

# **IRS Enforcement of Individual Mandate Destined for Failure?**

## ***Official Congressional Research Service Finds IRS To Enforce Mandate As A Tax, But Lacks Enforcement Muscle***

### **HHS Secretary Can Choose To Exempt Americans From Individual Penalty**

“PPACA also authorizes the Secretary of HHS to exempt individuals who “have suffered a hardship with respect to the capability to obtain coverage under a qualified health plan.”<sup>13</sup> The Secretary of HHS is directed to prescribe what information individuals should provide when seeking a hardship exemption.<sup>14</sup>”

### **The IRS Will Enforce Individual Penalty “In the Same Manner as Taxes”**

“Section 5000A(g)(1) of the Internal Revenue Code (IRC) states that “the penalty provided by this section shall be paid upon notice and demand by the Secretary.” Subject to certain exceptions, the penalty is to be assessed and collected in the same way as assessable penalties. Assessable penalties generally are assessed and collected in the same manner as taxes.<sup>15</sup>”

### **Millions of Americans Will Continue to Cheat the IRS and Evade Detection**

According to the IRS,<sup>1</sup> about 15 percent of Americans refuse to voluntarily pay their taxes on time. Under the new health care law, this trend will continue. “Once the penalty becomes effective, taxpayers who lack adequate health coverage at some time during the tax year should determine whether they are required to pay a penalty and, if so, should include that penalty on their tax return for that year. If they reported the amount, but failed to pay it with their return, the IRS would not need to take any further steps to assess the penalty. The IRS would be able to assess it based on the tax return. Nothing in PPACA limits the IRS’s authority or means for assessing the penalty. Given the reporting requirement PPACA imposes on anyone who ‘provides minimum essential coverage to an individual during a calendar year,’<sup>16</sup> it seems likely that the IRS will use its matching program to determine which taxpayers should have included the penalty on their returns and then determine whether they did so.<sup>17</sup> Assessing the penalty should proceed as it does for other omissions discovered through the matching program as described above.”

### **It Could Take A Year and a Half to Enforce the Penalty on Americans**

“Although there is an automated aspect to this assessment process, the process is not an immediate one. Instead, there is a lag of approximately 10 to 18 months between the filing of a return and the IRS’s issuing a letter proposing adjustments to the return based on the matching program. Thus, unless there is a change in procedures, it is unlikely that the IRS will assess the penalty on a return before routine processing of the return is completed. Accordingly, the taxpayer may have received in full the refund anticipated and reported on the return for which the penalty should have been calculated but was not.”

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<sup>1</sup> The Internal Revenue Service (IRS) collects 96 percent of the government’s total receipts, approximately \$2.7 trillion in FY 2008. The vast majority of those revenues come from taxpayers who voluntarily report and pay the taxes that they owe. The IRS has estimated the overall voluntary compliance rate to be approximately 84 percent. [http://www.irs.gov/pub/newsroom/tax\\_gap\\_report\\_final\\_version.pdf](http://www.irs.gov/pub/newsroom/tax_gap_report_final_version.pdf)  
[http://www.irs.gov/pub/irs-utl/tax\\_gap\\_facts-figures.pdf](http://www.irs.gov/pub/irs-utl/tax_gap_facts-figures.pdf)

## **Unlike With Other Taxes, IRS Has Less Ability To Collect Penalty Payments<sup>2</sup>**

“Section 5000A(g)(2) of the IRC limits the means the IRS may employ to collect the penalty established in the section. First, the taxpayer is protected from either criminal prosecution or penalty for failure to pay the penalty. Second, the IRS is prohibited from either filing a NFTL [notice of federal tax lien] or levying any property in an effort to collect the penalty.”

## **But IRS May Still Harass Americans, Impose Penalties, Charge Interest**

“ There is no prohibition, however, on establishing a statutory lien against the taxpayer’s property under § 6321. No additional limits are placed on the IRS using correspondence or phone calls, either through its own employees or through private collection agencies, in an effort to collect the amount owed. Additionally, no restriction was placed on the IRS’s ability to use the refund offset as a means of collecting the amount due. Those who are required to pay the penalty for failure to maintain minimum coverage but choose not to do so will be subject to increases in the amount owed due to interest and late payment penalties imposed on the penalty after it has been assessed by the IRS. The IRS may impose interest on tax, including penalties, under § 6601(a), (e)(2), and it may impose penalties under § 6651(a)(3). A taxpayer who chooses not to pay the required penalty may ultimately forfeit more than the amount of the penalty if that taxpayer is ever in the position of having an overpayment to the IRS for any reason, since the refund offset applies not only to overpayments shown on original tax returns, but also to any subsequent adjustments, for example an audit by the IRS that results in an overpayment. Further, as explained above, it is possible that the IRS could present its claim when property is being sold and collect both the original penalty amount along with accrued interest and applicable penalties.”

## **Millions of Americans Will Be Required to Give Personal Information To The Secretary of HHS For Inclusion In A Federal Health Care Tax Database**

“Among the information that is to be provided [to HHS] is information regarding income and family size; the name, address, and employer identification number of the individual’s employer, if any; whether the individual is employed full time; whether the employer offers minimum essential coverage; and the cost of the cheapest health coverage options available from the employer and the employee’s required contribution.<sup>30</sup>”

## **Federal Contractors Not Compliant With the Individual Mandate May Still Receive Millions of Taxpayer Dollars in Federally-Funded Projects**

“Delinquency in federal taxes is a ground for debarment of a federal contractor. However, debarment is not an automatic process and requires that the contracting agency initiate debarment proceedings against a government contractor.<sup>32</sup>”

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