Human Events
POWERFUL CONSERVATIVE VOICES

Business Owners Sue IRS Over Obamacare Employer Mandate

By: John Hayward – May 2, 2013

A new legal challenge to ObamaCare comes from a group of individuals and small business owners in six different states, who charge that the Internal Revenue Service has illegally expanded ObamaCare's employer mandates, contradicting the explicit language of the legislation.

"The Affordable Care Act authorizes health insurance subsidies to qualifying individuals in states that created their own healthcare exchanges," the group explained in a press release. "Those subsidies trigger the employer mandate (a $2,000/employee penalty) and expose more people to the individual mandate. But last spring, without authorization from Congress, the IRS vastly expanded those subsidies to cover states that refused to set up such exchanges. Under the Act, businesses in these nonparticipating states should be free of the employer mandate, and the scope of the individual mandate should be reduced as well. But because of the IRS rule, both mandates will be greatly enlarged in scope, depriving states of the power to protect their residents."

To date, 33 states have chosen not to create the exchanges in question.

Plaintiffs offered a number of different reasons for joining the suit: "One business can only afford to employ some full-time workers without providing health insurance, another wants to convert its employee health insurance to a completely consumer-driven health plan, and several individual plaintiffs (most of them self-employed) object to paying for costly insurance packages that they neither need nor want."

Representatives of the organizations coordinating and supporting this lawsuit had some tough things to say about the IRS action, which they regard as "flagrantly illegal."

> "Agencies are bound by the laws enacted by Congress," said Sam Kazman, general counsel of the Competitive Enterprise Institute (CEI). "Obamacare is already an incredibly massive program. For the IRS to expand it even more, without congressional authorization and in a manner aimed at undercutting state choice, is flagrantly illegal."
>
> "Contrary to the clear language in the Affordable Care act, government is directly impeding my ability to design a quality affordable health plan for my employees," said Chuck Willey, M.D., one of the plaintiffs and head of Innovare Health Advocates in St. Louis, Missouri. "The IRS will extra-legislatively extend this onerous benefit requirement, which will increase premiums and costs of care, and impose the employer penalty in states with federally-run exchanges. I

> maintain the right to choose my own employees' health plan without government intervention into its benefit design and without penalty."
>
> "The IRS cannot rewrite the law that Congress passed," said Tom Miller, resident fellow at the American Enterprise Institute. "Its regulation expressly flouts the statutory text of the ACA, the intent of Congress, and the reasoned choices of 33 states."
>
> "The Obama administration plans to tax, borrow, and spend more than half a trillion dollars in clear violation of Obamacare, yet still says Obamacare is 'the law of the land,' saidMichael Cannon, director of health policy at the CATO Institute. "The courts should stop the administration before it starts imposing these illegal taxes on millions of individuals and employers in January."

As it happens, Investor's Business Daily just ran an article about the collapse of employer spending on benefits last quarter, "as companies began bracing for higher health costs with next year's launch of ObamaCare."

> Slower health-cost growth may be a contributing factor but wouldn't explain outright declines in per-person benefits.
>
> A possible explanation for the sudden shift could be that a smaller share of workers are being provided health care and other benefits due to part-time status — less than 30 hours per week under ObamaCare.
>
> Under ObamaCare regulations issued in January, the fines employers face in 2014 for failing to provide minimum-required coverage will be based on employment levels starting this July.
>
> In the past six months or so, a parade of service-sector companies has said they're mulling changes to worker hours and health benefits to reduce the cost of complying with ObamaCare.
>
> For example, Krispy Kreme (KKD) said in an SEC filing that it has 1,300 workers without coverage who may be entitled to it under ObamaCare at a potential cost of up to $5 million — before actions it might take "to reduce the number of employees subject to the new requirements."
>
> Fiesta Restaurant Group (FRGI), which operates 251 restaurants in four states, said it is "reviewing our strategy for employing part-time vs. full-time employees" in managing compliance costs.

What we really need to get this economy moving is full repeal of ObamaCare. But maybe we can at least win some relief for small business by insisting that it operate within the parameters of the law.