



VCU Medical Center

Office of Health Innovation

Proposed Rule: Rules Relating to Additional Medicare Tax

Description: This document contains proposed regulations relating to Additional Hospital Insurance Tax on income above threshold amounts, as added by the Affordable Care Act. Specifically, these proposed regulations provide guidance for employers and individuals relating to the implementation of Additional Medicare Tax.

Major Provisions

Unlike Social Security, the amount of compensation subject to the 1.45 percent Medicare FICA tax is uncapped. However, beginning in 2013, the Patient Protection and Affordable Care Act (PPACA) increases by an additional 0.9 percent—to 2.35 percent—the employee portion of FICA Medicare taxes on wages in excess of \$200,000 for an unmarried taxpayer, \$250,000 in the case of a joint return and \$125,000 in the case of a married taxpayer filing a separate return.

The additional tax differs from the standard Medicare tax in that there is no employer portion to correspond to the additional amount owed by the employee.

The proposed rules clarify that calculating wages for purposes of withholding the additional Medicare tax is no different than calculating wages for FICA generally. For example, if an employee has amounts deferred under a nonqualified deferred compensation plan and the nonqualified deferred compensation (NQDC) is taken into account as wages for FICA tax purposes, the NQDC would likewise be taken into account for purposes of determining an employer's obligation to withhold the additional Medicare tax.

To the extent that the additional Medicare tax is not withheld by the employer, the employee must pay the tax. This, again, is consistent with general FICA rules.

Withholding

The proposed regulations provide that an employer must withhold additional Medicare tax from an employee's wages only to the extent that the wages the employee receives from the employer exceed \$200,000 in a calendar year. In determining whether wages exceed \$200,000, the employer does not take into account the employee's filing status or other wages or compensation that may affect the employee's liability for the tax.

Reporting and Payment Obligation

An employee is liable for additional Medicare tax on wages or compensation to the extent that the tax is not withheld by the employee's employer. Individuals must report the tax on Form 1040, *U.S. Individual Income Tax Return*, and will claim on the Form 1040 credit for any tax withheld or pay any tax due that was not previously withheld or paid as an estimated tax.

Interest-Free Adjustments

Under the proposed regulations, adjustments for underpayments of the additional Medicare tax can only be made if the error is ascertained in the same year the wages or compensation was paid, unless the underpayment is attributable to an administrative error; Sec. 3509 applies to determine the amount of the underpayment, due to the employer's failure to treat the individual as an employee; or the adjustment is the result of an IRS examination.

Claims for Refund

Employers can claim refunds of overpaid additional Medicare tax only if the employer did not deduct or withhold the overpaid additional Medicare tax from the employee's wages or compensation.

Employees claim a refund or credit of overpaid additional Medicare tax by taking the overpayment into account in claiming a credit against, or refund of, tax on an individual tax return for the year in which the overpayment was made, or for a tax year for which a tax return has been filed, by filing Form 1040X, *Amended U.S. Individual Income Tax Return*. This process is in lieu of filing a claim for refund for overpaid additional Medicare tax on Form 843, *Claim for Refund and Request for Abatement*. Employees may only claim a refund of additional Medicare tax if they have not received repayment or reimbursement from their employer in the context of an interest-free adjustment.

