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Why Taxpayers May Want to File a Protective Claim With the IRS for a Refund of ACA-Related Taxes



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Following the enactment of tax reform legislation in 2017 commonly known as the Tax Cuts and Jobs Act (TCJA), the constitutionality of the “individual mandate” under the Affordable Care Act (ACA) came into question and is one of the issues to be decided in a case now pending before the United States Supreme Court.

The stakes – and urgency – for some taxpayers might be high enough, if the ACA is ruled unconstitutional, for them to proactively file a protective claim with the Internal Revenue Service for a refund for ACA-related taxes paid starting in tax year 2016. ***But the deadline to file a protective claim for the 2016 tax year is next Wednesday, July 15, 2020.***

Background

Under the ACA, the individual mandate created a tax penalty for individual taxpayers without health insurance. In 2012, the Supreme Court ruled that the individual mandate was constitutional as the penalty on individuals who did not buy health insurance was a tax, and Congress had the power to impose. However, the TCJA amended the ACA to provide that the penalty imposed on individuals who did not buy health insurance was zero. In response, a group of states led by Texas went to federal court claiming that the individual mandate was unconstitutional because the penalty was now zero, and therefore no longer a tax, which has now made its way to the Supreme Court. The justices are expected to hear the case later this year, with a decision most likely to be made some time in 2021.

Tax Implications Under ACA

As a result of the ACA, taxpayers became subject to the 0.9% Additional Medicare Tax and the 3.8% Net Investment Income Tax (ACA Income Taxes). The Additional Medicare Tax affects individuals, and the Net Investment Income Tax affects individuals, estates and trusts. One of the issues before the Supreme Court is whether the individual mandate can be severed from the rest of the ACA. If it cannot, and all of the ACA is deemed to be unconstitutional, the ACA Income Taxes would most likely also be eliminated.

Statute of Limitations

Generally, a taxpayer may make a claim for refund on the taxpayer's income tax return during the three-year period from the due date of the return or the date the return was filed, whichever is later. By way of illustration, if the taxpayer filed on March 20, the three-year period would begin on April 15. If the taxpayer extended the filing date of the taxpayer's income tax return, the three-year period would begin on the date the taxpayer filed, whether October 15 or any date before October 15.

Impact of Case on Taxpayer

If the Supreme Court rules that the whole of the ACA is unconstitutional, and if the ACA Income Taxes are eliminated, and if the elimination of the ACA Income Taxes are retroactive to previous tax years, a taxpayer may file a protective claim for refund for its 2016 tax year that would keep the taxpayer's 2016 tax year open for a potential refund. In addition, because the case may not be decided until 2021, a taxpayer may desire to also file a protective claim for refund for its 2017 tax year as well. As noted, several steps will need to be met for a taxpayer to receive a potential refund. Each taxpayer will need to weigh the benefits of filing a protective claim for refund and make its own determination.

Protective Claim for Refund

A taxpayer may file a protective claim for refund when the taxpayer's right to a refund is contingent on future events and may not be determinable until after the statute of limitations expires. A taxpayer's statute of limitations with regards to its 2016 tax year (filed in 2017) is set to expire in 2020. If a taxpayer filed its 2016 tax return on or before April 15, 2017, the taxpayer's statute of limitations will expire on July 15, 2020, due to the extension of time for time-sensitive actions due to COVID-19.

Thus, if a taxpayer desires to file a protective claim for refund, the taxpayer must do so by the appropriate time in 2020. **We have drafted a sample letter that may be used to file a protective claim for refund (links below)**. We recommend sending the letter via certified mail to obtain proof of timely filing. The sample letters can be used for any state; please refer to the chart attached to the letter for the appropriate mailing address.

[Individual sample letter](#)

[Trust or estate sample letter](#)

For additional information, or assistance filing a protective claim for refund, please contact a member of Gould & Ratner's [Tax Planning and Compliance Practice](#).