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the IRS and “your health care”

At most times, the IRS is one of America’s least loved institutions, but this past month has been a particularly bad period for the agency.

First, it became clear that the IRS had been targeting groups that had “tea party” in their name or other identifications that indicated a conservative political tie for special scrutiny and additional audits when they were applying for their tax-exempt status. Since then, there have been additional charges that the IRS singled out individuals who donated to conservative causes for gift tax audits, but to my knowledge, this second set of charges has not been validated.

The targeting charge sparked a flurry of newspaper articles and television interviews, raising questions as to whether the IRS might also try to influence how people receive their health care as a result of the implementation of the Affordable Care Act (ACA). Some of the more extreme comments charged that the IRS could potentially delay or deny Americans their health care or gain access to their medical records. Michele Bachmann (R-Minn.) has been particularly aggressive about these issues, and a few other members of Congress have voiced similar concerns.

I am as appalled as anyone else is by what the IRS did in its targeting of conservative groups for delays and audits in establishing their tax-exempt status, but there are enough reasons to be worried about the implementation challenges associated with the ACA without manufacturing issues that are incendiary in nature, in addition to being untrue.

IRS Role in the ACA

The IRS has a substantial role in implementing the ACA, although the major responsibility for implementation of the act rests with the U.S. Department of Health and Human Services. The primary responsibilities of the IRS focus on implementing the ACA’s 47 different tax provisions and determining the amount of the subsidy a family will be eligible to receive. The IRS also will be responsible for determining whether individuals have insurance and for imposing and collecting the penalties if they do not.

The significance of this role should not be underestimated. There are some 47 different tax provisions that will need to be implemented, including the small business healthcare credit and taxes on medical devices, pharmaceutical companies, and insurance companies. However, the IRS is well-accustomed to these types of activities, and although the number of new taxes is unusually large, the imposition of these new taxes represents routine business for the agency.

The greatest new challenges that the IRS will face will be in determining family income for purposes of subsidizing the purchase of insurance in the newly created insurance exchanges. This activity also is not entirely new for the IRS, because the agency is already administering a variety of income-related credits—albeit with a somewhat questionable record of accomplishment. There is cause, therefore, for legitimate questions about whether the IRS will be able to establish a family’s income level in a timely manner that is fair both to the family and to the taxpayer.

The timing of the income determination is a challenge in itself. For people who will be purchasing insurance in the marketplaces as of January 2014, the subsidy that they receive will be determined by the income tax they filed in April, which reflects their 2012 income. Whether their income in 2012 matches their income in 2014 is a different matter. If a family believes that it is entitled to a larger subsidy due to declining income since 2012, the family can ask for a review, presumably provide documentation of the decline, and be eligible for a higher subsidy. If the family's income were to increase after 2012, it would qualify for a reduced subsidy. But the IRS would not find out about the change until early 2016, because the relevant tax return would likely not be filed until April 2015 and the agency would need at least nine months after that to initiate audits to determine whether the 2014 tax filings were consistent with the subsidy granted. Whether the IRS will perform such audits is unclear.

The challenges associated with determining the income of nonfilers is even greater. The IRS will need to use some sort of an affidavit or statement regarding income to establish the appropriate subsidy. Just how the IRS might approach auditing these statements for accuracy also is unclear.

It would be very difficult, if not impossible, for the IRS to selectively challenge conservatives or any other political group in this activity for the simple reason that the IRS has no way of knowing any individual's political position based on his or her income tax filing. Unlike the filing for tax-exempt status, where certain key words are used to support additional scrutiny, the IRS will only know the person's name, social security number, and occupation—none of which provide an indication of political affiliation.

Likelihood of IRS Success?

Greg Scandlen, a senior fellow of The Heartland Institute and founder and director of Consumers

for Health Care Choices, wrote a recent column describing the IRS experience implementing an expanded tax credit for families that adopt children—another littler known provision of the ACA (“How the IRS Monitors Tax Credits,” first published on John Goodman’s Health Policy Blog, June 6, 2013). The ACA increased the amount of the credit to \$13,170 per child and made it refundable for the tax years 2010 and 2011. Apparently, the IRS struggled with what type of documentation would verify the claim, and concern about fraud prompted the agency to flag about 90 percent of returns claiming a credit and audit 69 percent of the returns. In the end, the IRS actually disallowed only \$11 million, while having to pay out \$2.1 million in interest on claims held up for more than 45 days.

The adoption credit posed several challenges that made it especially hard for the IRS. Many of the people who qualified for the credit were not usual filers—a problem that will clearly occur with the ACA. It was also a time-limited credit, which is not the case with the credits under the ACA. On balance, this experience raises some legitimate concern about how well the IRS will be able to handle its many responsibilities.

The challenges for the IRS are real and formidable, and they give cause for concerns. But the concerns that the agency will target individuals for their political beliefs or review their personal health records are not justified. The IRS will have more than enough to do to keep the subsidy eligibility machinery running smoothly. There is no need to manufacture “bogeymen” to scare the public about what else the IRS might be doing. ●

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