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Taxes and Fees Enacted as Part of the Affordable Care Act

Background and Provisions

The Patient Protection and Affordable Care Act (ACA; P.L. 111-148, as amended by P.L. 111-152) contains a number of tax provisions that serve different purposes. Some of the more well-known provisions, such as the individual mandate and employer penalty, have revenue and budgetary effects but are primarily intended to encourage health insurance coverage. The focus of this product is a number of other taxes and fees enacted as part of the ACA that *primarily* serve to raise revenue.

Tax on High-Cost Employer-Sponsored Coverage

Effective 2022, a 40% excise tax, also referred to as the "Cadillac tax," is to be assessed on the aggregate cost of employer-sponsored health coverage that exceeds a dollar threshold. The thresholds are adjusted for eligible retirees, workers in certain high-risk professions, and plans whose demographics differ significantly from the national workforce. The thresholds are also adjusted for inflation.

Increased Medicare Payroll Tax and Net Investment Tax for High-Income Earners

Effective 2013, the ACA imposes two taxes on married couples filing jointly with modified adjusted gross income (MAGI) exceeding $250,000 ($200,000 for single, non-married filers). These thresholds are not adjusted for inflation. An additional Medicare hospital insurance tax of 0.9% is imposed on employees who have wages in excess of the threshold. (For all wage income, employees and employers are each subject to Medicare hospital insurance payroll tax of 1.45%, or 2.9% total.) In addition, a 3.8% net investment income tax (NIIT) is imposed on individuals on the lesser of either (a) their net investment income or (b) the amount by which their MAGI exceeds the threshold. Net investment income includes income from certain sources, such as interest, dividends, annuities, passive business income, and capital gains.

Medical Device Excise Tax

Effective 2013, the ACA imposes a 2.3% excise tax on the manufacturer's price of certain medical devices intended for consumption in the United States. Imports are taxed, but exports, certain products defined in statute, and products that are directly available for retail sale to consumers are exempt from the tax. The tax was in effect through 2015, but the Consolidated Appropriations Act, 2016 (CAA; P.L. 114-113) temporarily suspended the tax for 2016 and 2017, and P.L. 115-120 extended the suspension for another two years (2018 and 2019).

Health Insurer Providers Fee

Effective 2014, the ACA imposes an annual fee on certain health insurance providers based on their market share. Market share is calculated based on an insurance carrier's share of premiums written in the previous year. The fee on the entire industry was $8 billion in 2014 and was set to increase gradually to $14.3 billion in 2018. The fee is indexed to the rate of insurance premium growth in years after 2018. The CAA temporarily suspended the fee for 2017. The fee is in effect for 2018 and is still set to collect $14.3 billion. P.L. 115-120 suspends the fee for 2019.

Branded Pharmaceuticals Industry Fee

Effective 2011, the ACA imposes an annual fee on certain firms, manufacturers, and importers of branded pharmaceuticals based on their market share of all branded pharmaceuticals sales (excluding orphan drugs). The fee levied on the industry peaks at $4.1 billion in 2018 and remains constant at $2.8 billion in 2019 and beyond. Firms with less than $5 million in annual branded pharmaceuticals sales are exempt from paying the fee, and the amount of sales taken into account for the purposes of imposing the fee is reduced by certain percentages (between 90% and 25%) for firms that have between $5 million and $400 million in annual branded pharmaceutical sales.

Indoor Tanning Services Excise Tax

Effective 2010, the ACA imposes a 10% excise tax on the price of indoor tanning services provided by certain businesses. The tax does not apply to spray-on tanning services, topical creams and lotions, or phototherapy services performed by a licensed medical professional. There is also an exemption for "qualified physical fitness facilities," such as gyms or fitness clubs, which offer tanning as an incidental service to members.

Collections from most of these provisions are directed to the general fund of the Treasury, with the exceptions being the Medicare payroll surtax (which is dedicated to the Medicare Part A Trust Fund) and the branded pharmaceutical fee (which is dedicated to the Medicare Part B trust fund).

Legislation in the 115th Congress

On January 22, 2018, the President signed P.L. 115-120, which provided continuing appropriations for FY2018 through February 8, 2018. The legislation also enacted a two-year moratorium on the medical device tax (2018 and 2019) and a one-year moratorium on the health insurer providers fee (2018) and further delayed the implementation of the Cadillac tax for two years (from 2020 to 2022). The $31.3 billion revenue loss associated with these provisions is shown in **Table 1**.

Congress could debate further delay or repeal of certain ACA taxes and fees. **Table 2** shows revenue loss estimates from the American Health Care Reform Act (AHCA; H.R. 1628), passed by the House on May 4, 2017. Although revenue loss estimates for AHCA predated the policy changes in P.L. 115-120, the scores could be informative about the relative magnitude of potential revenue losses from repealing certain provisions. Revenue loss estimates for future bills that delay or repeal ACA taxes or fees could vary from the AHCA score.

The Senate Budget Committee's Better Care Reconciliation Act of 2017, revised on July 13, 2017, would have also repealed certain ACA taxes and fees. Revenue loss estimates for that bill are not provided below but are available on the Joint Committee on Taxation's (JCT) website.

Table 1. Revenue Loss from Select Provisions in P.L. 115-120, Continuing Resolution ($bil), FY2018-FY2027

Provision	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-2027
Delay Cadillac Tax Implementation (from 2020 to 2022)	-	-	$3.7	$7.5	$3.6	-	-	-	-	-	$14.8
Moratorium on Health Insurer Providers Fee (2019)	-	$12.7	-	-	-	-	-	-	-	-	$12.7
Moratorium Medical Device Excise Tax (2018 and 2019)	$1.4	$1.9	$0.5	-	-	-	-	-	-	-	$3.8
Total	$1.4	$14.6	$4.2	$7.5	$3.6						$31.3

Sources: JCT, *Estimated Revenue Effects of the Revenue Provisions Contained in the "Extension of Continuing Appropriations Act, 2018," as Passed by the Congress on January 22, 2018*, JCX-2-18, January 23, 2018, https://www.jct.gov/publications.html?func=startdown&id=5058.

Table 2. Revenue Loss from Select Provisions in House-Passed AHCA ($bil), FY2017-FY2026

Provision	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2017-2026
-Effective January 1, 2017											
Repeal Net Investment Income Tax	$1.5	$16.7	$15.9	$16.7	$17.8	$18.7	$19.7	$20.7	$21.7	$22.7	$172.2
Repeal Health Insurer Providers Fee[a]	-	$12.8	$13.5	$14.3	$15.1	$15.9	$16.8	$17.8	$18.7	$19.7	$144.7
Repeal Pharmaceuticals Industry Fee	$3.0	$4.0	$2.7	$2.7	$2.7	$2.7	$2.7	$2.7	$2.7	$2.7	$28.5
Repeal Medical Device Excise Tax[a]	-	$1.4	$1.9	$2.0	$2.1	$2.2	$2.3	$2.4	$2.6	$2.7	$19.6
-Effective July 1, 2017											
Repeal Tanning Services Excise Tax	[b]	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.1	$0.6
-Effective January 1, 2023											
Repeal 0.9% Medicare Payroll Surtax	-	-	-	-	-	$0.5	$9.3	$14.7	$16.5	$17.6	$58.5
-Effective January 1, 2026											
Delay Cadillac Tax Implementation[a]	-	-	-	$3.4	$6.9	$8.7	$10.7	$13.4	$16.4	$6.6	$66.0
Total	$4.5	$35.0	$34.1	$39.2	$44.7	$48.8	$61.6	$71.8	$78.7	$72.1	$490.1

Sources: CRS analysis of JCT data, *Estimated Revenue Effects of the Tax Provisions Contained in Title II of H.R. 1628, the "American Health Care Act of 2017," as Passed by the House of Representatives*, JCX-27-17, May 24, 2017, https://www.jct.gov/publications.html?func=startdown&id=5000. Estimates for the Senate version is available at JCT, *Estimated Revenue Effects of an Amendment in the Nature of a Substitute to the Tax Provisions Contained in Title I of H.R. 1628, the "Better Care Reconciliation Act of 2017," as Posted on the Website of the Senate Committee on the Budget on July 20, 2017*, JCX-39-17, July 20, 2017, https://www.jct.gov/publications.html?func=startdown&id=5018.

Notes:

a. Denotes a provision that was affected by P.L. 115-120. See estimates in **Table 1**.

b. JCT estimates an annual revenue loss less than $50 million.

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