PERSPECTIVE

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If The 'Cadillac Tax' Falls, Entire Health Care Law Could Be Next

By Robert W. Wood

Long before Donald Trump blew past rivals in the Republican Primary and then took an unexpected path to victory in the general election, the Cadillac tax seemed doomed. It is perhaps the signature tax of the Affordable Care Act, aka Obamacare, and absent other funding, its demise could doom the act, too. Even the Democratic Party platform calls for end to Obamacare tax. The Republicans have been saying it for years.

Secretary Hillary Clinton agreed. A single sentence on page 35 of the 2016 Democratic Party Platform says: "We will repeal the excise tax on high-cost health insurance and find revenue to offset it because we need to contain the long-term growth of health care costs, but should not risk passing on too much of the burden to workers."

The Supreme Court upheld Obamacare as a tax law, and it contains many taxes, including the Cadillac tax, which is a whopping 40 percent on top of all other federal taxes. The Cadillac tax was supposed to rake in huge dollars to help pay for Obamacare. Specifically, it is a 40 percent tax on the cost of employer-sponsored health coverage exceeding certain thresholds: $10,800 for self-only coverage, and $29,100 for family coverage. The cost of wellness programs, on-site clinics and other plan features meant to reduce expenses are also included. A vast number of participants in numerous employer-sponsored plans will be affected. Several bills are pending to repeal it.

The theory of the law is that health insurance should be the great leveler. The Cadillac tax was *supposed* to target *overly generous* employer-provided health care 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 Cadillac tax puts pressure on employers to offer less-generous health insurance plans. In evaluating the thresholds, both employer and worker contributions are included. The tax applies to every dollar above those thresholds. Like a cliff, the dollars are taxed at a 40 percent rate, and the tax is not even tax deductible by the employer.

The Cadillac tax 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 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 puts direct and forceful pressure on employers to offer less-generous health insurance plans.

The Cadillac 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. A reasonable response to the Cadillac tax is likely to be cutting of health insurance, and recent surveys say that is exactly what is occurring. In large part, the result is likely to higher costs for employees, higher deductibles, and other add-ons that will harm employees.

Apart from the Cadillac tax, there are many other Obamacare taxes, including these:

1. A 2.3 percent tax on medical device manufacturers (this doesn't hit you directly, but indirectly it sure can).
2. A 3.8 percent net Investment income tax. This one is a big one. Depending on your income, it adds a 3.8 percent tax on top of your interest, dividends and capital gains.
3. The employer mandate on businesses with over 50 full-time equivalent employees to provide health insurance to full-time employees: $2,000 per employee, $3,000 if employee uses tax credits to buy insurance on the exchange.
4. A medical deduction threshold tax increase (threshold to deduct medical expenses as an itemized deduction increases to 10 percent from 7.5 percent).
5. The individual mandate (a tax for not purchasing insurance, though the tax penalty is called a "shared responsibility payment," the greater of 2.5 percent of your income above the filing threshold of $10,300 for singles and $20,600 for married couples filing jointly or $695 per adult ($347.50 per child), with a maximum of $2,085 for a family, whichever is higher).
6. An excise tax on charitable hospitals which fail to comply with the requirements of Obamacare.
7. The elimination of tax deduction for employer-provided retirement prescription drug coverage in coordination with Medicare Part D.
8. A Medicare Part A tax increase of 0.9 percent over $200k/$250k.
9. An annual $63 fee levied by Obamacare on all plans (decreased each year until 2017 when pre-existing conditions are eliminated) to help pay for insurance companies covering the costs of high-risk pools.
10. A medicine cabinet tax (over the counter medicines no longer qualify as medical expenses for flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), health savings accounts (HSAs), and Archer Medical Saving accounts (MSAs)).
11. An additional tax on HSA/MSA distributions.
12. HSAs or MSAs, penalties for non-qualified medical expenses of 10 percent to 20 percent in the case of a HSA and from 15 percent to 20 percent for an MSA.

A full list of tax provisions is available from the IRS (https://www.irs.gov/affordable-care-act), and from the joint tax committee on the Affordable Care Act (https://www.jct.gov/publications.html?func=startdown&id=4511). Even with all these taxes, it is worth asking where the revenue will come from to prop up the ironically named Affordable Care Act.

Robert W. Wood *is a tax lawyer with www.WoodLLP.com, and the author of "Taxation of Damage Awards & Settlement Payments" (www.TaxInstitute.com). This is not legal advice.*