

**Clarifications & Updates from the**  
**2010 Health Care Bill**  
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On March 23, 2010 President Obama signed into law the 2010 Health Care Act. In the months since the Act was signed, various myths have arisen that we wish to address in this month's newsletter. In addition, the IRS has clarified several problem areas, and Congress has made things worse in one area as a result of the Small Business Jobs Act signed into law by the President on September 27, 2010.

**Myth #1**

*Starting in 2011 health insurance will be taxable according to Kiplinger.* This myth was clearly started by someone who was reading challenged. The myth goes like this: an email is forwarded to you with an alarming headline that according to Kiplinger health insurance paid by employers will be reported on employee W-2s in 2011 and taxed to them. There is only one problem here-Kiplinger did not say that and it is not true. In fact Kiplinger (to which I subscribe) in their very next issue commented on the incorrect email being forwarded throughout the country!

Here is what actually will occur in 2011. Congress has no idea what employers are spending for the health insurance for their employees, and decided that they need this data **as an information item only** and the easiest way to get it was to have employers add it as **an information item only** in Box 12 of the 2011 W-2. It is not taxed now or next year, and there is nothing on the books making it taxable in the future!

In fact, in IRS Notice 2010-69 (10/14/2010) the IRS stated that the reporting is not mandatory in 2011, and no penalties will be imposed for failure to report.

**Myth #2**

*Starting in 2011 long term care insurance will be mandatory*

This myth being promoted primarily by insurance agents is an example of failure to read the law combined with a zeal to sell products. One section of the 2011 Health Care Bill includes a section known as the CLASS Act. Some over-zealous salesman are misreading this bill and preying on client fears to claim that long term care insurance is mandatory next year. Wrong!!

Here is what the CLASS Act really says. The new CLASS Act section of the Health care bill allows (It does not require!) employers to set up long term care insurance participation in the new national programs that the employee will automatically participate in, unless the employee opts out. **Note-many insurance agents are telling clients that long term care insurance will be mandatory. That is absolutely incorrect.** The Class Act does not require screening of applicants for health problems, so people who might not qualify for private long-term care insurance can enroll. Participants will pay monthly premiums; after a five-year vesting period, they receive benefits if they need care. Although the Act is effective 1/1/2011, it is estimated that at least 2 more years will pass before the plan is actually implemented in 2013 at the earliest.

Again, employer participation is voluntary, and employees may elect out of a program that will not even start, at the earliest, until 2013!

**Myth #3**

*There is a new 3.8% national sales tax on your home starting in 2013*

This myth, embarrassingly, is being perpetuated by tax preparers as well as their clients, simply because they are too lazy or inefficient to actually read or understand the law, and it is incorrect.

In 2013 there is a new 3.8% surcharge for high income individuals on taxable capital gains. This means you will not pay the tax unless your income is very high (over \$200,000 single, \$250,000 joint), and you sell an asset at a taxable profit. Note the word "taxable" that the idiots promoting this myth are ignoring. The sale of your home is not taxable except in extremely rare circumstances (I have never had one in 30 years as a practicing CPA!), and even if it were, your income would have to be higher than the thresholds to pay the tax, and even then it is only on the profit, not the sales price!.

Similarly, the sale of any other real estate follows these rules. If you sell at a loss, there is no surcharge; if you sell at a profit there is no surcharge unless your income is above the threshold, and even if you are above the threshold only the profit is subject to the surcharge.

### **The 2012 1099 Mess**

Businesses making payments of more than \$600 to corporations or individuals will now have to issue 1099's for both goods and services. If more than 250 Forms 1099-MISC are required they must be filed electronically. The IRS' own Nina Olson estimates an additional 40,000,000 will be filing Forms 1099-MISC under this rule, and if the average business files 200 Forms 1099-MISC that is an additional 8,000,000,000 (8 billion) forms. All vendors that do not provide, or that provide incorrect TIN's would be subject to 28% backup withholding! Failure to file penalties are \$50-\$100 each as increased by President Obama's September 2010 Small Business Jobs Act, and reporting was extended to rental property owners under the same act.

Some idiots are saying that it is a simple thing for businesses to track this information. They are just that, idiots. When Congress passed this they did not consider that most small businesses do not have an accounting system, or an in-house bookkeeper, or the expertise to track the information, or the time to track the information, or the money to pay someone to track the information. This is simply a stupid law passed by ignorant Washington folks who have no real life experience with small business. Then to compound the problem, instead of removing this law, they made it more onerous with the September 27, 2010 Small Business Jobs Act by doubling the penalties and extending it to the old lady who owns a rental house!

I have attached a table that summarizes all of the 1099 bills. I follow that with a letter I wrote to my Congressman that you and every small business person in America needs to send to their elected Congressman or woman.

### **Summary of 1099-Misc Reporting Changes**

<b>1099-Misc Requirements for Businesses</b>	<b><u>2010</u></b>	<b><u>2011</u></b>	<b><u>2012</u></b>
Non-Incorporated entities receiving over \$600 for services in one year from operating businesses	Yes	Yes	Yes
Non-Incorporated entities receiving over			

\$600 for services in one year from rental property owners	No	Yes (2010 Jobs Act)	Yes (2010 Jobs Act)
Incorporated entities receiving over \$600 for services in one year from operating businesses or rental property owners	No	No	Yes (2010 Health Care Act)
Incorporated entities receiving over \$600 for goods in one year from operating businesses or rental property owners	No	No	Yes (2010 Health Care Act)
Penalty for incorrect or failure to file 1099, <b>per 1099</b>	\$15 late, \$50 willfully incorrect	\$100 late (As increased by 2010 Jobs Act from the \$50 in the 2010 Health Care Act)	\$100 (As increased by 2010 Jobs Act from the \$50 in the 2010 Health Care Act)