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# Tax Alert



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## Obamacare Travesty: IRS Fines Employers For Reimbursing Workers

Is the Affordable Care Act *affordable*? It was passed by the same Congress that periodically brings us 'tax reform' or 'tax simplification.' Sure, these are nice euphemisms. Those laws are often not really reforms and are rarely simple. But even measured against such traditional DC speak, Obamacare's other name—the Affordable Care Act—*truly* takes the cake, no matter how much the Supreme Court likes it.

Apart from the numerous taxes brought by the Affordable Care Act—and there are [many Obamacare taxes](#)—get a load of the IRS fines on businesses that *help* their workers to cover their health insurance or medical expenses. The IRS is actually *fining* employers if they are caught *helping* their workers buy insurance or pay medical bills. How much?

According to the National Federation of Independent Business that is tracking the mess, the fines can total 18 times *more* than those imposed on larger employers that do not provide coverage at all. Think of it as not punishing someone for a big crime—say murder—but throwing them in jail for stealing a loaf of bread. Of course, this metaphor is inapt, because the fined employers aren't actually stealing anything.

In fact, they are *helping* their employees, paying them extra because health costs are so high. Why does President Obama's IRS penalize them? Employers who do not offer a group health plan, but give their workers additional pay to compensate for the purchase of health insurance or direct medical expenses can be fined \$100 per day, per employee.

Although the IRS the [IRS spared small employers](#) until July 1, 2015, there is no more relief. According to the IRS, an employer arrangement that reimburses or pays for employee individual health premiums is considered to be a group health plan that is subject to the \$100 per-employee per-day penalty. The penalty applies whether the reimbursement is considered a before-tax or an after-tax contribution.

Over the course of a year that adds up to \$36,500 per employee, up to \$500,000 in total. In a show that not all justice is equal, the penalty on businesses for failing to comply with the employer mandate is only \$2,000 per year. Will these fines be widespread? It sure looks that way.

The National Federation of Independent Businesses says that 14% of small businesses that do not offer group insurance reimburse their workers. You might think this kind of thing would even increase in the current climate. The fines could be scuttled if Congress would act on S. 1697 and H.R. 2911. Rep. Charles Boustany has introduced legislation in the House (H.R. 2911) and Sen. Charles Grassley, in the Senate (S.1697) to remedy the problem.

Both bills await congressional action. A [NFIB post](#) notes the terrible irony and the lack of symmetry with many other rules. For example, employers with fewer than 50 workers are exempt from Obamacare's employer-mandate penalty. But are those small employers exempt from these IRS fines?

Not hardly. It makes it somehow worse that this penalty is part of the IRS regulations under Obamacare. Obamacare itself—the many-headed hydra that Congress had to pass to see what was in it—doesn't include it.

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