Affordable Care Act Tax Refund Claim Looming

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Since its inception, the Affordable Care Act (ACA), also known as Obamacare, has been challenged for its constitutionality on several fronts. Most recently, the U.S. Supreme Court has agreed to consider yet another challenge to ACA provisions. In the case *California v. Texas* (known as *Texas v. U.S.* in previous litigation), while challenging the "individual mandate" provision that requires most people to either maintain a minimum level of health insurance coverage or pay a financial penalty known as the "shared responsibility payment," the litigants are also calling the entire ACA into question, which includes the constitutionality of its tax provisions.

When the ACA was enacted it brought with it several tax consequences for higher-income taxpayers. These tax provisions included a .9% Medicare tax on income greater than $200,000 for a single taxpayer and $250,000 for married taxpayers filing jointly, and a 3.8% net investment income tax (NII) that is applicable to investment income such as dividends, interest, and capital gains from taxpayers with a certain adjusted gross income threshold.

Many predict that it is not likely that the Court will declare the tax unconstitutional for tax years prior to 2019 because of Congress' elimination of the shared responsibility payment pursuant to the 2017 Tax Cuts and Jobs Act in 2019. Nevertheless, when the Supreme Court rules that a tax is unconstitutional, taxpayers may be refunded money previously paid; thus, if the Court finds the ACA to be unconstitutional, taxpayers will have the opportunity to be refunded Medicare tax and NII payments since the 2016 tax year.[1]

It is important for taxpayers to consider that refund claims are subject to a 3-year statute of limitations. This means that, considering the COVID-19 IRS filing and payment deadline "extensions," the earliest date to file an amended return refund claim for the 2016 tax year is July 15, 2020, assuming filing was made on or before April 15, 2017. Because the Court is not expected to hear the case until after the 2020 Presidential Election in

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November, and thus will likely not rule on the matter until 2021, in order for taxpayers to ensure full refunds in the event the ACA provisions are found to be unconstitutional they must file protective refund claims by July 15.

Protective refund claims best position a taxpayer to preserve a claim in the event a tax is found to be unconstitutional after the statute of limitations has expired. While many believe it is unlikely the tax for years 2016-2018 will be considered unconstitutional, in order to protect against the often inevitability of drawn out litigation from eventually barring additional tax refunds, taxpayers should consider filing a 2016 year claim by July 15, 2020.

To learn more about filing protective refund claims, or other ways your taxes may be changing, visit *Tax Law Defined Blog*, or contact Frost Brown Todd's Tax Team.

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[1] The Medicare tax is reported on IRS Form 8959, Part IV, Line 18 and the NII is reported on IRS Form 8960, Part III, Line 17.

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