ACA Tax Perspectives

May 2015

First Capitol Consulting, Inc.
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Founded in 1999, First Capitol Consulting is one of the leaders and largest credits and incentives service providers. First Capitol, consisting of lawyers and tax professionals from the "Big 4" accounting and international law firms, has attracted and benefited over 3,000 clients, including national brands such as International Gaming Technology, Clear Channel, Home Depot, MeadWestvaco, American Automobile Association, Kintetsu Enterprises Company of America, Univision/Hispanic Broadcasting, National Beef Packaging Company, OPI, Dermalogica, Hanmi Bank, California Center Bank, and US Metro Bank.

To continue its growth and expertise, TaxAdvantage^{sm} was jointly developed in a partnership with **Intuit**. TaxAdvantage^{sm} is First Capitol's proprietary software designed to create synergies in data collection and tax reporting processes layered with E-sign technology to process Work Opportunity Tax Credit and CA Enterprise Zone tax credits. Currently, our WOTC screening is web-integrated with **Careerbuilder.com** and **Monster.com**.

TaxAdvantage^{sm} is transparent, flexible, comprehensive, robust, automated and built to handle over 1.4 million companies with unlimited number of employees.

Robert S. Sheen

Robert, with extensive background in tax and finance, started his career at KPMG, LLP. Robert specialized in corporate reorganization, mergers and acquisitions, and multi-state tax product development and implementation. In 1998, Robert was asked to join BDO Seidman, LLP to lead its Los Angeles State and Local Tax practice. Before founding First Capitol, Robert successfully implemented several major high profile corporate reorganizations and implemented tax products and strategies to banks and multi-national corporations.

Currently, Robert leads First Capitol, representing over 3,000 companies, ranging from Fortune 500 to mid to small sized, with focused expertise in credits and incentives. At First Capitol, Robert developed its tax credits and incentive practice to be one of the largest in the nation. In 2008, Robert and First Capitol developed TaxAdvantage℠ in a partnership with Intuit for Intuit Employment Management Service's 1.4 million customers. TaxAdvantage℠ consists of a web portal, software, call-center, and IT solutions, backed with experienced tax professionals, to provide the industry's best Work Opportunity Tax Credit services.

Professional Affiliation and Credentials

- Founder, Organizer and Vice Chairman, U.S. Metro Bank, 2006 to Present
- Trustee, Pacific Asia Museum, 2002 to 2008
- National Advisory Board member, Asian American Justice Center 2002 to Present
- Board member, MTV's Rock The Vote, 2002-2007
- President, Korean American Bar Association, 2004
- Member, California State Bar, Taxation Section
- Member, Los Angeles County Bar Association
- Member, American Bar Association
- Member, The Breakfast Club
- "The Men of L.A." The Women's Foundation, 2003

Education

- B.S. Business Administration with emphasis in Finance, University of Southern California
- J.D., Loyola Law School, Los Angeles

Affordable Care Act

ACA Affordable Care Act

About ACA

- Enacted in 2010, as the Patient Protection and Affordable Care Act. (PL 111-148).
- In 2012, Supreme Court upheld the constitutionality of the ACA.
- Government-run Health Insurance Exchange will be set up to provide affordable health insurance.
- The Treasury noted that the ACA represents the “largest set of tax law changes the IRS has had to implement in more than 20 years.”
- The Treasury noted that the ACA’s revenue provisions “are designed to generate $438 billion.”
- Congressional Budget Office (CBO) estimates that ACA penalties will be source of $117 billion from employers and $55 billion from uninsured individuals.

Important Upcoming ACA Dates

January 1, 2015:	Start of timeframe to track data for IRS 6055/6056 Reports
	Applicable Large Employers must begin to offer healthcare coverage to full time employees to avoid tax penalties
	Potentially start of Automatic enrollment into employer sponsored health coverage plan for employers with 200 or more full time employees
January 31, 2016:	IRS 6055/6056 Disclosures due
February 28, 2016:	IRS 6055/6056 *manual* filing due
March 31, 2016:	IRS 6055/6056 *electronic* filing due (>250 Returns)

Applicable Large Employer (ALE)

The Employer Shared Responsibility provisions of the ACA apply to an Applicable Large Employer (ALE) and any of its member employers.

An ALE is made up of all members of a Controlled Group under Internal Revenue Code ("IRC") Rule 1.414.

An ALE is comprised of at least 50 full time equivalents employees (FTEs). (For 2015 only, employers between 50-99 FTEs may be eligible for transition relief.)

Controlled Groups and FTEs discussed shortly.

ALE Penalties

The ALE is subject to certain penalties under the Employer Shared Responsibility provisions of the ACA. These include (a) Section 4980H(a) penalties for failing to offer health insurance to 70% (2015) and 95% (2016 onward) of its full time employees and (b) Section 4980H(b) penalties for failing to offer health insurance that is affordable and meets minimum value.

Section 4980H(a) penalties are determined at a rate of $2,080 multiplied by the number of full time employees if *one* of them receives a premium subsidy from the Healthcare Exchange. An exclusion exists for first 80 full time (FT) employees (2015 only) and first 30 FT employees (2016 onward).

Section 4980H(b) penalties are determined at a rate of $3,120 per full time employees for each one who receives a premium subsidy from the Healthcare Exchange.

Controlled Group

Under Internal Revenue Code ("IRC") Rule 1.414 and IRC 1563(a), Controlled Groups may result through the following common relationships.

1. Parent-Subsidiary Groups
2. Brother-Sister Groups
3. Affiliated Service Groups
4. Management Groups

All of the entities within one of these Controlled Groups must be grouped together for ALE analysis under the ACA.

Controlled Group -
Brother-Sister Controlled Group

Brother Sister Controlled Group (simplified):

1. Controlling Interest: The same 5 or fewer persons own at least 80% in each entity.
2. Effective Control: The persons' "identical" ownership is more than 50% of each entity.
3. The 5 or fewer persons whose ownership is considered to show Controlling Interest for each entity are the same persons whose ownership is considered to show Effective Control.

Controlled Group – Example

Brother Sister Example:

- Corporation X's shareholders are: Shareholder A (50%), Shareholder B (30%) and Shareholder C (20%).
- Corporation Y's shareholders are: Shareholder A (60%), Shareholder B (25%) and Shareholder D (15%).

Corporations X and Y must be grouped together as a Brother Sister Controlled Group because:

- Shareholders A and B are the two common Shareholders between Corporation X and Y.
- Controlling Interest: Shareholders A and B together have at least 80% in Corporations X (80%) and Corporation Y (85%).
- Effective Control: Shareholder A and B have 75% "identical ownership" of the entities. This meets the more than 50% identical ownership.

Controlled Group – Example

Based on the previous example, suppose Corporation X has 49 FTEs (all FTs) and Corporation Y has 49 FTEs (all FTs).

If Corporation X and Y were erroneously treated separately, neither Corporation X nor Corporation Y would seem to be an ALE. WRONG!

Wrong FTE calculation means the two Corporations would erroneously think they are not subject to the ACA reporting requirements!

- Reporting Penalty: In general, the penalty is $100 per return, up to a maximum of $1,500,000. Corrections within 30 days reduces the penalty to $30 per return not to exceed $250,000. Correction by August 1 reduces the penalty to $60 per return not to exceed $500,000.

Controlled Group – Example

Suppose Corporation X has 49 FTEs (made up of all FTs) and Corporation Y has 100 FTEs (made up of all FTs).

If Corporation X and Y were erroneously treated separately, Corporation X would erroneously think it would not be subject to the ACA Reporting requirements and its FT employees not combined with Corporation Y's FT employees. WRONG!

Wrong FTE calculation means Corporations might think they are not subject to the ACA reporting requirements!

- Reporting Penalty.
- Employer Shared Responsibility Penalty: 4980H(a) penalty for 2015 of $2,080 x (149-80) FT employees = $143,520. And even if satisfies the offer of coverage, if not affordable and/or meets minimum value, will be subject to the $3,120 penalty per FT employee who receives a premium tax credit.

Full Time Equivalent (FTE)

An ALE is comprised of at least 50 full time equivalents employees (FTEs). (For 2015 only, employers between 50-99 FTEs may be eligible for transition relief.)

An FTE combines both FT employees and part-time (PT) employees as follows.

- Totaling each FT employee (working more than 120* hours per month) is treated as one FTE.
- Totaling the hours of service for each month of total PT employee (working no more than 120* hours per month) and dividing that number by 120. This gives the number of FTEs based on combined PT employers.

* Note: The 120 number is applied *only* for ALE purposes and not for counting the total number of FT employees (130).

Full Time Equivalent – Example

Suppose during each calendar month of 2015, Corporation X has 20 FT employees each of whom averages 35 hours of service per week, 40 employees each of whom averages 90 hours of service per calendar month.

- Each of the 20 employees with an average of 35 hours per week count as one FT employee for each calendar month.
- To determine the number of FTEs (based on PT employees) for each calendar month, the total hours of service of the PT employees are aggregated and divided by 120. The result is a total of 30 FTEs for each calendar month (40 × 90 = 3,600, and 3,600 ÷ 120 = 30) based on the PT employees.

Corporation X is an ALE because it has 50 FTEs (the sum of 20 FTE based on FT employees and 30 FTEs based on PT employees) during each calendar month in 2015.

Full Time Equivalent – Example

Based on the previous example, if the employer ignored the PT employees, the employer would erroneously think it is not an ALE (i.e., it “only” has 20 FT).

This mistake can subject the employer to the following penalties:

- Reporting Penalty.
- Employer Shared Responsibility Penalty.

Reporting IRS 6055/6056

Among many, here are some examples of data needed:

HR	**Date of hire** **Date of birth** **Union status** **State of Residence**
Time and Attendance	**Jury duty** **Special Unpaid Leave** USERRA (Uniformed Services Employment and Reemployment Rights Act of 1994) Paid Leaves
Payroll	**Hours worked and paid** **Payroll period begin/end date** **Applicable Monthly Salary or Hourly rate of pay** **Rate of pay effective date** **SSN** **Box-1 Form W-2 Value**
Benefits	**Fully funded or self funded** **MEC documentation** **60% MV documentation** **Proof of Offering documentation** **Lowest Employee Cost by plan and tier** **Status of Employee enrollment**

IRS 1094 and 1095

- 1094-B (Transmittal for Insurer): employer information, EIN, contact information, number of 1095-B filings, declaration of examination of return and supporting documentation.

- 1095-B (Return for Insurer and Self Insured for certain non-employees): responsible individual (policy holder) SSN, address, employer health insurance offer of coverage information, insurer information, covered individuals and their SSNs/DOBs, and months of coverage.

- 1094-C (Transmittal for Employer): employer information, EIN, contact information, number of 1095-B filings, certification as to eligibility of certain transition/qualification methods, ALE status and membership, full time employee and total employee counts, declaration of examination of return and supporting documentation.

- 1095-C (Return for Employer): applicable employee, SSN, address, employer health insurance offer of coverage information, covered individuals and their SSNs/DOBs, and months of coverage (for Self Insured).

IRS 1094 and 1095

Failure to comply with the 6056 reporting requirements are located under IRC 6721 and 6722.

- In general, the penalty is $100 per return (maximum of $1,500,000 per year).
- Correction within 30 days reduces the penalty to $30 per return not to exceed $250,000.
- Correction by August 1 reduces penalty to $60 per return not to exceed $500,000.
- Exception for de minimum failures to include all required information due to reasonable cause and not willful neglect, provided that the number of returns to which the above penalties apply shall not exceed 10 or 0.5% of total returns, whichever is greater.
- If gross receipts are $5 million or less, penalties are reduced: $500K instead of $1.5 million; $75K instead of $250K, and $200K instead of $500K.
- If shown intentional disregard of filing or correct information reporting requirement, each failure is $250, and the $1.5 million cap does not apply.
- IRS announced 2015 transition relief based on showing of good faith to comply with reporting requirements. No relief if ALE cannot show good faith effort or that fail to timely file an information return or furnish a statement.

Exchange Notices

- Employers have a 90 day window to appeal a tax penalty as a result of an improper determination by the Exchange of allowable premium tax credits and premium cost sharing for an individual..

Benefits of Healthcare

Tax

Section 125 plans are both tax deductible to both the employer and employees. In order to take advantage of this tax deduction, the employer must have a written Section 125 plan in place that satisfies the Section 125 requirements. Among these requirements, Section 125 has certain non-discrimination rules, which guards against favorable to the highly compensated employees/

Healthier workforce

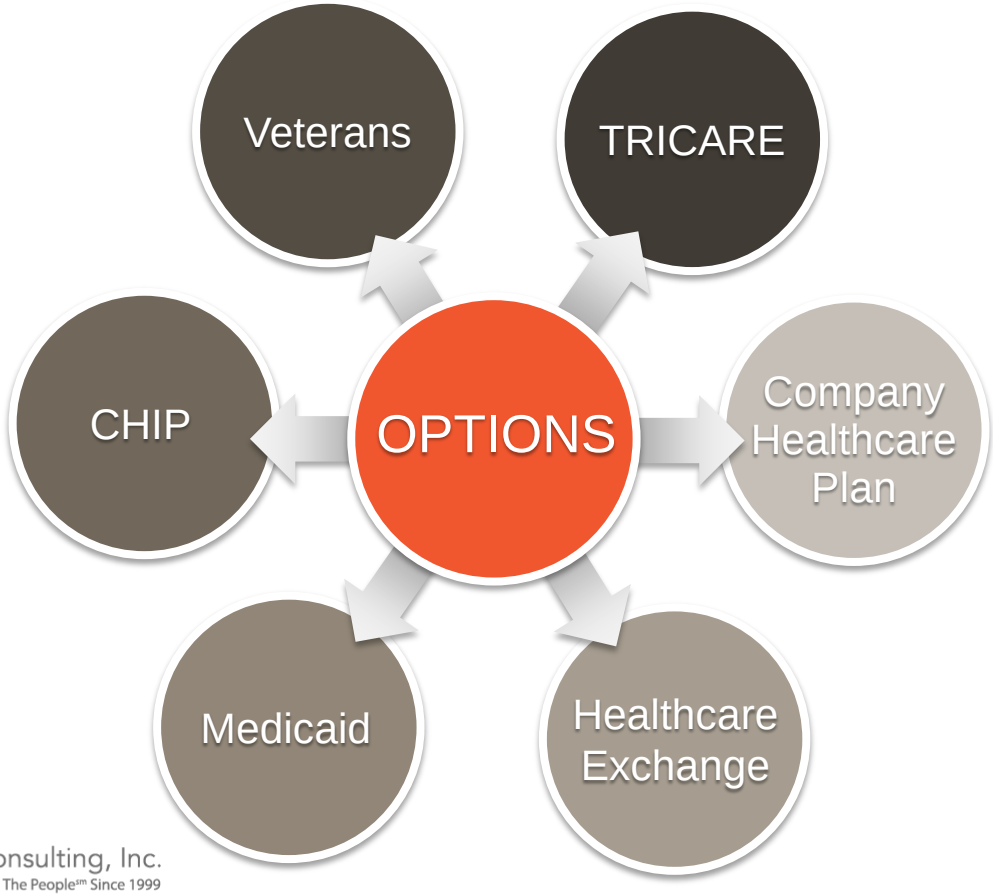
1. Rand report found that 5 year participation in wellness program lower healthcare costs and decreasing healthcare use

2. Positive outcomes are

    a. improved employee health
    b. control healthcare costs
    c. reduce absenteeism
    d. increase productivity
    e. attract and retain employees

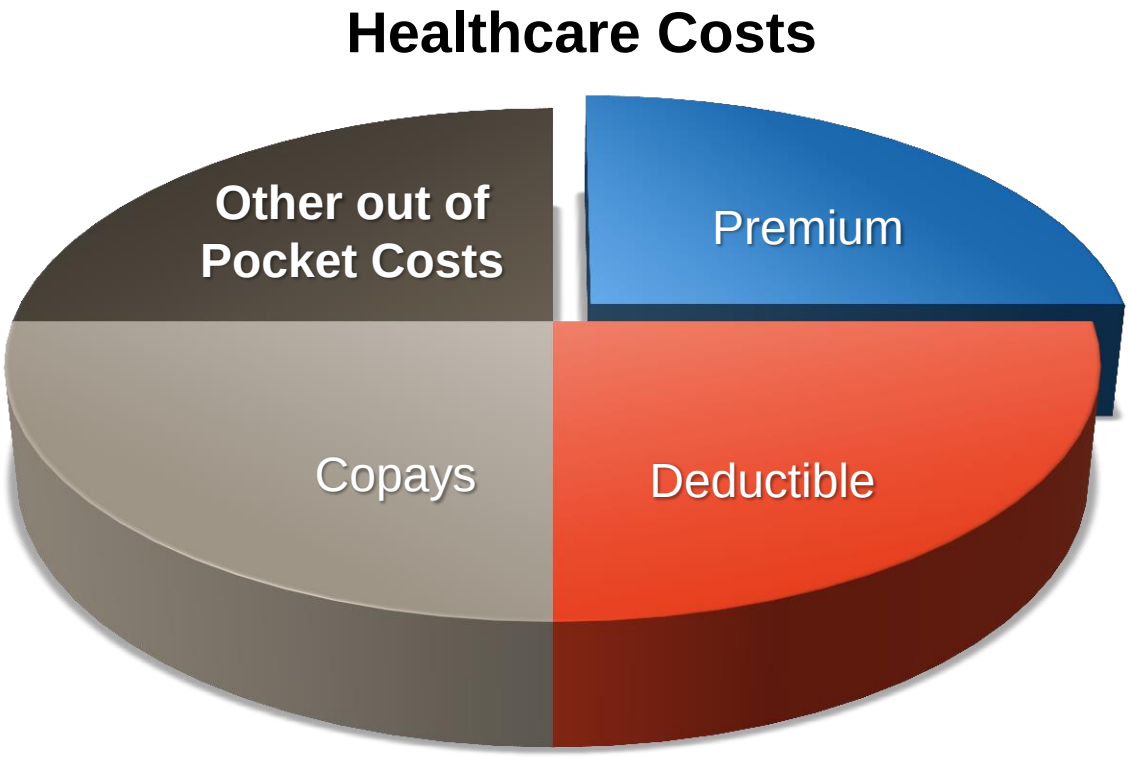
Potential Healthcare Coverage Options

Employees and their family members may be eligible for health care coverage options beyond the Employer's Sponsored Plan.

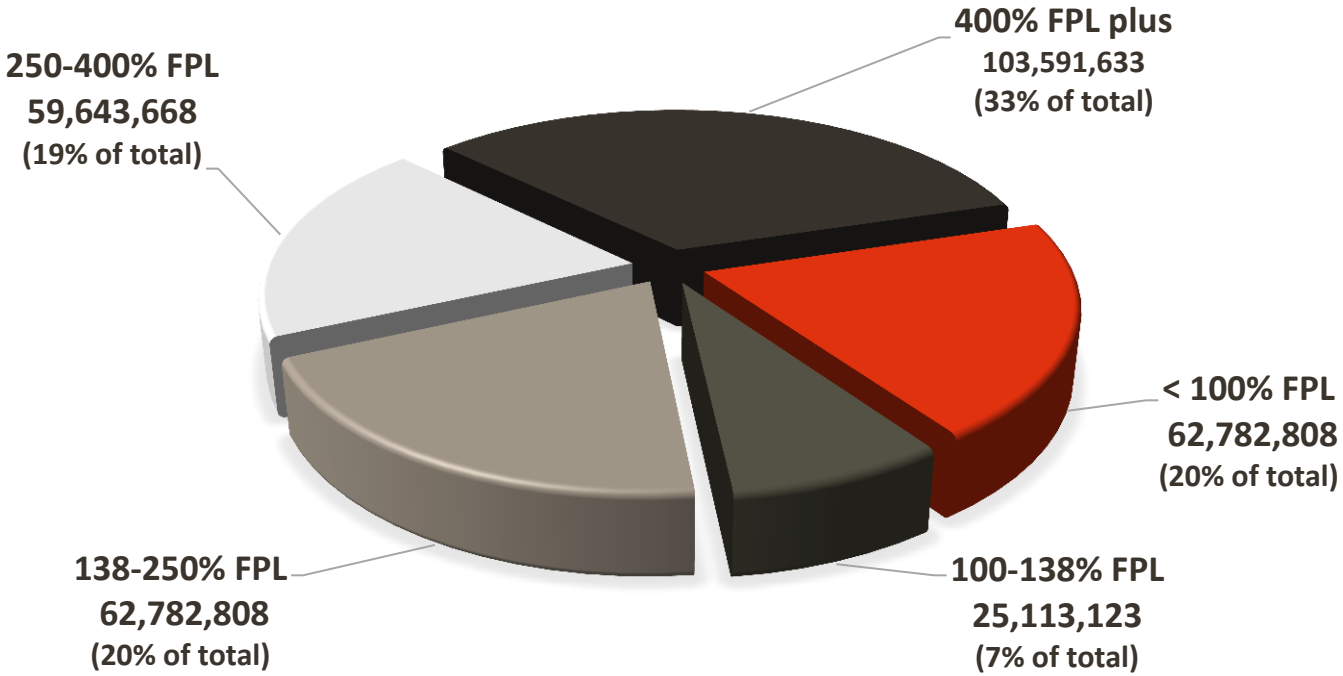


Healthcare Costs

Monthly premiums are just a slice of the healthcare cost pie.



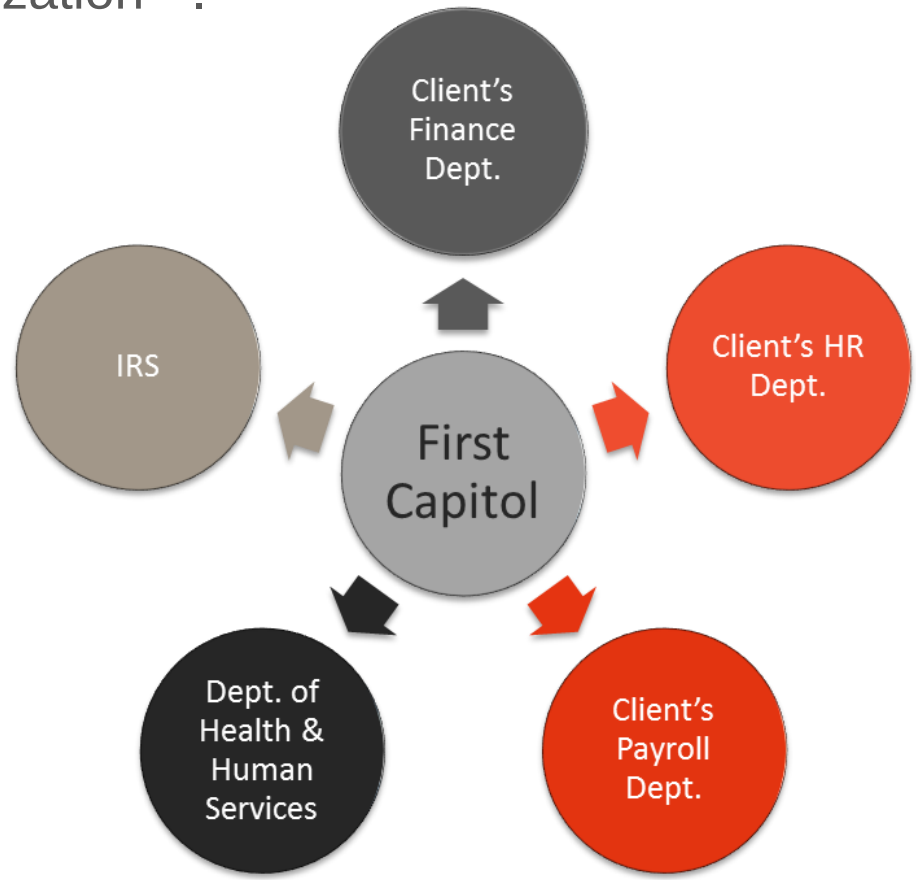
Population Distribution by Federal Poverty Line



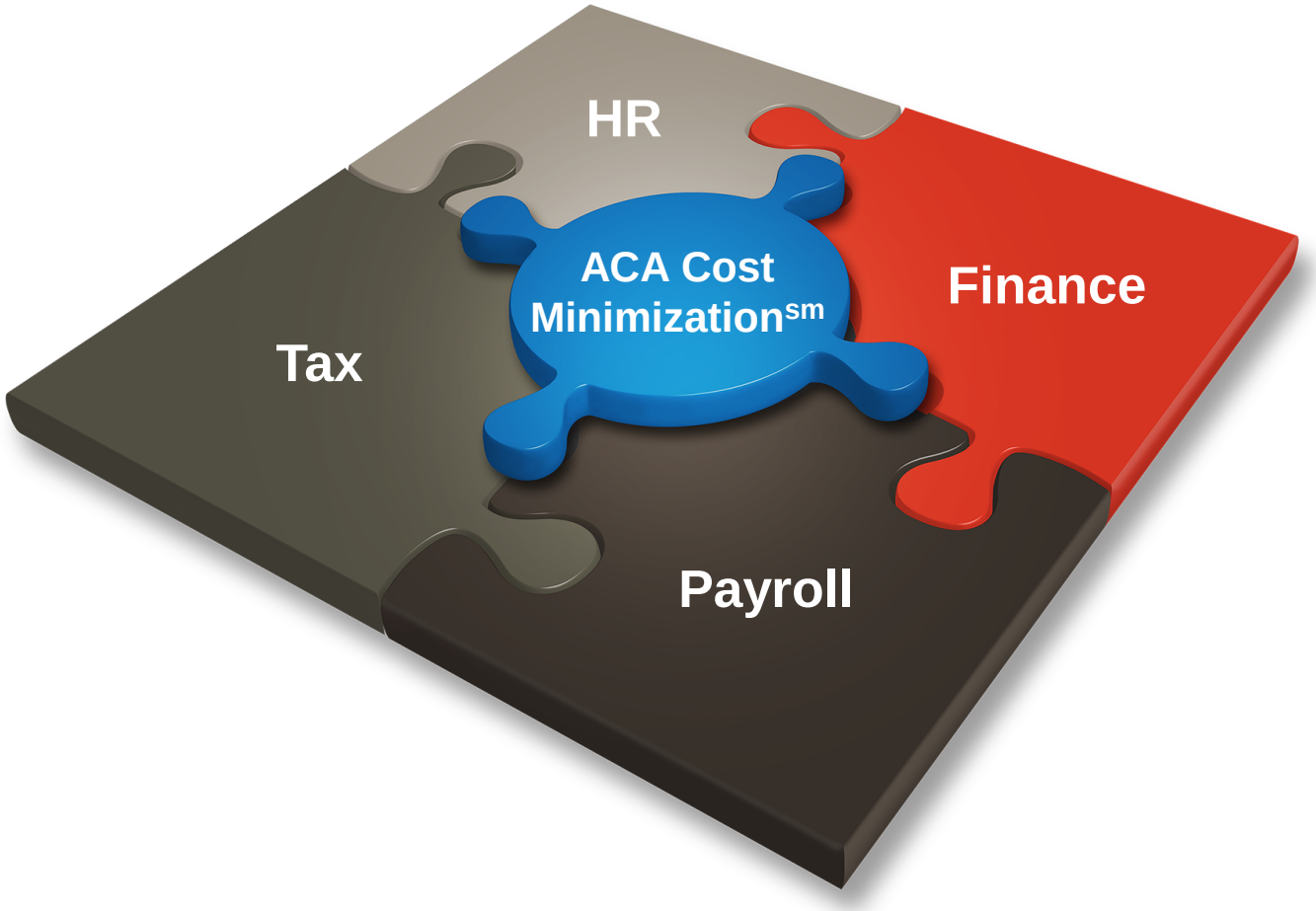
Household Size	100% FPL	138% FPL	250% FPL
1	$11,670	$16,105	$29,175
2	$15,730	$21,707	$39,325
3	$19,790	$27,310	$49,475
4	$23,850	$32,913	$59,625

A Holistic Approach to the ACA

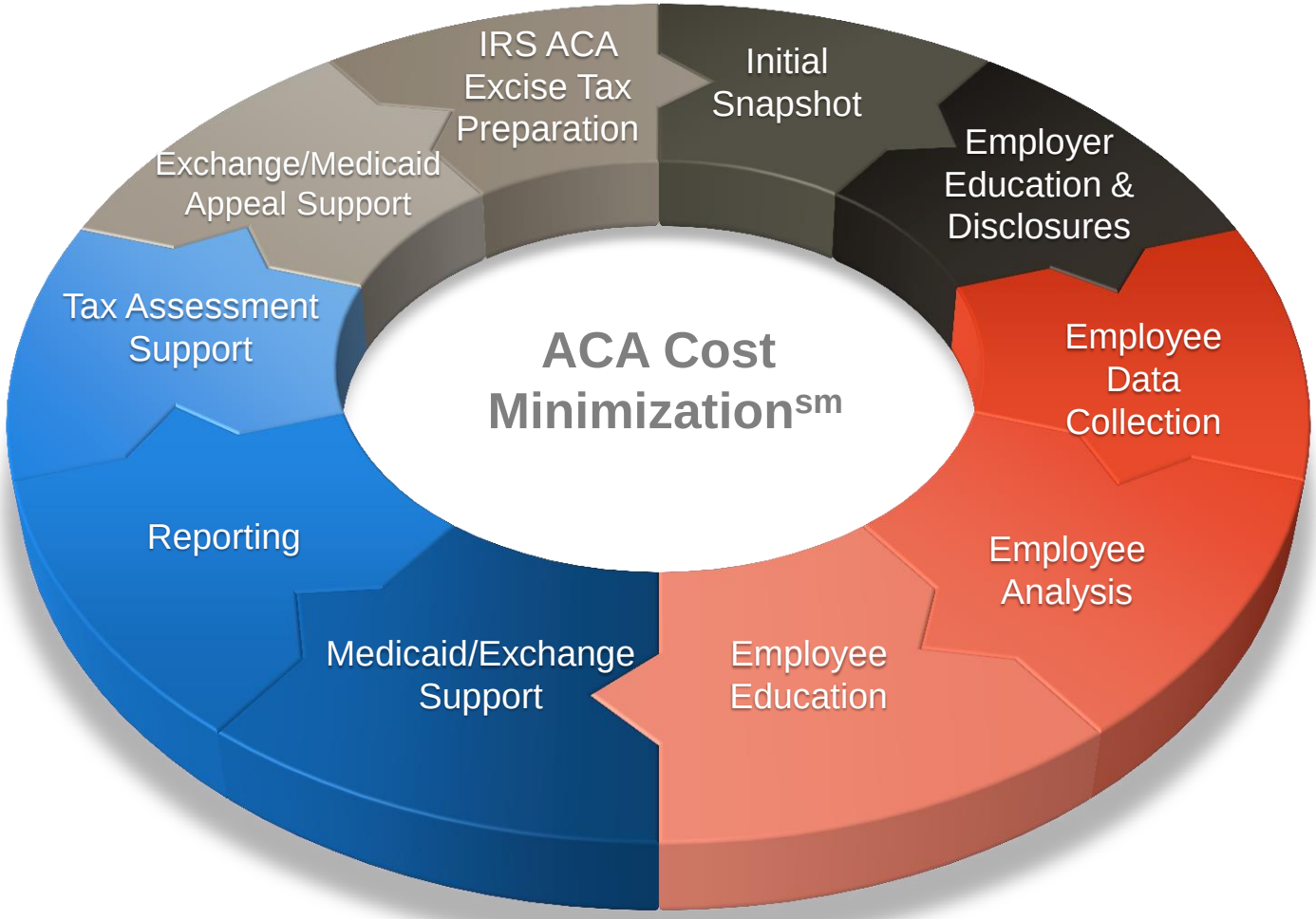
First Capitol acts as the hub coordinating ACA Compliance and ACA Cost Minimization[sm].



ACA Cost Minimization℠
Multidepartmental solution



ACA Cost Minimization[sm]
Best Practices



Contact Us

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