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TaxNewsFlash

United States

No. 2023-275
August 8, 2023

D.C. Circuit: Exaction related to employer mandate under Affordable Care Act is a tax for jurisdictional purposes

The U.S. Court of Appeals for the District of Columbia Circuit today affirmed a decision of the U.S. District Court for the District of Columbia holding that an exaction under section 4980H—part of the "employer mandate" enacted as part of the "Patient Protection and Affordable Care Act" (Pub. L. No. 111-148, March 2010) (the "Affordable Care Act" or ACA)—is a "tax" for purposes of the Anti-Injunction Act, which strips courts of jurisdiction over suits having the "purpose of restraining the assessment or collection of any tax" under section 7421(a). Accordingly, the D.C. Circuit affirmed the district court's dismissal of the appellant's suit for lack of jurisdiction.

The case is: *Optimal Wireless LLC v. IRS*, No. 22-5121 (D.C. Cir. August 8, 2023). Read the D.C. Circuit's decision [PDF 185 KB]

Summary

The ACA obligates large employers to provide their full-time employees with health insurance coverage meeting certain requirements. If an employer fails to provide coverage or provides noncomplying coverage, it is liable for an exaction under section 4980H.

In 2019, the IRS sent two letters proposing exactions under section 4980H to the appellant, a wireless communications company. The appellant then filed an action against the IRS and the Department of Health and Human Services, claiming that the agencies had failed to satisfy certain procedural requirements before imposing the proposed exactions. After the district court dismissed the appellant's suit for lack of jurisdiction, the appellant appealed to the D.C. Circuit.

Today, the D.C. Circuit affirmed the district court's dismissal of the appellant's suit on the grounds that a section 4980H extraction is a "tax" for purposes of the Anti-Injunction Act's jurisdictional bar.

The court noted that the Supreme Court upheld the individual mandate under the ACA in *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012) (NFIB), as a constitutional exercise of Congress's power to tax. However, the Supreme Court also held in NFIB that the exaction for noncompliance with the individual mandate was not a "tax" for purposes of the Anti-Injunction Act because Congress repeatedly described that exaction as a "penalty" rather than a "tax."

In contrast, Congress described the section 4980H exaction for noncompliance with the employer mandate as a "tax" four different times. Although Congress also labeled the same exaction an "assessable payment" or a "penalty," that did not dissuade the court from concluding that its repeated references to the exaction as a "tax" require treating it as one for purposes of the Anti-Injunction Act.

The court specifically rejected the appellant's argument that section 4980H must contain a clear statement that its exactions constitute a "tax" because the statute subject to that "high bar" is the jurisdictional bar under the Anti-Injunction Act, not section 4980H. The court stated that the question of whether another statute is best read to implicate the Anti-Injunction Act's jurisdictional bar—which in this case turns on whether section 4980H imposes a "tax"—is governed by ordinary principles of statutory interpretation, not by any clear-statement rule.

The court also noted that other circuits have disagreed on whether a section 4980H exaction is a "tax" for purposes of the Act's jurisdictional bar (compare *Hotze v. Burwell*, 784 F.3d 984 (5th Cir. 2015) (section 4980H exaction is a tax) with *Liberty University, Inc. v. Lew*, 733 F.3d 72 (4th Cir. 2013) (section 4980H exaction is not a tax); see also *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013) (indicating that section 4980H exaction would not constitute a tax).