

2017 Tax Reform And Its Effects On Health Care

By PETER DOMAS

Over the past decade, the health care industry has been accustomed to being center stage in political debates, but while medical providers and facilities did not have a prominent role in the latest political drama, the far-reaching effects of the Tax Cuts and Jobs Act of 2017, will impact almost everyone delivering health care goods and services. In addition to the reduction of personal tax rates, the following provisions will likely be most applicable to health care providers:

1. Reduced Business Tax Rates

The tax rate for businesses taxed as corporations was reduced from 35 percent to 21 percent, and entities taxed as a partnership, S corporation, or sole proprietorship may now be entitled to a Pass-Through Entities Deduction of 20 percent of domestic "qualified business income." The Pass-Through Entity Deduction, however, is complicated and has significant limitations. For example, select services entities, such as physician practices, have low upper limits for the availability of the deduction (\$415,000 for married taxpayers and \$207,500 for single taxpayers). As a result, this deduction may benefit only a limited number of health care providers.

Action Steps

There has been significant speculation as to whether there will be (or should be) a rush for S-Corps to revoke their designation, or for LLCs (PLCs) to elect a C-Corp tax status to take advantage of the reduced corporate tax rate. While some for businesses (such as capital-intensive high growth entities) this strategy may have merit, in many others there may be little, or negative, benefit in such a change. The decision to change the tax structure of your entity should not be taken lightly, and owners should review their structure with a qualified attorney, or accountant tax advisor, before making any changes.

2. No Deduction For Government Investigation Expense

The Act provides that payments to any government "in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law" are non-deductible. Health care entities will still be able to deduct amounts that are made for restitution or to "come into compliance with any law." Previously payments made to the state and federal governments, such as the False Claims Act settlements or court orders, were treated as deductible to the extent that they

are compensatory or remedial in nature. In addition, going forward, government agencies will be required to report on an informational return payments under a settlement agreement or court order.

Action Steps

In the event an organization is obligated to make such a payment, it will be important that any agreement or order specify the nature of the payment and the portion of the payment identified as restitution or to come into compliance.

3. Limitation of Operating Loss Deductions

The Act also limits the net operating loss ("NOL") deduction to 80% of taxable income, and eliminates the "carry-back" provisions that allowed losses to be applied to prior year's income. NOL's can now only be carried forward indefinitely and offset up to 80 percent of a future year's taxable earnings.

Action Steps

This provision results in businesses that were previously profitable, and have experienced a recent economic downturn, to be forced to wait until future years of profitability to receive a tax benefit from a current year's loss. Since entities will no longer be eligible to receive a tax refund for taxes paid in prior years, entities should develop additional contingency plans to assist with cash flow in the event of an unexpected decline in profitability.

4. Reduced Deduction on Certain Entertainment Expenses

No deduction will be allowed for expenses relating to entertainment, amusement, recreation, or clubs organized for business, pleasure or other social purpose. The deduction of 50 percent of food and beverage expenses will remain.

Action Steps

Organizations should review expenses to determine which will no longer be eligible for deductions, and ensure that such expenses are properly categorized to prevent inaccurate deductions of such expenses on future returns.

5. New Excise Tax on "Highly Compensated" Non Profit Executives

The Act imposes a new 21 percent excise tax on compensation that exceeds \$1 million paid to a tax-exempt employer's five highest paid employees (including any former employees). The tax applies to both direct and indirect compensation, and any "parachute payment," where the aggregate payment

is three times (or more) the average compensation in the preceding five years. For purposes of determining whether an individual is a covered employee, remuneration paid to a licensed medical professional (including doctors and nurses) that is directly related to the performance of medical services by such professional, is not included.

Action Steps

The new excise tax is effective for tax years after December 31, 2017. There is no transition rule for applying the excise tax on compensation paid to the employees. Exempt organizations will need to identify their highest five-paid employees based on the 2017 tax year, who will be considered covered employees for 2018, and plan accordingly.

Given the breath of the changes under the Act, it is important for organizations meet with their tax advisor now, and assess the impact of the many changes before being stuck with an unexpected tax bill next year.

Please contact Peter Domas at 248-433-7595 or any member of Dickinson Wright's Healthcare or Taxation team to assist your business with the changes under the Tax Cuts and Jobs Act of 2017.



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Peter Domas is an attorney in Dickinson Wright's Healthcare Practice group. Peter's practice is devoted to representing clients in the health care industry, and assisting them in navigating the complex statutory and regulatory environment unique to health care corporate, transactional, and litigation matters. Peter also counsels clients on the development and maintenance of effective internal compliance programs with a special focus on federal and state fraud and abuse laws, reimbursement regulations, and HIPAA.

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For more information about our healthcare practice or how we can assist you from our 18 offices across the country, please contact Peter Domas at 248.433.7595 | pdomas@dickinsonwright.com.

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