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An Unhealthy Dose of Obamacare Taxes

By: J.D. Tuccille - January 4th, 2012

In what was already an eventful year, Obamacare generated lots of buzz in 2012, first in the lead-up to the Supreme Court's much-anticipated ruling on the constitutionality of the Affordable Care Act, and then in the chatter-heavy aftermath of the surprise decision upholding the law. After that, headlines focused on Medicaid expansion (which states would and which states wouldn't) and health insurance exchanges (which states would take the task on, and which would tell the feds to tackle the mess themselves). But government regulations and new or expanded bureaucracies don't pay for themselves, you know; they require tax-funding. And we heard relatively little about the plague of taxes and tax changes that now sweep over us with the dawn of 2013.

Actually, we may have heard a *little*. The medical device industry had the resources to make a futile fuss relatively early about the 2.3 percent tax that is being levied on *gross* sales, without regard to profitability. That's right, in the red, or in the black, the medical device industry will have to give the government a cut. According to the Medical Devices Manufacturers Association, a trade group, "Many companies will owe more in taxes than they generate from their operations." The tax, which has its own IRS FAQ, along with 10 pages of helpful guidance (PDF), has somewhat disheartened crafters of pacemakers and brain implants. A survey conducted by the *Massachusetts Medical Devices Journal* found that "more than 40% of member company executives anticipate job losses as a result of the 2.3% medtech levy."

Speaking of brain implants, Frank Fischer, chief executive of NeuroPace Inc., a start-up company that manufactures just that, told *The Wall Street Journal*:

> "If we were trying to start the company today, I don't believe we'd be able to fund it," he said. "[With] the length of time the regulatory process has been taking over [the] last several years, and this additional issue of the tax on top of that, I believe many companies—if they weren't in the later stages of approval—wouldn't get the funding to get there."

Critics say that the tax could will stifle innovation, although it's just as likely to drive companies to move operations overseas.

But the medical device industry is an organized business community that can fight its own battles. Relatively unprepared individuals are targeted by the Additional Medicare Tax, which whacks higher-income Americans with a 0.9 percent surcharge on wages, Railroad Retirement Tax Act compensation, and self-employment income. The tax boosts the take on any income currently subject to Medicare tax, above the applicable threshold:

- $250,000 for married couples filing jointly
- $200,000 for individuals
- $125,000 if you're married and filing singly

As it turns out, there *is* a marriage penalty built into Obamacare. Surprise!
As Grace-Marie Turner of the Galen Institute points out, "This means the current 2.9% Medicare payroll tax will be increased to a total of 3.8% — a big hit especially for the self-employed." Keep in mind that the original 2.9 percent is split between employees and employers (nominally, anyway, though the employer's share is generally believed to be reflected in reduced compensation), while the new tax comes straight out of the taxpayer's pocket.

Oh, and note that, according to the IRS's oh-so-helpful FAQ, if you're married and make over 200 grand, but your spouse's income doesn't push you over the $250K limit, too bad for you. Your employer has to withhold the tax and you get to ask for it back when you file. Don't expect a thank-you note for that loan.

Anybody at that income level probably has some investment income, which also comes in for attention from the revenue-hungry Obamacare machine. That attention arrives in the form of a 3.8 percent hit at the same thresholds as wage income, pointed out above. As short and not-so-sweet as that sounds, the tax on investments is far from simple. There is, of course, a handy-dandy IRS FAQ, or you can take a quick glance through the tax agency's 42 pages (PDF) of explanatory rule-making. However, Amy Feldman, a finance wiz at Reuters, offers a bit of caution to those who have even slightly complicated finances:

> Medicare surcharge strategies get more complex for those who have trusts ... most trusts — with the exception of charitable trusts, which are exempt — will be affected. One possible strategy: Trusts may be able to reduce or eliminate the Medicare tax by distributing income to beneficiaries.

Feldman also warns that interest payments on intra-family loans "could be" subject to the Obamacare tax. Don't you love that "could be" element of uncertainty when interpreting elements of a tax code that's enforced by fines and prison sentences?

Of course, most Americans don't make enough money to be affected by the Additional Medicare Tax or the Net Investment Tax, but many of us still enjoy using Flexible Savings Accounts. Tax-free contributions to these were uncapped in the past, potentially giving people a great deal of control over their healthcare. Now, though, FSA contributions are limited to $2,500. Anyway, as the IRSinforms us, except for insulin, FSAs were already hobbled in 2011, ever since which "the cost of an over-the-counter medicine or drug cannot be reimbursed from Flexible Spending Arrangements (FSAs) or health reimbursement arrangements unless a prescription is obtained." Health Savings Accounts and Archer Medical Savings Accounts got similar treatment.

In another sneaky rule-shift, medical deductions get pushed a little further out of reach as the feds raise the bar you have to reach on expenses before you can write them off. Says the Medicare Newsgroup:

> *People can now itemize deductions for medical expenses for amounts in excess of 7.5 percent of their adjusted gross income (AGI). If the AGI is $100,000, people can deduct any expenses in excess of $7,500. The threshold will be increased to 10 percent of adjusted gross income on Jan. 1, 2013, making it harder to itemize medical bills. However, individuals 65 and older can still itemize at 7.5 percent until 2017.*

If you're getting the feeling that the sum total of these taxes and rule changes is to push people away from individual decision-making and toward a collective healthcare system of as yet amorphous form and arbitrary boundaries, you ain't alone. Michael F. Cannon of the Cato Institute has been warning that the Obama Administration's prodding of reluctant Americans to participate in the untested scheme exists in a quasi-legal realm all of its own. Cannon writes, "the IRS has announced it will impose ObamaCare's taxes on employers and individuals whom Congress expressly exempted from those taxes, and will send potentially hundreds of billions of taxpayer dollars to private health insurance companies, also contrary to the plain language of the statute." He and Jonathan Adler of Case Western Reserve University School of Law document their argument in an article available from the Social Science Research Network.

All in all, we may not know how Obamacare will work out, whether it will squeeze out private medicine or merely further corporatize an already... ummm... mixed-economy system of healthcare. But we do know that it will take a tight grip and suck more money out of our pockets and into government coffers. And that's as old-school as it comes, when you remember that physicians, once upon a time, applied leeches to their ailing patients.