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FOR SMALL BUSINESS.

**Healthcare Reform: How High's the Water, Mama?**

**Industrial Association of Quincy 2011**

**8/15/11**

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# How high's the water, mama?

Medicaid Expansion

Tax Credits Go Away

Senior Deductions Shrink

Cadillac Tax

**MORE TAX INCREASES**

Tax Credits only in Exchange

Individual Mandate

BENEFIT MANDATES

Employer Mandate

Premium Subsidies

Insurance Exchanges

Small Business Health Insurance Tax

Investment Tax

Medicare Payroll Tax

~~IRS Form 1099s~~

Medical Device Tax

Fewer 1040 Deductions

No OTC in HSAs/FSA's

FSA Limits

CLASS

Drug Tax

W-2 Reporting

Tanning Tax

Small Business Tax Credit

KIDS COVERED TILL 26

**NFIB** The Patient Protection and Affordable Care Act



# Missing Jobs

- **Usually, 65% of new jobs come from small business**
  - This time, ~0%
- **Major reasons**
  - Poor sales
  - High and uncertain taxes (personal income, corporate income, estate, imbedded PPACA)
  - Loss of real estate equity
  - PPACA in general

# Individual Mandate

- **Individual mandate**
  - Unique in American history
  - Have to compensate employees
- **Florida lawsuit**
  - Joining with 26 states as the 27th litigant in challenging the law's constitutionality
    - Prevailed at the District Court level
    - Appeal coming up this summer
    - Supreme Court in 2012?

# Employer Mandate

- **How will employers feel the mandate?**
  - More red tape
  - Disincentive to grow
  - High consumer prices
  - Medicaid bounce
  - Lots of bookkeeping
  - Laundry-up-the-flagpole provision
  - Employee's spouse's uncle tax

# Employer Mandate

- **Which businesses face potential penalties?**
  - Those with 50 or more full-timers or FTEs
  - Owners with multiple businesses totaling 50 or more full-timers or FTEs (no splitting)
- **How much are the penalties?**
  - If you don't provide coverage:  $\$2,000 \times (L-30)$
  - If you do provide coverage:
    - $(\$3,000 \times S)$  or  $\$2,000 \times (L-30)$
- **How does an employee qualify for subsidies?**
  - Affordability standard:  $(4 \times \text{FPL})$  and 9.5%

# The Free Rider Provision (Employer Mandate)

Calculating the healthcare law's free rider tax penalties for businesses with one or more employees receiving insurance subsidies. Understanding the free-rider provision's bottom-line effects.



**[1] A business owes a free-rider penalty ONLY if it meets two conditions.**

- **If it has 50 or more full-time employees or full-time equivalents.** Each 120 hours per month of part-time labor counts as a full-time equivalent. (Rules for determining the number of employees and part-time hours are complex, so you'll need help from an accountant.)
- **If one or more of its employees receive premium credits** (government subsidies) to help purchase health insurance in the exchange.

**[2] An employee ONLY receives a premium subsidy if he meets two conditions.**

- **The employee's household income must be less than 400% of the Federal Poverty Level (FPL)**, which varies with family size. For a family of four, 400% FPL = \$88,200. Household income includes the income of the employee's spouse and of other dependent members of the household.
- **The employee's portion of the insurance premium on the employer's plan must exceed 9.5% of the employee's household income.**

**[3] If a business DOES owe a free-rider penalty, the calculations are as follows:**

- **If the business DOESN'T provide health insurance**, its annual penalty equals {the total number of employees in the firm (subsidized and unsubsidized) minus 30} x {\$2,000}. In the table below, in [S3] and [S4], the 50-employee firm owes \$40,000 = (50-30)x\$2,000.
- **If the business DOES provide health insurance**, its annual penalties equal THE LESSER OF {the number of subsidized employees} x {\$3,000} OR {the number of employees in the firm (subsidized and unsubsidized) minus 30} x \$2,000. In [S4], it pays \$6,000 (the lesser of \$6,000 and \$40,000). In [S6], it pays \$42,000 (the lesser of \$75,000 and \$42,000).

**[4] Observations from the table**

- **[S3] vs. [S5]:** For a non-providing firm, the free rider provision penalizes the firm \$2,000 for creating an additional job.
- **[S3] vs. [S4]:** For a non-providing firm, the free rider provision DOES NOT penalize the firm for having more subsidized employees.
- **[S3] vs. [S4]:** For a providing firm with few subsidized employees, the free-rider provision penalizes the business \$3,000 for each additional subsidized employee.
- **[S3] vs. [S5]:** For a providing firm with few subsidized employees, the free-rider provision DOES NOT penalize the business for creating an additional job – as long as the new employee is not subsidized.
- **[S6], [S7], [S8]:** A providing firm with many subsidized employees pays the same penalty as a non-providing firm of the same size.
- **[S6] vs. [S7]:** For a providing firm with many subsidized employees, the free rider provision penalizes the firm \$2,000 for creating an additional job.
- **[S6] vs. [S8]:** For a providing firm with many subsidized employees, the free rider provision DOES NOT penalize the firm for having more subsidized employees.
- **[S6] vs. [S9]:** A firm can reduce its penalties tremendously by replacing full-time employees with part-timers.
- **[S1] and [S2]:** Unless the business has 50 or more full-time employees or FTEs AND has at least one subsidized employee, there are no penalties.

Scenarios	[S1]	[S2]	[S3]	[S4]	[S5]	[S6]	[S7]	[S8]	[S9]
<b>Total employees</b>	49	50	50	50	51	51	52	51	31
<b># of Unsubsidized employees</b>	48	50	49	48	50	26	27	25	6
<b># of Subsidized employees</b>	1	0	1	2	1	25	25	26	25
<b># of Full-time equivalents (part-time hours in one month divided by 120)</b>	0	0	0	0	0	0	0	0	20
<b>Penalty for a business that DOES provide health insurance</b>	\$0	\$0	\$3,000	\$6,000	\$3,000	\$42,000	\$44,000	\$42,000	\$2,000
<b>Penalty for a business that DOES NOT provide health insurance</b>	\$0	\$0	\$40,000	\$40,000	\$42,000	\$42,000	\$44,000	\$42,000	\$2,000

# Individual mandate + subsidies + employer mandate

- **Laundry-up-the-flagpole provision:** If you get a credit, your boss will pay a penalty. The government will notify him that your income is below a fairly modest level. Reveals income of spouses, etc.
- **Employee's Spouse's Uncle Tax:** If “something” changes in an employee's household (wife's uncle moves in, husband takes pay cut, etc.), the boss gets a large tax penalty and doesn't know why.
- **“Solutions”:** Pricier coverage, part-timers, shrink, outsource, snoop, challenge employees' honesty.



# Other Costs

- 1099 nightmare
- Grandfathering (20% or less)
- Drug tax
- Medical device taxes
- No OTC
- Preventive / 26+ / No coverage limits
- CLASS Act
- **Health Insurance Tax**
- **Essential Health Benefits**
- **“Medicare” “payroll” taxes**

## **Benefit?**

Small business health insurance tax credit

- Few firms get it
- Fewer get 35%
- All goes away soon

# Health Insurance Tax

- **Facts**

- Insurer writes the check. Purchasers pay.
- Increased costs.
- 87% of small business community affected
- Falls on most small businesses – not on most big businesses, labor unions, governments
- \$8b in 2014. \$14.3b in 2018, then indexed
- \$87b 2014-20. \$200b+ 2021-30

# Essential Health Benefits

- **State mandates**
  - Costly, but require legislative processes
- **EHB: The Secretary's Joystick**
  - No clear guidance on what belongs in it
  - Data are fuzzy
  - No public hearing process specified
  - One-size-fits-all nationally
  - Falls on most small businesses – not on most big businesses, labor unions, governments.

# “Medicare” “Payroll” Taxes

- **Threshold**
  - \$200,000 individual filer
  - \$250,000 joint filer
- **Why “Medicare?” Why “payroll?”**
  - Applies 0.9% to wage/salary above threshold
  - 3.8% payroll tax on *household* net investment income (interest, dividends, annuities, royalties, rents, and net gain on the disposition of property not held in a trade or business) above threshold
- **Employers of perhaps 25% of private workforce**