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THE GROUP BENEFIT NEWS BULLETIN

UPDATE:Treasury Issues Round Two of Excise Tax Guidance

On July 30, 2015 the Department of Treasury issued Notice 2015-52. Notice 2015-52 is a new guidance which has been released in the development of the Cadillac (excise) Tax administration. The Cadillac Tax will be paid on high cost employer-sponsored health coverage per Section 49801 of the Internal Revenue Code (Code), which was added to the Code by the Affordable Care Act (ACA). The Cadillac Tax will apply effective January 1, 2018. Notice 2015-52 represents the second round of guidance for employers, issuers, and benefit professionals concerning the way the Cadillac Tax on high-cost employer benefit plan offerings will be administered when it becomes effective in 2018. The applicable dollar limit for the 2018 plan year will be $10,200 for Employee Only Coverage and $27,500 for Employee + Spouse, Employee + Child, or Employee + Family coverage.

Notice 2015-52 is a supplement to the first round of guidance issued in February (Notice 2015-16). The notice identifies the taxpayers which may be liable for the excise tax, employer aggregation, how the tax is to be apportioned among the applicable taxpayers, and how the tax is to be paid.

The types of coverage included in applicable coverage are FSAs, Archer MSAs, HSAs, Government Plans, Retiree coverage, Multiemployer plans, Certain excepted benefits offered as independent benefits, i.e. Critical Illness, Hospital Indemnity, etc.

Note: The IRS anticipates that future guidance will provide that an HRA is applicable coverage and more guidance is needed regarding on-site medical clinics.

The coverages that are excluded from applicability are Accident Insurance, Disability, Supplemental coverage, General and Automobile Liability Coverage, Worker's Compensation Insurance, Automobile Insurance covering Medical Payment, Credit-only Insurance, Insurance to which medical care is secondary, Long-Term Care Coverage, Solitary Dental or Vision Insurance, Certain excepted benefits offered as independent benefits, i.e. Critical Illness, Hospital Indemnity, etc.

The new notice shows that fully insured plans are not likely to be able to avoid paying the tax, since the excise tax is non-deductible. However, the Treasury Department is trying to lessen the pain by proposing a formula to calculate gross-ups by service providers and carriers to cover their income tax liability and also propose that gross-ups not be counted in the cost of the employer's applicable coverage. The Treasury Department is also weighing the pros and cons of allowing the issuer to use their own specific marginal tax rate in the calculation of the gross-up, or requiring the industry to use a specified average percentage.

The other major issue covered by the notice is the way the threshold variations for age and gender could potentially be handled. In this notice, the Treasury Department acknowledges that the age and gender adjustment formula is insufficient because they cannot compare the average age and gender of an employer's workforce to the average age and gender of the national workforce. The premium rate depends on the distribution of men and women in different age groups. The Treasury Department has created a method of determining national age and gender averages and propose that each employer determine its age and gender distribution by using the plan population on the first day of the plan year as a snapshot for the entire coverage year. The Treasury department plans to produce age and gender calculation tables for employers to use to determine their adjustments.

Notice 2015-52 also determines when the tax would need to be paid, how the IRS will likely use a method similar to the PCORI (Patient–Centered Outcomes Research Institute) fee payment, the taxability of excessive contributions to high-income employees as so defined under section 105(h), and some unique issues relative to tax liability and account-based plans.

Treasury officials have stated that they will review all comments, which are due on October 1st, before issuing a comprehensive proposed excise tax ruling. Treasury officials noted that they released this notice now, even though it doesn't cover every issue, because they are very sensitive to the need to both obtain real-world feedback about the practicality of their proposals and also issue guidance in a timely fashion so that employers and benefit professionals can adequately prepare and plan.

Note: The IRS has not yet determined if employer contributions to plan member's HSAs are to be included in the total Health Plan Cost.