KPMG report: Highlights of recent tax law changes for the healthcare industry

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Introduction

President Trump on December 20, 2019, signed into law H.R. 1865 ("The Further Consolidated Appropriations Act, 2020" (Pub. L. No. 116-94))—a government funding bill that includes significant provisions affecting taxable and tax-exempt healthcare organizations, individuals, and employers.

The discussion below provides information and observations regarding the implications of selected provisions that may be of interest to the healthcare industry.

- For an overview of all of the legislation's tax provisions, read ***KPMG report: Tax provisions enacted in December 2019 appropriations legislation***
- For additional information on provisions applicable to tax-exempt organizations, generally, read ***KPMG report: Highlights of 2019 appropriations legislation affecting tax-exempt organizations***

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Overview

H.R. 1865 is one of two appropriations bills enacted on December 20, 2019, that fund the government for the 2020 fiscal year. Prior to enactment of the bills, the government was operating at fiscal year (FY) 2019 funding levels under a continuing resolution that was scheduled to expire on December 20, 2019. Enactment of these bills prevented a government shutdown.

H.R.1865 contains a number of extensions of expiring tax provisions as well as changes to retirement savings and pension provisions. Another significant aspect of the legislation is its healthcare-related tax provisions, of interest to individuals, healthcare organizations, as well as employers offering health insurance plans. These provisions include:

- Repeal of the annual health insurer fee
- Repeal of the "Cadillac" tax
- Repeal of the medical device excise tax
- Extension of the PCORI fee
- Reinstatement of the lower medical expense deduction threshold
- Repeal of the "parking tax"
- Modified rate for tax on foundation investment income

Each of these provisions is discussed in greater detail below.

Repeal of the annual health insurer fee

The annual fee on health insurance providers is repealed, but not until calendar years beginning after December 31, 2020. The annual health insurer fee was suspended for the 2017 and 2019 fee years, so health insurers were not required to pay the fee in those two years. The fee remains in effect for 2020. Therefore, health insurers subject to the fee are required to file IRS Form 8963 in April 2020 for the 2019 data year and pay the fee by September 30, 2020.

Repeal of the "Cadillac" tax

The 40% tax on high-cost employer-sponsored health plans (the so-called "Cadillac" tax) under section 4980I is repealed for tax years beginning after December 31, 2019. When enacted, this excise tax was designed to apply to "expensive" health coverage and related expenses paid for by employers for such healthcare coverage. Originally scheduled to take effect in 2018, the implementation of the tax had been delayed twice and was scheduled to apply beginning in 2022, but is now permanently repealed.

Repeal of the medical device excise tax

The medical device excise tax under section 4191 is repealed under the new law for sales after December 31, 2019. By way of background, the medical device excise tax was in effect from 2013 through 2015 but had been suspended under a moratorium for the last four years.

KPMG observation

Repeal of this tax has been welcomed by the medical device manufacturers that had been advocating for the tax's repeal since its enactment.

Extension of the PCORI fee

The new law *extends* the healthcare inflation-adjusted excise taxes imposed by sections 4375 and 4376 (commonly referred to as the "PCORI fee") on health insurance policies and self-insured health plans through 2029. These taxes were originally scheduled to expire for policy years and plan years ending after September 30, 2019. Further, the law includes authorization through 2029 of the transfer of funds raised through these fees to the Patient-Centered Outcomes Research Trust Fund and authorization for certain expenditures from the fund.

KPMG observation

Affected health insurers and plan sponsors of self-insured health plans need to file a second quarter federal excise tax return (IRS Form 720) and pay the fee in 2020.

Reinstatement of the lower medical expense deduction threshold

One of the "extenders" provisions of the new law addresses the medical expense deduction floor for individual taxpayers. Immediately prior to the enactment of the 2017 U.S. tax law (Pub. L. No. 115-97, that is often referred to as the "Tax Cuts and Jobs Act" or TCJA), individuals could deduct qualified medical expenses in excess of 10% of adjusted gross income (AGI). The TCJA lowered the threshold for the medical expense deduction to 7.5% of AGI for tax years 2017 and 2018, with the 10% AGI threshold scheduled to resume after 2018. Under the new law, the 7.5% AGI threshold is reinstated for tax years 2019 and 2020 for both regular and alternative minimum tax purposes.

Repeal of the "parking tax" for tax-exempt organizations

The legislation repeals what is commonly referred to as the "parking tax," or the tax imposed on tax-exempt organizations (including tax-exempt healthcare organizations) under section 512(a)(7). This provision required such organizations to include in unrelated business taxable income the amounts they paid or incurred on qualified transportation fringe benefits. Section 512(a)(7) was enacted as part of the TCJA. The repeal takes effect retroactively to the date of enactment of the TCJA (i.e., December 22, 2017). The Joint Committee on Taxation (JCT) estimated that this provision would lose approximately $1.87 billion over a 10-year period.

KPMG observation

Because the repeal of section 512(a)(7) is retroactive to the December 22, 2017 date of enactment, tax-exempt healthcare organizations that paid unrelated business income tax (UBIT) on their employees' qualified transportation fringe benefits may be entitled to a refund. Tax-exempt organizations that paid UBIT on transportation benefits can seek refunds by filing amended returns, according to a recent IRS release. For more information, read ***TaxNewsFlash***

Modified rate for tax on foundation investment income

The legislation changed the longstanding two-tiered excise tax rate applicable to investment income of certain private foundations—under section 4940(a)—to a single 1.39% rate. This provision applies to tax years beginning after the date of enactment (i.e., beginning after December 20, 2019). The JCT estimated that this provision would have negligible revenue effect over a 10-year period.

KPMG observation

Changing the private foundation excise tax from a two-tier rate to a flat 1.39% tax is expected to increase the excise tax paid by some private foundations and to decrease the amount paid by others. However, the administrative burden of calculating the tax may be reduced for all private foundations. A significant number of healthcare providers and payors have private foundations and need to consider taking this modified tax rate into account going forward.

Extenders of general interest

In addition to the provisions described above, the law includes extensions of a number of tax provisions that either had already expired or that were scheduled to expire. These extenders include, among other things, the work opportunity tax credit, the new markets tax credit, and empowerment zone tax incentives. The December 2019 law extends these provisions through 2020. (Certain other provisions not mentioned in this report were extended beyond the end of this year.) The incentives that already had expired were generally extended retroactively to the date of expiration.

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