

Welcome to TaxMama's® Place - Home of the



Today's Topic:

**August 2020
Tax Roundtable**

They have a new FAQ page on their website

<https://www.prometric.com/test-takers/frequently-asked-questions>

It's primarily about cancellations, rescheduling and the refunds you're supposed to get when THEY cancel.

If you have questions, consider starting there – for whatever it's worth

<https://www.irs.gov/newsroom/irs-new-law-provides-relief-for-eligible-taxpayers-who-need-funds-from-iras-and-other-retirement-plans>

Can I get money from my retirement account now?

Under the CARES Act, individuals eligible for coronavirus-related relief may be able to withdraw up to \$100,000 from IRAs or workplace retirement plans before December 31, 2020, if their plans allow. In addition to IRAs, this relief applies to 401(k) plans, 403(b) plans, profit-sharing plans and others.

These coronavirus-related withdrawals:

- May be included in taxable income either over a three-year period (one-third each year) or in the year taken, at the individual's option.
- Are not subject to the 10% additional tax on early distributions that would otherwise apply to most withdrawals before age 59½,
- Are not subject to mandatory tax withholding, and
- May be repaid to an IRA or workplace retirement plan within three years.

Who is eligible?

To be eligible for COVID-19 relief, coronavirus-related withdrawals or loans can only be made to an individual if:

- The individual is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (collectively, COVID-19) by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetics Act);
- The individual's spouse or dependent is diagnosed with COVID-19 by such a test; or
- The individual experiences adverse financial consequences as a result of:
 - The individual being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to lack of childcare, having a reduction in pay (or self-employment income), or having a job offer rescinded or start date for a job delayed, due to COVID-19;
 - The individual's spouse or a member of the individual's household (that is, someone who shares the individual's principal residence) being quarantined, being furloughed or laid off, having work hours reduced, being unable to work due to lack of childcare, having a reduction in pay (or self-employment income), or having a job offer rescinded or start date for a job delayed, due to COVID-19; or
 - Closing or reducing hours of a business owned or operated by the individual, the individual's spouse, or a member of the individual's household, due to COVID-19.

Good Afternoon Eva,

Question:

Pending Supreme Court Case that ACA is unconstitutional. If upheld clients are entitled for refund relating to "Net Investment Income Tax" and "Additional Medicare Tax".

- What steps should we take on behalf of our clients to obtain refund
- What are the filing requirement by IRS to obtain refund
- What's the timeline for filing required reports
- How should we determine if its feasible or not, considering administrative cost, etc

Thank you,
Gytree

What is a Protective Claim and how do you file it?

- A protective claim is an amended return for a tax year that is still open to the amendment statutes – three years from the due date of the return – or the filing date of the return.
- AND that addresses a tax issue that is in the process of being litigated in the courts, or being debated in the U.S. legislature about being changed.

Right now, affected tax years include:

- All past due tax returns that were filed within the three years before the date the Protective Claim is filed
- 2016 tax returns that were on extension until October 15, 2017
- 2017 - 2019 tax returns

<https://www.irs.gov/forms-pubs/due-date-to-file-a-protective-claim-for-tax-year-2016-individual-income-tax-returns-including-for-aca-has-been-postponed-until-july-15-2020>

For Forms 1040-X filed as “Protective Claims under the ACA litigation,” write “Protective Claim for refund under California, et al. v. Texas” at the top of Form 1040-X.

Instructions related to [Form 1040-X](#) in IRS Publication 17 include:

Protective claim for refund

Generally, a protective claim is a formal claim or amended return for credit or refund normally based on current litigation or expected changes in tax law or other legislation. You file a protective claim when your right to a refund is contingent on future events and may not be determinable until after the statute of limitations expires. A valid protective claim doesn't have to list a particular dollar amount or demand an immediate refund. However, a valid protective claim must:

- Be in writing and signed
- Include your name, address, SSN or ITIN, and other contact information
- Identify and describe the contingencies affecting the claim
- Clearly alert the IRS to the essential nature of the claim
- Identify the specific year(s) for which a refund is sought.

<https://www.tscpa.org/resources/news/articles/protective-claims-advice>

July 2020

In March of this year, the U.S. Supreme Court announced that it will hear a case that challenges the constitutionality of the individual mandate under *The Patient Protection and Affordable Care Act (ACA)*. (The original case, *Texas v. U.S.*, is now docketed in the Supreme Court as *California v. Texas*.) It is possible that if the individual mandate is held to be unconstitutional, income taxes established under the ACA, such as the Net Investment Income Tax (NIIT), may effectively be repealed.

Accordingly, any ACA-related income taxes paid in prior years, including the individual shared responsibility penalty, may be refundable if a claim for refund is filed in a timely manner. The Supreme Court did not accept the case for an expedited review, so it will be some time until the case is heard. Some practitioners are wondering if their clients should file protective claims for any years about to expire, especially since claims for the 2016 tax year are due July 15, 2020. The Taxpayer Advocate Service's website lists the requirements for a valid protective claim.

1. Why is *Texas v. United States* important?

The case of *Texas v. United States* has brought forward a discussion of protective claims that we have not had since *Quality Stores*. *Quality Stores* was the case where the issue was whether severance payments were subject to employment taxes. *Texas v. U.S.* involves a case brought by several state governors challenging the constitutionality of the *Affordable Care Act* (ACA). The Supreme Court will hear arguments that address the constitutionality of the ACA, with a decision likely to come out next spring.

2. Is the possibility that the Supreme Court finds the ACA unconstitutional retroactively back to at least 2016 reasonable?

Firms are grappling with whether they should file protective claims regarding the case. If a protective claim is filed, it must be on a reasonable basis; some firms don't think it is reasonable that even if the Supreme Court deems the ACA unconstitutional, that it will do so retroactively to 2016. These firms believe if a claim is filed, it will likely be thrown out as baseless. Many firms are not filing claims, but there is a risk with that as well. Other firms are telling their clients to consult their attorneys.

AICPA concluded that there is little chance of the tax being declared unconstitutional for tax years before 2019 (2019 is different as that is the year the *2017 Tax Cuts and Jobs Act* effectively eliminated the individual health insurance penalty). Almost all national and regional CPA firms have reached the same conclusion and as such, they are not recommending that their clients go through the expense of filing a protective claim. AICPA is making the same recommendation and does not advise action.

3. If deemed unconstitutional, can we expect the Supreme Court to make it retroactive to 2016?

Some firms think it's a stretch that, if deemed unconstitutional, the Supreme Court would look back retroactively to 2016. But, if it's found unconstitutional and retroactive to 2016, then there could be a problem because the statute runs out on the 2016 tax year on July 15. Taxpayers that paid these taxes with their 2016 federal tax returns would lose any opportunity to claim a 2016 tax refund if they don't file a protective claim

QUESTIONS

- You can find today's handout in the Board after the session

<http://irsexams.com/board/index.php?/topic/956-taxmamas-tax-roundtables/>

- And at the TaxMama site
<http://taxmama.com/tax-quijs/taxmamas-tax-roundtables-2018/>

QUESTIONS