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No Statutory Authority under Obamacare? No Problem

By Karen Duquette

The Cato Institute, in conjunction with Case Western School of Law, has come out with a recent working paper that details how the new IRS rules under Obamacare taxes employers, issues tax credits, and creates new deficit spending all without statutory authority.

Here's the abstract:

"The Patient Protection and Affordable Care Act (PPACA) provides tax credits and subsidies for the purchase of qualifying health insurance plans on state-run insurance exchanges. Contrary to expectations, many states are refusing or otherwise failing to create such exchanges. An Internal Revenue Service (IRS) rule purports to extend these tax credits and subsidies to the purchase of health insurance in federal exchanges created in states without exchanges of their own. This rule lacks statutory authority. The text, structure, and history of the Act show that tax credits and subsidies are not available in federally run exchanges. The IRS rule is contrary to congressional intent and cannot be justified on other legal grounds. Because the granting of tax credits can trigger the imposition of fines on employers, the IRS rule is likely to be challenged in court."

The crux of the issue surrounds whether the federal government can issue these tax credits and "penalties" where a state has refused to set up its own exchange. The feds could set up a federal exchange but the Act (Obamacare) only authorizes subsidies through a state-based exchange. Where then, do they think they get their authority? Check out the paper for a more detailed explanation!