

Part I

Section 61.—Gross Income Defined

Rev. Rul. 2013-27

ISSUE

Are amounts a covered entity collects from policyholders to offset the cost of the annual fee imposed on health insurance providers under § 9010 of the Affordable Care Act included in the covered entity's gross income under § 61(a) of the Internal Revenue Code?

FACTS

M is a United States corporation that is engaged in the business of providing health insurance for United States health risks. Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029) (2010)) (collectively, the Affordable Care Act or ACA), imposes an annual fee on each covered entity engaged in the business of providing health insurance (annual fee). M is a "covered entity" within the meaning of § 9010(c)(1).

In Taxable Year X, the annual fee imposed on M pursuant to § 9010 is \$10x. To offset part of the cost of the annual fee, M imposes a surcharge totaling \$6x on certain

of M's health insurance policyholders that is separately stated from the premium billed to them. To offset the remaining cost of the annual fee, M increases by a total of \$4x the amount charged for health insurance premiums to M's remaining policyholders. The additional charge is not stated separately on the policyholders' bills. M collects from policyholders the total amount of the \$10x cost of the annual fee imposed by § 9010.

LAW

Section 61(a) provides that, except as otherwise provided in subtitle A, gross income means all income from whatever source derived.

Section 9010(a) of the ACA imposes an annual fee on each covered entity engaged in the business of providing health insurance. Under § 9010(c)(1), a covered entity is generally an entity that provides health insurance for a United States health risk. A covered entity is liable for the annual fee in each calendar year beginning after 2013.

Section 9010(f)(2) treats the annual fee as a tax described in § 275(a)(6), which denies a deduction for certain taxes.

ANALYSIS

Unless a specific exclusion from income applies, an amount a taxpayer collects from a third party to cover the cost of a liability, including deductible and nondeductible liabilities incurred in a trade or business, is included in the taxpayer's gross income under § 61. Amounts a taxpayer charges customers for goods and services typically offset the taxpayer's costs of doing business. No provision of the Code or other law excludes these amounts from a taxpayer's gross income simply because the taxpayer is

passing overhead costs and other business expenses to its customers. As discussed below, these amounts consistently have been found to be includible in income.

Rev. Rul. 79-27, 1979-1 C.B. 217, involves a taxpayer engaged in mining and selling coal, on which a federal excise tax was imposed. The taxpayer separately stated the excise tax on invoices to its customers. Noting that the excise tax was the liability of the taxpayer and could not be assessed on the customer, the ruling holds that additional amounts the taxpayer received from its customers on account of the separately stated excise tax were included in the taxpayer's gross income. See also Iowa Southern Utilities Co. v. United States, 841 F.2d 1108 (Fed. Cir. 1988) (surcharge utility collected from customers to offset specific expense is includable in gross income); Hinshaw's Inc. v. Commissioner, T.C. Memo. 1994-327 (1994) (recoupment from customers of cost of insurance that state law required taxpayer to purchase is included in taxpayer's gross income).

Section 9010 of the ACA imposes the annual fee on a covered entity, not on the covered entity's health insurance policyholders. The fee is part of the covered entity's cost of doing business. No exemption or exclusion from gross income applies to additional amounts that the covered entity charges its policyholders to cover the cost of this fee. Accordingly, M charging and collecting from its policyholders the \$10x, whether or not separately stated, is no different than M passing other business expenses on to its customers as part of M's charges for providing health insurance. As a result, M must include the \$10x in gross income.

HOLDING

Amounts a covered entity collects from policyholders to offset the cost of the annual fee imposed on health insurance providers under § 9010 of the ACA are included in the covered entity's gross income under § 61(a).

DRAFTING INFORMATION

The principal author of this revenue ruling is Edward C. Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Schwartz at (202) 317-7006 (not a toll-free call).