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Fifth Circuit Rules ACA Individual Mandate Unconstitutional ACA Employer Mandate and Other Protections Remain

On December 18, 2019, in a split decision, a three judge panel on the United States Fifth Circuit Court of Appeals held the Affordable Care Act's ("ACA") individual mandate is unconstitutional.

The Court upheld only part of the lower court's decision in *Texas v. Azar*, remanding the case back to the United States District Court in Texas, for further analysis with respect to whether the entire ACA should be struck down due to the individual mandate being held unconstitutional.

The Court's decision does not impact the ACA's employer mandate, or other ACA provisions including annual reporting. The Internal Revenue Service continues active enforcement of the ACA's employer mandate issuing large penalties for failures to offer minimum essential coverage and employer reporting. Employers must continue compliance with the ACA, as this Court's decision does not provide relief.

Background

In *Texas v. Azar*, twenty Republican Attorney Generals, Governors of the states of Maine and Mississippi, and two individual plaintiffs challenged the constitutionality of the individual mandate following the 2017 Tax Cuts and Job Reform Act, which reduced the individual mandate penalty to \$0 as of January 1, 2019.

Plaintiffs argued the individual mandate without a penalty is no longer sustainable under the United States Supreme Court's 2012 decision in *National Federation of Independent Business v. Sebelius*, which upheld the mandate under Congress' taxing power. They further argued that the entire ACA should be struck down because the mandate was "essential" to the law.



On December 14, 2018, the Judge in the *Texas v. Azar* case issued a sweeping ruling invalidating the entire ACA. Judge O'Connor's decision held that the ACA is unconstitutional. The result of this ruling, if it is ever implemented, is that the entire ACA would no longer have effect.

On December 30, 2018, Judge O'Connor issued a stay of his December 14, 2018 ruling. The stay barred any application of his order until the ruling in his case were upheld or overturned. Parties to the lawsuit immediately appealed the decision to the U.S. Court of Appeals for the Fifth Circuit.

On December 18, 2019, as expected the conservative leaning Fifth Circuit three judge panel, in a 2-to-1 decision, held the ACA's individual mandate is unconstitutional.

However, the Court sent the case back down to the U.S. District Court for further review of the issue of severability. Does the ruling of the Court that the ACA's individual mandate is unconstitutional mean that the entire ACA is unconstitutional, thus must be entirely struck down? The Court was not convinced that the rationale in Judge O'Connor's ruling appropriately answered this question.

What Happens Next?

As noted, the case heads back to the lower court for further review. Judge O'Connor in the U.S. District Court most likely will keep with his prior ruling finding the entire ACA must be struck down due to the individual mandate being found unconstitutional by the Fifth Circuit Court of Appeals.

The issue will undoubtedly again come before the United States Supreme Court, as the highest court previously determined that the ACA is constitutional under Congress' taxing power.

Opponents of the Fifth Circuit and District Court's decisions make a strong argument that reducing a tax to zero does not mean that the tax no longer exists, only that Congress has decided not to enforce the tax at this time. Thus, nothing has changed since 2012 when Justice Roberts, Chief Justice of the United States Supreme Court, issued the opinion in *National Federation of Independent Business v. Sebelius*, upholding the ACA as constitutional.

The judicial process will take time and is unlikely the case will be reviewed by the United States Supreme Court, if at all, until its next term beginning October 2020.

All Remains the Same

The 2017 Tax Cuts and Job Reform Act reduced the individual mandate penalty to \$0. The Fifth Circuit Court of Appeals' decision declares the individual mandate unconstitutional, effectively changing nothing for individuals, as no penalty is currently being enforced.

The Court's decision does not impact the ACA's employer mandate, or other ACA provisions impacting employers including annual reporting. Previously, the White House and the Centers

for Medicare & Medicaid Services issued statements stating that the ACA remains the law of the land pending appeal, a determination echoed by numerous legal authorities. All aspects of the law, with exception to the individual mandate continue to have effect. For practical purposes, nothing has changed except the decision now hangs over the country and Congress as an unsettling reminder of the political fight over healthcare reform.

The content herein is provided for educational and informational purposes only and does not contain legal or tax advice. Please contact our office if you have any questions regarding what ACA provisions remain applicable to you as an employer and may apply to your employee benefit plans.

Dated: December 19, 2019