

Last Chance for ACA-Related Protective Refund Claims for 2016

Key Points

- The Supreme Court's upcoming decision regarding the Affordable Care Act could render its tax provisions retroactively unconstitutional.
- Depending on the outcome, there is a potential opportunity for refunds on open tax years for taxpayers who paid the net investment income tax and additional Medicare tax.
- For most taxpayers, the deadline for a protective claim of refund on a 2016 tax return, filed without extensions, is July 15, 2020.

The Supreme Court is scheduled to consider the latest challenge to the [2010 Patient Protection and Affordable Care Act \(ACA\)](#) this fall in the case of [California v. Texas](#), with a decision expected in 2021. In the event the Court decides the individual mandate is unconstitutional, income taxes established under the ACA could be effectively repealed. Any such taxes paid in prior years would be refundable if a claim of refund was properly filed.

Protective Refund Claim for ACA-Related Income Taxes

Since 2013, the ACA has set in place a net investment income (NII) tax, applied at a rate of 3.8% to dividends, royalties, interest, and capital gains of higher-income individuals, trusts, and estates. The ACA also imposes an additional 0.9% Medicare tax on the wages, compensation, and self-employment income of individuals over the applicable thresholds.

It remains to be seen whether the Supreme Court will strike down the ACA provisions on the NII and additional Medicare tax in its highly anticipated decision. However, taxpayers who have paid significant ACA-related income taxes may consider filing a protective refund claim while the case is still pending. A protective refund claim must be filed to preserve the taxpayer's right when the refund depends on future events and may not be determined until after the statute of limitations expires.

Deadline for Filing a Protective Refund Claim for 2016

Generally, the period of limitation on filing a refund claim is three years from the date the return was filed or two years from the



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date the tax was paid, whichever is later. As a result, taxpayers who wish to preserve the right to a refund of ACA-related income taxes must file a protective refund claim for the 2016 tax year, as the statute of limitations on that tax year will close before the Supreme Court's decision.

Given the extensions granted due to COVID-19, most taxpayers who filed a 2016 tax return on or before July 15, 2017 must file a protective claim by July 15, 2020. For extended returns, the claim would be due three years from the date of filing.

For further information on tax planning matters in light of the latest challenge to the ACA, please contact the [Hanson Bridgett Tax Group](#).

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