

August 24, 2013

AFFORDABLE CARE ACT

INTRODUCTION

Last summer, the United States Supreme Court upheld the constitutionality of the “*Affordable Care Act*” (ACA) removing most of the constitutional issues surrounding health care reform. Consequently, with ACA’s health insurance rules *generally becoming effective in 2014*, efforts by health insurance companies and health care providers to comply with these upcoming health care requirements are in full swing. In addition to changing the rules for the health care industry, ACA contains several critically-important “*tax provisions*” that are designed to serve as the “*enforcement mechanisms*” for ACA’s health insurance mandates.

More specifically, these ACA “*tax provisions*” generally:

- 1) require individuals to maintain qualified health insurance coverage, or pay an excise tax on their individual income tax returns (the “*Individual Mandate*”);
- 2) allow certain low-and-middle income individuals a refundable income tax credit to help pay for health insurance premiums, that will also be reported on an individual’s income tax return (the “*Premium Assistance Credit*”); and
- 3) require employers that employ at least 50 employees to offer qualified health care coverage to employees, or pay an excise tax (the “*Employer Mandate*”).

To help you understand these upcoming “*tax provisions*,” we are sending you this letter generally outlining how these new tax provisions work, and the impact they could have on you or your business.

CAUTION!

The “*Affordable Care Act*” (ACA) states that the three “*tax provisions*” discussed in this letter are to become effective in 2014. However, with 2014 rapidly approaching, the IRS and the Department Of Health and Human Services (HHS) have recently identified several implementation problems involving these ACA tax provisions. Consequently, the IRS and HHS have decided to delay the effective date of certain aspects of these tax provisions by one year. More specifically, the IRS announced that it will postpone its enforcement of the “*excise tax*” under the “*Employer Mandate*” provisions of ACA until 2015. The IRS has also announced that it will delay certain ACA *insurance information reporting requirements* until 2015. In addition, HHS recently announced that, *for 2014 only*, it will loosen certain documentation requirements for individuals applying for the “*Premium Assistance Credit*.”

Planning Alert! As we complete this letter, the IRS *has not indicated* that it intends to postpone the effective date of the “*Individual Mandate*” or the availability of the “*Premium Assistance Credit*” beyond 2014.

We have included a discussion of this late-breaking transition relief in this letter. However, due to the difficulty in implementing this massive new health care legislation, it is quite possible that additional guidance, clarifications, and relief provisions could be released later this year. Feel free to contact us if you want a status report.

Ensure. Enrich. Entrust.

To help you locate items of interest, we have divided the remainder of this letter into the following topics:

- State Insurance Exchanges/Marketplaces
- Excise Tax on Uninsured Individuals (The “Individual Mandate”)
- Refundable “Premium Assistance Credit”
- Potential Excise Tax on “Applicable Large Employers” (The “Employer Mandate”)

STATE INSURANCE EXCHANGES/MARKETPLACES

A major component of ACA’s expansion of health care coverage is the creation of state-by-state health insurance “exchanges” (also referred to as “marketplaces”). Each state is supposed to have its insurance exchange operational and ready to accept insurance applications *by October 1, 2013*. These state exchanges are also critically important to the effective administration and enforcement of the tax provisions discussed in this letter. For example, the refundable “*premium assistance credit*” is only available for insurance coverage purchased at a state exchange.

Planning Alert! Presently, approximately 17 states have committed to set up and run their own state health insurance exchanges. Each of the remaining 33 states has opted to either have the Department of Health and Human Services (HHS) set up and run the state’s exchange, or has agreed to form a partnership with the HHS to establish and operate the state’s exchange.

Tax Tip. HHS has set up a consumer website at www.healthcare.gov designed to provide information on health insurance coverage available on the state exchanges in each individual state. If this website works as planned, you should be able to get the latest information regarding your state’s health insurance exchange at this website.

EXCISE TAX ON UNINSURED INDIVIDUALS (THE “INDIVIDUAL MANDATE”)

Overview. *Starting in 2014*, you may have to pay an excise tax with your individual income tax return (Form 1040) if you or your dependents are not covered by a “*qualified health plan*,” unless you or your dependents qualify for a *specific exemption*. Also, unless an exemption applies, if you are married and file a joint return, you could owe an excise tax if you, **your spouse** or **your dependents** are not covered by a “*qualified health plan*.” For example, if you and your spouse file a joint return and you each have qualified self-only employer-provided health insurance, you would still be liable for any excise tax applicable to a child you can claim as a dependent who is not covered. Furthermore, the IRS says that you cannot avoid the excise tax simply by failing to claim the uninsured person as a dependent on your tax return. Consequently, to avoid this excise tax, an individual generally must either: **1)** have “*qualified health plan*” coverage, or **2)** qualify for a specific “*exemption*” from the tax.

“Qualified Health Plan” Coverage. The excise tax *does not apply* for the period during which an individual has any of the following types of “*qualified health plan*” coverage: **1) Government Plans** - Includes *Medicare Part A, Medicaid, CHIP* (Children’s Health Insurance Program), *TRICARE* for life, a program established by the Secretary of *Veterans Affairs*, a Nonappropriated Fund Health Benefits Program of the *Department of Defense*, and the government health plan for *Peace Corps* volunteers; **2) Eligible Employer Health Plans** - Includes any health insurance coverage under your employer’s group health plan or group health insurance program (including COBRA coverage) that is either a governmental plan, any other plan or coverage offered in the small or large group market within a state, or a “*grandfathered employer health plan*” (as described below) offered in a group market; **3) Insurance Obtained From State Health Insurance Exchange** - Includes individual health insurance policies purchased from any of the state health insurance exchanges; **4) “Grandfathered Health Plans”** - Generally includes a group health plan that existed *as of March 23, 2010*, that has not been modified since that date as to cause it to lose its “grandfathered” status; and **5) Other HHS-Approved Plans** - Includes *state high risk pools* and *self-funded health coverage offered to students by colleges or universities* for plan or policy years **beginning before January 1, 2015** (Please note that HHS may add other programs to this list in the future).

Individuals “Exempt” From Excise Tax. Individuals who are *not covered* under a “*qualified health plan*” will generally be *exempt* from the excise tax if included in any of the following groups: **1)** Individuals in the U.S. illegally; **2)** Members of certain religious sects; **3)** Members of Federally-recognized Indian tribes; **4)** Incarcerated individuals; **5)** Certain U.S. Citizens while living abroad; **6)** Individuals with household income below the threshold for filing an income tax return; **7)** Individuals who fail to have “qualified health plan coverage” for less than 3 months during a year; **8)** Individuals who only have access to qualifying health insurance with premiums that are considered “unaffordable” based on an individual’s household income; and **9)** Individuals who obtain an economic “*hardship exemption certificate*” from a state exchange.

Amount of Excise Tax. *Beginning in 2014*, an excise tax will apply for *each month* that you, your spouse, or your dependents do not have “*qualified health insurance*” coverage (and do not otherwise meet an exemption). Although the excise tax is determined on a monthly basis, the *maximum excise tax* for the *entire 2014 tax year* is the *greater of*: **1)** \$95 per uninsured *adult member* of the household, plus \$47.50 per uninsured member of the household *under age 18, not to exceed \$285*, or **2)** 1% of “*household income*” in excess of the income threshold required for filing a Form 1040 return. However, the overall penalty under this formula cannot exceed the national average premium of the applicable “bronze” level health insurance offered through the state insurance exchanges. Your “*household income*” for purposes of computing this excise tax is your *modified* adjusted gross income (generally, adjusted gross income plus tax-exempt interest and the foreign earned income exclusion), plus the modified adjusted gross income of any person who you claim as a dependent and who is also required to file an income tax return.

For example, assume that for the *entire 2014 year*, Bob is an uninsured, single 30-year old professional who earned \$71,000 (also assume that this represents Bob’s “*household income*”). Assume that the *income filing threshold* for a single taxpayer in 2014 is \$11,000. If Bob does not have “*qualified health plan*” coverage and does not qualify for an “*exemption*,” his excise tax for the *entire 2014 tax year* would be the *greater of*: **1)** \$95, or **2)** \$600 (1% of \$60,000 [i.e., \$71,000 less \$11,000]). Therefore, Bob’s *penalty for the entire year of 2014 would be \$600*, provided the national average premium for “bronze” level health insurance for a single individual offered through the state insurance exchanges was at least \$600. **Planning Alert!** The excise tax increases for **2015**, and increases again in **2016**.

Reporting the Excise Tax. Beginning with the 2014 tax year, the excise tax is reported on your income tax return (Form 1040).

Planning Alert! Spouses filing a joint return are jointly liable for any excise tax on the joint return even if the penalty applies to only one spouse. You are also liable for the excise tax attributable to any person you are eligible to claim as a dependent. Interestingly, the IRS generally *will not be allowed* to collect the *unpaid excise tax* by using IRS *liens or seizures*. However, the IRS may offset any unpaid excise tax against an individual’s tax refund.

Planning Observations. *Starting in 2014*, you may be exposed to this excise tax if you, your spouse, or any individual who is eligible to be claimed as your dependent fails to have “*qualified health plan*” coverage. When exploring ways to avoid this excise tax, it’s important that you consider the new “*premium assistance credit*” (discussed in the immediately following segment) when evaluating the “*affordability*” of “*qualified health plan*” coverage for 2014.

THE REFUNDABLE “PREMIUM ASSISTANCE CREDIT”

Overview. As discussed above, a “*qualified health plan*” (for purposes of avoiding the excise tax) includes individual health insurance coverage purchased through the new *state health insurance exchanges*. To make health insurance more affordable and to encourage individuals to utilize the state health insurance exchanges, *beginning in 2014* ACA provides for a tax credit (the “*premium assistance credit*” or “*PAC*”) for eligible low-and-middle income individuals. The PAC is *only available to individuals* who purchase individual and family health insurance *through a state exchange*. The PAC is “refundable.” This generally means that, to the extent the credit exceeds the

taxes that you would otherwise owe without the credit, the IRS will actually send you a check for the excess. However, unlike the classic refundable credit which is paid directly to the taxpayer, the PAC will generally be payable *in advance directly to the insurer*.

Who Qualifies For The “Premium Assistance Credit” (PAC)? An individual *generally* qualifies for the “premium assistance credit” (PAC) *only if* the individual’s “household income” is *at least 100%* and *not more than 400%* of the Federal Poverty Line (FPL) for the individual’s family size. *For example*, using the 2013 FPL, a family of four could qualify for the PAC even if it had “household income” *of up to \$94,200!* For purposes of the “premium assistance credit,” your “household income” starts with your *adjusted gross income* on your income tax return (plus the adjusted gross income of any person who you properly claim as a dependent and who is also required to file an income tax return), and then certain exclusions on the return are added back. For example, tax-free social security benefits, tax-exempt interest, and the foreign earned income exclusion are *added back* to your *adjusted gross income*. **Tax Tip.** If you otherwise qualify, you are allowed the PAC for health insurance purchased through a state exchange for yourself or your “family” (i.e., your spouse and anyone you properly claim as a dependent).

- **PAC Not Allowed To Certain Individuals.** An otherwise qualifying individual will *not qualify for the PAC* if the person is married and files a separate return (i.e., married individuals must file a joint return to qualify for the PAC). Also, a person who is “eligible” to be claimed as a dependent of another individual will not qualify. In addition, the PAC is *generally not available* to the extent it is attributable to health insurance purchased through a state exchange for a person who is “eligible” for qualifying health care coverage available through programs other than the state exchanges. For example, a person who is “eligible” to enroll in Medicare or Medicaid *will not qualify* for the PAC, even if the person purchases health insurance through the state exchange. Moreover, an individual who is “eligible” for coverage in his or her employer’s “eligible employer health plan” generally does not qualify for the PAC. **Tax Tip.** If an employee is “eligible” to enroll in his or her employer’s “eligible employer health plan,” but enrolls instead in the state health insurance exchange, the employee may still qualify for the PAC if the employer’s health plan: **1)** fails certain employee “affordability” requirements, or **2)** the employer’s health plan does not provide “minimum value” to the employee. **Caution!** The rules for determining whether an *eligible employer health plan* meets the “affordability” and “minimum value” requirements are extremely detailed. Please contact our firm if you need additional details.

How The Premium Assistance Credit (PAC) Is Computed And Paid. The PAC is computed based on a qualifying individual’s “household income” in relation to the “Federal poverty line” (FPL). The amount of the PAC is *reduced* on a sliding scale as an individual’s “household income” *increases* from 100% to 400% of the FPL. If you otherwise qualify, the IRS will generally pay your PAC (as an “advance payment”) *directly to* your health insurance company as a partial premium payment, and you will personally pay the remaining portion of your premium. Your eligibility for the PAC will be determined as part of the evaluation process when you apply for health insurance coverage through your state’s exchange. When you apply for health insurance on the state exchange, the *exchange* is required to: **1)** determine whether your “projected household income” for the period for which you are applying for health insurance satisfies the criteria for a PAC, and **2)** calculate the *amount* of your PAC “advance payments.” To project your “household income” for the applicable year, the exchange (through HHS) will have access to certain information from the IRS regarding your income tax return for the most recent tax year available, and will use that information to calculate your *projected “household income.”* **Tax Tip.** Several health care providers have developed on-line interactive calculators for estimating the amount (if any) of your PAC based on your *projected “household income” for 2014*. For example, the Kaiser Family Foundation has an interactive online calculator at www.kff.org which you can use to estimate your PAC. **Planning Alert!** The HHS recently announced that, *for 2014 only*, the exchanges may rely on certain representations by applicants (without further confirmation) in determining whether the applicant qualifies for PAC “advance payments.” For example, HHS says that in certain situations the exchanges may rely on an applicant’s representation of projected “household income” or “eligibility” to enroll in an eligible employer-sponsored health plan, without requiring outside confirmation.

How The PAC Is Reported On Your Income Tax Return. If you qualify for “*advance payments*” of the PAC, you ***must file*** an income tax return for the year the “*advance payments*” were paid to the health insurance carrier. On the return, you will be required to reconcile 1) the amount of the “*actual*” PAC based on your *actual* “*household income*” from the current tax year’s information, with 2) the amount of your “*advance payments*” (which were “*projected*” based on your “*household income*” as *projected* by the state exchange). The reconciliation will be reflected on your income tax return for the taxable year of the PAC (presumably the IRS will develop a new form for this reconciliation). If your “*actual*” PAC for the current taxable year ***exceeds*** the “*advance payments*” made to the insurance company, the excess is treated as a “refundable” credit (i.e., to the extent the credit exceeds the taxes that you would otherwise owe without the credit, the IRS will actually send you a check for the excess). On the other hand, if your “*advance payments*” for the taxable year exceed your “*actual*” PAC (based on your current year “*household income*”), you will generally owe the excess as an “***additional income tax liability.***” In this latter situation, there may be a dollar cap on the “additional income tax liability,” depending on your “*household income*” for the current year.

Planning Observations. The PAC “*advance payments*” should be particularly beneficial to individuals with “*household income*” below 400% of the “Federal poverty line” who don’t have access to affordable qualified health plan coverage from other programs. If you or your family is in that situation, you should consider *applying for* health insurance through a state exchange. As part of the application process, the exchange is required to determine whether you qualify for PAC “*advance payments.*” If you do qualify, the exchange is also required to determine how much your out-of-pocket premiums will be after the PAC “*advance payments*” are applied. This information should go a long way in helping you determine whether the exchange’s health insurance coverage is affordable based on your specific financial situation.

POTENTIAL EXCISE TAX ON “APPLICABLE LARGE EMPLOYERS” (THE “EMPLOYER MANDATE”)

IRS Delays Effective Date of Employer Mandate Excise Tax and Certain Health Insurance Information Reporting. ACA generally provides that “*applicable large employers*” must offer an “*eligible employer health plan*” to its full-time employees, or face a ***nondeductible excise tax*** (the so-called *play-or-pay* penalty). Although ACA states that this provision becomes effective in 2014, the ***IRS has recently announced that it will not impose this excise tax on employers until 2015.*** The IRS also says that it will delay, ***from 2014 to 2015,*** the ACA requirement that employers must file certain annual health insurance information returns with the IRS and their employees. **Planning Alert!** This delay essentially gives an additional year to prepare for the health care mandate imposed by ACA on “*applicable large employers.*” However, it is not too early for employers to become familiar with how these rules could impact their business operations. Indeed, even though employers will not face a penalty until 2015, there are certain actions employers should consider well before 2015 in order to minimize exposure to this excise tax. Consequently, ***based on current IRS guidance,*** the following is a summary of how the employer mandate is scheduled to operate.

Overview. Generally, ACA provides that an “*applicable large employer*” that fails to offer an “*eligible employer health plan*” to its employees will be required to pay a nondeductible excise tax. “*Applicable large employers*” include not only “for profit” private businesses, but also tax-exempt organizations and government entities. Furthermore, as discussed in more detail later in this letter, even if an “*applicable large employer*” offers its employees coverage in an “*eligible employer health plan,*” it may still face an excise tax if the health plan does not satisfy certain employee “*affordability*” tests, or does not satisfy certain “*minimum value*” requirements. **Planning Alert!** This excise tax applies ***only to*** employers that meet the technical definition of an “*applicable large employer*” (i.e., generally, employers with 50 or more employees). However, before we discuss the technical rules for determining whether an employer meets the 50-employee threshold, the following are several *special rules* that are critical to the potential application of this excise tax to an “*applicable large employer.*”

- **Employees Of Certain Affiliated Employers Must Be Aggregated.** For purposes of determining whether the 50-employee threshold has been met, ACA provides rules requiring the aggregation of the employees of

separate businesses under common control and separate affiliated service groups. Generally, these aggregation rules require all employees of trades or businesses (whether or not incorporated) which are under common control and affiliated service groups to be added together in determining if any member of the group is an “*applicable large employer*” and, therefore, subject to this excise tax. For example, these aggregation rules require the aggregation of the employees of parent-subsidary groups where a group of corporations or unincorporated trades or businesses are controlled through at least 80% ownership by a common parent corporation or business. In addition, the employees of a brother-sister group of businesses must be aggregated in determining if any member of the group is an “*applicable large employer*.” Generally, a group of businesses is a “brother-sister group” if **1)** the same five or fewer persons own at least 80% of each trade or business; and **2)** taking into account the ownership of each such person only to the extent the person’s ownership is identical with respect to each of the trades or businesses, these persons own more than 50% of the trades or businesses. **Planning Alert!** There are complex indirect ownership rules for determining whether the 80% ownership test is met for parent-subsidary groups and whether the 80%/50% ownership test is met for brother-sister groups.

- **“Eligible Employer Health Plan.”** An “*applicable large employer*” will generally avoid an excise tax if it offers its full-time employee coverage in an “*eligible employer health plan*.” An “*eligible employer health plan*” generally includes any ***governmental plan***, any health plan coverage offered in the ***small or large group market*** within a state, and any “***grandfathered***” health plan. **Planning Alert!** A “grandfathered” health plan is generally an employer-sponsored health plan that had at least one enrolled employee ***as of March 23, 2010***, and which has not been modified since that date as to cause the plan to lose its “grandfathered” status. **Tax Tip.** Employers should check with their health insurance carriers to determine if the current plan satisfies the “grandfathered” plan requirements.
- **95% Coverage Safe Harbor.** To avoid an excise tax, an “*applicable large employer*” must generally offer “*eligible employer health plan*” coverage to ***full-time employees*** and ***their dependents***. The IRS says that an “*applicable large employer*” will satisfy this requirement if it offers the health care coverage to all but 5% (or if greater, all but 5) of its otherwise qualifying ***full-time employees*** and ***their dependents***. Therefore, generally, if an “*applicable large employer*” offers “*eligible employer health plan*” coverage to at least 95% of its ***full-time employees and their dependents***, it will be deemed to have satisfied its coverage requirement. **Tax Tip.** This safe harbor provides relief for “*applicable large employers*” that may inadvertently fail to offer health care to certain eligible employees. **Note!** For purposes of determining if an employer offers a plan to “*dependents*” of an employee, “***dependent***” means a child of the employee under age 26.

Determining Whether An Employer Is An “Applicable Large Employer.” The employer “***excise tax***” for failure to offer an “*eligible employer health plan*” to employees applies only to “*applicable large employers*.” An “***applicable large employer***” is generally an employer that employed on average ***50 or more “Full-Time Employees”*** during the business days of the entire ***preceding calendar year***. Consequently, an employer that is below the 50-employee threshold is exempt from the employer “***excise tax***.” **Tax Tip.** An employer that is either well above or well below the 50-employee threshold will generally have little problem determining whether it is an “*applicable large employer*.” However, for employers that maintain a workforce near the 50-employee threshold, the technical rules for determining “*applicable large employer*” status become critically important. **Planning Alert!** The IRS recently issued extensive guidelines which require an employer to apply very specific tests for determining whether it employs 50 or more “***Full-Time Employees***.” ***Solely for purposes of determining whether the 50-employee threshold has been met***, the IRS requires an employer to include not only its “***Full-Time Employees***” (i.e., generally employees that are paid for at least 30-hours per week) but also its “***Full-Time Equivalent Employees***.” The “***Full-Time Equivalent Employees***” calculation is essentially a formula for converting the “part-time” employees’ hours into hypothetical full-time employees. **Caution!** It is important to recognize that, once an employer is classified as an “*applicable large employer*,” it is ***only required to offer*** health plan coverage to its “***Full-Time Employees***.” It is ***not required to offer coverage*** to its “***part-time***” employees (i.e., employees that fall below the 30 hour per week threshold). To determine whether an employer is an “*applicable large employer*” (and therefore required to offer an “*eligible employer health plan*,” or face an excise tax), the IRS guidelines require us to apply the following rules:

- **Testing Period.** Generally, to determine whether an employer is an “*applicable large employer*” for the *current year*, the “*Testing Period*” for applying the “*50-employee threshold*” is the *entire preceding calendar year*. Under this rule, an employer would be classified as an “*applicable large employer*” for **2015** (i.e., the first year the IRS will enforce the employer mandate excise tax) if it employed a monthly average of at least 50 full-time employees (“*Full-Time Employees*” plus “*Full-Time Equivalent Employees*”) during the *entire 2014 calendar year*.
- **Calculating Whether The “50 Or More Employees” Threshold Has Been Met.** As mentioned above, to compute the “average” number of full-time employees, the IRS requires an employer to first compute its number of “*Full-Time Employees*,” and separately compute its number of “*Full-Time Equivalent Employees*” *for each month* of the previous year. A “*Full-Time Employee*” (FT) for *any calendar month* is an employee who is paid on average *for at least 30 hours per week*. The IRS says that if an employer does not want to apply the 30-hour test on a weekly basis, it may choose instead to classify an employee who is paid for at least **130 hours during the month** as an FT. “*Full-Time Equivalent Employees*” (FTEs) for a calendar month are computed by: **1)** determining the *total hours* of all employees *who are not* “*Full-Time Employees*” *during a month* (i.e., employees who fall under the 30-hour-per-week threshold), and **2)** dividing that total *by 120*. For this computation, no more than 120 hours of any part-time worker is included in the monthly total.

After an employer has computed the number of *FTs* and *FTEs* for each month of the preceding year, the employer must then apply the following formula: **1)** compute the sum of the monthly *FTs* and *FTEs* for the entire previous year, and **2)** divide the sum computed in the previous step *by 12*. If the result is **50 or more**, the employer is an “*applicable large employer*” (if the resulting number ends with a fraction, the number is rounded down to the lowest whole number).

- **Example.** Motor Company has **40 “Full-Time Employees”** (i.e., employees who are paid for at least 30 hours per week) for *each month* in **2014**. In addition, for 2014, Motor Company employs **40 “part-time” employees** (i.e., those who are paid on average for less than 30 hours per week). Each part-time employee works 90 hours *each month*. Assume all 80 employees work the *entire 2014* calendar year. Motor Company will determine whether it is an “*applicable large employer*” *for 2015* (based on its **2014** employment information), as follows: **Step #1** - Determine the number of “*Full-Time Employees*” (FTs) for *each month* of 2014 (Motor Company had **40 FTs** for *each month*). **Step #2** - Determine the number of “*Full-Time Equivalent Employees*” (FTEs) for *each month* of 2014 (Motor Company’s 40 part-time workers each worked 90 hours each month for total part-time hours of 3,600 per month). 3,600 hours divided by 120 equals **30 FTEs** for *each month*. **Step #3** - Compute the sum of the monthly *FTs* and *FTEs* for the entire 2014 calendar year (40 FTs each month plus 30 FTEs each month equals 70 each month). 70 times 12 months *equals 840 for the year*. **Step #4** - Divide the sum computed in **Step #3** (i.e., 840) by 12 (840 divided by 12 *equals 70*). **Conclusion.** Motor Company is an “*applicable large employer*” *for 2015* because its combined average of *FTs and FTEs* during the **2014 “Testing Period”** was **70**, which exceeds the 50-employee threshold. **Planning Alert!** Motor Company is an “*applicable large employer*” even though it actually had only 40 “*Full-Time Employees*” (the inclusion of the *FTEs* caused it to meet the 50-employee threshold). However, Motor Company is not required to offer health plan coverage to its 40 part-time employees (i.e., employees that are paid for less than 30 hours per week).

Computation Of The Employer Mandate Excise Tax. There are *two different situations* where an “*applicable large employer*” may be subject to a “*nondeductible*” monthly excise tax under the *Affordable Care Act*. The excise tax is computed differently under each situation. **Planning Alert!** Whether an “*applicable large employer*” falls into the “*First Situation*” (described below) or the “*Second Situation*” (described below), the employer *will not be subject to any excise tax* unless a state exchange certifies that *at least one of its “Full-Time Employees”* has obtained health insurance coverage from the exchange and also *certifies* that the employee received the “*premium assistant credit*” (PAC) or a cost-sharing reduction subsidy.

- “**First Situation**” **Causing Excise Tax.** The “*First Situation*” that would subject an “*applicable large employer*” to an excise tax is where **1)** the employer *fails to offer* an “*eligible employer health plan*” (as defined previously in this letter) for a calendar month to all but 5% (or 5 if greater) of its “*Full-Time Employees*” and their dependents, **and 2)** the employer has received a certification from an exchange that at least one employee

has obtained health insurance coverage from the exchange and has received the “*premium assistant credit*” (PAC) or a cost-sharing reduction subsidy for that month.

- **Amount Of Excise Tax.** In this “*First Situation*,” the “*applicable large employer*” is subject to an excise tax of **\$166.67 per month** (as adjusted for inflation after 2014) for each “*Full-Time Employee*” **in excess of a 30-employee** threshold. Therefore, for 2015, the maximum “annual” penalty for each “*Full-Time Employee*” in excess of the 30-employee threshold is \$2,000 (\$166.67 x 12 months).
- **“Second Situation” Causing Excise Tax.** The “*Second Situation*” that would subject an “*applicable large employer*” to an excise tax is where **1)** the employer **does offer** “*eligible employer health plan*” coverage to its “*Full-Time Employees*” and their dependents for a calendar month, **and 2)** the employer has received certification from a state insurance exchange that at least one employee obtained health insurance coverage from the exchange that qualified the employee for the “*premium assistant credit*” (PAC), or a cost-sharing reduction subsidy. **Planning Alert!** Generally, as previously discussed in the “*premium assistance credit*” (PAC) segment of this letter, an otherwise qualifying individual who **is offered** “*eligible employer health plan*” coverage could qualify for the PAC **only if** the “*eligible employer health plan*” failed to satisfy either the “*affordability*” test or the “*minimum value*” test with respect to that individual. The “*affordability*” test is generally violated with respect to an employee if the employee’s required contribution to the plan (e.g., employee’s share of health insurance premiums) for self-only coverage **exceeds 9.5%** of the employee’s “*household income*.” The “*minimum value*” test is generally violated if the employer’s health plan does not cover **at least 60%** of the cost of the benefits provided under the plan. In other words, for the excise tax to apply to an “*applicable large employer*” that offers employees an “*eligible employer health plan*,” the employer’s “*eligible employer health plan*” would have to fail either the “*affordability*” test or the “*minimum value*” test with respect to at least one employee, allowing the employee to qualify for the “*premium assistance credit*” for health insurance purchased on the state exchange.
- **Amount Of Excise Tax.** In this “*Second Situation*,” the “*applicable large employer*” is generally subject to an excise tax of **\$250 per month** (as adjusted for inflation after 2014) for **each “Full-Time Employee”** who is certified as enrolled in a state health insurance exchange and **who received a “premium assistance credit” (PAC)** or a cost sharing reduction subsidy. **Planning Alert!** The excise tax in this “*Second Situation*” (i.e., where the employer offers an “*eligible employer health plan*”) can never exceed the excise tax that would have been imposed had the “*applicable large employer*” been subjected to an excise tax in the “*First Situation*” (i.e., where the “*applicable large employer*” failed to offer an “*eligible employer health plan*”).

Which Employees Must Be Offered Health Care By “Applicable Large Employers”? Once an “*applicable large employer*” decides to offer its employees “*eligible employer health plan*” coverage, the employer still must satisfy certain ACA requirements for the “*administration*” of the plan. The IRS has recently issued detailed guidance dealing with various administrative requirements, including: **1) which** “*Full-Time Employees*” must be offered coverage, **2) when** a “*Full-Time Employee’s*” coverage must begin, and **3) how long** a “*Full-Time Employee’s*” coverage must last. **Planning Alert!** This IRS guidance addressing these administrative requirements is extensive. We suggest that you review these technical rules with your company’s health insurance representative.

FINAL COMMENTS

Please contact us if you are interested in a topic relating to the *Affordable Care Act* that we did not discuss. In addition, please call us before implementing any planning ideas discussed in this letter, or if you need additional information. **Caution!** The information contained in this material represents a general overview of selected tax provisions of the *Affordable Care Act* and should not be relied upon without an independent, professional analysis of how any of these provisions may apply to a specific situation.

Circular 230 Disclaimer: Any tax advice contained in the body of this material was not intended or written to be used, and cannot be used, by the recipient for the purpose of **1)** avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions, or **2)** promoting, marketing, or recommending to another party any transaction or matter addressed herein.

A handwritten signature in blue ink, appearing to read "Mark B. White". The signature is written in a cursive style with a large, looped initial "M".