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Calling Cadillac Tax A Lemon, Congress Moves To Repeal Core Of Obamacare

More than 300 members of the House support legislation to repeal the Cadillac tax. The Cadillac tax is a 40% tax on the cost of employer-sponsored health coverage exceeding certain thresholds. Those 'Cadillac' thresholds are actually more Yugo territory: $10,800 for self-only coverage, and $29,100 for family coverage. What's more, the cost of wellness programs, on-site clinics and other plan features meant to reduce expenses are also included. The result is that vast number of participants in numerous employer-sponsored plans will be affected.

There are two bills in the House, H.R. 879 introduced by Rep. Frank Guinta (R-NH), and H.R. 2050, introduced by Rep. Joe Courtney (D-CT). The House and Senate may actually do it this time. Those favoring repeal come from all corners. But a major advocate for repeal is the Alliance to Fight the 40, a coalition of public and private employers, patient advocates, businesses, unions, and more. And they are racking up the votes and sponsors.

The Supreme Court upheld Obamacare as a tax law, and it contains many taxes, including the Cadillac tax. It is a whopping 40% on top of all other federal taxes. It had a clever delayed effective date that was supposed to make it easier for all of us to swallow. Obamacare was passed in 2010, but the Cadillac tax was deferred until 2018. Later, Congress rolled it back two more years, to 2020.

That delayed effective date clearly de-emphasized the importance of the provision. But when it does hit, it will hit with a vengeance. It was *supposed* to target *overly generous* employer-provided health care plans. That doesn't just mean for executives. In fact, the tax mostly appears to hit union plans. Unions often negotiate for rich benefits and may be willing to take lower cash wages as a trade-off. Unions that have negotiated for generous health benefits may now wish they hadn't.

The theory of the law is that health insurance should be the great leveler. The Affordable Care Act included the Cadillac tax as a tool to cut health care costs. It puts direct and forceful pressure on employers to offer less-generous health insurance plans. Starting in 2020, Obamacare imposes a 40% tax on the cost of individual health plans above $10,800 for individuals and $29,100 for family coverage.

In evaluating these dreaded thresholds, both employer and worker contributions are included. The tax is decidedly punitive. The tax applies to every dollar above those thresholds. Like a cliff, the dollars are taxed at a 40% rate. What's more, the tax is not deductible by the employer. The Cadillac tax makes sure that more health insurance dollars are spent across a greater number of people. The tax is projected to collect $80 billion by 2023. However, many excise tax figures turn out not to be incorrect. Indeed, excise taxes are often enacted to discourage particular behavior. Here, a reasonable response to the Cadillac tax is likely to be cutting of health insurance, and the recent survey says that is exactly what is occurring.

Why would employers offer generous health insurance that triggers a 40% excise tax that they must pay and cannot deduct? American taxpayers could end up carrying the burden of the tax. In large part, the result is likely to higher costs for employees, higher deductibles, and other add-ons that will harm employees. Doesn't that go directly contrary to what President Obama and other proponents of the Affordable Care Act represented? Whether it does or does not, the votes for repeal are piling up. That means the quite ironically named 'Affordable Care Act' may just get even less affordable.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.