

Amendment 69: What it means for our taxes

Income Taxes on Payroll: Employers will pay 6.67 percent on total payroll. Employees will pay 3.33 percent on all payroll income. This totals a new 10 percent tax on all wages and earnings. This is in addition to Colorado's existing income tax rate of 4.63 percent.

Example: Jack earns \$1,000 a week. Jack's employer must pay \$66.70, and Jack must pay \$33.30 each week in ColoradoCare taxes. If the employer so chooses, it may elect to pay Jack's share of the taxes.

Income Taxes on Non-Payroll Revenue: In addition to the payroll taxes just described and Colorado's existing income tax rate of 4.63 percent, a new 10 percent ColoradoCare tax will be assessed on all non-payroll income. This includes:

Interest income earned on savings & dividend income from stock: this includes funds in savings accounts, money market accounts, and certificates of deposits (CDs) and dividend income generated from stock ownership in either public or private companies.

Example: Jack receives interest income of \$100 on his savings account and dividend income of \$200 on stock he inherited from his grandfather. Jack will have to pay ColoradoCare taxes of \$30 (\$10 on the interest income and \$20 on the dividend income) on his earnings.

All capital gains income: not only capital gains from the sale of stock, but also capital gains on the sale of equipment or assets, which would most likely accrue to small businesses.

Example: Jack has a gain of \$18,000 on stock he purchased 10 years ago and sold this year. He must pay ColoradoCare tax of \$1,800 on the sale of the stock.

Example: Jill is an individual proprietor of a print shop. She sells some equipment at auction for a \$12,000 gain. Jill must pay \$1,200 in ColoradoCare tax on the gain.

State income tax refunds: if required to report this income, it would be subject to the 10 percent tax.

Example: Jack and Jill purchased their first home last year and, as a consequence, were able to itemize their deductions. Doing so generated a state income tax refund of \$900 they have to include in income this year. They'll pay ColoradoCare tax of \$90 on that refund income.

Some retirement income: while some portion of retirement income from social security, pensions, annuities and IRA income is exempt, any income taxable in the state of Colorado will be subject to the new 10 percent tax. Coloradans with retirement income in excess of \$24,000 could be taxed on the incremental revenue above that amount.

Example: Paul finally retired this year at age 68 and received a \$96,000 lump-sum distribution from his retirement fund. Paul will have to pay ColoradoCare tax of 10%, or \$7,200, on \$72,000 of the distribution (\$96,000 - \$24,000, times 10%).

Business income to entrepreneurs and family owned-businesses: This new tax will disproportionately hurt people who have structured their businesses for tax purposes as “pass through” entities. This includes sole proprietors, partnerships, S corporations, LLCs, LLPs, many trusts, and income from farms and rental property. In fact, anyone receiving income on a Schedule K-1, rental income, or income from a farm will have to pay the full 10 percent tax on all their business profits, whether or not those profits are ever withdrawn from the business and realized to the individual. In contrast, businesses that pay corporate taxes will not be subject to this 10 percent tax on their business profits unless or until that revenue is withdrawn from the corporation and realized to an individual. This tax is in addition to the payroll tax that all businesses – regardless of tax structure - will pay for employees that work for them. Since most entrepreneurs, small and family businesses use pass-through entities for structuring their business activities, the ColoradoCare tax will disproportionately fall on them. In 2015, Colorado had 52,032 corporate filers and 235,733 pass-through filers (partnerships, LLCs, and S corporations).

Example: Jack and Jill are starting a new business and incorporate as a regular “C” corporation. Including themselves, the corporation has ten employees with total salaries of \$480,000 and makes a profit in the first year of \$80,000. They re-invest the profit in additional equipment. The corporation’s total ColoradoCare tax on salaries will be 10% of the \$480,000 or \$48,000 (6.67%, or \$32,016, will have to be paid by the corporation and 3.33%, or \$15,984, will be withheld from the employee’s wages). There is no ColoradoCare tax on the profits earned by the corporation

However, if Jack and Jill start a new business and decide to establish a partnership rather than a corporation, their tax treatment under Amendment 69 is different. Let’s assume the same facts as above: including themselves, the partnership has ten employees with total salaries of \$480,000 and makes a profit in the first year of \$80,000. They re-invest the profit in additional equipment. Just like the corporation, the partnership’s total ColoradoCare tax on salaries will be 10% of the \$480,000 or \$48,000 (6.67%, or \$32,016, will have to be paid by the partnership and 3.33%, or \$15,984, will be withheld from the employee’s wages). However, Jack and Jill will also have to pay 10%, or \$8,000, ColoradoCare tax on the partnership’s profits and will only have \$72,000 to reinvest. ***In short, starting out as a pass-through entity (partnership, LLC, LLP, or S corporation) will cost Jack and Jill an additional \$8,000 in ColoradoCare taxes.***

Other income: this catch-all category could include any income reported on a Form 1099, including everything from jury duty pay to gaming winnings.

The only income *excluded* from this 10 percent non-payroll income tax is *alimony, unemployment income and the exempted portion of retirement income.*

These taxes may increase. No one really knows what it will cost to run this first-of-its-kind government health care program. As such, the amendment empowers the new Board of ColoradoCare to seek member approval for future tax increases. (Note: the definition of who is a “member” eligible to vote in ColoradoCare elections is different than existing voter eligibility rules in Colorado.) ***This means that the new taxes outlined in Amendment 69 are a floor, or a starting-point, for what Colorado taxpayers might need to pay to support this new government-run health care system.***

Important Tax Questions about Amendment 69:

When do the new taxes take effect?

If Amendment 69 is approved in November 2016, collection of the new taxes will begin July 1, 2017.

The initial tax rates will be a fraction of the ultimate tax rate: 0.6 percent of total payroll from each employer, 0.3 percent of payroll income from each employee and 0.9 percent on all non-payroll income. This new revenue will accrue to a transitional operating fund to support the establishment of ColoradoCare. Taxes will continue to be collected at this rate until 30 days before ColoradoCare assumes responsibility for paying for health care services for beneficiaries, at which time, the Colorado Department of Revenue will collect the full tax rate described above. There is no timeline established in the amendment by which ColoradoCare must assume responsibility for paying for health care services. As such, Colorado taxpayers could pay into the transitional operating fund for years, without receiving any health care benefits.

What does this mean for retirees?

While a portion of retirement income, social security, pensions, annuities and IRA income, is exempt from the new 10 percent non-payroll tax, any amount taxable in the state of Colorado will be subject to the new tax. Coloradans with retirement income of more than \$24,000 could be taxed on the incremental amount above \$24,000. If you are a Medicare-eligible retiree, you could be paying for health care twice, once through Medicare and again with this 10% tax. In that case, ColoradoCare becomes a secondary insurer to Medicare.

What does this mean for non-profit and public institutions?

All businesses, regardless of tax status, are subject to the 10 percent payroll tax.

What does this mean for national corporations or unions that offer self-funded, federally-regulated health plans to employees in Colorado today?

All companies, regardless of size, tax structure or location of corporate headquarters will be subject to the payroll tax for their Colorado workforce. National companies and unions that offer self-funded, federally regulated health plans will face a choice about how to finance health benefits for their Colorado employees. They will either have to exclude their Colorado employees from the health insurance benefits provided to employees/members in other states and replace those benefits with ColoradoCare, thus creating a different set of benefits for employees based on location. In this scenario, depending on the benefits that ColoradoCare offers, employers may have to consider purchasing a supplemental plan to ensure benefit parity for all employees. Or they will be subject to paying for private health insurance benefits for all employees/members and paying the payroll tax on their Colorado employees, in order to offer all employees the same benefits. In the latter scenario, ColoradoCare will act as a secondary insurance benefit to Colorado employees, paying deductible and co-pays under their employer/union plan.

What does this mean for employers that don't offer health insurance today or only cover a portion of their employees?

Under Amendment 69, *all* employers will be required to pay the payroll tax on *all* employees. While this is changing due to the employer requirement in the Affordable Care Act, some employers do not offer health insurance benefits to their employees today. Other employers offer health insurance only to a portion of their workforce – e.g. full time employees only. Other employers offer health insurance to all to their employees, but only a portion of their workforce participates in the employer's health plan because the employees choose to get their health benefits through a spouse/partner or through the individual market. As such, employers need to recognize that Amendment 69 shifts a portion of health care costs for

all employees to the employer, not just those employees who participate in the company's health care plan today.

What does this mean for non-residents doing business in Colorado?

People who live in other states, but do business in and have taxable Colorado-source income are required to report taxable income generated in Colorado. These people file a non-resident Colorado tax return and will be subject to the new 10 percent health care tax, but would not be eligible for health care services under ColoradoCare because they do not meet the definition of "beneficiary" under Amendment 69. (A beneficiary is someone whose primary residence is in Colorado.)

Example: AAA Architecture is a regional architectural firm established as a partnership that does business and generates revenue in Kansas, Colorado and Oklahoma. Revenue generated in all three states is shared among the partners. Those partners whose primary residence is in Kansas and Oklahoma are required to file a non-resident tax return in Colorado. Under Amendment 69, that revenue will be subject to the new 10 percent tax, even though those partners will not qualify as "beneficiaries" under the new program because their primary residence is not in Colorado.

Will this tax be deductible for the purposes of determining federal taxes for employers and employees?

Unclear. While it appears that proponents have assumed that this tax will be treated the same as an income tax, it is unclear from the way the Amendment is drafted if that is the case. The new tax structure may be viewed by the Internal Revenue Service (IRS) and the Colorado Department of Revenue as a "payroll tax" similar to federal tax withholdings under the Federal Insurance Contributions Act (FICA) or a health insurance premium tax. How the IRS and Colorado Department of Revenue classify the tax will determine whether or not it is deductible income for federal tax purposes.

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