



March 5, 2013

The Honorable Charles W. Boustany
Chairman
Subcommittee on Oversight
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

The Honorable John Lewis
Ranking Member
Subcommittee on Oversight
Committee on Ways and Means
1106 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Boustany and Ranking Member Lewis:

On behalf of Associated Builders and Contractors (ABC), a national association of 72 chapters representing 22,000 merit shop construction and construction-related firms, I am writing in regard to today's subcommittee hearing on the tax provisions contained in the Patient Protection and Affordable Care Act (PPACA).

Providing quality health care benefits is a top priority for ABC and its member companies. Throughout the health care reform debate, ABC advocated for policies that reduce the cost of health care for employers and their employees. ABC called on Congress to advance common-sense proposals that would address the skyrocketing costs of health insurance, especially for employer-sponsored plans and the rapidly rising number of uninsured Americans. ABC believes true reform should provide greater choice and affordability and allow private insurers to compete for business.

Unfortunately, PPACA fails to lower costs and imposes new taxes, as well as costly and burdensome federal government mandates on businesses. Some of the new job-killing taxes contained in PPACA include:

The Employer Mandate

Beginning in 2014, PPACA mandates that employers with 50 or more full-time equivalent employees offer a certain level of coverage or be subject to taxes. The increased costs related to this onerous mandate are of significant concern to ABC members.

By forcing employers to offer government-prescribed health insurance, ABC members will no longer have the choice or flexibility to structure health care coverage options that meet the needs of their fluctuating workforce. The resulting increased costs will jeopardize the ability of ABC members companies to maintain affordable coverage options for their employees and force some to drop coverage all together. Funds that employers could use to hire and retain workers or expand their businesses will instead go toward paying the burdensome employer mandate tax.

ABC is also concerned about the regulations implementing the employer mandate, which are complex, confusing and unclear. They create an environment of uncertainty in our industry that makes it difficult for firms to adequately plan for the future—ultimately stifling job creation.

ABC supports the American Job Protection Act (H.R. 903), introduced by Rep. Charles Boustany, which would repeal the employer mandate provision in PPACA and protect existing jobs, remove some of the uncertainty facing employers and help America’s job creators get back to work.

Additional Medicare Taxes on Wages and Investment

As of January 2013, high earners and small businesses are exposed to surtaxes on various types of income. Wages above \$200,000 (or \$250,000 if filing jointly) are subject to a 0.9 percent additional Medicare tax, while a 3.8 percent net investment income tax (NIIT) will be levied on the lesser of adjusted gross income above \$200,000 (\$250,000 jointly) and “unearned” income. Combined with the 39.6 percent top bracket created by the American Taxpayer Relief Act, these surtaxes yield a 25 percent gap between the rates paid by Main Street businesses and those enjoyed by the country’s largest corporations. Importantly, these thresholds have not been indexed for inflation and will gradually ensnare more taxpayers and small businesses each year.

Beyond the sheer financial burden, the 3.8 percent NIIT and its nebulous definition of “investment income” creates further uncertainty for contractors engaged in real estate ownership and management. For instance, it is common for construction entities to own and operate rental properties such as commercial buildings and shopping centers. A contractor generally is considered to be a real estate professional by virtue of his participation in construction activities. However, the contractor also must meet a separate test regarding time actually spent on rental activities in order for the rentals not to be passive. Because the rules are complex and time consuming to understand, contractors most likely will consult counsel or a CPA, which means another added business cost.

The Health Insurance Premium Tax

The health insurance premium tax (HIT) is one of the law’s largest new taxes to fall on the backs of small business. This tax is assessed on all health insurance companies based on their “net premiums,” which means it is just another new cost passed along to the customer—small business owners. Estimates show this \$87 billion tax will cost a minimum of \$500 annually per family.

ABC supports the Jobs and Premium Protection Act of 2013 (H.R. 763), introduced by Reps. Charles Boustany and Jim Matheson, which would repeal the harmful HIT provisions in PPACA. Repeal of the HIT would help to reduce business costs and provide more certainty to the nation’s job creators.

Medical Device Excise Tax

An additional PPACA tax that will be passed through to consumers in the form of higher health insurance premiums is the new 2.3 percent medical device tax. This tax must be repealed to prevent increased health care costs for businesses and their employees.

ABC supports the Protect Medical Innovation Act of 2013 (H.R. 523), introduced by Rep. Erik Paulsen, which would amend the Internal Revenue Code to repeal the excise tax on medical device manufacturers and importers.

We appreciate your attention to the onerous tax provisions contained in PPACA and look forward to working with you on comprehensive tax reform and creating jobs.

Sincerely,

A handwritten signature in black ink, appearing to read "K Swearingen". The signature is fluid and cursive, with a large initial "K" and a long, sweeping underline.

Kristen Swearingen
Sr. Director, Legislative Affairs