td>21</td>
<td>Imported petroleum products oil spill tax</td>
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<td>21</td>
</tr>
<tr>
<td>98</td>
<td>Ozone-depleting chemicals (ODCs)</td>
<td></td>
<td>98</td>
</tr>
<tr>
<td>19</td>
<td>ODC tax on imported products</td>
<td></td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>IRS No.</th>
<th>Communications and Air Transportation Taxes (see instructions)</th>
<th>Tax</th>
<th>IRS No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>Local telephone service and teletypewriter exchange service</td>
<td></td>
<td>22</td>
</tr>
<tr>
<td>26</td>
<td>Transportation of persons by air</td>
<td></td>
<td>26</td>
</tr>
<tr>
<td>28</td>
<td>Transportation of property by air</td>
<td></td>
<td>28</td>
</tr>
<tr>
<td>27</td>
<td>Use of international air travel facilities</td>
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<td>27</td>
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</table>
### Part II

<table>
<thead>
<tr>
<th>IRS No.</th>
<th>Description</th>
<th>(a) Avg. number of lives covered</th>
<th>(b) Rate for avg. covered life</th>
<th>Col. (a) x Col. (b)</th>
<th>Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td>133</td>
<td>Specified health insurance policies</td>
<td></td>
<td>$1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Applicable self-insured health plans</td>
<td></td>
<td>$1.00</td>
<td></td>
<td></td>
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<tr>
<td>41</td>
<td>Sport fishing equipment (other than fishing rods and fishing poles)</td>
<td></td>
<td></td>
<td></td>
<td>10% of sales price</td>
</tr>
<tr>
<td>110</td>
<td>Fishing rods and fishing poles (limits apply, see instructions)</td>
<td></td>
<td></td>
<td></td>
<td>10% of sales price</td>
</tr>
<tr>
<td>42</td>
<td>Electric outboard motors</td>
<td></td>
<td></td>
<td></td>
<td>3% of sales price</td>
</tr>
<tr>
<td>114</td>
<td>Fishing tackle boxes</td>
<td></td>
<td></td>
<td></td>
<td>3% of sales price</td>
</tr>
<tr>
<td>44</td>
<td>Bows, quivers, broadheads, and points</td>
<td></td>
<td></td>
<td></td>
<td>11% of sales price</td>
</tr>
<tr>
<td>106</td>
<td>Arrow shafts</td>
<td></td>
<td></td>
<td></td>
<td>$.48 per shaft</td>
</tr>
<tr>
<td>140</td>
<td>Indoor tanning services</td>
<td></td>
<td></td>
<td></td>
<td>10% of amount paid</td>
</tr>
<tr>
<td>64</td>
<td>Inland waterways fuel use tax</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>125</td>
<td>LUST tax on inland waterways fuel use (see instructions)</td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>51</td>
<td>Alcohol and cellulosic biofuel sold as but not used as fuel</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>117</td>
<td>Biodiesel sold as but not used as fuel</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Rate

- 10% of sales price
- 3% of sales price
- 11% of sales price
- $.48 per shaft
- 10% of amount paid

#### Tax

- $ .20
.9% Medicare Tax – New Rules

- IRS has issued proposed regulations under IRC Sec(s). 1401, 3101, 3102, et al addressing the new 2013 .9% Medicare tax.

- These are PROPOSED regulations; they are not effective any earlier than when finalized. However, they may be used as guidance.
Health Care 2013 – .9% Surtax

• Additional Medicare tax on high income workers
  — The tax is increased by .9% (1.45% to 2.35%) on those earning over $250,000 joint/$200,000 single
  — Threshold is not indexed for inflation
  — Does not impact the Medicare tax paid by the employer
  — This tax will not generate an above-the-line deduction
  — Employer is required to withhold on wages over $200,000
Example: Harry and Sharie, a married couple, earn wages of $125,000 and $175,000 respectively. For the first $250,000 of combined wages the Medicare tax is:

$$250,000 \times 1.45\% = 3,625$$

The next $50,000 is taxed at the higher rate of 2.35% (1.45% + .9%)

$$50,000 \times 2.35\% = 1,175$$

The combined Medicare tax is: $3,625 + $1,175 = $4,800

The new additional tax is .009 \times $50,000 = $450

Observation: The employer is not required to withhold the additional $450 in this instance.
3. When are individuals liable for Additional Medicare Tax?
An individual is liable for Additional Medicare Tax if the individual’s wages, compensation, or self-employment income (together with that of his or her spouse if filing a joint return) exceed the threshold amount for the individual’s filing status:

<table>
<thead>
<tr>
<th>Filing Status</th>
<th>Threshold Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married filing jointly</td>
<td>$250,000</td>
</tr>
<tr>
<td>Married filing separately</td>
<td>$125,000</td>
</tr>
<tr>
<td>Single</td>
<td>$200,000</td>
</tr>
<tr>
<td>Head of household (with qualifying person)</td>
<td>$200,000</td>
</tr>
<tr>
<td>Qualifying widow(er) with dependent child</td>
<td>$200,000</td>
</tr>
</tbody>
</table>

These amounts are not indexed for inflation!
15. If my employer withholds Additional Medicare Tax from my wages in excess of $200,000, but I won't owe the tax because my spouse and I file a joint return and we won't meet the $250,000 threshold for joint filers, can I ask my employer to stop withholding Additional Medicare Tax?
No. Your employer must withhold Additional Medicare Tax on wages it pays to you in excess of $200,000 in a calendar year. Your employer cannot honor a request to cease withholding Additional Medicare Tax if it is required to withhold it. You will claim credit for any withheld Additional Medicare Tax against the total tax liability shown on your individual income tax return (Form 1040).

16. What should I do if I have two jobs and neither employer withholds Additional Medicare Tax, but the sum of my wages exceeds the threshold at which I will owe the tax?
If you anticipate that you will owe Additional Medicare Tax but will not satisfy the liability through Additional Medicare Tax withholding (for example, because you will not be paid wages in excess of $200,000 in a calendar year by an employer), you should make estimated tax payments and/or request additional income tax withholding using Form W-4. For information on making estimated tax payments and requesting an additional amount be withheld from each paycheck, see Publication 505, Tax Withholding and Estimated Tax.
• **Self-employed individuals who also have employment income.**

1) Calculate the additional Medicare tax on any wages in excess over the applicable threshold for the filing status ($250,000/$125,000/$200,000), without regard to whether any tax was withheld.

2) Reduce the applicable threshold for the filing status by the total amount of Medicare wages received (but not below zero).

3) Calculate the additional Medicare tax on any self-employment income in excess of the reduced threshold.
**.9% Medicare Tax**

- **Illustration:** Allison, a single filer, has $130,000 in wages and $145,000 in self-employment income. Before calculating the additional Medicare tax on self-employment income, the $200,000 threshold for single filers is reduced by Allison’s $130,000 in wages, resulting in a reduced self-employment income threshold of $70,000. Allison has to pay additional Medicare tax on $75,000 of self-employment income ($145,000 in self-employment income minus the reduced threshold of $70,000).
Illustration: Neal and Nancy are married and file jointly. Neal has $150,000 in wages and Nancy has $175,000 in self-employment income. Before calculating the additional Medicare tax on Nancy’s self-employment income, the $250,000 threshold for joint filers is reduced by Neal’s $150,000 in wages, resulting in a reduced self-employment income threshold of $100,000. Neal and Nancy are liable to pay additional Medicare tax on $75,000 of self-employment income ($175,000 in self-employment income minus the reduced threshold of $100,000).
41. Will the IRS be changing Form 941 or any other forms for tax year 2013 to be completed by employers and payroll service providers?
Yes. For example, a line will be added to Form 941 on which employers will report any individual’s wages paid during the quarter that is in excess of $200,000 for the year, and on which employers will report their withholding liability for Additional Medicare Tax on those wages. The existing line, on which employers report the liability for regular Medicare tax on all wages, will remain unchanged.

However, there will be no change to Form W-2. Additional Medicare Tax withholding on wages subject to Federal Insurance Contributions Act (FICA) taxes will be reported in combination with withholding of regular Medicare tax in box 6 (“Medicare tax withheld”).

The IRS plans to release drafts of revised forms, including Forms 941, 943, and the tax return schemas for the F94X series of returns.

42. When an employer deposits Additional Medicare Tax through the Electronic Federal Tax Payment System (EFTPS), does it need to separate Additional Medicare Tax from regular Medicare tax?
No. When providing the deposit detail, regular Medicare tax and Additional Medicare Tax are entered as one combined amount.
Corporate payers. When an employee is performing services for multiple subsidiaries of a company, and each subsidiary is an employer of the employee with regard to the services the employee performs for that subsidiary, wages paid by the payor on behalf of each subsidiary are combined for purposes of the additional Medicare tax only if the payor is a common paymaster. Wages are not combined for purposes of the $200,000 withholding threshold if the payor is not a common paymaster.
.9% Medicare Tax – New Rules

- **Fringe benefits.** The employer must withhold additional Medicare tax on total wages, including taxable noncash fringe benefits, in excess of $200,000.
3.8% Medicare Tax

- IRS has just issued proposed regulations under IRC Sec(s). 1411 and 469 addressing the new 3.8% Medicare tax.

- These are PROPOSED regulations; they are not effective any earlier than when finalized. However, they may be used as guidance.
3.8% Medicare Tax

- Net Investment Income (section 1411 overview):
  
  i. Interest, dividends, annuities, royalties and rents, other than such income derived in the ordinary course of a business not described in (ii) below (Basically non-passives)

  ii. Passive activity income (section 469) and income from the trade or business of trading in financial instruments or commodities (Section 475(e)(2))

  iii. Net gain other than for gain on property held in a trade or business not described in (ii)
  - Less allowable deductions
3.8% Medicare Tax

Unearned Income Medicare Contribution Tax

• 3.8% surtax is imposed on net investment income:
  Interest, dividends, royalties, rents, capital gains, non-qualified annuities, passive income from a trade or business or income from the business of trading in commodities or financial instruments

• Excluded items:
  Wages, unemployment compensation, interest on tax-exempt bonds, Social Security, alimony, non-taxable gain on the sale of a principal residence, non-passive trade or business income, S/E income, Alaska Permanent Fund dividends and retirement plan distributions (can increase MAGI though).

• This tax is in addition to the additional Medicare tax of .9%.
3.8% and .9% Tax

- Income from the following should be exempt from both the .9% and 3.8% tax:
  - Activities that do not rise to the level of a trade or business (e.g., Executor)
  - S income for an active owner
  - Covenant-not-to-compete
  - Income earned by an active limited partner that is not a guaranteed payment. Note: Be careful of a service based LLC.
3.8% Medicare Tax

Unearned Income Medicare Contribution Tax

• Distributions from the following retirement plans are excluded:
  ▪ Qualified pension, profit sharing and stock bonus
  ▪ Qualified annuity
  ▪ Qualified annuity plans for tax exempts
  ▪ IRAs
  ▪ Roth IRAs
  ▪ Deferred compensation plans of state and local governments and nonprofits
Health Care 2013 – 3.8% Medicare Tax on Net Investment Income

- The Medicare contribution tax is imposed on individuals, estates, and trusts.

- For an individual, the tax is 3.8% of the lesser of either:
  
  1) net investment income or
  2) the excess of modified adjusted gross income (MAGI) over the threshold amount.

- The threshold amount is $250,000 for joint return or surviving spouse, $125,000 for marrieds filing separate return, and $200,000 for all others.
Health Care 2013 – 3.8% Medicare Tax on Net Investment Income

**Example 1:** For 2013, Kayla, a single taxpayer, has net investment income of $100,000 and MAGI of $220,000.

The tax is imposed on the lesser of net investment income ($100,000) or MAGI over $200,000 ($220,000 – $200,000)

The surtax is $20,000 × 3.8% = $760

**Example 2:** Assume that in the previous example MAGI was $300,000.

MAGI exceeds threshold amount by $100,000.

The surtax is: $100,000 × 3.8% = $3,800

*Observation: The surtax is not deductible.*
Health Care 2013

Observations:

- Top tax bracket will be: 39.6% + 3.8% = 43.4%
- The potential **capital gain** increase over last year is: 23.8% - 15% = 8.8%
- Invest in municipal bonds
- Invest in retirement plans
- Passive income planning
3.8% Medicare Tax

- The IRS will closely review transactions that manipulate a taxpayer's net investment income to reduce or eliminate the amount of tax imposed by section 1411. In appropriate circumstances, the IRS will challenge such transactions based on applicable statutes and judicial doctrines.
3.8% Medicare Tax

Pass-through entities:

- If income is “investment income” at the entity level it will be “investment income” for the owners.
- If the income is not investment income to the entity it would be investment income to a passive owner.
3.8% Medicare Tax

Flow-through Example: An S Corp. has $10,000 in interest and a $7,000 loss allocable to a passive member.

The $10,000 of interest flows through subject to the NIIT. If the $7,000 loss is suspended under 469 it will have no effect on the 1411 NIIT.
3.8% Medicare Tax

3. What individuals are subject to the Net Investment Income Tax?

Individuals will owe the tax if they have Net Investment Income and also have modified adjusted gross income over the following thresholds:

<table>
<thead>
<tr>
<th>Filing Status</th>
<th>Threshold Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Married filing jointly</td>
<td>$250,000</td>
</tr>
<tr>
<td>Married filing separately</td>
<td>$125,000</td>
</tr>
<tr>
<td>Single</td>
<td>$200,000</td>
</tr>
<tr>
<td>Head of household (with qualifying person)</td>
<td>$200,000</td>
</tr>
<tr>
<td>Qualifying widow(er) with dependent child</td>
<td>$250,000</td>
</tr>
</tbody>
</table>

Taxpayers should be aware that these threshold amounts are not indexed for inflation.

If you are an individual that is exempt from Medicare taxes, you still may be subject to the Net Investment Income Tax if you have Net Investment Income and also have modified adjusted gross income over the applicable thresholds.
3.8% Medicare Tax

5. What Estates and Trusts are subject to the Net Investment Income Tax?

Estates and Trusts will be subject to the Net Investment Income Tax if they have undistributed Net Investment Income and also have adjusted gross income over the dollar amount at which the highest tax bracket for an estate or trust begins for such taxable year (for tax year 2012, this threshold amount is $11,650). There are special computational rules for certain unique types of trusts, such as Charitable Remainder Trusts and Electing Small Business Trusts, which can be found in the proposed regulations (see # 19 below).

6. What Trusts are not subject to the Net Investment Income Tax?

The following trusts are not subject to the Net Investment Income Tax:

a. Trusts that are exempt from income taxes imposed by Subtitle A of the Internal Revenue Code (e.g., charitable trusts and qualified retirement plan trusts exempt from tax under IRC section 501, and Charitable Remainder Trusts exempt from tax under IRC section 664);

b. A trust in which all of the unexpired interests are devoted to one or more of the purposes described in IRC section 170(c)(2)(B);

c. Trusts that are classified as “grantor trusts” under IRC sections 671-679;

d. Trusts that are not classified as “trusts” for federal income tax purposes (e.g., Real Estate Investment Trusts and Common Trust Funds).
3.8% Medicare Tax

9. What kinds of gains are included in Net Investment Income?

To the extent that gains are not otherwise offset by capital losses, the following gains are common examples of items taken into account in computing Net Investment Income:

a. Gains from the sale of stocks, bonds, and mutual funds;
b. Capital gain distributions from mutual funds;
c. Gain from the sale of investment real estate (including gain from the sale of a second home that is not a primary residence);
d. Gains from the sale of interests in partnerships and S corporations (to the extent you were a passive owner).

10. Does this tax apply to gain on the sale of a personal residence?

The Net Investment Income Tax will not apply to any amount of gain that is excluded from gross income for regular income tax purposes. The pre-existing statutory exclusion in IRC section 121 exempts the first $250,000 ($500,000 in the case of a married couple) of gain recognized on the sale of a principal residence from gross income for regular income tax purposes and, thus, from the NIIT.
3.8% Medicare Tax

12. What investment expenses are deductible in computing NII?

In order to arrive at Net Investment Income, Gross Investment Income (items described in items 7-11 above) is reduced by deductions that are properly allocable to items of Gross Investment Income. Examples of properly allocable deductions include investment interest expense, investment advisory and brokerage fees, expenses related to rental and royalty income, and state and local income taxes properly allocable to items included in Net Investment Income.

13. Will I have to pay both the 3.8% Net Investment Income Tax and the additional .9% Medicare tax?

You may be subject to both taxes, but not on the same type of income.

The 0.9% Additional Medicare Tax applies to individuals’ wages, compensation, and self-employment income over certain thresholds, but it does not apply to income items included in Net Investment Income. For more information on the Additional Medicare Tax, see HERE
3.8% Medicare Tax

Deductions:

- Only the portion exceeding the 2% threshold is allowed.
- The 2% reduction must be allocated proportionately to all miscellaneous itemized deductions.
- Phase-out under section 68 – Adjustments must be made to take this into account
3.8% Medicare Tax

General tax principles will continue to apply. For example:

- 453 – Installment sales
- 1031 – Like Kind Exchange
- 1033 – Deferral of casualty loss
- 121 – Sale of a principal residence
- Deferral or disallowance provisions (e.g. PAL limit or investment interest)
- Deduction carried over to a tax year (even if from a pre-effective date tax year) if allowed for AGI – also allowed for NII calculation.
3.8% Medicare Tax – New Rules

How the Net Investment Income Tax is Reported and Paid

14. If I am subject to the Net Investment Income Tax, how will I report and pay the tax?

For individuals, the tax will be reported on, and paid with, the Form 1040. For Estates and Trusts, the tax will be reported on, and paid with, the Form 1041.

15. Is the Net Investment Income Tax subject to the estimated tax provisions?

The Net Investment Income Tax is subject to the estimated tax provisions.
Net Investment Income

- Portfolio Income and Passive Income
- Less expenses including pro-rata state taxes.
3.8% Medicare Tax – New Rules

- The 3.8% applies to a trade or business **ONLY** if it is a Sec. 469 “passive activity” of the taxpayer **OR** an IRC Sec. 475(e)(2) financial instruments or commodities trading business.

- The tax **DOESN’T** apply to **active** (non-passive) trades or businesses conducted by a sole proprietor, partnership (LLC), or S corporation **BUT** income, gain, loss on working capital **IS** subject to the tax.
3.8% Medicare Tax

Passives…

❖ A “passive activity” is any activity that involves the conduct of a “trade or business” in which the taxpayer does NOT materially participate.

❖ Generally, any rental activity (payments are principally for the use of tangible property that is used or held for use by customers) is inherently PASSIVE.
S Corporations and Partnerships

Schedule K-1 (Form 1120S)
Department of the Treasury
Internal Revenue Service

For calendar year 2012, or tax year beginning __________ ending __________

Part III
Shareholder’s Share of Current Year Income, Deductions, Credits, and Other Items

<table>
<thead>
<tr>
<th></th>
<th>Ordinary business income (loss)</th>
<th>13</th>
<th>Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>450,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part I
Information About the Corporation

A. Corporation’s employer identification number
   - 123-45-7785

B. Corporation’s name, address, city, state, and ZIP code
   - The External Revenue Service
     - 500D Abbott Drive
     - Broomall
     - PA 19008

C. IRS Center where corporation filed return
   - Cincinnati, OH 45999

Part II
Information About the Shareholder

D. Shareholder’s identifying number
   - 123-45-7785

E. Shareholder’s name, address, city, state, and ZIP code
   - Eddie Earner
     - 123 Makeortakeit Lane
     - 123-45-7785
S Corporations and Partnerships

Will Eddie pay 3.8% on Line one Earnings of $450,000?
S Corporations and Partnerships

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ordinary business income (loss)</td>
<td>450,000</td>
</tr>
<tr>
<td>2</td>
<td>Net rental real estate income (loss)</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Other net rental income (loss)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Interest income</td>
<td></td>
</tr>
<tr>
<td>5a</td>
<td>Ordinary dividends</td>
<td>45,000</td>
</tr>
</tbody>
</table>

Part III: Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

- Ordinary business income: $450,000

---

Depends on if Eddie is a material participant. If not subject to NIIT.
Will Eddie pay 3.8% on Line 4 interest of $45,000?
YES, to avoid paying the 3.8% Eddie will have to be both a material participant and the interest must be from the ordinary course of business.
3.8% Medicare Tax – New Rules

• IRC 469 → death to tax shelters
• Creates “baskets of activity”
  – Passive
  – Portfolio
  – Non-passive
• Losses and credits are segregated
• So what’s a passive activity?
  – Rental activities, generally
  – Activities involving trades or business in which taxpayer does not materially participate
* GAO – 53% misreported rental real estate
3.8% Medicare Tax – New Rules

Meet 1 of 7 tests

1. Participate in activity > 500 hrs per year
2. Be the only one participating in the activity
3. More than 100 hrs participation, nobody does more
4. Where there are significant participation (>100 hour) activities and aggregate participation > 500 hrs
5. Taxpayer materially participated in for 5 out of 10 years
6. It’s a personal service activity, and taxpayer materially participated in at least 3 years at some point (not necessarily consecutive)
7. Facts and circumstances indicates regular, continuous and substantial participation(!)
3.8% Medicare Tax – New Rules

• Activity vs. an Undertaking
  – Why is this important?
    • If suspended losses are freed up when an activity is disposed of….not an undertaking
    • Two undertakings are part of an activity, only necessary to prove material participation in one
  – Group undertakings into activities….  
    • By common control
    • By geographical locations
    • Interdependence between activities
    • Combining rental activities with trade/business  
      – Must be appropriate economic unit
      – One is insignificant compared to other
3.8% Medicare Tax – New Rules

• **Example:** Alex has 100% ownership in an S corporation that makes ceramic pottery. He materially participates on a full-time basis. His supplier is facing difficult financial times and may close his business. To protect his source of supply Alex buys 80% of the supplier’s company. Alex can’t spend much time in the new business.

• Alex does not meet the material participation standards for the supply company. However he can choose to treat the supply company and S corp. as one activity because there is an interdependence between the two.
3.8% Medicare Tax – New Rules

- **Example:** TJ operates a sole proprietorship that supplies computer hardware and parts to small businesses. He establishes an S corp. with some friends to refurbish computer hardware. He purchases hardware from the S corp. to use in sole proprietorship.

- Although TJ does not participate in the S corp. operations, the two companies are considered an appropriate economic unit for him. He may treat the activities as one.
3.8% Medicare Tax – New Rules

• Combining rental activities with trade/business
  – Must be appropriate economic unit
  – One is insignificant compared to other
  – The two are inter-related (rental of items to the trade/business)
  – No mixing of rental of realty and rental of personal property

• Once you group, must stay that way
  – Unless there is a material change or
  – Original grouping was inappropriate
  – IRS can re-group at will
  – (Candeleria)
The PAL grouping rules apply in determining whether the trade or business is a passive activity for purposes of Code Sec. 1411(c)(2).

Noting that Code Sec. 1411 may cause taxpayers to reconsider their previous grouping determinations under the PAL rules, the proposed regulations provide a regrouping “fresh start” for certain taxpayers, allowing them to regroup their activities for any tax year that begins during 2013 if Code Sec. 1411 would apply to the taxpayer without regrouping.
3.8% Medicare Tax – New Rules

- A taxpayer may only regroup activities once, and any regrouping will apply to the tax year for which the regrouping is done and all later years.

- The regrouping must comply with the disclosure requirements under Rev. Proc. 2010-13, 2010-4 IRB 329 and Reg. 1.469-4(e).
Example – Application of grouping rules under section 469: April, owns an interest in SKS, a partnership for federal income tax purposes. SKS is engaged in two activities, Dancing is Fun, and Catch a Salmon, which constitute trades or businesses, and neither of which constitute trading in financial instruments or commodities. April has properly grouped Dancing is Fun and Catch a Salmon (the grouped activity).
Example (cont.): April participates in Dancing is Fun for more than 500 hours during the year and would be treated as materially participating in the activity. April only participates in Catch a Salmon for 50 hours and, but for the grouping of the two activities together, April would not be treated as materially participating in Catch a Salmon within the meaning of Reg. 1.469-5T(a). However, April materially participates in the grouped activity, and therefore, neither company is a passive activity with respect to April and the 3.8% tax will not apply.
3.8% Medicare Tax – New Rules

• Rentals are assumed to be passive, except:
  – Rental of personal property (tools, DVDs, etc.)
  – Average period of use is 7 days or less
  – Customers rent for 30 days or less and services are provided (i.e., room service)
  – Extraordinary personal services are provided
    • i.e., hospital (see Assaf case)
  – Rental is incidental to another activity
    • Accountant rents out space to another
Example – Rental activity: Jason, a single guy, rents a commercial building to Traci for $50,000. Jason's rental activity does not involve the conduct of a section 162 trade or business, but under section 469(c)(2), Jason's rental activity is a passive activity. Jason's rental income of $50,000 is not derived from a trade or business. However, Jason's rental income of $50,000 will still constitute gross income from rents.
3.8% Medicare Tax – New Rules

- The proposed regulations provide that if a taxpayer meets one of the rental activity exceptions under Reg. 1.469-1T(e)(3)(ii), the rental activity exceptions will also apply to determine whether the activity is a passive activity under Code Sec. 1411(c)(2).

- However, a taxpayer who meets one of these exceptions isn't necessarily engaged in a trade or business under Code Sec. 162.
3.8% Medicare Tax – New Rules

- So, even if the taxpayer meets one of these PAL exceptions, if the taxpayer's activity isn't a Code Sec. 162 trade or business, gross income from rents from the activity (rent) may be subject to Code Sec. 1411(c)(1)(A)(i) because the activity doesn't meet the ordinary course of a trade or business exception.
3.8% Medicare Tax – New Rules

Example – Application of the rental activity exceptions: George, who is single, is a partner in JMS, which is engaged in an equipment leasing activity. The average period of customer use of the equipment is seven days or less (and therefore meets the exception in Reg. 1.469-1T(e)(3)(ii)(A)). George materially participates in the equipment leasing activity (within the meaning of Reg. 1.469-5T(a)). The equipment leasing activity constitutes a trade or business within the meaning of section 162.
Example (cont.): George has modified adjusted gross income of $300,000, all of which is derived from JMS. All of the income from JMS is derived in the ordinary course of the equipment leasing activity, and all of JMS's property is held in the equipment leasing activity. Of George's allocable share of income from JMS, $275,000 constitutes gross income from rents.

While $275,000 of the gross income from the leasing activity meets the definition of rents, the activity meets one of the exceptions to rental activity treatment and George materially participates in the activity.
3.8% Medicare Tax – New Rules

Example (cont.): Therefore, the trade or business is not a passive activity with respect to George, and because the rents are derived in the ordinary course of a trade or business, the ordinary course of a trade or business exception applies, which means that the rents are not subject to the tax.

Furthermore, the $25,000 of other gross income is not subject to the 3.8% tax.

Finally, gain or loss from the sale of the property held in the equipment leasing activity will not be subject to the 3.8% tax.
3.8% Medicare Tax

- Real Estate Professionals
  - Deduct all real estate rental losses

- What is a Real Estate Professional?
  - Real property development, construction acquisition, conversion, operation, rental, management or brokerage
  - Must devote more than 50% of personal services
  - Must devote more than 750 hours
3.8% Medicare Tax – New Rules

- Must materially participate
- Elect to aggregate all rentals as one activity
- Attach statement to original return:
  - Qualify as RE professional
  - Treating all rentals as one activity
  - Applies for current and all future years
  - Failure to elect = need material participation in each property
If a taxpayer meets the requirements to be a real estate professional under the PAL rules, the taxpayer's rental real estate activities will not be passive activities if he materially participates in the activities.

The proposed regulations provide that IF the rental real estate activities are Code Sec. 162 trades or businesses, the PAL rules will apply in determining whether the rental real estate activity is a passive activity for purposes of Code Sec. 1411(c)(2)(A).
However, if the rental real estate activities aren't Code Sec. 162 trades or businesses, the gross income from rents derived from the activity will not be excluded by the ordinary course of a trade or business exception.

That exception is inapplicable because rents aren't derived from a trade or business and will therefore be subject to Code Sec. 1411.

The proposed regulations do NOT include an example for these taxpayers.
Self Rental:

- Occurs when taxpayer rents property to trade or business he/she materially or significantly participates in.
- Does not apply if written binding contract existed before 2/19/88.
- Rental income is **NOT** passive but is subject to the NIIT.
- Rental loss is passive.
If less than 30% of the unadjusted basis is subject to depreciation any net income is treated as nonpassive.

However it is portfolio income subject to the NIIT.
3.8% Medicare Tax – New Rules

- In most cases, these items will be subject to section 1411 if the item of income constitutes gross income from one of the items described in proposed § 1.1411-4(a)(1)(i) and the item of income is not derived in the ordinary course of a trade or business.

- For example, if a taxpayer has gross income from rents from an activity described in § 1.469-2(f)(6)(self rental) that is not derived in the ordinary course of a trade or business, the gross income from rents will be subject to section 1411.
3.8% Medicare Tax – New Rules

Rental income excluded for regular tax purposes under the 14-day rule is also excluded from the 3.8% tax.
3.8% Medicare Tax – New Rules

- Gains are taxable, including:
  - Gains from the sale of stocks, bonds, and mutual funds
  - Capital gain distributions from mutual funds (i.e., regulated investment companies (RICs))
  - Gain from the sale of investment real estate (including gain from the sale of a second home that isn't a primary residence)
  - Gains from the sale of interests in partnerships and S corporations (to the extent the taxpayer was a passive owner)
  - Capital gain dividends from real estate investment trusts (REITs) and undistributed capital gains from RICs and REITs
3.8% Medicare Tax – New Rules

• Gains are taxable, including:
  – Gains from the sale of passive activities and from the business of trading in financial instruments or commodities
  – Distributions in excess of basis for an S shareholder
3.8% Medicare Tax – New Rules

• Gains can’t be less than zero

• Although a $3,000 excess capital loss is allowed for regular tax purposes, for NII purposes it cannot offset other net investment income.

• Net gain includes gain or loss attributable to the disposition of property from the investment of working capital. (Prop Reg. § 1.1411-4(d)(3)(i))
3.8% Medicare Tax – New Rules

Example:

• In 2013, Fred realizes a $40,000 capital loss on the sale of Apple stock and a $10,000 capital gain on the sale of Pear stock, resulting in a net capital loss of $30,000. Fred has $300,000 of wages and also earns $5,000 in interest.

• Under section 1211(b) Fred can use $3,000 of the net capital loss against other income, with the remaining $27,000 being a capital loss carryover. For Code Sec. 1411 purposes, Fred's $10,000 gain on the Pear stock sale is reduced by his $40,000 loss on the Apple stock sale.

• However, because net gain can't be less than zero, he can't reduce his net investment income by the $3,000 of the excess of capital losses over capital gains allowed for income tax purposes under Code Sec. 1211(b)
Example (cont.):

• In 2014, Fred has a $30,000 capital gain on the sale of stock in Mango, Inc. For income tax purposes, Fred can reduce the $30,000 gain by the 2013 Code Sec. 1212(b) $27,000 capital loss carryover.

• For Code Sec. 1411 purposes, Fred's $30,000 gain may also be reduced by the $27,000 capital loss carryover from 2013. Therefore, in 2014, Fred has $3,000 of net gain under Prop Reg § 1.1411-4(a)(1)(iii).
Variation:

- Assume the same facts as before except for 2013 Fred also realizes $20,000 of gain on the sale of rental property (all of which is treated as ordinary income under Code Sec. 1250). Fred could use $3,000 of the net capital loss against other income for income tax purposes, with the remaining $27,000 being a capital loss carryover.

- For Code Sec. 1411 purposes, Fred's $10,000 gain on the Pear stock sale is reduced by his $40,000 loss on the sale of the Apple stock. His $20,000 gain on the sale of rental property is reduced to the extent of the $3,000 loss allowed under Code Sec. 1211(b).
3.8% Medicare Tax – New Rules

- **Dispositions of partnership and S corporation interests.** Code Sec. 1411(c)(1)(A)(iii) generally applies if the property disposed of is either not held in a trade or business, or is held in a trade or business described in Code Sec. 1411(c)(2) and Prop. Reg. 1.1411-5 (i.e., a passive activity or trading in financial instruments or commodities).

- **English:** If you are a material participant in a business that is not involved with trading of financial instruments or commodities there are special computational rules for the NIIT.
If the property disposed of is held in a trade or business that ISN’T described in Prop. Reg. 1.1411-5, net investment income DOESN’T include gain attributable to the property.

If an individual, estate, or trust holds an interest in a pass-through entity and the entity disposes of its property, the determination of whether property is held in a trade or business that is a passive activity is made at the taxpayer level (held in a trade or business of trading in financial instruments or commodities at the entity level).
3.8% Medicare Tax – New Rules

- IRS says that in most cases, an interest in a partnership or S corporation ISN’T property held in a trade or business, and so gain or loss from the sale of such is subject to Code Sec. 1411(c)(1)(A)(iii).
3.8% Medicare Tax – New Rules

- Code Sec. 1411(c)(4) provides that gain is adjusted to the extent of the net gain on the sale of all the partnership's or S corporation's property at its FMV immediately before the disposition of the interest.

- Gain or loss on the sale of an interest in the entity and a sale of the entity's underlying properties do not always match.
3.8% Medicare Tax – New Rules

- There may be disparities between the transferor's adjusted basis in the partnership interest or S corporation stock and the transferor's share of the entity's adjusted basis in the underlying properties.

- Or the sales price of the interest may not reflect the proportionate share of the underlying properties' FMV with respect to the interest sold.
3.8% Medicare Tax – New Rules

- To remedy this, Code Sec. 1411(c)(4) is applied on a property-by-property basis, and a determination must be made on how the property was held in order to determine whether the gain or loss to the transferor from the hypothetical disposition of such property would have been gain or loss subject to Code Sec. 1411(c)(1)(A)(iii).

- English: we need an asset by asset appraisal!
Under the proposed regulations, a transferor computes the gain or loss from the sale of the underlying properties of the partnership or S corporation using a deemed asset sale method (Deemed Sale), and then determines if, based on the Deemed Sale, there is an adjustment (either positive or negative) to the transferor's gain or loss on the disposition of the partnership or S corporation interest for purposes of Code Sec. 1411(c)(1)(A)(iii).

A positive adjustment reduces a loss on the disposition of the interest, and a negative adjustment reduces the gain on the disposition of the interest.
3.8% Medicare Tax – New Rules

- If a transferor has a $100,000 gain on the disposition of S corporation stock, the Code Sec. 1411(c)(4) adjustment cannot result in a gain for Code Sec. 1411 purposes greater than $100,000.

- A similar rule applies to losses – A loss cannot be increased by the adjustment.
3.8% Medicare Tax – New Rules

- Summary of steps:
  1. Compute gain to shareholder
  2. Compute theoretical S corp. sales price on each asset according to its FMV
  3. Compute theoretical gain/loss on each asset sold
  4. Allocate gain/loss to each shareholder.
Summary of steps:

5. Determine if the asset sold would have been excluded as Net Investment Income to the shareholder.

6. Add up the deemed S corp. gains for all assets that would not be NII to the shareholder.

7. Reduce the gain on the sale of the S corp. stock that the shareholder would otherwise have to report as Net Investment Income.
Example:

- Ben owns and actively participates in his 100%-owned S corp. He sells his stock for $100,000 which has a basis of $85,000 generating a $15,000 gain.
- How much of the gain must Ben include as Net Investment Income?
- Assume a deemed asset sale by the S corp. of $100,000 with a basis to the corp. of $85,000 with a theoretical passed through gain of $15,000.
- Ben could exclude the entire gain if the property was used in the S Corp. trade or business.
Variation:

- Assume Ben had acquired his stock by purchase and has a basis of $80,000 instead of $85,000. He would recognize $20,000 of gain.
- He could exclude $15,000 of the gain from the theoretical S corp. gain.
- He would have $5,000 of Net Investment Income tax gain.

Note: We need to attach an explanation as to how we calculated the adjustment.
3.8% Medicare Tax – New Rules

- There are special rules for:
  - Controlled Foreign Corporations and PFICs (1297(a))
3.8% Medicare Tax – New Rules

Net Operating Losses:

- A has a $20,000 NOL carryover, $200,000 of wages, $100,000 of gross income from a trading activity, $80,000 of income from his sole proprietorship, and $10,000 in trading activity expense deductions. For income tax purposes, A's $20,000 net operating loss carryover will be allowed as a deduction. In addition, under § 1.1411-2(c), A's $20,000 net operating loss will be allowed as a deduction in computing A's modified adjusted gross income.
Form 8960

Net Investment Income Tax—Individuals, Estates, and Trusts

Attach to Form 1040 or Form 1041.

Information about Form 8960 and its separate instructions is at www.irs.gov/form8960.

Part I
Investment Income

| Section 6013(q) election (see instructions) | 0 |
| Regulations section 1.1411-10(c) election (see instructions) | 0 |

1 Taxable interest (Form 1040, line 8a; or Form 1041, line 1) | 1 |

2 Ordinary dividends (Form 1040, line 9c; or Form 1041, line 2a) | 2 |

3 Annuities from nonqualified plans (see instructions) | 3 |

4a Rental real estate, royalties, partnerships, S corporations, trusts, etc. (Form 1040, line 17; or Form 1041, line 6) | 4a |

b Adjustment for net income or loss derived in the ordinary course of a non-section 1411 trade or business (see instructions) | 4b |

c Combine lines 4a and 4b | 4c |

5a Net gain or loss from disposition of property from Form 1040, combine lines 13 and 14; or from Form 1041, combine lines 4 and 7 | 5a |

b Net gain or loss from disposition of property that is not subject to net investment income tax (see instructions) | 5b |

c Adjustment from disposition of partnership interest or S corporation stock (see instructions) | 5c |

d Combine lines 5a through 5c | 5d |

6 Changes to investment income for certain CFCs and PFICs (see instructions) | 6 |

7 Other modifications to investment income (see instructions) | 7 |

8 Total investment income. Combine lines 1, 2, 3, 4c, 5d, 6, and 7 | 8 |

Part II
Investment Expenses Allocable to Investment Income and Modifications

9a Investment interest expenses (see Instructions) | 9a |

b State income tax (see Instructions) | 9b |

c Miscellaneous investment expenses (see Instructions) | 9c |

d Add lines 9a, 9b, and 9c | 9d |

10 Additional modifications (see Instructions) | 10 |

11 Total deductions and modifications. Add lines 9d and 10 | 11 |

Part III
Tax Computation

12 Net investment income. Subtract Part II, line 11 from Part I, line 8. Individuals complete lines 13–17. Estates and trusts complete lines 18a–21. If zero or less, enter -0- | 12 |

Individuals:

13 Modified adjusted gross income (see instructions) | 13 |

14 Threshold based on filing status (see instructions) | 14 |

15 Subtract line 14 from line 13. If zero or less, enter -0- | 15 |

16 Enter the smaller of line 12 or line 15 | 16 |

17 Net investment income tax for individuals. Multiply line 16 by 3.8% (.038). Enter here and on Form 1040, line 60 | 17 |

Estates and Trusts:

18a Net investment income (line 12 above) | 18a |

b Deductions for distributions of net investment income and deductions under section 642(c) (see instructions) | 18b |

c Undistributed net investment income. Subtract line 18b from 18a (see Instructions) | 18c |

19a Adjusted gross income (see instructions) | 19a |

b Highest tax bracket for estates and trusts for the year (see Instructions) | 19b |

c Subtract line 19b from line 19a. If zero or less, enter -0- | 19c |

20 Enter the smaller of line 19c or line 19c | 20 |

21 Net investment income tax for estates and trusts. Multiply line 20 by 3.8% (.038). Enter here and on Form 1041, Schedule G, line 4 | 21 |

For Paperwork Reduction Act Notice, see your tax return instructions.
The Individual Mandate

- We will now examine the individual mandate:
  - The requirements
  - The penalty
  - Premium Assistance Credit
    Note: Not like a normal credit. The money goes directly to the insurance company.
  - Exceptions to the penalty
  - Define Minimum Essential Coverage
Penalty for Remaining Uninsured

- Minimum essential coverage is required to avoid the penalty
  
  Note: Insurance bought through an exchange will meet the Minimum Essential Requirements.

- The penalty imposed on the uninsured under 18 is one-half of that imposed on adults

- A taxpayer is responsible for providing coverage if they are able to claim a personal exemption for the person

- Exempted from penalties (See later)

- The penalty is the greater of a **Percentage of the Taxpayer’s Income** or a **Flat Dollar Amount**
The Individual Shared Responsibility Penalty

- The per adult annual penalty is phased in:
  - 2014: Greater of 1% of applicable income* or $95
  - 2015: Greater of 2% of applicable income or $325
  - 2016: Greater of 2.5% of applicable income or $695
  - 2017 and beyond: Indexed for inflation from $695

* Applicable Income: Excess of household income over the threshold filing amount.

Example on next slide
Penalty for Remaining Uninsured

**Example:** Dennis and Susan have $125,000 of household income. Assume the threshold filing amount for MFJ is $19,500. The applicable income is: $105,500 ($125,000 - $19,500)

The Penalty is $1,055 which is the greater of:

\[ 1\% \times $105,500 = $1,055, \text{ or} \]

\[ $95 \times 2 = $190 \]

*(2014)*
Penalty for Remaining Uninsured

- The Flat Dollar amount is capped at 300% of the adult penalty (without regard to dependents)
- For 2016: 2.5% of household income or $2,085 (3 x $695)
- Note: The penalty cannot exceed the cost of a bronze level plan
- The penalty applies to any period essential coverage is not maintained (monthly)
- The penalty is to be assessed through the IRC (no liens or levies allowed)
Penalty for Remaining Uninsured

**Example 1 Facts:** Steve is single, no dependents. In 2016 he has no insurance. His household income is $120,000 and filing threshold is $12,000. National average bronze plan premium is $5,000.

- **Flat Dollar Amount**
  
  $695

  Not more than 3 $695 = $2,085

- **Percentage of Income Amount**

  (120,000 - 12,000) × 2.5%

  $2,700

- **Penalty**

  $2,700

  (greater of $695 or $2,700 but not more than $5,000)
Penalty for Remaining Uninsured

**Example 2 Facts:** Steve is single, no dependents. In 2016 he has insurance Jan-June. His household income is $120,000 and filing threshold is $12,000. National average bronze plan premium is $5,000.

Flat Dollar Amount ($695 × 6/12) $348

Not more than 3 × $695 × 6/12 = $1,043

Percentage of Income amount

(120,000 - 12,000) × 2.5% × 6/12 $1,350

Penalty $1,350

(greater of $348 or $1,350 but not more than $2,500)
Example 3 Facts: Steve is married with three dependents, two under 18. No insurance in 2016. The household income is $120,000 and filing threshold is $24,000. National average bronze plan premium is $20,000.

Flat dollar amount \((695 \times 3 + \frac{695}{2} \times 2)\) $2,780

Maximum amount \((695 \times 300\%)\) $2,085

Percentage of Income amount
\((120,000 - 24,000) \times 2.5\%)\) $2,400

Penalty $2,400

(greater of $2,085 or $2,400 but not more than $20,000)
Example 5: During 2016 Sheila and Tyler are married and file a joint return. Sheila and Tyler have one child, Ulysses, who turns 18 years old on June 28. No member of the family has minimum essential coverage for any month during 2016. Sheila and Tyler's household income is $60,000. Sheila and Tyler's applicable filing threshold is $24,000. The annual national average bronze plan premium for a family of 3 (2 adults, 1 child) is $15,000.

For the period January through June 2016, the applicable dollar amount is $1,737.50 (($695 x 2 adults) + ($695/2) x 1 child)) and the flat dollar amount is $1,737.50 (the lesser of $1,737.50 or $2,085 ($695 x 3)).

Because Ulysses turns 18 in June, for the period July through December 2016, the applicable dollar amount is $2,085 ($695 x 3) and the flat dollar amount is $2,085 (the lesser of $2,085 or $2,085 ($695 x 3)). The excess income amount is $900 (($60,000-$24,000) x 0.025). Therefore, for January through June the monthly penalty amount is $144.79 (the greater of $144.79 ($1,737.50/12) or $75 ($900/12)). The monthly penalty amount for July through December is $173.75 (the greater of $173.75 ($2,085/12) or $75 ($900/12)).

The sum of the monthly penalty amounts is $1,911.24 (($144.79 x 6) + ($173.75 x 6)). The sum of the monthly national average bronze plan premiums is $15,000 ($15,000/12 x 12).

Therefore, the shared responsibility payment imposed on Sheila and Tyler for 2016 is $1,911.24 (the lesser of $1,911.24 or $15,000).
Example 5: During 2016 Sheila and Tyler are married and file a joint return. Sheila

2016: Income $60K/$24K Filing Threshold & $15K Bronze Plan

Lesser of $1,737.50 [($695 × 2) + ($695/2 × 1) and $2,085 ($695 × 3) = $1,737.50 Flat Dollar Amount for First 6 Months, but $2,085 for Last 6 Months

($60K - $24K) × 2.5% = $900 Excess Income Amount

Greater ($1,737.50/12) = $144.79 Monthly Penalty and ($2,085/12) = $173.75

($144.79 × 6 months) + ($173.75 × 6 Months) = $1,911.24

Lesser of $1,911.24 or $15K Bronze Plan = $1,911.24 Penalty
Premium Assistance Credit (2014)

- Tax credit available for those with incomes up to 400% of the federal poverty level, currently: $45,960 (single), $94,200 (family of four)
- Not eligible for Medicaid or affordable employer insurance
- These people will have to obtain insurance through an exchange
- Based on income level two years before the enrollment period (for 2014 the 2012 return is used).
- Eligibility is determined month-by-month
- Can’t be eligible if claimed as a dependent
Premium Assistance Credit

- Employee declining coverage qualifies if otherwise eligible unless:
  - The employer plan is affordable
    - And
  - The employer plan provides minimum value

- Reduce medical expenses by credit amount whether or not the credit is claimed or received
Premium Assistance Credit

- Final regulations for Section 36B Health Insurance Premium Tax Credit effective on May 23, 2012:
  - Reg. 1.36B-1 through 1.36B-5 and Reg. 1.6011-8
- CBO estimates average subsidy will be > $5,000 per year
- Advance payment recipients must file by April 15
Premium Assistance Credit

- Applicable taxpayer may elect to have estimated credit paid directly to the insurer to help with monthly nut
- Eligible for any month must purchase health insurance thru individual market
- Must file joint return to be eligible
- Can’t get if dependent of another
- Employer-sponsored plan ineligible
- Employee declining may still get sometimes
Premium Assistance Credit

The taxpayer is only eligible for the credit if ER coverage is unaffordable

• The ER plan is unaffordable if the EE must pay (self-coverage only) premiums that exceed 9.5% of household income
Example:

Rob and Lisa are married and his ER plan requires him to contribute $6,000, which is 10% of their household income of $60,000.

At first glance they would seem to qualify for the credit. However the self-only coverage for Rob is $4,000 which is only 6.7% of household income.

Therefore Rob and Lisa do not qualify for the credit since the self-only coverage does not exceed 9.5% of household income.
Premium Assistance Credit

❖ Household Income:

AGI plus

1. Tax exempt income,

2. Foreign earned income and housing excluded under section 911, and

3. Excluded Social Security benefits

❖ Note: Also include the AGI of dependents who are required to file a return.
Premium Assistance Credit

How it works:
- Jim buys insurance at the exchange
- The IRS makes advance payments on behalf of Jim
- Note: The exchange will determine Jim’s eligibility
- At tax time Jim reconciles the actual credit for the tax year computed on his 1040 with the amount of advance payments made on his behalf.
- If the credit exceeds the amount of advance payments he gets a refund.
- If the advance payments exceed the credit he owes.
Reconciling Credit with Advance Payments

- Although a refundable credit – advance payments made must be reconciled when return is filed.
- There is a repayment limitation based on household income as a percentage of the Federal Poverty Level.
- The limitation is:

<table>
<thead>
<tr>
<th>Household Income</th>
<th>MFJ</th>
<th>Single</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 200%</td>
<td>$600</td>
<td>$300</td>
</tr>
<tr>
<td>200% – 300%</td>
<td>$1,500</td>
<td>$750</td>
</tr>
<tr>
<td>300% – 400%</td>
<td>$2,500</td>
<td>$1,250</td>
</tr>
</tbody>
</table>

Over 400% - You get to repay the entire difference (Inflation Adjusted)
Premium Assistance Credit

- For 2014, the federal government announced it will ease up on requirements that exchanges verify information provided by consumers who appear to qualify for the Premium Assistance Credit.
Premium Assistance Credit

The credit is the Lesser of:

- The monthly premiums for the QHP offered thru state-run exchange

  OR

- The excess (if any) of adjusted monthly premium for 2\textsuperscript{nd} lowest Silver plan thru state-run exchange minus \((\frac{1}{12}\text{ annual household income} \times \text{applicable percentage})\)
Premium Assistance Credit

Calculating the credit

Definitions:
• “Adjusted monthly premium” – monthly premium adjusted for ages of covered individuals
• “Benchmark plan” – Silver plan (second lowest) offered by an exchange
• “Applicable percentage” – ranges from 2% to 9.5%. See next slide.
# Premium Assistance Credit

<table>
<thead>
<tr>
<th>Household income as % of FPL</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 133%</td>
<td>2.0 – 2.0%</td>
</tr>
<tr>
<td>133% to 150%</td>
<td>3.0 – 4.0%</td>
</tr>
<tr>
<td>150% to 200%</td>
<td>4.0 – 6.3%</td>
</tr>
<tr>
<td>200% to 250%</td>
<td>6.3 – 8.05%</td>
</tr>
<tr>
<td>250% to 300%</td>
<td>8.05 – 9.50%</td>
</tr>
<tr>
<td>300% to 400%</td>
<td>9.50 – 9.50%</td>
</tr>
<tr>
<td>Over 400%</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Example 2: Ben's household income is 210% of the Federal poverty line for Ben's family size. In the table above, the initial percentage for a taxpayer with household income of 200% to 250% of the Federal poverty line is 6.3 and the final percentage is 8.05. Ben's applicable percentage is 6.65, computed as follows:

Determine the excess of Ben's Federal poverty line percentage (210) over the initial household income percentage in his range (200), which is 10. Determine the difference between the initial household income percentage in the taxpayer's range (200) and the ending household income percentage in the taxpayer's range (250), which is 50. Divide the first amount by the second amount: 10/50 = .20.

Compute the difference between the initial premium percentage (6.3) and the second premium percentage (8.05) in the taxpayer's range; 8.05-6.3 = 1.75.

Multiply the amount in the first calculation (.20) by the amount in the second calculation (1.75) and add the product (.35) to the initial premium percentage in Ben's range (6.3), resulting in Ben's applicable percentage of 6.65.

\[
10\%/(250\% - 200\%) = .20 \\
.20 \times (8.05\% - 6.3\%) + 6.3\% = 6.65\%
\]
**Premium Assistance Credit**

- Applicable taxpayers eligible are households @ 100% - 400% of FPL for family size (# of exemptions) (e.g., family of four in 2012 is $23,550 - $94,200)

<table>
<thead>
<tr>
<th>Number of Individuals in Family</th>
<th>48 Contiguous States and District of Columbia</th>
<th>Alaska</th>
<th>Hawaii</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$11,490</td>
<td>$14,350</td>
<td>$13,230</td>
</tr>
<tr>
<td>2</td>
<td>15,510</td>
<td>19,380</td>
<td>17,850</td>
</tr>
<tr>
<td>3</td>
<td>19,530</td>
<td>24,410</td>
<td>22,470</td>
</tr>
<tr>
<td>4</td>
<td>23,550</td>
<td>29,440</td>
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</tr>
<tr>
<td>5</td>
<td>27,570</td>
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<td>6</td>
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<td>35,610</td>
<td>44,530</td>
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</tr>
<tr>
<td>8</td>
<td>39,630</td>
<td>49,560</td>
<td>45,570</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of Individuals in Family</th>
<th>48 Contiguous States and District of Columbia</th>
<th>Alaska</th>
<th>Hawaii</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
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<td>$57,400</td>
<td>$52,920</td>
</tr>
<tr>
<td>2</td>
<td>62,040</td>
<td>77,520</td>
<td>71,400</td>
</tr>
<tr>
<td>3</td>
<td>78,120</td>
<td>97,640</td>
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</tr>
<tr>
<td>4</td>
<td>94,200</td>
<td>117,760</td>
<td>108,360</td>
</tr>
<tr>
<td>5</td>
<td>110,280</td>
<td>137,880</td>
<td>126,840</td>
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<tr>
<td>6</td>
<td>126,360</td>
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<tr>
<td>7</td>
<td>142,440</td>
<td>178,120</td>
<td>163,800</td>
</tr>
<tr>
<td>8</td>
<td>158,520</td>
<td>198,240</td>
<td>182,280</td>
</tr>
</tbody>
</table>
Family size based on personal exemptions

Example: Hector and Kathleen are a married couple. They have two children, ages 10 and 15, who live in their home all year. Both of the children are claimed as dependents on Hector and Kathleen’s joint income tax return. Hector and Kathleen’s family size is four (Hector + Kathleen + two dependent children).
Calculating the Credit – Example:
Household income for family of 3 is $50,353 (275% of FPL)
Silver plan premium for family is $12,000
Applicable percentage is in range 8.05%-9.5%
275% is halfway between 250%-300% – use 8.78% (halfway between 8.05% and 9.5%)
Premium credit is $7,579 lesser of:
• Silver premium $12,000
  or
• Silver premium $12,000
  minus household income × 8.78% (4,421)
  $7,579
Premium Assistance Credit

❖ Employee declining coverage qualifies if otherwise eligible unless:
  - The employer plan is affordable
  - The employer plan provides minimum value

❖ Reduce medical expenses by credit amount whether or not the credit is claimed or received
Reduced Cost Sharing for Low-Income Taxpayers

- Starting in 2014 cost sharing subsidy to reduce out-of-pocket costs
  - For eligible insured individuals and families
  - Household income 100% - 250% of FPL
  - FPL based on family size

- Cost sharing =
  - Deductibles, co-pays, etc.
  - Rx rules and medical expense rules apply
Reduced Cost Sharing for Low-Income Taxpayers

- Eligible insured individual
  - Enrolled in Silver level QHP in individual market thru state exchange
  - Household income 100% - 250% of FPL
  - FPL based on family size
- Lawfully present aliens treated as if 100% as cannot get Medicaid
- Same rules as premium assistance credit for household income, family size, coverage months, etc.
Reduced Cost Sharing for Low-Income Taxpayers

- Further cost sharing reductions for those purchasing Silver plan:
  - 100% - 150% of FPL – individual’s cost sharing is limited to 6%
  - 150% - 200% of FPL – individual’s cost sharing is limited to 13%
  - 200% - 250% of FPL – individual’s cost sharing is limited to 27%
Penalty for Failure to Provide Correct Information

- Civil penalties of up to $25,000 for negligence or disregard
- Penalty increased up to $250,000 if done knowingly and willingly
- Can they get blood from a stone??
Exemption from Mandate Penalty

1. Religious reasons
2. Member of health care sharing ministry
3. Indian tribes (Members only)
4. No tax return filing requirement
5. Short coverage gap (you went without coverage for less than three consecutive months)

Warning: The short coverage gap only applies to the first gap

6. Unaffordable coverage options – The minimum amount you must pay for premiums is more than 8% of your Adjusted Household Income
7. Incarceration (Must be found guilty)
8. Not a U.S. citizen, a U.S. national nor an alien lawfully present in the U.S.
Exemption from Penalty – 8% rule

If the premiums exceed 8% of Adjusted Household Income the taxpayer is exempted from penalties

❖ Adjusted Household Income:
AGI plus
1. Tax exempt income and
2. Foreign earned income and housing excluded under section 911

❖ Subtotal is called: Household Income

❖ Add back premiums paid through a salary reduction plan (e.g., Cafeteria plan)

❖ Total is: Adjusted Household Income
Exemption from Penalty – 8%rule

- Note: Also include the AGI of dependents who are required to file a return.

- Observation: Do not add in nontaxed Social Security benefits as we do with the Premium Assistance Credit.

- Observation: If an individual can only buy through an Exchange the cost is based on Bronze level premiums.
### Exemption from Penalty – 8% rule

**Example:** Tim has gross salary of $50,000, bank interest of $3,000, tax exempt muni interest of $2,000 and is offered insurance through a salary reduction plan of $4,000.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross salary</td>
<td>$50,000</td>
</tr>
<tr>
<td>Less: Pre-tax insurance</td>
<td>$(4,000)</td>
</tr>
<tr>
<td>Plus: Interest income</td>
<td>3,000</td>
</tr>
<tr>
<td>AGI</td>
<td>49,000</td>
</tr>
<tr>
<td>Plus: Muni bond interest</td>
<td>2,000</td>
</tr>
<tr>
<td>MAGI (Household Income)</td>
<td>51,000</td>
</tr>
<tr>
<td>Plus: Pre-tax insurance premiums</td>
<td>4,000</td>
</tr>
<tr>
<td>Adjusted Household Income</td>
<td>55,000</td>
</tr>
</tbody>
</table>
Exemption from Penalty – 8% rule

Result: Tim’s required contribution is 7.27% ($4,000 of premiums / $55,000 of Adjusted Household Income). Tim is subject to the penalty if he decides not to buy insurance through the exchange.
Exceptions to the Penalty

Example 2: Bob and Carol are married and file a joint return for 2016. Bob and Carol have two children, Donny and Eloise. During November of 2015, Bob is eligible to enroll in self-only coverage under a plan offered by his employer for calendar year 2016 at a cost of $5,000 to him. Carol, Donny, and Eloise are eligible to enroll in family coverage under the same plan for 2016 at a cost of $20,000 to Bob. The family has household income of $90,000. Bob's required contribution is his share of the cost for self-only coverage, $5,000. Bob has affordable coverage for 2016, because his required contribution ($5,000) does not exceed 8% of his household income ($7,200).

The required contribution for Carol, Donny, and Eloise is Bob's share of the cost for family coverage, $20,000. Carol, Donny, and Eloise lack affordable coverage for 2016 because their required contribution ($20,000) exceeds 8% of their household income ($7,200).

$90,000 x 8% = $7,200
Self Only Coverage- $5,000- Affordable
For everyone $20,000- Unaffordable
Exceptions to the Penalty – A Bit More Complicated!!

Example 3: Fiona is an unmarried individual with no dependents. During June of 2015, Fiona is eligible to enroll in self-only coverage under a plan offered by her employer for the period July 2015 through June 2016 at a cost to her of $4,750. During June of 2016, Fiona is eligible to enroll in self-only coverage under a plan offered by her employer for the period July 2016 through June 2017 at a cost to her of $5,000. During 2016, Fiona's household income is $60,000.

Fiona's annualized required contribution for the period January 2016 through June 2016 is $4,750 ($2,375 paid for premiums in 2016 x 12/6). She has affordable coverage for January 2016 through June 2016 because her annualized required contribution ($4,750) does not exceed 8% of her household income ($4,800).

Fiona's annualized required contribution for the period July 2016 to December 2016 is $5,000 ($2,500 paid for premiums in 2016 x 12/6). Fiona lacks affordable coverage for July 2016 through December 2016 because her annualized required contribution ($5,000) exceeds 8% of her household income ($4,800).

$60,000 x 8% = $4,800
Exceptions to the Penalty – A Bit More Complicated!!!

• Fiona has Self Only Coverage July 2015 through June 2016 at a cost of $4,750.
• From July 2016 to June 2017 coverage costs $5,000.
• Her household income is $60,000 x 8% = $4,800.
• For January 2016 through June her annualized contribution is $4,750($2,375 x 12/6)- Affordable.
• For July 2016 to December 2016 her share is $5,000 which exceeds $4,800 so that portion of the year is unaffordable.
Exceptions to the Penalty

- Individuals are exempt any month they lack affordable coverage.
- Individuals and related individuals *ineligible thru an employer*, if premium for lowest cost Bronze plan in individual market *reduced by the 36b credit* > 8% of adjusted household income for most recent tax year for which info is available.
Exceptions to the Penalty

**Example 1:** Taxpayer Erin is an unmarried individual with no dependents. Erin is ineligible to enroll in any minimum essential coverage other than coverage in the individual market for all months of 2016. The annual premium for the lowest cost bronze self-only plan in Erin's rating area (her applicable plan) is $5,000. The adjusted annual premium for the second lowest cost silver self-only plan in Erin's rating area (her applicable benchmark plan) is $5,500. During 2016 Erin's household income is $40,000, which is 358% of the Federal poverty line for her family size for the taxable year.

The credit allowable under section 36B is determined pursuant to section 36B (this calculation is discussed later). With household income at 358% of the Federal poverty line, her applicable percentage is 9.5. Because each month in 2016 is a coverage month, her maximum credit allowable under section 36B is the excess of her premium for the applicable benchmark plan over the product of her household income and her applicable percentage ($1,700). Therefore, Erin's required contribution is $3,300. Erin lacks affordable coverage for 2016 because her required contribution ($3,300) exceeds 8% of her household income ($3,200).

$40,000 \times 8\% = $3,200

$5,000 \text{ less } $1,700 \text{ Credit } = $3,300
Exceptions to the Penalty

Example 1: Taxpayer Erin is an unmarried individual with no dependents. Erin is

- Applicable-Bronze Self-Only Premium is $5,000
- Benchmark- Second Lowest Silver Plan- $5,500
- Affordability - $40,000 x 8% = $3,200
- Credit is based on the excess of the benchmark plan over her monthly income x applicable percentage 9.5 is $1,700
- $5,000 less $1,700 Credit = $3,300
- At 358% of FPL applicable % is 9.5%
Exceptions to the Penalty

**Example 2:** During 2016 Marty and Nina are married and file a joint return. They have two children, Polly and Quentin. All four are ineligible to enroll in minimum essential coverage other than coverage in the individual market for a month during 2016. The annual premium for their applicable plan is $20,000. The adjusted annual premium for their applicable benchmark plan is $25,000. Marty and Nina's household income is $80,000, which is 347% of the Federal poverty line for a family size of 4 for the taxable year.

The credit allowable under section 36B is determined pursuant to section 36B. With household income at 347% of the Federal poverty line, the applicable percentage is 9.5. Because each month in 2016 is a coverage month, the maximum credit allowable under section 36B is the excess of the premium for the applicable benchmark plan over the product of the household income and the applicable percentage ($17,400). Therefore, the required contribution for Marty, Nina, Polly, and Quentin is $2,600. They have affordable coverage for 2016 because their required contribution ($2,600) does not exceed 8% of their household income ($6,400).

\[
\text{\$80,000 x 8\% = \$6,400} \\
\text{\$20,000 less \$17,400 Credit = \$2,600}
\]
Exceptions to the Penalty

Example 2: During 2016 Marty and Nina are married and file a joint return. They

- Family of 4
- Applicable Plan (Bronze) $20,000
- Benchmark Plan (2nd Low Silver) is $25,000
- Income $80,000 – 347% of FPL
- Applicable percentage 9.5%
- Credit excess of benchmark premiums over the product of household income x applicable percentage = $17,400
- Required contribution is $2,600
- $80,000 x 8% = $6,400
- $20,000 less $17,400 Credit = $2,600
Example 3: During 2016 Uriah and Valerie are married and file a joint return. They have two children, Willy and Xavier. Uriah and Valerie are ineligible to enroll in minimum essential coverage other than coverage in the individual market for all months during 2016; however, Willy and Xavier are eligible for coverage under CHIP for 2016 at an annual cost of $1,000 per child. The annual premium for the whole family's applicable plan is $20,000. The adjusted annual premium for the second lowest cost silver plan that would cover Uriah and Valerie (the applicable benchmark plan) is $12,500. Their household income is $50,000, which is 217% of the Federal poverty line for a family size of 4 for the taxable year. Willy and Xavier do not enroll in CHIP coverage.

The credit allowable under section 36B is determined pursuant to section 36B. With household income at 217% of the Federal poverty line, the applicable percentage is 6.89. Each month of 2016 is a coverage month for Uriah and Valerie, but no months in 2016 are coverage months for W and X because they are eligible for CHIP coverage. The maximum credit allowable under section 36B is the excess of the premium for the applicable benchmark plan over the product of the household income and the applicable percentage ($9,055). Therefore, the required contribution is $10,945. The family lack affordable coverage for 2016 because their required contribution ($10,945) exceeds 8% of their household income ($4,000).

$50,000 x 8% = $4,000
$20,000 less $9,055 Credit = $10,945
Exceptions to the Penalty

**Example 4:** The facts are the same as Example 3, except Willy and Xavier enroll in CHIP coverage on January 1, 2016. Uriah, Valerie, Willy, and Xavier are members of Uriah and Valerie's nonexempt family for 2016. Therefore, the annual premium for the applicable plan is the same as in Example 3 ($20,000). The maximum credit allowable under section 36B is also the same as in Example 3 ($9,055). The required contribution is $10,945. Uriah and Valerie lack affordable coverage for 2016 because their required contribution ($10,945) exceeds 8% of their household income ($4,000).

\[
\begin{align*}
$50,000 \times 8\% &= $4,000 \\
$20,000 \text{ less } $9,055 \text{ Credit} &= $10,945
\end{align*}
\]
8. Are children subject to the individual shared responsibility provision?
Yes. Each child must have minimum essential coverage or qualify for an exemption for each month in the calendar year. Otherwise, the adult or married couple who can claim the child as a dependent for federal income tax purposes will owe a payment.

9. Are senior citizens subject to the individual shared responsibility provision?
Yes. Senior citizens must have minimum essential coverage or qualify for an exemption for each month in a calendar year. Senior citizens will have minimum essential coverage for every month they are enrolled in Medicare.
Exemption from Penalty

11. Are U.S. citizens living abroad subject to the individual shared responsibility provision?
Yes. However, U.S. citizens who live abroad for a calendar year (or at least 330 days within a 12-month period) are treated as having minimum essential coverage for the year (or period). These are individuals who qualify for an exclusion from income under section 911 of the Code.

12. Are residents of the territories subject to the individual shared responsibility provision?
All bona fide residents of the United States territories are treated by law as having minimum essential coverage. They are not required to take any action to comply with the individual shared responsibility provision.
Minimum Essential Coverage

- Minimum essential coverage includes at a minimum all of the following:
  - Employer-sponsored coverage (including COBRA coverage and retiree coverage)
  - Coverage purchased in the individual market
  - Medicare coverage (including Medicare Advantage)
  - Medicaid coverage
  - Children's Health Insurance Program (CHIP) coverage
  - Certain types of Veterans health coverage
  - TRICARE
Minimum Essential Coverage

13. If I receive my coverage from my spouse’s employer, will I have minimum essential coverage?
Yes. Employer-sponsored coverage is generally minimum essential coverage. If an employee enrolls in employer-sponsored coverage for himself and his family, the employee and all of the covered family members have minimum essential coverage.

14. Do my spouse and dependent children have to be covered under the same policy or plan that covers me?
No. You, your spouse and your dependent children do not have to be covered under the same policy or plan. However, you, your spouse and each dependent child for whom you may claim a personal exemption on your federal income tax return must have minimum essential coverage or qualify for an exemption, or you will owe a payment when you file.
15. My employer tells me that our company’s health plan is “grandfathered.” Does my employer’s plan provide minimum essential coverage?
Yes. Grandfathered group health plans provide minimum essential coverage.

16. I am a retiree, and I am too young to be eligible for Medicare. I receive my health coverage through a retiree plan made available by my former employer. Is the retiree plan minimum essential coverage?
Yes. Retiree health plans are generally minimum essential coverage.

17. I work for a local government that provides me with health coverage. Is my coverage minimum essential coverage?
Yes, generally.
Minimum Essential Coverage

18. Do I have to be covered for an entire calendar month in order to get credit for having minimum essential coverage for that month?
   No. You will be treated as having minimum essential coverage for a month as long as you have coverage for at least one day during that month.

19. If I change health coverage during the year and end up with a gap when I am not covered, will I owe a payment?
   Individuals are treated as having minimum essential coverage for a calendar month if they have coverage for at least one day during that month. Additionally, as long as the gap in coverage is less than three months, you may qualify for an exemption and not owe a payment.
Minimum Essential Coverage

20. If I think I qualify for an exemption, how do I claim it?

It depends upon which exemption it is.

The religious conscience exemption and the hardship exemption are available only by going to a Health Insurance Marketplace, also known as an Affordable Insurance Exchange, and applying for an exemption certificate.

The exemptions for unaffordable coverage, short coverage gaps, and individuals who are not lawfully present in the United States can be claimed only as part of filing a federal income tax return. The exemption for those under the federal income tax return filing threshold is available automatically.
Employer Mandate

Delayed Until 2015

- What does this mean?
- What does this not mean?
- What is the opportunity for us?
Large Employer Testing - Conclusions

• If we are under 50 FTEs then not subject to the mandate.

• If 50 or over then subject to the mandate effective 1/1/15.
  – Employer will have to offer affordable coverage to employees and their dependents who average over 30hrs/weekly in a standard measurement period.
  – The coverage will last for a stability period that is at least equal to the standard measurement period.
  – Employer can have an Administrative Period.
  – These functions are really HR functions.
Large Employer Play or Pay

- A large employer is one that had at least 50 FTE (average at least 30 hours per week or 130 hours per month) during the previous calendar year. (Do not include leased, 2% S, Sole Proprietors or partners.)

- Part-time workers – In determining whether a company is a large employer the employer will take the aggregate number of hours of part-time employees $\div 120$ and add this to the number of FTE.

Note: An exemption applies where

- The workforce exceeds 50 FTE for no more than 120 days, and
- The employees in excess of 50 were seasonal
Example: Rainbow, Inc. has a workforce comprised of 30 people who work 40 hours per week and another 80 people who average 20 hours per week. Assuming the part-timers worked 20 hours for four weeks in that month:

$$80 \text{ (people)} \times 20 \times 4 \text{ (weeks)} = 6,400 \text{ hours} / 120 = 53.33$$

53 equivalent full-time + 30 full-time = 83

Result: Rainbow is considered a large employer
### Worksheet 1 - Monthly Analysis worksheet

<table>
<thead>
<tr>
<th>Client Name</th>
<th>Carina's Marina</th>
<th>Jan-14</th>
</tr>
</thead>
<tbody>
<tr>
<td>For Month Ending</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employee Name</th>
<th>Total Hours Worked During the Month</th>
<th>Full-Time Employee - Enter 1 if total hours are more than 130 hours</th>
<th>Part-time Employee Hours - Enter hours for all non-full-time employees.</th>
</tr>
</thead>
<tbody>
<tr>
<td>T. Sundstien</td>
<td>140</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>G. Stienstrom</td>
<td>145</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>S. King</td>
<td>125</td>
<td></td>
<td>120</td>
</tr>
<tr>
<td>J. Jackson</td>
<td>110</td>
<td></td>
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</tr>
<tr>
<td>S. Spaniel</td>
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<tr>
<td>E. Edwards</td>
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<tr>
<td>S. Spalding</td>
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<tr>
<td>E. Everett</td>
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<tr>
<td>D. Donkey</td>
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</tr>
<tr>
<td>M. Monk</td>
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<td>S. Sue</td>
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<tr>
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<td></td>
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<tr>
<td>J. Jackobs</td>
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<td>1</td>
<td></td>
</tr>
</tbody>
</table>
### Large Employer Testing

**2014 is the testing period**

#### Worksheet 1: Monthly Analysis Worksheet

*Carina's Marina*

<table>
<thead>
<tr>
<th>Client Name</th>
<th>For Month Ending</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Jan-14</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employee Name</th>
<th>Total Hours Worked During the Month</th>
<th>Full-Time Employee - Enter 1 if total hours are more than 130 hours</th>
<th>Part-time Employee Hours - Enter hours for all non-full-time employees.</th>
</tr>
</thead>
<tbody>
<tr>
<td>T. Sundstien</td>
<td>140</td>
<td></td>
<td></td>
</tr>
<tr>
<td>G. Stienstrom</td>
<td>145</td>
<td></td>
<td></td>
</tr>
<tr>
<td>S. King</td>
<td>125</td>
<td></td>
<td></td>
</tr>
<tr>
<td>J. Jackson</td>
<td>110</td>
<td></td>
<td></td>
</tr>
<tr>
<td>S. Spaniel</td>
<td>140</td>
<td></td>
<td></td>
</tr>
<tr>
<td>E. Edwards</td>
<td>134</td>
<td></td>
<td></td>
</tr>
<tr>
<td>S. Spalding</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>E. Everett</td>
<td>80</td>
<td></td>
<td></td>
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<tr>
<td>D. Donkey</td>
<td>130</td>
<td></td>
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</tr>
<tr>
<td>M. Monk</td>
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</tr>
<tr>
<td>S. Sue</td>
<td>117</td>
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<td>R. Rowling</td>
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<tr>
<td>J. Jackobs</td>
<td>150</td>
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</tr>
</tbody>
</table>
2014 is the testing period

We list all employees and hours for the month.

<table>
<thead>
<tr>
<th>Employee Name</th>
<th>Total Hours Worked During the Month</th>
<th>Full-Time Employee - Enter 1 if total hours are more than 130 hours</th>
<th>Part-time Employee Hours - Enter hours for all non-full-time employees</th>
</tr>
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<tbody>
<tr>
<td>T. Sundstien</td>
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<tr>
<td>G. Stienstrom</td>
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<td>S. King</td>
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<td>J. Jackson</td>
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<td>D. Donkey</td>
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### Large Employer Testing

2014 is the testing period.

### Carina's Marina

**Worksheet 1- Monthly Analysis Worksheet**

<table>
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<tr>
<td>J. Jackobs</td>
<td>150</td>
<td>1</td>
<td></td>
</tr>
</tbody>
</table>

All employees that have more than 130 are treated as full time.
2014 is the testing period

Record hours of part-timers. No one gets more than 120 hours.
The number of FTEs and the hours for the part-timers are transferred to a summary sheet.
Large Employer Testing

<table>
<thead>
<tr>
<th>Testing Month</th>
<th>Number of Full-time Employees from (Worksheet 1, Column D)</th>
<th>Total Part-time Hours (from Worksheet 1, Column E)</th>
<th>Part-time Hour to FTE Equivalent Conversion Hour</th>
<th>Total Full Time Equivalents - (Column C divided by D) Retain Fractions</th>
<th>Total FTE (Columns B + E)</th>
<th>Without Seasonal Employees</th>
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<tbody>
<tr>
<td>January</td>
<td>43</td>
<td>2305</td>
<td>120</td>
<td>19.22</td>
<td>62.22</td>
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<tr>
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<td>2408</td>
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<td>20.07</td>
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<td>March</td>
<td>45</td>
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<td>40</td>
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<td>120</td>
<td>19.26</td>
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<td>July</td>
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<td>120</td>
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<td>30</td>
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<td>120</td>
<td>16.67</td>
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<tr>
<td>September</td>
<td>30</td>
<td>1900</td>
<td>120</td>
<td>16.67</td>
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</tr>
<tr>
<td>October</td>
<td>30</td>
<td>1800</td>
<td>120</td>
<td>16.67</td>
<td>46.67</td>
<td>46.67</td>
</tr>
<tr>
<td>November</td>
<td>30</td>
<td>1800</td>
<td>120</td>
<td>16.67</td>
<td>46.67</td>
<td>46.67</td>
</tr>
<tr>
<td>December</td>
<td>30</td>
<td>1700</td>
<td>120</td>
<td>16.67</td>
<td>46.67</td>
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<td>Totals</td>
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<td>24734</td>
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</tr>
</tbody>
</table>

Average Number of Full-Time Equivalents rounded down

The part-time hours are divided by 120
Large Employer Testing

This converts the PT hours to FTEs.
Large Employer Testing

The FTEs for each month are totaled and then averaged.
We then adjust for seasonality. Essentially take out the highest 4 months.
Large Employer Testing

Because of seasonality the employer is under 50 FTEs and is not subject to the mandate

Not Subject to the Mandate. Forget about the coverage.
Employer Mandate

- What hours of service are counted?
  - Include all hours for which the employee is paid not just the actual working hours:
    - This includes sick pay, military duty, vacation, holiday, jury duty, disability leave, etc.

- When must coverage begin?
  - For full-time employees within 90 days of employment
What if I am not sure an employee is full-time?

- If employees work at least 30 hours per week during the measurement period then they are treated as full-time during the stability period regardless of how many hours they work.
Employer Mandate

- Standard Measurement Period – A three-six month period where an employer can look back. The employer can choose the length of time. The length of time needs to be consistent with employees in the following categories:
  - salaried and hourly employees,
  - employees of different entities,
  - employees in different states, and
  - collectively bargained and noncollectively bargained employees
Employer Mandate

- Stability Period
  - A period of time where employees determined to be full-time in the measurement period must be offered insurance.
  - The Stability period must be for at least six consecutive calendar months and is no shorter than the Measurement Period.
What about new hires that are variable-hour or seasonal employees?

- Generally, an employer must cover new employees within 90 days of hire if they expect the employee to be full-time.
- An employer can use an **Initial Measurement Period** that is between three-to-twelve months.
- **Administrative Period** for new employees – In addition to the Initial Measurement Period an employer can have an administrative period of up to 90 days before the Stability Period starts.
Employer Mandate

There are two potential penalties:

- A “no coverage penalty”
  - Where an employer does not offer minimum essential insurance to at least 95% of its full-time employees (in 2015 this includes dependents) and at least one employee qualifies for the Premium Assistance Credit

- A “Lacking Minimum Value or Unaffordable Penalty”
  - Where an employer does offer minimum essential coverage to at least 95% of the full-time employees but at least one employee qualifies for the Premium Assistance Credit
Employer Mandate

There are two potential penalties (continued):

- Dependents include children under 26 years of age.
- The spouse is not considered a dependent of the employee
Employer Mandate

“No coverage” penalty

- Penalty for not offering minimum essential coverage
  Does not offer coverage to at least 95% of its full-time employees (in 2015 this includes dependents)

- The penalty will only apply if at least one full-time employee is enrolled in a health insurance exchange to which a premium tax credit or cost-sharing reduction is allowed

- The penalty is calculated on a monthly basis—
  $2,000 \times \frac{1}{12}

- The penalty is based on the number of full-time employees minus 30.
Example: In 2014, Chinook, Inc. fails to offer minimum essential coverage. The company has 100 FTE, ten of whom receive a tax credit for enrolling in a state-exchanged offered plan. For each employee over the 30-employee threshold, the company owes $2,000 for the year.

- The total penalty will be $140,000 (70 × $2,000)
- The penalty is assessed on a monthly basis
**Employer Mandate**

“Inadequate or Unaffordable Insurance”

- Penalty on employer who does offer coverage to at least 95% of **the full time employees** is still penalized.
- The penalty applies where the insurance
  - a. Is unaffordable, or
  - b. Lacks minimum value

At least one FTE receives a premium tax credit or cost-sharing reduction through a state exchange

- The penalty is assessed monthly at a rate of $3,000 ÷ 12
- The maximum penalty is capped at the $2,000 per employee failure to provide essential coverage
Example: During 2014, Abe Used Cars offers minimum essential coverage to its 75 full-time employees and their dependents. However, Abe's coverage does not meet the 9.5% of household income affordability requirement or the 9.5% of Form W-2 wages safe harbor requirement. The state insurance exchange certified to Abe that 35 employees were paid a premium assistance credit to purchase insurance in a QHP in the individual market through a state insurance exchange for the entire year.

Abe's penalty for offering unaffordable coverage for 2014 is $105,000 (35 full-time employees × 12 months × $250 per month). However, the penalty is capped at $90,001.80 [(75 full-time employees - 30-employee threshold) × 12 months × $166.67 per month]. This is the same penalty Abe would be subject to if it had not offered any insurance coverage for the entire year.
The Lesser of:

(35 full-time employees X 12 months x $250 per month) = $105,000 penalty

or

(75 full-time employees - 30 employee threshold) X 12 months X $166.67 = $90,001.80 penalty
11. How does an employer know whether the coverage it offers is affordable?

If an employee’s share of the premium for employer-provided coverage would cost the employee more than 9.5% of that employee’s annual household income, the coverage is not considered affordable for that employee.

If an employer offers multiple healthcare coverage options, the affordability test applies to the lowest-cost option available to the employee that also meets the minimum value requirement.
11. How does an employer know whether the coverage it offers is affordable? (continued)

Because employers generally will not know their employees’ household incomes, employers can take advantage of one of the following safe harbors:

a. Form W-2 Determination Method:
   • Self-only coverage does not exceed 9.5% of the W-2 as reported in Box 1.
   • This is determined at the end of the year on an employee-by-employee basis.
   • The employee’s required contribution must remain consistent throughout the year.
11. How does an employer know whether the coverage it offers is affordable? (continued)

b. Federal Poverty Line Method:
   - The cost does not exceed 9.5% of the Federal Poverty Line.

c. Rate of Pay Method:
   - The cost does not exceed 9.5% of 130 hours x employee’s rate of pay as of the first day of the coverage period.
   - Use monthly salary for salaried employees.
   - Note: This method could be helpful where the workforce hours fluctuate.
12. How does an employer know whether the coverage it offers provides minimum value?

A minimum value calculator will be made available by the IRS and the Department of Health and Human Services (HHS).

Employers can input information and determine if the plan provides minimum value by covering at least 60% of the expected costs.
Other Employer Mandate Issues:

- Testing Periods – The ER can use any consecutive six-month period in 2013 to measure the number of employees in 2013 for the 2014 year. (Not extended for 2015)
- Aggregation rules – Controlled and Affiliated group rules apply.
- Benefits provided through an association: The determination of large employer status is made at the employer level.
8. Are companies with employees working outside the United States subject to the Employer Shared Responsibility provisions?

Not necessarily. For example, if a foreign employer has a large workforce worldwide, but less than 50 full-time (or equivalent) employees in the United States, the foreign employer generally would not be subject to the Employer Shared Responsibility provisions.
9. Are companies that employ U.S. citizens working abroad subject to the Employer Shared Responsibility provisions?

Yes, if the company had at least 50 full-time employees determined by taking into account only work performed in the United States.

The time spent working outside of the U.S. would not be taken into account for purposes of determining whether the employer owes an Employer Shared Responsibility payment or the amount of any such payment.
6. Do the Employer Shared Responsibility provisions apply only to large employers that are for-profit businesses or to other large employers as well?

No, non-profit and governmental entities get hammered as well.
13. If an employer wants to be sure it is offering coverage to all of its full-time employees, how does it know which employees are full-time employees? Does the employer need to offer the coverage to all of its employees because it won’t know for certain whether an employee is a full-time employee for a given month until after the month is over and the work has been done?

An employer can use the look back method.
16. How will an employer know that it owes an Employer Shared Responsibility payment?

The IRS will contact employers to inform them of their potential liability and provide them an opportunity to respond before any liability is assessed or notice and demand for payment is made. The contact for a given calendar year will not occur until after employees’ individual tax returns are due for that year claiming premium tax credits and after the due date for employers that meet the 50 full-time employee (plus full-time equivalents) threshold to file the information returns identifying their full-time employees and describing the coverage that was offered (if any).

**Observation:** We need to plan to minimize surprises.
17. How will an employer make an Employer Shared Responsibility payment?

The IRS will send a notice and demand for payment. That notice will instruct the employer on how to make the payment.

Employers will not be required to include the Employer Shared Responsibility payment on any tax return that they file.
19. Is transition relief available to help employers that are close to the 50 full-time employee threshold determine their options for 2014?

Yes. Rather than being required to use the full 12 months of 2013 to measure whether it has 50 full-time employees, an employer may measure using any six-consecutive-month period in 2013.

So, for example, an employer could use the period from January 1, 2013 through June 30, 2013, and then have six months to analyze the results, determine whether it needs to offer a plan, and, if so, choose and establish a plan.
Other

- For pass-throughs the tax is imposed on the entity (1120S or 1065)
Employer Options

- Split up entities to keep below 50 FTE – controlled group
- Keep employees below 30 hours per week – Hours could push company over the top
- Use EE leasing companies – For which company is the worker a common law employee?
- Use Independent contractors – no 530 relief
- Discriminate on insurance/pay – Insurance policies

Note: All of these options have issues
Health Care 2018

Excise tax on Cadillac plans

- A 40% tax imposed on high cost employer-sponsored and self-insured plans
- The tax is levied on insurance companies and plan administrators
- It is applied to annual insurance premiums for those under 55 that exceed $10,200 for individuals and $27,500 for families
- For those aged 55 and above, the threshold is $11,850 for individuals and $30,950 for families
- There are age, gender and other adjustments
For your time and attention