

ALSTON & BIRD



Health Care Update

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“Cadillac Tax” -- 40% Excise Tax on Job-Based Health Plans





Some people think of it more as the ----





Others consider it more like the ---





Effective starting in 2020



Cadillac Tax -- Simply Stated

- 40% excise tax on cost of health coverage above dollar thresholds

	Self-Only	Family
2018	\$10,200	\$27,500
2020 (est)	\$10,800	\$29,100

- All multiemployer plan coverage treated as family
- Adjustments to dollar limits
 - Age and gender
 - Post-age 55 retirees (but pre-Medicare)
 - Specified high risk professions and repairing or installing electrical or telecommunications lines
- Broad definition of “coverage” taken into account
- Indexing -- CPI



Basic Questions

- Who is legally responsible for paying the tax?
 - Insurer for fully insured plans
 - Otherwise “person who administers the plan benefits”
- Who bears the economic burden of the tax?
- How complicated are the details?



- Graham/Cassidy Does Not Pass
- Graham/Cassidy Passes As Is
 - No Change to Cadillac Tax
- Amendment to Delay/Repeal Cadillac Tax
 - Heller Repeal Amendment (July 27), passed 52-48
- Tax Reform
 - Opportunity
 - But.....
 - Taxing employees on their health care?



- ✓ **House Republican “Better Way” Blue Print on Health, June 2016**
- ✓ HHS Sec. and Former House Budget Comm. Chairman **Tom Price**, Empowering Patients First Act,” HR 2300 (114th Cong)
- ✓ **Finance Comm. Chairman Orrin Hatch**, Sen. Richard Burr, then-Energy and Commerce Comm. Chairman Fred Upton “Patient CARE Act” (Feb. 5, 2015)
- ✓ “Leaked” **ACA repeal/replace reconciliation draft** dated Feb. 10, 2017
- ✓ Is a cap on the employee exclusion a tax on the middle class? “*I don’t see it that way*”. **Ways and Means Committee Chairman Kevin Brady (R-TX)**



\$3.6 TRILLION

- Lost revenue to federal government (tax expenditure) over 2017-2026 budget window
- \$266 billion in fiscal year 2016 alone

Source: Joint Committee on Taxation (JCT), as reported by the Congressional Budget Office (CBO)



177 Million

- Number of American workers, retirees (pre-65), and their families covered by job-based health coverage
- Most common source of health coverage for pre-age 65 Americans
- Both before and after Affordable Care Act



IRS Still Sorting Out Excise Tax Details

- Notice 2015-16; Notice 2015-52
- NCCMP Comments -- Guiding Principles
 - Fully implement multiemployer statutory provisions (any coverage is family coverage)
 - Minimize administrative burdens as much as possible
 - Flexibility – It’s not “one size fits all”
- NCCMP Comments -- Detailed Comments
 - Including who is liable for the tax, how to calculate cost of coverage, age and gender adjustments, high risk professions, excluded coverage...



Graham/Cassidy Issues

- **Employer penalty repealed retroactive to 1/1/2016**
- Individual penalty repealed retroactive to 1/1/2016
- OTC tax repealed
- **HSA enhancements**
- Market Reforms: State wavers for *individual* and *small group*
 - Allows unrestricted variations in premiums, including based on age and health status (other than differences based on gender or constitutionally protected classes)
 - Essential Health Benefits
 - MLR rebate requirements
- **Impact on Large Group and Self-Funded?**
 - No specific changes for such plans
 - Possible impact through EHB changes on annual/lifetime limits, OOP max, but not clear
 - Possible new state-level health care related taxes? State employer responsibility penalties?



If Congress Doesn't Act

- More Focus On Administrative Changes
 - Regulatory and Sub-Regulatory Guidance (FAQs, etc)
- Litigation



NL East Division Champions 2017





Thank You!