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Supreme Court Upholds Subsidies

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On June 25, 2015, the Supreme Court confirmed in a 6-3 decision that premium tax credits and cost-sharing subsidies (referred to as "subsidies") are available in the federal Health Insurance Marketplaces (also referred to as the "Exchange").

This ruling effectively removes any challenges to the ability of Exchanges to offer subsidies to qualified individuals.

What was the Issue?

The Affordable Care Act ("ACA") established Exchanges as a means of offering health insurance coverage. A state is permitted to establish its own Exchange (known as a state-run Exchange), rely on the federal government to establish an Exchange (known as a federally-run Exchange), or enter into a state/federal partnership Exchange.

The issue in this case was whether the IRS set forth rules consistent with the statutory language (as is within its authority) or overstepped its bounds.

Under the text of the ACA (creating Code § 36B), subsidies are available in "an Exchange established by the State under § 1311 of the ACA."

Subsequent IRS regulations interpreted § 36B to permit eligible individuals enrolled in qualified health plans in either a state-based or a federally-facilitated Exchanges to access these subsidies.

As described, any such assessment is predicated on an FTE receiving a subsidy in a Marketplace. If subsidies were ruled unavailable to FTEs because coverage is accessed through a federal marketplace, there may have been nothing to trigger a penalty. However, this did not happen.

Employer Action

As subsidies are available in the 50 states and District of Columbia, employers should do nothing different. Employers should continue to monitor their employer penalty exposure and prepare for future requirements such as the requirement to complete Forms 1094-C and 1095-C and the 2018 “Cadillac Plan” Tax.