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Health Care Reform Alert

July 31, 2015

Second 40% Excise Tax (“Cadillac Tax”) Notice Issued

On July 30, the Department of the Treasury and the Internal Revenue Service (IRS) issued a second notice regarding the 40% Excise Tax a.k.a. the Cadillac Tax. The notice provides information on possible approaches that are being considered for administering the Cadillac Tax and continues the process of gathering input that will be used to develop regulations.

This is a follow-up to the notice issued on February 23, 2015, and comments may be submitted until October 1, 2015.

The notice addresses several issues, including:

- Who pays the tax
- How the tax will be determined
- How the tax will be paid

The 40% Excise Tax a.k.a. “Cadillac Tax”

The Cadillac Tax is a 40% excise tax scheduled to take effect in 2018 to reduce health care usage and costs by encouraging employers to offer cost-effective plans that engage employees in sharing in the cost of care. The tax impacts plans exceeding the following thresholds, which will be adjusted annually for inflation:

$10,200 for individual coverage

$27,500 for family coverage

Who Pays the Tax

Each “coverage provider” must pay the tax on its share of the excess benefit. A coverage provider is:

- The health insurer for insured coverage.
- The employer for accounts such as Health Savings Accounts (HSAs) to which the employer contributes.
- The plan benefits administrator – the agencies are seeking comments on whether this should be the third-party administrator or the entity that has ultimate responsibility for plan administration, typically the employer.

The notice seeks comments on how to calculate and administer the tax. The following are some of the proposed approaches.

Timing – Following the end of each calendar year, employers will need to determine whether and by how much the cost of coverage exceeded the allowed limit for each month. The employer must then notify the IRS and each coverage provider of their share of the excess benefit so the tax can be calculated and paid.

Cost – The cost of coverage may be determined in a manner similar to determining COBRA premiums.

Age and Gender Adjustments – The current thresholds for 2018 are $10,200 for individual coverage and $27,500 for family coverage. These amounts may be increased for some employers based on how the age and gender of their employee population compares to the national workforce. No downward adjustments will be made. The notice seeks input on how these adjustments should be determined.

Allocation of Accounts – The notice proposes that employer and employee contributions to accounts such as HSAs, Health Reimbursement Accounts (HRAs) and Flexible Spending Accounts (FSAs) would be allocated equally to each month of the plan year, regardless of when the contributions were actually made. For FSAs, the agencies propose that the annual contribution amount be used, regardless of whether all funds were spent during the year or some funds were carried over to the next year.

Employer Aggregation – Related employers would be aggregated and treated as a single employer.

Taxation – No deduction is allowed for the payment of the tax.

How the Tax will be Paid

Each coverage provider will be responsible for paying the tax on its share of the excess benefit. IRS Form 720, the Quarterly Federal Excise Tax Return, may possibly be used to pay the tax. If so, a specific quarter of the calendar year would be designated for payment.

Proposed Regulations Still to Come

The agencies will review all comments and leverage the feedback to help draft regulations.

For more information, view the notice.

We encourage you to bookmark Cigna's health care reform website, http://www.informedonreform.com/, where we continuously update regulatory guidance and information as it becomes available.