

SHOULD YOU FILE PROTECTIVE CLAIM FOR REFUND FOR 2017?



GRIFFING AND COMPANY, P.C.

The Supreme Court has agreed to hear the court case California v. Texas regarding the constitutionality of the Affordable Care Act now that the individual mandate has been eliminated. If the Affordable Care Act is declared unconstitutional, then federal income taxes paid based on this and its associated legislation may be declared refundable.

These taxes include the 0.9% Additional Medicare Tax on Earnings, reported on Form 8959, and the 3.8% Net Investment Income Tax, reported on Form 8960. These taxes affected single taxpayers with compensation and/or Adjust Gross Incomes over \$200,000 and married filing joint taxpayers with compensation and/or Adjust Gross Incomes over \$250,000.

Tax returns have a statute of limitations which allows amended returns for 3 years after either the due date of the return or the date the return was originally filed, whichever is later. Because this court case may not be settled before the end of this statute of limitations for most 2017 tax returns, some taxpayers may want to file a Protective Claim for Refund for 2017. This is filed with the IRS before the statute of limitations expires and requests that the statute of limitations be extended for this one area until the issue is resolved.

Note, this court case is based on the passage of the Tax Cuts and Jobs Act of 2017 which removed the individual mandate starting in 2019. Since the case is based on the elimination of the individual mandate in 2019, many experts believe, regardless of the outcome, that it is highly unlikely that the Supreme Court will declare taxes prior to 2019 unconstitutional.



Nevertheless, we at Griffing & Company, PC want to inform our clients that this option is available. If you paid substantial amounts in these additional taxes in 2017 and would like to discuss the filing of a Protective Claim in order to preserve your possible refund, please contact your tax advisor as soon as possible. This protective claim would need to be filed before the current statute of limitation expires, which could be as early as May 17, 2021.