

## Challenge to the Constitutionality of the ACA Raises NII Tax Refund Possibility

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The constitutionality of the Affordable Care Act (ACA) is being challenged before the Supreme Court for a third time this fall in the case of *California v. Texas* (captioned *Texas v. U.S.* in prior litigation). Among the provisions of the ACA that could be struck down is the 3.8% net investment income (NII) tax that has applied to the investment income (such as dividends, interest, and capital gains) of higher-income taxpayers since 2013. The ACA also imposes an additional 0.9% Medicare tax on the wages of high-income taxpayers.

The plaintiffs in this case would have to overcome a number of significant obstacles to prevail in this case. Even if they did, it seems unlikely that the ACA (including these taxes) would be invalidated for years prior to January 1, 2019, when Congress eliminated the “individual mandate” and associated penalties, since the elimination of those provisions is critical to this challenge.

If, however, the Supreme Court invalidates the taxes imposed by the ACA with respect to years prior to 2019, your ability to claim a refund of NII and Medicare tax would be limited by the deadline to file a refund claim. Taking into account the extensions granted due to the coronavirus, for 2016 tax returns filed on or before July 15, 2017, the deadline for a refund claim could be as early as July 15, 2020. If you had an extension for filing your 2016 return and filed by the extended deadline, a claim for refund would have to be filed within three years of your filing date. Because the Supreme Court will not hear this case until fall at the earliest, and likely will not decide the case until 2021, you have the option to preserve your ability to claim a refund for 2016 if those taxes are later invalidated by filing a “protective refund claim” no later than July 15, 2020 (or the later applicable date, if you filed on extension for 2016).

Due to the uncertainty created by the Supreme Court’s recent decision to hear this case, we wanted to make you aware of the **July 15, 2020 deadline** to file a protective refund claim for 2016 taxes. Please contact us if you would like to discuss this in light of your individual circumstances.

For more information, please contact Leila Carney or another attorney in our Private Client or Tax Controversy practice groups:

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