

# Tax Provisions of the Affordable Care Act (ACA)

House Research Department and House Fiscal Analysis Department

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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 111<sup>th</sup> 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 2013
  - \$3.8 billion in FFY 2014-2022

## 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:
  - 1<sup>st</sup> \$25 million of premiums and 50% of 2<sup>nd</sup> \$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:
    - **(\$0.18 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. <a href="#">Prescription Drug Fee</a>	\$ 2.6		
2. <a href="#">Codify Economic Substance Rule</a>	\$ 0.6	\$ 6.0	2011 to 2015
3. <a href="#">Health Plan Fee</a>	\$ 1.2		
4. <a href="#">Repeal Deduction</a>	\$ 0.3		
5. <a href="#">Medical Device Excise Tax</a>	\$ 3.3		
6. <a href="#">Limit Deduction - Insurance Executive Compensation</a>	\$ 0.1		
7. <a href="#">Annual Fee on Health Insurers</a>	\$ 13.0		
8. <a href="#">Excise Tax on High Cost Employer Coverage</a>	\$ 22.0		
<b>Total</b>	<b>\$ 43.1 Billion</b>	<b>\$ 6.0 Million</b>	

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. <a href="#">Excise Tax on Indoor Tanning Services</a>	\$ 0.2		
2. <a href="#">Increase Threshold on Itemized Deduction for Medical Expenses</a>	\$ 2.7	\$ 16.2	2014 to 2015
3. Health Pre Tax Accounts -			
(a) <a href="#">Over-the-Counter Medicines Unless Prescribed by a Doctor</a>	\$ 0.5	\$ 14.4	2011 to 2015
(b) <a href="#">Tax on Distributions</a>	\$ 0.7		
(c) <a href="#">Maximum Allowed</a>	\$ 2.8	\$ 27.8	2013 to 2015
4. Medicare (Medicare Trust Fund):	\$ 40.7		
(a) <a href="#">Payroll Tax at 0.9% rate increase on high income earners (about 40% of the total);</a>			
(b) <a href="#">3.8% on unearned income (about 60% of the total)</a>			
<b>Total</b>	<b>\$ 47.6 Billion</b>	<b>\$ 58.4 Million</b>	

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. <a href="#">Small Business Tax Credit*</a>	\$ (4.0)		
2. <a href="#">SIMPLE Cafeteria Plan</a>	Negligible		
3. <a href="#">Shared Responsibility for Employers*</a>	\$ 11.0		
4. <a href="#">Free Choice Vouchers</a>	Not Available		
<b>Total</b>	<b>\$ 7.0 Billion</b>	<b>\$ -</b>	

\*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. <a href="#">Premium Assistance Credit*</a>	\$ (26.0)		
2. <a href="#">Coverage for Adult Children*</a>	\$ (1.6)	\$ (21.5)	2011 to 2015
3. <a href="#">Personal Responsibility Requirement*</a>	\$ 4.0		
<b>Total</b>	<b>\$ (23.6)</b>	<b>\$ (21.5)</b>	
	<b>Billion</b>	<b>Million</b>	

\*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. <a href="#">Income Exclusion for Certain Tribal Health Care Benefits</a>	Negligible	Negligible	FY 2011-2015
2. <a href="#">Exclusion under State Loan Forgiveness Programs for Certain Professionals</a>	Negligible	\$ (0.4)	FY 2011-2015
3. <a href="#">Exclusion for Adoption Assistance Through Tax Year 2011*</a>	No Revenue Effect	\$ (0.4)	FY 2011-2015
<b>Total</b>	<b>\$ - Billion</b>	<b>\$ (0.8) Million</b>	

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. <a href="#">Revenue Raisers - Firms</a>	\$ 43.1	\$ 6.0
2. <a href="#">Revenue Raisers - Individuals</a>	\$ 47.6	\$ 58.4
3. <a href="#">Incentives to Change Behavior - Firms</a>	\$ 7.0	\$ -
4. <a href="#">Incentives to Change Behavior - Individuals</a>	\$ (23.6)	\$ (21.5)
5. <a href="#">Other</a>	\$ -	\$ (0.8)
<b>Total</b>	<b>\$ 74.1 Billion</b>	<b>\$ 42.1 Million</b>
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