



Written by [Michael Tennant](#) on February 16, 2017

IRS Won't Make Taxpayers Say If They Met ObamaCare's Individual Mandate

President Donald Trump's [day-one executive order](#) directing federal agencies to reduce ObamaCare's burdens on Americans is already paying dividends. The Internal Revenue Service (IRS) has decided that it will not require taxpayers to indicate on their income-tax returns whether or not they complied with the individual mandate the previous year.



The Affordable Care Act (ACA) requires taxpayers to indicate on their returns whether they maintained health-insurance coverage for the year and, if not, either to pay a penalty — euphemistically called the “individual shared responsibility payment” — or to claim an exemption from the mandate. A return that does none of these is called a “silent return.” The IRS has thus far not rejected silent returns, but it had planned to do so beginning with filing year 2016.

Then along came Trump's order, which told executive-branch agencies to “exercise all authority and discretion available to them to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the [ACA] that would impose ... a cost, fee, tax, penalty, or regulatory burden on individuals.” The IRS decided that continuing to permit silent returns was “consistent with” the order, the agency says on its [website](#).

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“Processing silent returns means that taxpayer returns are not systemically rejected by the IRS at the time of filing, allowing the returns to be processed and minimizing burden on taxpayers, including those expecting a refund,” the IRS explains. It does, however, reserve the right to send taxpayers “follow-up questions and correspondence at a future date.”

The IRS didn't exactly shout this decision from the rooftops. The [San Francisco Chronicle](#) reported Tuesday: “In a Feb. 3 meeting with tax-preparation software companies, the IRS said it would not reject silent returns this filing season, according to Andrew Townsend, tax analyst for software maker TaxAct. The decision, which took effect Feb. 6, was not announced publicly and Townsend said he has not seen it in writing.”

While the IRS has issued a statement confirming the decision to inquiring reporters, the statement isn't readily found on the agency's website. It's not in a press release or any other prominent position on the site but on a page that requires several clicks to reach from the homepage. Along the way, the intrepid



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taxpayer will [encounter](#) the following verbiage: “The IRS is currently reviewing the Jan. 20, 2017, executive order to determine the implications. Taxpayers should continue to file their tax returns as they normally would.”

Inuit, which produces TurboTax, and Drake Software, which makes software for tax professionals, told the *Chronicle* that, in keeping with the direction of the IRS, they have made completing the individual-mandate line optional in their software. Townsend said TaxAct “does not plan” to stop prompting users to complete the line.

Taxpayers have good reason to avoid telling the IRS about their insurance status. For one thing, it’s none of the government’s business, constitutionally speaking. For another, it could save them a significant amount of money if they didn’t have coverage: \$695 per adult and \$347.50 per child or 2.5 percent of adjusted gross income, whichever is higher.

There is, however, one caveat to this newfound freedom. As the IRS notes, “Legislative provisions of the ACA law are still in force until changed by the Congress, and taxpayers remain required to follow the law and pay what they may owe.”

“It’s pretty disturbing. It leaves individuals at risk for paying the penalty while at the same time, causing people not to enroll or stay enrolled because they think they are not subject to it,” Edwin Park, vice president of health policy at the pro-ACA Council on Budget and Policy Priorities, told the *Chronicle*.

Since the ACA is still on the books, can the IRS really decline to enforce part of it? *Reason’s* Peter Suderman [considered](#) the matter:

The move has already raised questions about its legality. Federal law gives the administration broad authority to provide exemptions from the mandate. But “it does not allow the administration not to enforce the mandate, which it appears they may be doing here,” says Michael Cannon, health policy director at the libertarian Cato Institute. “Unless the Trump administration maintains the mandate is unconstitutional, the Constitution requires them to enforce it.”

The administration would, in fact, be entirely correct in declaring the mandate — and, for that matter, the rest of the law — unconstitutional, convoluted Supreme Court decisions notwithstanding. The high court, after all, was never intended to have the final say on which laws are constitutional and which are not.

Ryan Ellis, a senior fellow at the Conservative Reform Network, offered a slightly different take on the legality of the policy in an interview with Suderman:

“The mandate can only be weakened by Congress,” says Ellis. “This is a change to how the IRS is choosing to enforce it. They will count on voluntary disclosure of non-coverage rather than asking themselves.”

... Ellis says the new policy doesn’t fully rise to the level of declining to enforce the law. “If the IRS turns a blind eye to people’s status, that isn’t quite not enforcing it,” he says. “It’s more like the IRS wanting to maintain plausible deniability.”

To the extent that the new policy does reduce ObamaCare enrollment, it could hasten the collapse of the exchanges, which are already faltering. On Tuesday, Humana [announced](#) that it would be pulling out of all exchanges next year, citing “an unbalanced risk pool,” meaning that too many sick people and



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not enough well people are enrolling. Those who don't believe they will need insurance and don't want to pay the exorbitant cost of it under the ACA are the most likely to forgo it if they think they can get away without paying the penalty, which will only tip the risk-pool balance even more toward those with chronic conditions that are costly to treat. That, in turn, will lead to higher premiums and fewer insurers in the exchanges — the classic “death spiral.”

“The Trump administration may not be tearing Obamacare down entirely,” observed Suderman, “but it appears to be taking steps to weaken the law, however subtly, one line at a time.” Let's hope it continues — following constitutional procedures, of course — until the whole ACA is but a bad memory.



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