

FYI[®] Alert

For Your Information[®]

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IRS Issues Initial Cadillac Tax Guidance

Yesterday the IRS and the Treasury Department issued a notice on the 40% excise tax (Cadillac tax) that is imposed on high-cost health plans under the ACA. The notice discusses a number of issues concerning the tax and requests comments on the possible approaches that ultimately could be incorporated in proposed regulations. Notably the guidance states that the agencies anticipate that pre-tax salary reduction contributions made by employees to HSAs will be subject to the tax.

Background

In 2018, the ACA provides that a nondeductible 40% excise tax be imposed on "applicable employer-sponsored coverage" in excess of statutory thresholds (in 2018, \$10,200 for self-only, \$27,500 for family). As 2018 approaches, the benefit community has long awaited guidance on this tax — commonly called the Cadillac tax. While many employers have actively managed their plan offerings and costs in anticipation of the impact of the tax, those efforts have been hampered by the lack of guidance. Among other things, employers are uncertain what health coverage is subject to the tax and how the tax is calculated.

Cadillac Tax Guidance

Yesterday, the IRS and the Treasury (agencies) released [Notice 2015-16](#), which discusses approaches to certain aspects of the excise tax that could be implemented in proposed regulations. Specifically the notice addresses:

- Definition of applicable coverage
- Determination of cost of coverage
- Application of dollar limits

The agencies are requesting comments on issues discussed in this notice by May 15. They intend to issue another notice that will address other areas of the excise tax and anticipate issuing proposed regulations after considering public comments on both notices.

Applicable Coverage

Of most immediate interest to plan sponsors is the specific type of coverage (i.e., "applicable coverage") that will be subject to the excise tax, particularly where the statute is unclear.

Employee Pre-Tax HSA Contributions

The statute provides that employer contributions to a health savings account (HSA) are subject to the excise tax, but did not specifically address the treatment of employee pre-tax HSA contributions. The notice says that the agencies “anticipate that future proposed regulations will provide that (1) employer contributions to HSAs, including salary reduction contributions to HSAs, are included in applicable coverage, and (2) employee after-tax contributions to HSAs are excluded from applicable coverage.”

Comment. This anticipated treatment of employee pre-tax contributions to HSAs will have a significant impact on HSA programs. If implemented as the agencies anticipate, it could mean many employer plans that provide for HSA contributions will be subject to the Cadillac tax as early as 2018, unless the employer limits the amount an employee can contribute on a pre-tax basis.

Self-Insured Dental and Vision Plans

The ACA statutory language specifically excludes insured dental and vision plans from the excise tax. The treatment of self-insured dental and vision plans was not clear. The notice states that the agencies will consider exercising their “regulatory authority” to exclude self-insured plans that qualify as excepted benefits from the excise tax. (See our [October 8, 2014 For Your Information](#).)

EAPs

The agencies are also considering whether to exclude excepted benefit EAPs from the excise tax. (See our [October 8, 2014 For Your Information](#).)

On-Site Medical Clinics

The notice discusses the exclusion of certain on-site medical clinics that offer only de minimis care to employees, citing a provision in the COBRA regulations, and anticipates excluding such clinics from applicable coverage. Under the COBRA regulations an on-site clinic is not considered a group health plan if:

- (1) The healthcare consists primarily of first aid provided during the employer’s work hours for treatment of a health condition, illness or injury that occurs during work hours.
- (2) Healthcare is only available to current employees.
- (3) Employees are not charged for use of the facility.

The agencies are also asking for comment on the treatment of clinics that provide certain services in addition to first aid:

- (1) Immunizations
- (2) Allergy injections
- (3) Provision of nonprescription pain relievers, such as aspirin
- (4) Treatment of injuries caused by accidents at work, beyond first aid

In Closing

With the release of this initial guidance, plan sponsors can gain some insight into the direction the government is likely to take in proposed regulations and can better address potential plan design strategies. We will discuss this notice in broader detail in a future *For Your Information* publication.

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