

Tax Provisions of the Affordable Care Act (ACA)

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Overview of the ACA

- Stated purpose of the act is to provide “near-universal health care coverage”
- Implement by:
 - Expanding Medicaid program to cover more individuals (up to 133% of poverty level), largely funded by federal government
 - Expanding purchases of “minimum essential” health coverage

Increase Use of Insurance

“Carrot and Stick” approach taken to encourage purchase of “minimum essential” health coverage:

- Penalty/tax on individuals who don't purchase
- Require larger employers (50+ employees) to provide insurance for their employees
- Insurance regulation: can't deny coverage for pre-existing conditions + community rating
- Tax credits and other incentives for individuals and small employers to purchase coverage

ACA and Federal Taxes

- Taxes and fees increased to offset:
 - Increased outlays under the act (e.g., Medicaid expansion)
 - Reduced revenues from tax credits and other incentives
- Tax provisions used to modify behavior:
 - Penalties or excise taxes for failure to take desired actions
 - Tax credits and other incentives to encourage desired behavior, such as purchasing health coverage

ACA and MN Taxes

ACA affects MN tax system and revenues in two ways:

- Provisions that redefine federal taxable income affect computation of MN individual income tax and corporate franchise tax bases:
 - 2011 MN Legislature conformed to the changes
- Changes in behavior in response to ACA will automatically impact MN's tax revenues:
 - MMB adjusted forecast for these changes

Overview of Presentation

Presentation covers:

- ACA's revenue raisers – provisions intended mainly to offset the federal budget effects of other ACA provisions
- ACA's provisions mainly intended to change behavior
- Selected other tax provisions
- Summary/overview of ACA's estimated effects on federal and MN tax revenues

Estimates: Discussion

- Most recent estimates available presented:
 - \$ for first FY with non-negligible impact, *and*
 - Cumulative 10-year impact
- Some, but not all, federal estimates have been updated since ACA enacted
- Result is that estimates that have been updated are not comparable with those that have not

Estimates: Sources

- Joint Committee on Taxation:
 - Communication from JCT Staff to DOR (April 13, 2010)
 - General Explanation of Tax Legislation Enacted in the 111th Congress (JCS-2-11, March 2011)
 - Memorandum providing estimate of repeal of ACA (June 15, 2012)
- Congressional Budget Office:
 - Estimate of H.R. 1473 (April 12, 2011)
- Minnesota Department of Revenue:
 - The Patient Protection and Affordable Care Act and The Reconciliation Act of 2010, Forecast Adjustments (October 20, 2010)
 - Federal Update through December 17, 2010, Tax Year 2010 only (February 11, 2011)
 - Federal Update: All Provisions after Enactment of Chapter 8 (March 28, 2011)

Revenue Raisers – Firms

Prescription Drug Fee

Annual fee on pharmaceutical manufacturers and importers that sell to government programs (Medicare, Medicaid, VA, etc.)

- Fee is set at a total \$ amount and is allocated to each firm based on its share of total sales to the government programs in the prior CY
- Effective CY 2011
- Federal revenue effect:
 - \$2.5 billion in FFY 2011
 - \$34.2 billion in FFY 2013-2022

Codify Economic Substance Rule

- Codifies conjunctive version of court-based test; transactions must have economic substance and business purpose – even if they satisfy the technical requirements of statute – to qualify for tax benefits
- Imposes new penalties
- Effective for transactions entered after 3/30/2010
- Effective at state level as MMB forecast adjustment

Codify Economic Substance Rule

- Federal revenue effect:
 - \$0.2 billion in FFY 2013
 - \$5.3 billion in FFY 2013-2022
- State revenue effect:
 - \$0.9 million in SFY 2011
 - \$6.0 million in SFY 2011-2015

Health Plan Fee

- \$2 annual fee (\$1 for FFY 2013) per average number of lives insured for the year
- Also applies to self-insured plans and government plans that are generally not exempt (except Medicare, Medicaid, SCHIP, federal programs for military, etc.)
- Revenue to trust fund for comparative effectiveness research
- Effective for coverage periods ending after 9/30/2012
- Federal revenue effect:
 - \$0.2 billion in FFY 2018
 - \$3.8 billion in FFY 2013-2022

Repeal Deduction

Federal Subsidies for Retiree Drug Coverage

- Under Medicare Part D, federal government pays subsidies to employers who continue drug coverage for retirees (for those not electing Part D)
- Subsidy is excluded from income and employers are allowed to deduct the cost of providing coverage
- ACA repeals deduction, effective TY 2013
- Federal revenue effect:
 - \$0.3 billion in FFY 2014
 - \$3.1 billion in FFY 2013-2022
- MN did not conform, so no state revenue effect

Medical Device Excise Tax

- 2.3% tax rate applies to sales price
- Manufacturers, producers, and importers pay tax
- Devices typically purchased by consumers at retail are exempt (e.g., eyeglasses and hearing aids)
- Effective 2013
- Federal revenue effect:
 - \$1.7 billion in FFY 2013
 - \$29.1 billion in FFY 2013-2022

Limit Deduction for Insurance Executive Compensation

- Limits deduction for compensation paid to each insurance company executive to \$500,000/year
- Applies to:
 - Companies that derive at least 25% of their gross premiums from health business
 - Compensation paid to officers, directors, employees, and service providers (e.g., consultants)
 - No exemption for performance-based compensation
- Effective TY 2013
- Federal revenue effect:
 - \$0.1 billion in FFY 2014
 - \$0.8 billion in FFY 2013-2022
- No state revenue effect – payors not subject to corporate tax

Annual Fee on Health Insurers

- Fee is a total amount (set in law through 2018, indexed after that), allocated to each “covered” provider in proportion to its share of US health insurance written in the prior year
- Covered insurance excludes:
 - 1st \$25 million of premiums and 50% of 2nd \$25 million of premiums
 - Self-insurance
 - Medicare supplement, long-term care, accident & disability, etc.
- Enforced as federal excise tax
- Effective 2014
- Federal revenue effect:
 - \$6.1 billion in FFY 2014
 - \$101.7 billion in FFY 2013-2022

Excise Tax on High-Cost Employer-Provided Coverage

- 40% excise tax on value of coverage over thresholds
- Thresholds (in 2010 amounts):
 - \$10,200 for single
 - \$27,500 for family
 - Adjusted for risk factors (age, gender, occupation, etc.)
 - Adjusted for increases in health costs between 2010 and 2018
 - Indexed for CPI inflation after 2018
- Effective TY 2018
- Federal revenue effect:
 - \$10.9 billion in FFY 2018
 - \$111.0 billion in FFY 2013-2022

1099 Reporting of Payments to Corporations (*Repealed*)

- 1099s required for payments to a single payee aggregating \$600 or more in a calendar year
- Effective TY 2012
- Federal revenue effect:
 - \$0.4 billion in FFY 2012
 - \$17.1 billion in FFY 2009-2020
- Repealed by P.L. 112-9, April 14, 2011

Increased Corporate Estimated Payment Requirement (*Repealed*)

- Increased corporate estimated payments due in July, August, or September 2014 by 15.75% (accelerated payments from FFY 2015 to FFY 2014)
- Federal revenue effect:
 - \$8.8 billion in FFY 2014
 - \$0 in FFY 2009-2020
- Repealed by P.L. 112-96, February 16, 2012

Revenue Raisers – Individuals

Excise Tax on Indoor Tanning Services

- 10% rate
- Imposed on purchaser, collected by seller
- Effective July 1, 2010
- Federal revenue effect:
 - \$0.2 billion in FFY 2014
 - \$1.5 billion in FFY 2013-2022

Increase Threshold on Itemized Deduction for Medical Expenses

- AGI threshold for medical expense deduction increases from 7.5% to 10%
- Effective tax year 2013, but increase delayed until tax year 2017 if taxpayer or spouse is at least 65 years old
- MN conformed in 2011 Special Session

Increase Threshold on Itemized Deduction for Medical Expenses

- Federal revenue effect:
 - \$0.4 billion in FFY 2013
 - \$18.7 billion cumulative FFY 2013-2022
- State revenue effect:
 - \$7.9 million in SFY 2014
 - \$16.2 million cumulative SFY 2014-2015

Health Pre-tax Accounts – OTC Medicines

- Disallows reimbursement for over-the-counter (OTC) medicines unless prescribed by a doctor
- Effective tax year 2011
- Effective at state level as MMB forecast adjustment
- Federal revenue effect:
 - \$0.2 billion in FFY 2013
 - \$4.0 billion cumulative FFY 2013-2022
- State revenue effect:
 - \$1.6 million in SFY 2011
 - \$14.4 million cumulative SFY 2011-2015

Health Pre-tax Accounts – Tax on Distributions

- Increases additional tax on HSA and MSA distributions not used for medical expenses from 10% to 20%
- Effective tax year 2011
- Federal revenue effect:
 - \$0.1 billion in FFY 2013
 - \$4.5 billion cumulative FFY 2013-2022

Health Pre-tax Accounts – Maximum Allowed

- Decreases the maximum amount allowed under FSAs in plans funded by salary reductions to \$2,500, indexed annually
- Effective tax year 2013
- Effective at state level as MMB forecast adjustment
- Federal revenue effect:
 - \$1.4 billion in FFY 2013
 - \$24.0 billion cumulative FFY 2013-2022
- State revenue effect:
 - \$6.0 million in SFY 2013
 - \$27.8 million cumulative SFY 2013-2015

Medicare Payroll Tax

- Additional 0.9% hospital insurance (HI, or Medicare) payroll tax on wages over a threshold
- Threshold is \$250,000 combined wages for married joint filers, \$125,000 for married separate, \$200,000 for all others
- Unlike existing HI tax, paid only by employees
- Employers must withhold on wages over \$200,000, with any additional amount due paid directly by employees
- Effective tax year 2013

Tax on Unearned Income

- Additional 3.8% tax on lesser of:
 - Modified AGI over a threshold, or
 - Net investment income
- Threshold is \$250,000 modified AGI for married joint filers, \$125,000 for married separate, \$200,000 for all others
- Modified AGI is AGI plus net foreign earned income
- Modified AGI retains exclusion for gain on sale of a principal residence as under regular tax
- Effective tax year 2013

Medicare Payroll Tax *and* Tax on Unearned Income

- Federal revenue effect:
 - \$19.5 billion in FFY 2013
 - \$317.7 billion cumulative FFY 2013-2022
- Payroll tax revenue goes to Medicare Trust Fund
- 0.9% Medicare payroll tax is about 40% of total
- 3.8% tax on unearned income is about 60% of total

Incentives to Change Behavior – Firms

Small Business Tax Credit

- Nonrefundable credit applies to small businesses and exempt organizations with 25 or fewer employees and average wages of \$50,000 or less
- To qualify business must pay minimum of 50% of employees' health coverage – credit applies to amount paid by the employer (not salary reduction)
- Maximum credit rate is 35% for small business and 25% for exempt organizations
- In 2014, maximum credit rates increase to 50% for small businesses and to 35% for exempt organizations, if coverage is purchased through exchanges
- Full credit phases down for businesses or organizations with more employees than 10 or average wages above \$25,000
- Exempt organization credit applies against employer payroll tax
- Effective TY 2010

Small Business Tax Credit

- Federal revenue effect:
 - (\$2.0 billion) in FFY 2010
 - (\$40.0 billion) in FFY 2009 - 2020
- CBO reports that small businesses slower to use the credit than originally estimated; updated data requested but not received

SIMPLE Cafeteria Plan

- Special safe harbor rule from nondiscrimination requirements for cafeteria plans
- Qualifying employers must have 100 or fewer employees
- All employees allowed to participate (exception for those under 21, part-time, and those who haven't worked for at least one year)
- Employer must make minimum contribution
- Effective TY 2011
- Federal revenue effect: negligible

Shared Responsibility for Employers

- Imposes penalties on larger employers (average of 50 or more employees in prior year) that do not offer minimum essential coverage to employees or whose employees obtain coverage through exchange
- Penalty = \$167/employee for each month not offered coverage
- Penalty = \$250/employee for each month for employees purchasing insurance through an exchange with premium credit
- Amounts indexed for inflation after 2014
- Effective 2014
- Federal revenue effect:
 - \$3.0 billion in FFY 2014
 - \$52.0 billion in FFY 2009 - 2020

Free Choice Vouchers

- Requires employers who provide minimum essential coverage to employees to provide qualified employees with vouchers
- Qualified employees are those who would need to pay more than 8% but less than 9.8% of household income for the employer-provided coverage
- Value of voucher is same as employer would have paid for coverage for the qualified employee
- Qualified employee can use to purchase insurance on the exchange, but employee does not qualify for tax credits
- Effective 2014
- Federal revenue effect (CBO estimate):
 - (\$420 million) in FFY 2011 – 2021

Incentives to Change Behavior – Individuals

Premium Assistance Credit

- Refundable credit for insurance purchased through exchanges by individuals with income between 100% and 400% of federal poverty level
- Insurance must provide minimum essential coverage
- Credit equals a percentage of income, increasing from 2% at 100% of FPL to 9.5% at 400% of FPL
- Credit paid directly to insurance exchange
- Effective tax year 2014

Premium Assistance Credit

- Federal revenue effect:
 - (\$5.0 billion) in FFY 2014
 - (\$107.0 billion) cumulative FFY 2009-2020

Personal Responsibility Requirement

- Excise tax for failure to maintain minimum essential coverage
- Penalty equals the greater of:
 - A percentage of income over the income tax filing threshold, or
 - A fixed dollar amount per adult (half that per minor)
but aggregate household penalty is limited to 300% of penalty amount for an adult
- 2014: greater of 1% of income over threshold or \$95
- 2015: greater of 2% of income over threshold, or \$325
- 2016: greater of 2.5% of income over threshold, or \$695 (indexed in following years)

Personal Responsibility Requirement

- Individuals exempt from penalty if cost of insurance through employer or exchange exceeds 8% of income
- IRS collection authority limited
- Effective tax year 2014
- Federal revenue effect:
 - \$2.0 billion in FFY 2015
 - \$17.0 billion cumulative FFY 2009-2020

Coverage for Adult Children

- Extends the exclusion for health insurance benefits to include coverage for adult children up to and including age 26
- Effective for plan years beginning on or after 9/23/2010
- MN conformed in 2011 Regular and Special Sessions

Coverage for Adult Children

- Federal revenue effect (JCT estimate provided to DOR):
 - (\$0.7 billion) in CY 2011
 - (\$10.6 billion) cumulative CY 2011-2019
- State revenue effect:
 - (\$1.9 million) in SFY 2011
 - (\$21.5 million) cumulative SFY 2011-2015

Other ACA Tax Provisions

Provisions with State Revenue Effects

- Income exclusion for certain tribal health benefits:
 - State revenue effect:
 - Negligible in SFY 2011-2015
- Exclusion for loan forgiveness programs for certain health professionals:
 - State revenue effect:
 - **(\$.18 million)** in SFY 2011
 - **(\$0.42 million)** in SFY 2011-2015
- Increased exclusion for employer-provided adoption assistance; extend to tax year 2011:
 - State revenue effect:
 - **(\$0.2 million)** in SFY 2011
 - **(\$0.35 million)** in SFY 2011-2015

Health-related Provisions

This is NOT an exhaustive list

- Tax exemption for certain member run health insurance issuers (effective date of enactment)
- Reporting of insurance coverage to individuals and the IRS by insurers providing minimum essential coverage (effective CY 2014)
- Investment credit (or grants) for qualified therapeutic discovery (effective 2009 and 2010 only)

Health-related Provisions

- Reimbursement or payment of certain plans offered through exchange is qualified benefit under a cafeteria plan (effective TY 2014)
- Authorized disclosure by IRS to Social Security Administration of tax information on Part D subsidies
- Reporting on W-2s of employer-sponsored health coverage (effective TY 2011)
- Information reporting by employers to employees and IRS on coverage information, if benefits exceed 8% of wages for any employee (effective CY 2014)

Health-related Provisions

- Additional requirements for charitable hospitals – community health needs assessment, financial assistance policy, limitations on charges and collection activities, and additional reporting and disclosure (various effective dates)
- Requiring medical loss ratio of 85% or more to claim § 833 deduction

Summary

Revenue Raisers – Firms & Organizations	Federal (FFY 2020)	State	
	Amount (Billions)	Cumulative Amount (Millions)	Fiscal Year Period
1. Prescription Drug Fee	\$ 2.6		
2. Codify Economic Substance Rule	\$ 0.6	\$ 6.0	2011 to 2015
3. Health Plan Fee	\$ 1.2		
4. Repeal Deduction	\$ 0.3		
5. Medical Device Excise Tax	\$ 3.3		
6. Limit Deduction - Insurance Executive Compensation	\$ 0.1		
7. Annual Fee on Health Insurers	\$ 13.0		
8. Excise Tax on High Cost Employer Coverage	\$ 22.0		
Total	\$ 43.1 Billion	\$ 6.0 Million	

Note: Positive Numbers Indicate Revenue Gain, Negative Numbers Indicate Revenue Loss

Summary

Revenue Raisers – Individuals	Federal (FFY2020)	State	
	Amount (Billions)	Cumulative Amount (Millions)	Fiscal Year Period
1. Excise Tax on Indoor Tanning Services	\$ 0.2		
2. Increase Threshold on Itemized Deduction for Medical Expenses	\$ 2.7	\$ 16.2	2014 to 2015
3. Health Pre Tax Accounts -			
(a) Over-the-Counter Medicines Unless Prescribed by a Doctor	\$ 0.5	\$ 14.4	2011 to 2015
(b) Tax on Distributions	\$ 0.7		
(c) Maximum Allowed	\$ 2.8	\$ 27.8	2013 to 2015
4. Medicare (Medicare Trust Fund):	\$ 40.7		
(a) Payroll Tax at 0.9% rate increase on high income earners (about 40% of the total);			
(b) 3.8% on unearned income (about 60% of the total)			
Total	\$ 47.6 Billion	\$ 58.4 Million	

Note: Positive Numbers Indicate Revenue Gain, Negative Numbers Indicate Revenue Loss

Summary

Incentives to Change Behavior - Firms	Federal (FFY 2020)	State	
	Amount (Billions)	Cumulative Amount (Millions)	Fiscal Year Period
1. Small Business Tax Credit*	\$ (4.0)		
2. SIMPLE Cafeteria Plan	Negligible		
3. Shared Responsibility for Employers*	\$ 11.0		
4. Free Choice Vouchers	Not Available		
Total	\$ 7.0 Billion	\$ -	

*Notes:

- 1) Positive Numbers Indicate Revenue Gain, Negative Numbers Indicate Revenue Loss
- 2) FY 2020 annual data not available. Flat-lined FY 2019 estimate to infer FY 2020
- 3) Free Choice annual data not available

Summary

Incentives to Change Behavior – Individuals	Federal (FFY 2020)	State	
	Amount (Billions)	Cumulative Amount (Millions)	Fiscal Year Period
1. Premium Assistance Credit*	\$ (26.0)		
2. Coverage for Adult Children*	\$ (1.6)	\$ (21.5)	2011 to 2015
3. Personal Responsibility Requirement*	\$ 4.0		
Total	\$ (23.6) Billion	\$ (21.5) Million	

*Notes:

1) Positive Numbers Indicate Revenue Gain, Negative Numbers Indicate Revenue Loss

2) FY 2020 annual data not available. Flat-lined FY 2019 estimate to infer FY 2020.

Summary

Other	Federal (FFY 2020)	State	
	Amount (Billions)	Cumulative Amount (Millions)	Fiscal Year Period
1. Income Exclusion for Certain Tribal Health Care Benefits	Negligible	Negligible	FY 2011-2015
2. Exclusion under State Loan Forgiveness Programs for Certain Professionals	Negligible	\$ (0.4)	FY 2011-2015
3. Exclusion for Adoption Assistance Through Tax Year 2011 *	No Revenue Effect	\$ (0.4)	FY 2011-2015
Total	\$ - Billion	\$ (0.8) Million	

Note: Positive Numbers Indicate Revenue Gain, Negative Numbers Indicate Revenue Loss

*The federal estimated tax revenue reduction from TY 2010 to TY 2013 is \$1.2 billion; includes extension of increased adoption credit

Summary

Fiscal Summary of ACA	Federal (FFY 2020)	State (SFY 2010-2015)
	Amount (Billions)	Cumulative Amount (Millions)
1. Revenue Raisers - Firms	\$ 43.1	\$ 6.0
2. Revenue Raisers - Individuals	\$ 47.6	\$ 58.4
3. Incentives to Change Behavior - Firms	\$ 7.0	\$ -
4. Incentives to Change Behavior - Individuals	\$ (23.6)	\$ (21.5)
5. Other	\$ -	\$ (0.8)
Total	\$ 74.1 Billion	\$ 42.1 Million
Total ACA Federal Conformity Provisions Adopted by Legislative Actions		\$ (6.1)
Total ACA Federal Conformity Forecast Adjustments		\$ 48.2

Note: Positive Numbers Indicate Revenue Gain, Negative Numbers Indicate Revenue Loss