



# Indian Law Newsletter



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## Word from the Chair



By Lauren King

**Hello friends,**

We have lots of news as we kick off our 2015-2016 year:

**New Board Members.** Congratulations and welcome to the newly elected officers and trustees of the Indian Law Section elected at the annual meeting on September 10, during the University of Washington’s Indian Law Symposium. Joining our governing board of trustees, we welcome Rebecca Jackson (Morisset Schlosser Jozwiak), Robin McPherson (Washington State Attorney General’s Office), Lauren Rasmussen (Law Offices of Lauren P. Rasmussen), Rachel Saimons (Kilpatrick Townsend), and Jane Steadman (Kanji & Katzen). The slate of officers for 2015 includes Claire Newman (Kilpatrick Townsend) serving as Chair-Elect, Diana Bob (Stoel Rives) serving as Secretary / Treasurer, and I am honored to take on the role as Chair (big thanks to Foster Pepper for supporting me in this role). We are at work setting our priorities for the year ahead. We look forward to continuing to coordinate with the Northwest Indian Bar Association to increase the opportunities for Indian law practitioners to network with each other and to attend meaningful continuing education and fundraising events.

**Holiday Party!** This year, we plan to have our holiday party on Thursday, December 10, after the Northwest Gaming Law Summit from 5:00 p.m. to 7:00 p.m. The party will be hosted at Stoel Rives, across the street from the Gaming Summit at One Union Square, 600 University St, 36th Floor. Join us and enjoy Stoel Rives’ display of over 100 original Edward Curtis photographs! There is no cost to attend the party, but we would appreciate attendees bringing children’s winter wear, toiletries, and /or diapers for donation to native communities. *(continued on page 2)*

## Indian Lawyers in the News

Congratulations to **Brooke Pinkham** (Nez Perce) on her completion of the 2015 Washington Leadership Institute. Brooke is an attorney with the Northwest Justice Project.



(left to right) Washington Supreme Court Justice and WLI Co-Chair, Mary Yu; WLI Founder Ronald Ward; Brooke Pinkham and her son Abraham Krigsman; WLI Co-Chair James Williams.



**Bree Black Horse** (Seminole Nation of Oklahoma) has joined Galanda Broadman PLLC as an associate in the firm’s Seattle office. Bree is a graduate of Seattle University Law School and comes to the firm from a U.S. District Court clerkship.



Attorney **Sarah Roubidoux Lawson** has recently joined the nationally-recognized Indian law practice at Schwabe, Williamson & Wyatt. Lawson brings over a decade of experience in Indian law working in-house with tribal governments. She is admitted to practice in Washington, Arizona, and Wisconsin.

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ALTERNATIVE  
DISPUTE  
RESOLUTION

ANIMAL LAW

ANTITRUST,  
CONSUMER  
PROTECTION AND  
UNFAIR BUSINESS  
PRACTICES

BUSINESS LAW

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*Connect with others in your  
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Membership in one or more of the WSBA's sections provides a forum for members who wish to explore and strengthen their interest in various areas of the law.

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## Is there a section that meets my interest?

With 28 practice sections, you'll find at least one that aligns with your practice area and/or interest.

## What is the membership year?

Oct. 1 to Sept. 30.

## What about law students?

Law students can join any section for \$18.75.

## What about new attorneys?

Newly admitted attorneys can join one section for free during their first year.

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*Section logo designed by Scott Sufficool*

## Message from the Chair from page 1

**Scholarships.** ILS is proud to fund \$10,000 for two scholarships for native students. One scholarship will fund an LSAT prep course, and one scholarship will help pay for law school tuition.

**Mentorship/Outreach.** ILS is developing a mentorship program in which local Indian law practitioners will assist Native American law school applicants to navigate the LSAT, the law school application process, law school education, and beyond. We are excited to develop a program that will help increase access to law school. We will kick off the mentorship program with a dinner in early November. If you are interested in becoming a mentor or learning more, please contact Claire Newman or Rachel Saimons, or watch for further information about the upcoming dinner.

We welcome ideas from our membership for areas of interest in CLE topics and social events. Stay tuned for more news and updates on Section activities through this newsletter and our Section email distribution list.

## INDIAN LAW NEWS YOU CAN USE

### 2015 State Legislative Update – Tribal Issues



By Sean Flynn

July marked the end of a historically long 2015 legislative session, after lawmakers reached a hard-fought compromise on the biennial budget that addressed several mandated funding priorities. The stage for this year's session was set the previous September when the state supreme court, under its continuing jurisdiction of the *McCleary* case,<sup>1</sup> found the Legislature in contempt for not meeting its constitutional duty to implement a plan to fully fund the public education system and threatened to impose sanctions if a plan was not enacted by the end of the 2015 session.<sup>2</sup>

The November elections provided additional pressure on the budget writers through passage of Initiative Measure 1351, which required the reduction of class sizes from kindergarten through high school and carried an estimated \$2 billion price tag. Also hanging over lawmakers was the impending order of a federal court requiring the state to improve competency services for mentally ill people in the criminal justice system.<sup>3</sup>

All this greeted a Legislature newly constituted from an election that had increased the political divide between the two houses, where the Republicans picked up a true majority in the Senate while the Democrats saw their majority shrink in the House. Seven months and three special sessions after convening, lawmakers left Olympia with a budget that significantly increased education funding, though delaying full implementation of the *McCleary* mandate as well as the class size reduction initiative.

While the budget negotiations provided a backdrop for the entire session, lawmakers were able to address other important policy issues, including marijuana regulation, environmental standards, and college tuition, as well as the first new transportation revenue package passed in a decade. Several bills directly involving tribal affairs also were enacted within this setting while other business was left unfinished for next year's session.

#### Tribal-State Marijuana Compact Authority (HB 2000)<sup>4</sup>

Leading up to the 2015 session, lawmakers had been preparing to tackle the difficult outstanding issues surrounding marijuana regulation left unaddressed since legalization. New questions suddenly arose in October

2014, however, when the Department of Justice issued a memorandum<sup>5</sup> announcing a new executive policy regarding the enforcement of federal marijuana law in Indian Country, which essentially mirrored the government's hands-off approach towards federal enforcement policy in states like Washington that had legalized marijuana pursuant to state law. Would tribes independently produce and sell marijuana products? What effect would a tribal industry have on the state regulatory system? Could a tribal retail market undercut the high state tax rate applied to marijuana sales?

In passing HB 2000, the Legislature recognized the importance of seeking agreements with tribes regarding the regulation of marijuana that would promote cooperation and mutual benefit for both sides. Like other tribal-state compact laws, this law gives the governor general authorization to enter into a compact with a federally recognized tribe and allows the parties to address a broad range of marijuana-related issues, including direct regula-

tion, enforcement, scientific research, taxation, tribal immunity, and dispute resolution processes. The compact agreements apply to sales involving tribal businesses, or where the actual transac-

tion occurs within Indian country.

While granting broad discretion to the governor in negotiating the terms of an agreement, the Senate amended the original bill to specifically require any compact to provide for the collection of a tribal tax equal to the state tax rate. However, the Senate amendments also allow for tribal tax exemptions for sales to tribal members or tribal businesses on marijuana grown, produced, or processed within Indian Country, as well as for medical marijuana products used by the tribe for medical treatment within Indian country. Other tax exemptions are recognized generally to the extent provided under state or federal law. The Legislature also requires that the compact address health, safety, security, and cross-border commerce issues regarding marijuana produced, processed or sold in Indian country.

Within two months of the new law's enactment, the Suquamish tribe entered into the nation's first marijuana compact with the state for the production and retail of marijuana products.<sup>6</sup> Soon after, the Squaxin Island Tribe signed a similar compact as well.<sup>7</sup> Among other things, these compacts address licensing, enforcement, dispute resolution, and taxation issues.

#### Tribal Curriculum in Public Schools (SSB 5433)<sup>8</sup>

The Legislature previously has encouraged the development and implementation of curricula in public schools  
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SEVERAL BILLS DIRECTLY INVOLVING TRIBAL AFFAIRS ALSO WERE ENACTED WITHIN THIS SETTING WHILE OTHER BUSINESS WAS LEFT UNFINISHED FOR NEXT YEAR'S SESSION.

## Protecting the Special Indian Provisions of “Obamacare”<sup>†</sup>

By Andrew W. Baldwin, Kelly A. Rudd, and M.J. Vuinovich

Congress exempted Indians from payment of health insurance deductibles and copayments under the Patient Protection and Affordable Care Act (ACA) (“Obamacare”) as a progressive way to help fulfill federal trust and treaty obligations in Indian Country. However, recent IRS regulations prevent tribal members from obtaining this exemption if they work for a “Large Employer,” even when that employer is an Indian Tribe. The regulations push tribal members, who are exempt from the ACA individual mandate, away from the health insurance market and back toward the historically underfunded Indian Health Services (IHS) system. At the same time, fewer insurance policies for tribal members reduce reimbursements for IHS, which, in turn, further reduce IHS funding and services. Indian Country is beginning to take a closer look at the problems created by these new IRS regulations and to lobby Congress and the Administration for a solution. In fact, Senator Daines, R-MT, and others, are now sponsoring a bill to make it clear that Congress does not intend for Tribes to be treated as Large Employers under the ACA.

### The Affordable Care Act

In 2010, Congress enacted special provisions for the health care of Indian people and permanently re-authorized the Indian Health Care Improvement Act (IHCIA) as part of the ACA. The intent of these provisions was to improve unconscionably poor health conditions among Native Americans and to help fulfill unique treaty and federal trust obligations to Tribes and tribal members.

### What are the Special Health Care Provisions for Indians?

The ACA includes two important provisions that facilitate cost-effective health care for Native Americans: (1) ACA §1401, which provides Premium Tax Credits to low-income and working-class Americans<sup>1</sup> (people in the income range of 100-400 percent of the poverty line);<sup>2</sup> and (2) ACA §1402(d)(1), which provides for a Cost-Sharing Exemption that Congress created for the specific purpose of funding out-of-pocket insurance co-payments for Native American households with incomes that do not exceed 300 percent of the poverty line.<sup>3</sup>

The federal government has trust and treaty obligations to Native Americans and the need for improved health care services in Indian Country is extraordinary. As a result, Congress went to significant lengths to create legislation that dealt uniquely with the provision of health care for Native Americans under the ACA. Congress intended to treat Indian individuals, Tribes, and tribal entities separately and distinctly from non-Indians within the Act.<sup>4</sup>

The Act includes permanent re-authorization for the IHCIA.<sup>5</sup> It exempts Native Americans from the individual mandate on the basis of the trust relationship.<sup>6</sup> It creates special cost-share benefits for Native Americans.<sup>7</sup> It allows IHS to receive reimbursement for Part B Medicare services.<sup>8</sup> It adjusts the valuation of out-of-pocket costs for Part D Medicare provided through IHS.<sup>9</sup> It creates special monthly enrollment periods for Native Americans designed to promote and protect the rights of Native Americans to make choices about health care insurance.<sup>10</sup> It provides special grant funding opportunities to Tribes and tribal organizations.<sup>11</sup> The law gives special emphasis to promoting health among Native communities and involves Tribes in that process.<sup>12</sup> Further, it preserves a tax immunity for insurance or other health care assistance provided by Tribes for tribal members.<sup>13</sup>

### What are the Two Key Mandates of the ACA?

Within the ACA, Congress created a new system for health care aimed at providing insurance coverage for most Americans. Generally, the law is structured around two key mandates which require most Americans to have health insurance: (1) the individual mandate; and (2) the Large Employer mandate. Nevertheless, Congress approached health care for Native Americans in a way that departs from this overarching structure and is not driven by the application of individual or Large Employer mandates.

The individual mandate obligates most people to purchase insurance or face tax penalties.<sup>14</sup> Congress made Native Americans exempt from the individual mandate.<sup>15</sup> This exemption is in recognition of treaty and trust obligations which require the federal government to provide health care to Native Americans, and builds on an established system of regulations and services provided through the IHS that pre-dates the ACA.

The Large Employer mandate<sup>16</sup> obligates certain employers with more than 50 employees to provide a qualified health insurance plan or face tax penalties. Indian Tribes are not specified in the statutory definition of a Large Employer

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APPLICATION OF THE LARGE EMPLOYER MANDATE TO TRIBES BY REGULATION IS CONTRARY TO THE INTENT OF CONGRESS BECAUSE IT CONFLICTS WITH TREATY OBLIGATIONS AND THE FEDERAL SYSTEM OF HEALTH CARE INCENTIVES FOR INDIANS.

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about tribal language, history and culture, and government. Ten years ago, the Legislature encouraged school districts to collaborate with nearby tribes to create curricula and exchange programs. In 2011, the Legislature directed the Office of Superintendent of Public Instruction (OSPI) to create and offer tribal-based curricula to the school districts. The resulting curriculum, "Since Time Immemorial: Tribal Sovereignty in Washington," is available to school districts through OSPI.<sup>9</sup>

The tribal curriculum bill, SSB 5433, that passed this year now requires school districts to use the OSPI-produced tribal curriculum and to incorporate material about the nearest federally recognized tribes for each district. Collaboration is also required between the school districts, tribes and OSPI.

Floor amendments were introduced to SSB 5433 in both the House and Senate to wipe out the reference to tribes' federally recognized status, and thereby require the curriculum to include non-federally recognized tribes, including tribes seeking federal recognition. However, both amendments failed on floor votes in each chamber.

### Tribal Law Enforcement Access to Prescription Monitoring Data (HB 1637)<sup>10</sup>

The state Department of Health maintains a program to monitor the prescription of controlled substances and how they are dispensed to patients. The data collected in the program is confidential, however the Department is authorized to provide information to local, state and federal law enforcement officials and prosecutors who are engaged in a specific investigation. This bill, HB 1637, allows tribal law enforcement officials and tribal prosecutors the same access to the Department's program data that is available to other law enforcement officials.

### Culvert Litigation and Transportation Budget

The Northwest tribes won a significant victory in 2013 in the longstanding federal litigation with the state over treaty fishing rights,<sup>11</sup> in which the district court determined that the state-managed stream culverts are blocking fish passage to the tribes' protected fishing areas and ordered the state to repair or replace all state culverts that impede fish migration runs. While the Department of Transportation has been working on fish passage issues for years, it estimated a total cost of approximately \$2.4 billion to sufficiently remove the fish barriers and meet the court's deadline for compliance by 2030. The new transportation revenue package includes roughly \$300 million for accelerated work on the culverts.

### Billy Frank Jr. Resolution (SR 8659)

Billy Frank Jr., the lifetime advocate for tribal treaty rights and longstanding chair of the Northwest Indian Fisheries Commission, passed away on May 5, 2014. Earlier that year, the Legislature passed HB 2080,<sup>12</sup> which vacated the old convictions for tribal activists, like Billy Frank Jr., who practiced civil disobedience in defiance of state law to promote awareness for tribal treaty fishing rights.

This year, the Secretary of State honored Billy Frank Jr. posthumously with the state's highest award, the Medal of Merit, in a ceremony held in the House chambers. Later during session, the Senate adopted a resolution honoring Billy Frank Jr., including his achievements in environmental preservation and his legacy of collaborative stewardship.

### Looking Ahead

The upcoming 2016 legislative session will see continued efforts to increase education funding as lawmakers consider supplementing the biennial budget under pressure of the short session term (60 days) as well as the state supreme court's active oversight of the budgetary progress.<sup>13</sup>

On the other hand, the Legislature avoided further judicial scrutiny this summer when the state supreme court upheld the tribal-state fuel tax compact law against challenges that compacts violated the constitutional provision limiting the use of gas tax receipts for highway purposes, and that the compact law impermissibly delegated legislative authority to the governor.<sup>14</sup>

There were a few tribal bills introduced in 2015 that moved through committees, but fell short of final passage. Representative Sherry Appleton's bill, HB 1113, recognizing tribal court judges as officers authorized to solemnize marriages, passed the House but stalled in the Senate Rules Committee. Two other bills passed the House Committee on Community Development, Housing and Tribal Affairs, but failed to reach a House floor vote: HB 1540, sponsored by Representative Joel Kretz, allowing the Colville Tribes to enter into a timber harvest tax agreement, was held up in the House Finance Committee; and HB 1631, sponsored by Representative Kristine Lytton, authorizing the governor to enter a fuel tax compact with the Samish Tribe, passed the House Transportation Committee but was held in the House Rules Committee. Finally, the comprehensive vapor product regulation bill, HB 2211, sponsored by Representative Pollet, including a section authorizing the governor to enter into tribal compacts, passed the House Finance Committee, but also stalled in Rules.

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that is subject to the mandate.<sup>17</sup> However, the IRS and U.S. Health and Human Services (HHS) now include Indian Tribes in a regulatory definition of “Large Employer.”

The IRS promulgated three final regulations – 26 C.F.R. §54.4980H-1,<sup>18</sup> 26 C.F.R. §301.6056-1,<sup>19</sup> and 26 C.F.R. §1.6055-1<sup>20</sup> – that deem Indian governments to be Large Employers for purposes of the ACA. The IRS asserts that the Large Employer mandate applies to “government entities,” including “Indian tribal government employers” and promulgated regulations to that effect. See IRS Questions and Answers on Employer Shared Responsibility Provisions Under the Affordable Care Act.<sup>21</sup> One regulation includes tribal agencies and instrumentalities<sup>22</sup> and another regulation reserves the issue for another day.<sup>23</sup>

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These bills and all others introduced, but not passed, in 2015 will be retained for consideration in the coming 2016 session. New bills also will be introduced for the coming session, starting in December.

*Sean Flynn is an attorney with the Office of Program Research, a nonpartisan division of the Washington State House of Representatives.*

1 McCleary v. State, 173 Wn.2d 477 (2012) (holding that the state had not complied with the constitutional mandate to fully fund the K-12 school system and retaining jurisdiction over the case to ensure the state’s compliance by 2018).  
 2 Order, McCleary v. State, No. 84362-7 (Wash. Sept. 11, 2014).  
 3 Trueblood v. Dep’t of Soc. and Health Serv., 2015 U.S. Dist. LEXIS 43857 (Wash. W.D. April 2, 2015).  
 4 Codified at Chapter 207, 2015 Laws.  
 5 Memorandum, Wilkinson Monty, Office of the Director, United States Department of Justice, October 28, 2014 (“Wilkinson Memo”).  
 6 See Washington State Liquor and Cannabis Board, at www.lbc.wa.gov.  
 7 As of this writing, the Squaxin compact is still pending the governor’s approval.  
 8 Laws of 2015, Ch. 198.  
 9 See Tribal Sovereignty Curriculum, OSPI, at http://tribalsov.ospi.k12.wa.us/.  
 10 Laws of 2015, Ch. 49  
 11 United States v. Washington, 20 F.Supp. 3d 986 (W.D. Wash. 2013) (“culverts case”).  
 12 Laws of 2014, Ch. 176.  
 13 Indeed, the court recently issued sanctions against the legislature for failing to adopt a complete funding plan in the 2015 session. See Order, McCleary v. State, No. 84362-7 (August 13, 2015).  
 14 Auto. United Trades Org. v. State, No. 98734-4 (Wash. August 27, 2015).

**How Do New Regulations Block Health Care Benefits for Indians?**

The ACA mandates that a Large Employer offer policies for their employees and their dependants on certain terms. Generally, the cost of such policies cannot exceed 9.5 percent of the employee’s household income.<sup>24</sup> A Large Employer that does not offer qualified policies faces fines and penalties for failing to do so.<sup>25</sup> Policies available through a Large Employer offer neither the §1401 Premium Tax Credits nor the §1402(d)(1) Cost Sharing Exemption for Indians. As a result, the new regulations block the benefits Congress intended for Native employees of large tribal employers.

The Obama Administration has begun to implement the regulations which include Indian Tribes in the definition of Large Employer. People who are employed by a Large Employer that offers qualified plans may choose to purchase insurance on the exchange instead of through their Large Employer, but in that event, those individuals are still *not* eligible for §1401 Premium Tax Credits to subsidize their health care costs. Moreover, under the new regulations, tribal members living below 300 percent of poverty will also be *blocked* from the §1402(d)(1) Cost Sharing Exemption if they are employed by a Large Employer.

In fashioning regulations expanding the Large Employer provision of the ACA to include Indian Tribes, the Obama Administration has, perhaps inadvertently, created barriers that block Native Americans from accessing important benefits that Congress provided. These regulations create a circumstance where a Native American who is employed by a Tribe (with over 50 employees) is only eligible for Large Employer group coverage. This Large Employer coverage does *not* provide either the Cost-Sharing Exemption or Premium Tax Credits. Simultaneously, the regulations disqualify the Native American employee from obtaining a policy on the exchange that would otherwise provide the Cost-Sharing Exemption and Premium Tax Credits, based (apparently) on the mistaken presumption that the Native American employee will have access to equivalent benefits and coverage on a Large Employer plan. Many tribal members cannot afford to purchase policies offered by a Large Employer, especially when doing so means they must also pay expensive deductibles and co-payments. Instead, members may decline to purchase health insurance and turn back toward reliance on the limited services provided by IHS. Tribes could face substantial financial penalties if they choose not to comply with the Large Employer mandate.

The regulations implementing the Large Employer mandate fail to recognize the unique status of Tribes and tribal members under the ACA. The agency regulations relegate tribal member employees of tribal organizations

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to a generic category of Large Employers, erasing the distinction recognized by Congress.

### Does *King v. Burwell* Have an Effect in Indian Country?

The recent Supreme Court ruling in *King v. Burwell* means that tribal members with health insurance in States that use the federal "exchange" can continue to obtain their policies there, which is good news. But the IRS and HHS continue to block tribal members who work for a Tribe with over 50 employees from the exemption from payment of deductibles and co-payments, which are available to other tribal members who do not work for a Large Employer.

### Conclusion

Application of the Large Employer mandate to Tribes by regulation is contrary to the intent of Congress because it conflicts with treaty obligations and the federal system of health care incentives for Indians. It blocks Native Americans from the Cost-Sharing Exemption (and the Premium Tax Credit), exposes Tribes to penalties if they choose not to comply with the Large Employer mandate, increases financial pressure on efforts by Tribes to help provide affordable health care, reduces IHS budgets and services by eliminating insurance policies as third-party billing sources, increases insurance costs and reduces coverage for Indian people, and drives tribal members back toward reliance on the underfunded IHS system. Health care providers will be burdened by greater numbers of uninsured patients. Consistent with its separate obligations to Indians and its special treatment of Indian health care issues, Congress intended Native Americans to obtain insurance policies and benefits available to them through the exchange. Coordinated lobbying efforts by Indian Country are needed to help resolve these problems. Support for the bill sponsored by Senator Daines is a great place to start.

† This article is not intended and should not be relied upon to provide legal advice. The authors represent the Tribe in *Northern Arapaho Tribe v. Burwell*, a challenge to these IRS regulations. They can be contacted through Baldwin, Crocker & Rudd, P.C. ([bcrrattorneys.com](http://bcrrattorneys.com)), a firm emphasizing the practice of Indian law.

1. ACA §1401 *et seq.*, 26 U.S.C. 36B.
2. ACA §1402(b)(2), 42 U.S.C. §18071.
3. ACA §1402(d), 42 U.S.C. §18071.
4. See Committee Report, Indian Health Care Improvement Act (IHCA) (Congress expressly recognizes "the Federal Government's long-standing obligations under lawful treaties with the Indian nations for the provision to them of health care services"); 25 U.S.C. §1602 (Indian health care laws spring from the United States' "special trust responsibilities and legal obligations to Indians").

5. ACA §10221; 25 U.S.C. §1601 *et seq.*
6. ACA §1501(b).
7. ACA §1402(d).
8. ACA §2902.
9. ACA §3314.
10. ACA §1311(D).
11. ACA §2951, §3505(a).
12. ACA §4001 *et seq.*, §5101 *et seq.*
13. ACA §9021.
14. ACA §5000A, 26 U.S.C. §5000A.
15. ACA §5000A, 26 U.S.C. §5000A.
16. ACA §1513, 26 U.S.C. §4980H.
17. 26 U.S.C.A. §4980H(c)(2)(A) as amended by §1513 of the Patient Protection and Affordable Care Act.
18. On February 12, 2014, the IRS promulgated regulation 26 C.F.R. §54.4980H-1 within its final regulations regarding "Shared Responsibility for Employers regarding Health Coverage." The regulation includes Indian tribal governments, agencies or instrumentalities as a "Governmental entity." The regulation took effect on January 1, 2015. See F.R. Vol. 79, No. 29, 8543 at 8544, 8577-80 (Feb. 12, 2014).
19. On March 10, 2014, the IRS promulgated regulation 26 C.F.R. §301.6056-1 within its final regulations regarding "Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered under Employer-Sponsored Plans." This final regulation incorporates the definition from 26 C.F.R. §54.4980H-1(a)(4) and 26 U.S.C. §4980H(c)(2), which establish a Large Employer to be "... an employer who employed an average of at least 50 full-time employees on business days during the preceding calendar year." The regulation includes Indian tribal governments and subdivisions as "Governmental units" subject to the Large Employer mandate. (The IRS has reserved for a later day its definition of agency or instrumentality.) This regulation also took effect on January 1, 2015. See F.R. Vol. 79, No. 46, 13231 at 13232, 13234, and 13247-48 (March 10, 2014).
20. On March 10, 2014, the IRS promulgated regulation 26 C.F.R. §1.6055-1 within its final regulations regarding "Information Reporting of Minimal Essential Coverage." These regulations set out guidance for providers of minimal essential coverage, including employers. It includes Indian tribal governments as a "government unit." (The IRS has reserved for a later date the definition of agency or instrumentality of that unit.) This regulation also took effect on January 1, 2015. See F.R. Vol. 79, No. 46, 13220 at 13222 and 13226, 13227 (March 10, 2014).
21. Available at <http://www.irs.gov/uac/Newsroom/Questions-and-Answers-on-Employer-Shared-Responsibility-Provisions-Under-the-Affordable-Care-Act>.
22. 26 C.F.R. §54.4980H-1(a)(23); Treas. Reg. §54.4980H-1.
23. Department of Treasury, Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans, F.R. Vol. 79, No. 46, 13231, 13234 (Preamble) (VII)(F) (March 10, 2014) (noting that "the regulations do not define the term *agency* or *instrumentality* of a *governmental unit* for the purpose of section 6056 ..."); see also 26 C.F.R. §301.6056-1, Treas. Reg. §301.6056-1(b)(7)-(8) (reserving on the definition of agency or instrumentality of a government unit).
24. See ACA §5000A(e)(1)(B), 26 U.S.C. §36B(c)(2)(C)(i).
25. ACA §1513, 26 U.S.C. §4980H.



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