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Taxes and the American Health Care Act: Frequently Asked Questions

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On May 4, 2017, the U.S. House of Representatives passed H.R. 1628, also known as the American Health Care Act of 2017 (the "AHCA"). (The bill that was passed by the House is an amended version of proposed legislation that was presented in March but failed to be brought to a vote.) The AHCA is styled as a budget reconciliation bill, which may only address matters related to spending, tax revenue, and the debt ceiling. (For additional discussion of the budget reconciliation process, see the *What's News in Tax* article, "What Does the Future Hold for the Tax Provisions of the Affordable Care Act?" (Nov. 29, 2016).) Consequently, many of the AHCA's provisions are tax law changes. These changes, if enacted, could potentially have significant consequences for individuals, employers, healthcare organizations, and taxpayers generally. This article explains the proposed legislation by answering some questions about the bill and comparing it to an earlier proposal.

1. What tax law provisions are included in the AHCA?

The Appendix to this FAQ includes a table that summarizes the tax provisions of the AHCA. This table is formatted for easy comparison with the table in the *What's News in Tax* article, "Potential Tax Implications of Healthcare Reform" (Feb. 28, 2017), which compared the tax provisions of various healthcare reform proposals that preceded the AHCA.

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2. Does the AHCA repeal all of the tax provisions of the Affordable Care Act?

No. The AHCA would repeal many, but not all, of the taxes in the Affordable Care Act.

Tax provisions of the Affordable Care Act that would *not* be affected by the AHCA include:

- Codification of the economic substance doctrine
- Requirements for tax-exempt hospitals under section 501(r)
- Medical loss ratio requirements for Blue Cross Blue Shield entities
- The Patient-Centered Outcomes Research Institute (PCORI) fee
- Certain information reporting requirements

3. How would the AHCA affect employers?

The AHCA retains many of the Affordable Care Act market reforms popular with employees, such as coverage of adult dependent children up to the age of 26, capping out-of-pocket expenses, coverage of preventive care with no cost-sharing, and elimination of annual and lifetime maximums on essential health benefits. (These provisions of the Affordable Care Act do not pertain to government taxes or spending and presumably cannot be modified through the budget reconciliation process.) The AHCA gives states more autonomy in deciding health insurance offerings within the state. The AHCA also gives states the right to opt out of certain Affordable Care Act essential health benefits such as mental health treatment, drug addiction treatment, and certain maternity care. If enacted, this provision could provide companies the option to offer their employees lower cost health insurance coverage with reduced benefits in certain circumstances.

The AHCA would reduce employer burdens and expenses in a number of ways, including repeal of the employer mandate penalty tax, effective retroactive to January 1, 2016, and delay of the effective date for the Excise Tax on High Cost Employer-Sponsored Health Coverage (the so-called “Cadillac Tax”) to 2026. However, the AHCA would also repeal the small business health plan tax credits. For employers that are covered health insurance providers, the AHCA would repeal the section 162(m)(6) limitation on compensation deductions.

If the AHCA is enacted, employers may need to modify their plans to comply with new rules that would expand the use of health savings accounts, flexible spending accounts, and health reimbursement arrangements. The AHCA would not repeal information reporting obligations for employers under the Affordable Care Act (including Forms 1094 and 1095).

4. How would the AHCA affect tax-exempt healthcare organizations?

The AHCA would significantly affect all healthcare organizations, regardless of tax status due to the non-tax reforms that are included in the legislation. For healthcare providers, significant Medicaid reforms included in the AHCA could affect federal reimbursements and lead to a greater number of uninsured or underinsured patients, resulting in more uncompensated care. For both taxable and

tax-exempt health insurers, the AHCA would change how plans would be priced in the individual marketplace.

None of the provisions of the AHCA specifically address tax-exempt healthcare organizations. There are, however, some tax provisions in the AHCA that will affect both tax-exempt and taxable healthcare organizations. For example, the annual health insurer fee applies to both taxable and tax-exempt health insurers (although tax-exempt health insurers pay the fee on a reduced premium base), so both tax-exempt HMOs and taxable health insurance companies would benefit from the repeal of that provision. In addition, both tax-exempt and taxable healthcare providers could be affected indirectly by some of the AHCA's tax provisions, such as the repeal of the medical device excise tax, which could reduce some costs.

5. Will the AHCA become law?

It is unlikely that the Senate will pass the AHCA in its current form. It has been reported that the Senate is working on its own healthcare reform bill. In addition, for the bill to pass muster under the Senate's procedural rules for a budget reconciliation bill, it may only include provisions that address taxing and spending. It is likely that certain provisions of the AHCA as passed by the House would have to be dropped from the bill in order to satisfy these procedural requirements.

With respect to the tax provisions specifically, it is unclear to what extent repealing these provisions is a high priority for Senate Republicans, as it is possible that a determination may be made that some of these taxes and fees will be needed to fund a new healthcare system. Accordingly, what will happen to the Affordable Care Act's tax provisions remains uncertain as healthcare reform efforts proceed in the Senate.

6. What is the connection between healthcare reform and tax reform?

President Trump and other Republicans have expressed a preference for addressing healthcare reform prior to tax reform, because passing legislation that repeals all or some of the Affordable Care Act tax provisions will benefit tax revenue "baseline" issues. In other words, passing healthcare reform first gives the Republicans a "head start" on reducing taxes, with revenue offsets provided by the repeal of various Affordable Care Act spending provisions. If tax reform were to occur first, repeal of these provisions would require that other offsets be identified if tax reform is to be enacted on a revenue-neutral basis.

In addition, procedural constraints restrict Congress's ability to proceed with tax reform until healthcare reform efforts are either successful or abandoned. There can be only a limited number of reconciliation bills in a year and only one reconciliation bill may be open at any given time. The 2017 fiscal year budget resolution is the procedural tool being used to pass healthcare reform legislation; accordingly, Republicans may not be able to use the reconciliation process again to move tax reform in the Senate until a future fiscal year budget resolution is passed. As a result, if Republicans want to use the reconciliation process to pass tax reform, they must first conclude their efforts on healthcare reform.

Appendix

Tax Provisions of the American Health Care Act

The table below compares key tax provisions of the American Health Care Act with the original Republican healthcare reform outline, titled "A Better Way." This table does not address the non-tax provisions in either proposal.

It is important to note that the Senate has not yet taken up the American Health Care Act, and there is currently a great deal of uncertainty around the substance, timing, and effective date of any Senate proposal.

	A Better Way: Our Vision for a Confident America, 2016	American Health Care Act of 2017 (H.R. 1628)
Introduced by	House Speaker Paul Ryan	Rep. Diane Black
Date introduced	Better Way: June 22, 2016 Policy Brief: February 16, 2017 Legislative text has not yet been introduced.	March 6, 2017 Amendments added prior to passage by the House, May 4, 2017
Summary	This high-level House Republican plan would repeal the Affordable Care Act ("ACA"), provide refundable tax credits to purchase health insurance, expand health savings accounts ("HSAs"), and add certain measures to improve health insurance access and consumer choice. House Republicans recently presented a similar proposal in the "Obamacare Repeal and Replace Policy Brief." Legislative text has not yet been introduced.	This "repeal and replace" legislation was passed by the House on May 4, 2017. It would repeal many of the ACA taxes and fees (as outlined below), roll back Medicaid expansion under the ACA, expand HSAs, and provide states with funds over 10 years that could be used for a variety of health-related purposes such as establishing a high-risk fund, subsidizing premiums, etc. The legislation included an amendment crafted by Representative Tom MacArthur (R-NJ) that allows states to waive age bands, essential benefits and community rating for certain individuals, and an amendment from Representative Fred Upton (R-MI), that provides an additional $8 billion

	A Better Way: Our Vision for a Confident America, 2016	American Health Care Act of 2017 (H.R. 1628)
		to help cover costs for patients with pre-existing conditions in states approved for a community rating waiver.
Tax Provisions for Employers		
Employer mandate	Repeal	Repeal effective for months after 12/31/2015
Information reporting (section 6056)	Not addressed	Unchanged
Cadillac Tax	Likely to be repealed	Effective date postponed to 2026
Small business healthcare tax credit	Not addressed	Repeal effective for years beginning after 12/31/2019
Tax Provisions for Individuals		
Individual mandate	Repeal	Repeal effective for months after 12/31/2015
Premium tax credits for individuals	Yes, refundable and advanceable	The proposal would create an advanceable tax credit that would be age-adjusted as follows: • $2,000 for individuals under 30 • $2,500 for individuals between 30 and 40 • $3,000 for individuals between 40 and 50 • $3,500 for individuals between 50 and 60 • $4,000 for individuals over 60 The total tax credit for a family would be capped at $14,000. The tax credit would be available for major

	A Better Way: Our Vision for a Confident America, 2016	American Health Care Act of 2017 (H.R. 1628)
		medical health coverage or unsubsidized COBRA continuation coverage not covering elective abortions. The tax credit would not be available to individuals eligible for employer coverage (regardless of affordability or adequacy) or a government program.
Increased threshold for medical expense deductions	Repeal	• Repeal effective for 2017 • Reduces qualifying threshold from 10 to 5.8 percent (which is lower than the pre-ACA level of 7.5 percent)
Medicare surtax	Not addressed	• Repeal effective for 2023 • Includes rule reducing self-employment taxes by 0.9 percent on income in excess of the statutory limits
Net investment income tax	Not addressed	Repeal effective for 2017
Statutory limit on FSA contributions	Not addressed	Repeal effective for 2017
Tax exclusion for employer-provided health insurance	Capped	Remains in effect
Expanded limits for HSAs	Yes ($6,550 for self-only and $13,100 for family coverage)	Yes ($6,550 for self-only and $13,100 for family coverage) Takes effect for 2018 Also, the additional tax on non-HSA qualified distributions from an HSA arrangement would be reduced to 10 percent (from the current 20 percent)

	A Better Way: Our Vision for a Confident America, 2016	American Health Care Act of 2017 (H.R. 1628)
Healthcare Industry Tax Provisions		
Section 501(r)	Not addressed	Remains in effect
Branded prescription drug fee	Repeal	Repeal effective for 2017
Medical device excise tax	Repeal	Repeal effective for 2017
Health insurer fee	Repeal	Repeal effective for 2017
Blue Cross Blue Shield medical loss ratio requirement	Not addressed	Remains in effect
Section 162(m)(6)	Not addressed	Repeal effective for 2017
Information reporting by insurers (section 6055)	Not addressed	Remains in effect, but new reporting is required for off-exchange coverage for purposes of the premium tax credit
Patient-Centered Outcomes Reinsurance Trust Fund Fee	Not addressed	Remains in effect
Section 501(c)(29) CO-OPs	Likely to be repealed	Remains in effect
Modified tax treatment of retiree drug subsidies to plan sponsors	Not addressed	Repeal effective for 2017
Other Tax Provisions		
Indoor tanning tax	Not addressed	Repeal effective for services performed after June 30, 2017
Codification of the economic substance doctrine	Not addressed	Remains in effect

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