

PROTECTIVE CLAIM OF REFUND FOR OBAMACARE TAXES

The U.S. Supreme Court has agreed to hear a case challenging the constitutionality of the Patient Protection and Affordable Care Act (PPACA) in *California v. Texas*.

Previously known as *Texas v. US* in the lower courts, the U.S. Court of Appeals declared that the requirement for individuals to carry health insurance was unconstitutional. This decision was largely based on the elimination of the individual shared responsibility payment (commonly referred to as the individual mandate penalty) for 2019 and in later years under the Tax

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Cuts and Jobs Act (TCJA). This Appeals Court decision affirmed an earlier ruling by the federal District Court in Texas, which held the entire PPACA unconstitutional.

If the PPACA is found to be unconstitutional by the U.S. Supreme Court, this determination could affect taxes applying to many taxpayers – including the 3.8% Net Investment Income Tax, the 0.9% Additional Medicare Tax, and the Individual Shared Responsibility payment. Taxpayers who have had to pay these taxes in tax years 2016, 2017, and 2018 may have an opportunity to recover those amounts as a refund.

We do not know what the result will be; however, the limitation period to make a claim for a refund for the calendar year 2016 (originally due April 15, 2020, but extended to July 15, 2020, under Notice 2020-23, for a 2016 return not otherwise extended) will pass before this case is resolved. The Supreme Court has indicated it will issue a decision either at the end of this year or, more likely, in 2021. At that point, it may be too late to make a claim for PPACA taxes and penalties paid for 2016 and possibly for 2017.

There is one option to help reserve your right to claim a refund due to this pending litigation. We suggest filing a protective claim of refund directly with the IRS by the July 15, 2020 deadline. This will help preserve your right to the claim of refund after the case is resolved even though the statute of limitations to file an amended return had expired. If you want to see how much of these taxes you paid, look at forms 8959 and 8960 in your copy of your 2016, 2017, and 2018 tax return (Form 1040 or 1041) to see the impact.

If you would like to file a protective claim for a refund for 2016, please reach out to us as soon as possible before July 15, 2020. Alternatively, you may let the statute of limitations for the tax year 2016 expire and choose to file a protective claim for tax years 2017 and 2018 instead. [Please let us know](#) and we will help get this process started.

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