United States Senate
WASHINGTON, DC 20510

February 10, 2014

John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20230

Dear Commissioner Koskinen:

At the turn of the year, we crossed a new threshold in federal policy. The Patient Protection and Affordable Care (ACA, also known as "Obamacare") now mandates individuals who choose not to purchase health insurance be subject to taxation by the Internal Revenue Service (IRS).[1]

Never before – since the founding of our Republic – has Congress adopted and the courts upheld a law which effectively forces Americans to buy a product they may not want and subjects them to a tax if they choose not to do so. Given the unprecedented nature of this new era, we write with several questions regarding the Internal Revenue Service's efforts to enforce section 5000A of the Internal Revenue Code, or the "individual mandate."

We note the Inspector General for Tax Administration (TIGTA) report released on November 8, 2013, which identifies the implementation of ACA's tax law changes as the second highest management and performance challenge for the Agency.[2] Certainly, administering the 21 new taxes in the law – which are estimated to raise more than $1 trillion in revenue over the coming decade – will be a challenge. However, the individual mandate is more than just another tax included in the law to pay for expensive health insurance coverage. According to many supporters of the ACA, the individual mandate tax is an essential component for the health care law to work.

Yet the individual mandate tax is one of the most unpopular provisions in the federal health law. Millions of Americans deeply resent how the ACA raises the cost of their health care coverage, reduces their coverage options, and effectively dictates the type of coverage they must buy – and taxes them if they do not buy it. Certainly, in the coming months many Americans will also have strong feelings about how the IRS enforces the individual mandate tax.

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1 We recognize the law and its accompanying regulation outline certain individuals (and their dependents) who may be exempt from the penalty. For example, individuals whose household income is less than the filing threshold for federal income taxes for the applicable tax year (filing threshold exemption), as well as those whose required contribution for self-only coverage for a calendar year exceeds 8% of household income (affordability exemption), will be exempt. Additionally, certain categories of individuals will be exempt from the individual mandate, including those with qualifying religious exemptions, those in a health care sharing ministry, individuals not lawfully present in the United States, and incarcerated individuals (except those pending the disposition of charges). Moreover, no penalty will be imposed on those without coverage for less than three months or members of Indian tribes.

2 "Management and Performance Challenges Facing the Internal Revenue Service for Fiscal Year 2014," Department of the Treasury, Inspector General for Tax Administration, November 8, 2013, http://www.treasury.gov/tigta/management/management_fy2014.pdf

Given a number of last-minute administrative "adjustments" made by the Administration, there is some understandable confusion and concern about the enforcement of the individual mandate tax. With the Administration's decision to waive, delay, or unilaterally alter some provisions of the law—including the employer mandate tax on businesses—taxpayers deserve clarification on how the agency intends to enforce the individual mandate tax.

In order to clarify the IRS's enforcement of the individual mandate tax, as well as any outstanding issues that need to be addressed by Congress and the IRS, please respond to the following questions:

1. Under the law, the IRS does not have the authority to file a notice of federal tax lien or bring forth criminal prosecutions in order to enforce the tax payment.

    a. Please describe the methods the IRS intends to use to enforce payment of the tax.

    b. The Congressional Research Service (CRS) states "it is possible that the IRS could present its claim when property is being sold and collect both the original penalty amount along with accrued interest and applicable penalties."[3] Does the IRS plan to do this?

2. CRS also notes "it is unlikely that the IRS will assess the penalty on a return before routine processing of the return is completed. Accordingly, the taxpayer may have received in full the refund anticipated and reported on the return for which the penalty should have been calculated but was not." In light of CRS' statement, does the IRS anticipate taking the tax from a person's refund would be an effective method for ensuring compliance with the individual mandate tax?

3. The ACA authorizes the Secretary of Health and Human Services (HHS) to exempt an individual from the individual mandate tax if he or she has "suffered a hardship with respect to the capability to obtain coverage under a qualified health plan."[4] The Administration subsequently announced late in 2013 that individuals whose insurance policy had been canceled would be eligible for a hardship exemption in 2014. Does the IRS intend to enforce the tax on individuals who have been unable to access the HealthCare.gov or state exchange websites? Will individuals who completed all the steps to purchase health insurance, but were not enrolled due to a website error be required to pay the tax?

4. The Administration has already announced several exemptions to the individual mandate. In fact, according to HealthCare.gov, there are eight separate exemptions, along with an additional thirteen circumstances that could qualify a person for a hardship exemption. Assuming the taxpayer can identify the correct exemption, they must either claim the exemption on their tax return or complete one of eight separate forms provided by the government. To make matters more confusing, those who are not required to file a

[3] "The PPACA Penalty Provision and the Internal Revenue Service," Congressional Research Service, April 30, 2010, http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=2ec1e180-afbf-4a48-ba12-8dea812ac30a
[4] P.L. 111-148, § 1411(b)(5)

tax return do not even need to apply for an exemption. If the taxpayer meets one or more of these exemptions, but unknowingly pays the tax, will the IRS refund the payment?[5]

5. How will the IRS verify the information provided regarding a person's enrollment in a qualified health plan is accurate? In addition, if a person has a gap in coverage that is less than three months, they are not required to comply with the individual mandate. How does the IRS intend to verify the coverage gap did not exceed the three-month threshold?

6. According to CRS, the IRS often conducts "correspondence audits in which the taxpayer is asked to provide additional information to support the information on the tax return."[6] Does the IRS plan to ask any, or all, taxpayers for supporting documentation to verify the taxpayer has health insurance meeting the minimum essential coverage requirement?

7. In light of TIGTA's November 13, 2013, memorandum, does the IRS currently have the personnel and infrastructure in place to equitably enforce the individual mandate in 2014? What steps does the IRS still need to complete to be able to enforce the tax, and when will these steps be completed?

Given the importance of ensuring that the law is enforced in a transparent and accountable manner, please respond to our letter within 15 days of receipt. Meanwhile, do not hesitate to contact our staff regarding any questions you may have. We look forward to your response to these important questions.

Sincerely,

Tom Coburn

Tom A. Coburn, M.D.
U.S Senator

Lamar Alexander

Lamar Alexander
U.S Senator

Jeff Sessions

Jeff Sessions
U.S Senator

John Cornyn

John Cornyn
U.S Senator

John Barrasso

John Barrasso, M.D.
U.S Senator

Jerry Moran

Jerry Moran
U.S Senator

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[5] "Questions and Answers on the Individual Shared Responsibility Provision," Internal Revenue Service, http://www.irs.gov/uac/Questions-and-Answers-on-the-Individual-Shared-Responsibility-Provision

[6] "The PPACA Penalty Provision and the Internal Revenue Service," Congressional Research Service, April 30, 2010, http://www.coburn.senate.gov/public/index.cfm?a=Files.Serve&File_id=2ec1e180-afbf-4a48-ba12-8dea812ac30a