

Health and Welfare Team:

**Jon W. Breyfogle**  
jbreyfogle@groom.com  
(202) 861-6641

**Jenifer A. Cromwell**  
jcromwell@groom.com  
(202) 861-6329

**Elizabeth T. Dold**  
edold@groom.com  
(202) 861-5406

**Thomas F. Fitzgerald**  
tfitzgerald@groom.com  
(202) 861-6617

**Anubhav Gogna**  
agogna@groom.com  
(202) 861-2602

**Cheryl Risley Hughes**  
chughes@groom.com  
(202) 861-0167

**Christine L. Keller**  
ckeller@groom.com  
(202) 861-9371

**Tamara S. Killion**  
tkillion@groom.com  
(202) 861-6328

**Mark C. Nielsen**  
mnielsen@groom.com  
(202) 861-5429

**Allison B. Rogers**  
arogers@groom.com  
(202) 861-0162

**William F. Sweetnam, Jr.**  
bsweetnam@groom.com  
(202) 861-5427

**Christy A. Tinnes**  
ctinnes@groom.com  
(202) 861-6603

**Brigen L. Winters**  
bwinters@groom.com  
(202) 861-6618

## Adult Child Health Care Premiums May Constitute Wages for State Tax Purposes

The Patient Protection and Affordable Care Act ("PPACA") requires all employer sponsored health care plans to cover adult children until their 26<sup>th</sup> birthday. Specifically, PPACA amended the Internal Revenue Code ("IRC") to require plans to cover adult children no later than the first day of the first plan year beginning on or after September 23, 2010. Although this employer-provided coverage is tax-free for federal income tax purposes, this may not be true for state law purposes, and may trigger wage reporting by employers of the fair market value of the coverage.

Importantly, there are a number of states -- over twenty, including Puerto Rico -- that do not automatically adopt the current version of the IRC, and therefore there is the risk that employers will need to impute income to their employees for state tax purposes. **Failure to properly report and withhold applicable state taxes may result in reporting and withholding obligations, penalties, and related interest on employers.**

The state law regarding this issue is evolving very quickly and we have been tracking it closely. Examples of recent state changes include the following:

- At the end of January, California posted information on its Employment Development Department and Franchise Tax Board websites regarding how employers should report and calculate the imputed income of health benefits for adult children on the Form W-2, box 16, for California state tax purposes. ([http://www.ftb.ca.gov/professionals/taxnews/2011/February/Article\\_10.shtml](http://www.ftb.ca.gov/professionals/taxnews/2011/February/Article_10.shtml)) Last week, the Employment Development Department removed their posting, which happened to be right around the time a bill was introduced in the State Legislature that would cause the California state tax code to conform to the IRC on this issue. The bill is currently in Committee.
- Last week, the Governor of Virginia approved a bill that updates the Virginia Tax Code so that it generally conforms to the IRC as of December 31, 2010. As a result, in 2011, Virginia employers should not have to impute the value of adult dependent coverage for state tax purposes.

We urge employers to watch this issue closely and to contact your regular Groom attorney, or any of the Health and Welfare team contacts listed to the left, for the latest state law developments in this area.