



PP&Co Action Alert – July 14, 2020

Potential Protective Claim for Refund Related to SCOTUS Review of ACA

The Supreme Court of the United States (SCOTUS) recently announced that it will again consider the constitutionality of the Affordable Care Act (ACA) via the case of *Texas v. US. Obamacare*, as the ACA is commonly known, has twice previously withstood similar challenges. If the ACA is ruled unconstitutional, there are potential opportunities for refunds for taxpayers who paid the net investment income tax and additional Medicare tax.

1. The Medicare tax
 - a. additional 0.9% tax on earned income in excess of \$200,000 for single filers or \$250,000 for filers who are married and filing jointly
2. The net investment income tax
 - a. additional 3.8% tax on net investment income for taxpayers with Adjusted Gross Income (AGI) above \$200,000 for single filers or \$250,000 for filers who are married and filing jointly

Note that taxpayers with an AGI below the thresholds indicated above did not pay these taxes.

Should the court rule the ACA unconstitutional, taxpayers can file amended return refund claims for tax years 2016, 2017, and 2018 (and 2019 if they have already filed) to have these taxes refunded. Even if the Supreme Court rules after the statute of limitations expires, taxpayers can still receive refunds if claims are filed within the allotted timeframe(s).

What should taxpayers do?

While it's presumed unlikely that the Court will rule the ACA unconstitutional, taxpayers who may benefit from such a ruling can use [THIS FORM](#) to file a protective claim for refund, starting with tax year 2016. For those taxpayers who filed their 2016 returns by April 15, 2017, **the statute of limitations to file a protective claim for the 2016 tax year expires on Wednesday, July 15th**. For extended returns, taxpayers generally have three years from the date the return was filed in which to file a protective claim.

The *Protective Claim for Refund* forms should be mailed to:

Department of the Treasury
Internal Revenue Service
Fresno, CA 93888-0422

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