

IRS Issues Request for Information on the Cadillac Tax

On February 23, the Internal Revenue Service (IRS) issued a notice covering a number of issues concerning the 2018 Cadillac Tax, or excise tax, and requested comments on the possible approaches that could ultimately be incorporated into proposed regulations. Regulations about the Cadillac Tax have not yet been issued.

The notice specifically addresses the following:

- Defining which coverage is subject to the Cadillac Tax,
- Determining the cost of applicable coverage, and
- Outlining the applicable annual dollar amount

Of note, the Department of the Treasury and the IRS anticipate that pre-tax salary deductions made by employees to Health Savings Accounts (HSAs) will be subject to the Cadillac Tax. In

addition, the statute previously excluded insured dental and vision plans from the Cadillac Tax. The notice clarifies that self-insured standalone dental and vision coverage will also be excluded. Lastly, the notice addresses potential approaches using COBRA rules to determine cost of coverage.

Both agencies invite comments on the issues addressed in this notice by May 15, 2015.

Defining Applicable Coverage

According to the notice, the following group employer-sponsored coverage is subject to the Cadillac Tax:

- Health coverage including medical, behavioral, and prescription drug
- Health Flexible Spending Accounts (FSAs)
- Health Savings Accounts (HSAs)
- Archer Medical Savings Accounts (MSAs)
- On-site medical clinics
- Coverage for a specified disease or illness
- Hospital indemnity or other fixed indemnity insurance
- Federal/State/Local government-sponsored plans for its employees
- Possibly other types of coverage including executive physical programs and Health Reimbursement Accounts (pending confirmation in future guidance)
- Retiree coverage

The 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

- Multi-employer plans

According to the notice, the following employer-sponsored coverage is not subject to the Cadillac Tax:

- Coverage for accident only, or disability income insurance, or any combination thereof
- Supplemental liability insurance
- Liability insurance, including general liability insurance and automobile liability insurance
- Worker's compensation or similar insurance
- Automobile medical payment insurance
- Credit-only insurance
- Other insurance coverage, as specified in regulations under which benefits for medical care are secondary or incidental to other insurance benefits
- Long Term Care
- Coverage under a separate policy, certificate or contract of insurance, which provides benefits substantially – all of which are for treatment of the mouth or for treatment of the eye (but guidance may exempt all limited scope dental and vision that qualify as excepted benefits for both insured and self-insured)
- Coverage for a specified disease or illness and hospital indemnity or other fixed indemnity insurance if payment is not excluded from gross income
- Federal/State/Local government-sponsored coverage for members of the military

In addition, the notice states that the IRS is considering potential approaches for the following coverages:

- HSAs/Archer MSAs
- On-Site Medical Clinics
- Limited Scope Dental and Vision Benefits
- Employee Assistance Plans (EAPs)

Determining the Cost of Applicable Coverage

The notice describes that the cost of coverage is determined under **rules similar to COBRA**. However, there are several issues with computing COBRA premium for which the IRS has never provided guidance, including but not limited to:

- How to determine which non-COBRA beneficiaries are similarly situated,
- **The specific methods self-insured plans may use to determine COBRA premium**, and
- How to determine the COBRA premium for HRAs.

The notice proposes several potential approaches to address these issues for the Cadillac Tax. The IRS is also considering whether these approaches should apply to determining COBRA premium. Because existing COBRA rules regarding determining the cost of coverage have large gaps in guidance, the IRS

notice also addresses potential COBRA rule changes. Therefore, comments to the notice will have an impact on both the Cadillac Tax and COBRA premium calculations.

While the notice poses potential approaches for determining the cost of coverage, the IRS notes that the cost of coverage could be determined in alternative ways. One example suggests using metal levels of coverage (bronze, silver, etc.) based on actuarial values, as used with Marketplace plans.

The notice clarifies that the Cadillac Tax would not be included in the cost of coverage and also outlines additional calculation rules for determining the cost of applicable coverage for:

- Separate costs for self-only and other-than-self-only coverage
- Retirees
- Health FSAs
- HSAs and Archer MSAs
- Monthly Costs

Outlining the Applicable Annual Dollar Amount

The applicable dollar amounts will change annually for the Cadillac Tax. The 2018 amounts per employee are \$10,200 for self-only coverage and \$27,500 for family coverage, with certain allowable adjustments for age and gender, retirees, and certain high-risk professions.

The IRS is seeking input on alternative approaches and considerations for employees with simultaneous self-only coverage and family coverage as well as adjustments for qualified retirees, high-risk professionals, and age and gender adjustments.

Staying Informed

At least one additional Request for Information will be issued by the agencies addressing further issues regarding the Cadillac Tax, but the timing of this notice is still to be determined. The agencies will review all comments and leverage the feedback to help draft regulations.

For more information, [view the notice](#) from the IRS.