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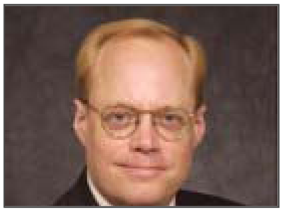

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New IRS Guidance Suggests Obamacare 40% Cadillac Tax Could Get Even Worse

As it did earlier this year, the IRS is asking for input on the Cadillac tax. Most comments are likely to be technical, on minute parts of the massively complex tax. Many Americans might make a more general comment: ‘get rid of it.’ Yet the tax is part of Obamacare, which the Supreme Court upheld. Bills have been introduced to repeal the tax, but meantime, the IRS has to administer it.

Obamacare contains [many taxes] including the [Cadillac tax]. Of all the taxes in the ironically named Affordable Care Act, none is more onerous, a whopping 40% on top of all other federal taxes. It is an excise tax meant to discourage something specific.

Some observers say it was sleight of hand to pass a law in 2010 adding a 40% tax in 2018. It was probably a bad idea even before the news broke that a once famous and now nearly infamous adviser had a big hand in the slick packaging of the law. That delayed effective date deemphasized the provision.

The Cadillac tax is [increasingly under fire]. Already, anyone who can avoid it is doing so. One survey showed that 62% of companies facing a 40% Cadillac tax hit in 2018 are already changing coverage to avoid it. Conversely, only 2.5 percent of companies say they will pay it.

Avoiding it usually means changing to higher deductible plans, reducing benefits, shifting more costs to employees, or dropping plans altogether. If no one pays it, how else will we pay for Obamacare? More tax increases? Cuts elsewhere?

As the IRS gets ready for 2018, it released guidance setting out approaches to the excise tax. Like all of Obamacare, the Cadillac tax is enormously complex. It targets overly generous employer-provided health care plans. That doesn't just mean for executives.

In fact, it mostly appears to hit union plans. Unions that have negotiated for generous health benefits at the expense of higher wagers may now wish they hadn't. The law puts forceful pressure on employers to offer less-generous health insurance plans. Starting in 2018, Obamacare imposes a 40% tax on the cost of individual health plans above $10,200 for individuals and $27,500 for family coverage.

In evaluating these thresholds, both employer and worker contributions are included. The tax is punitive, taxing every dollar above the threshold at a 40% rate. What's more, the tax is not deductible by the employer.

The tax is projected to collect $80 billion between 2018 and 2023. However, many excise tax figures turn out not to be incorrect. Indeed, excise taxes are often enacted to discourage particular behavior. Here, the Cadillac tax is likely to be cutting of health insurance, something that is already 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. The result is likely to higher costs for employees, higher deductibles, and other add-ons that will harm employees. It seems hard to square with the goals of the massive health care law.

The first IRS notice set out approaches to the excise tax. It considered how the cost of coverage would be determined. Now, the IRS is looking at who is liable. You might think this would be obvious. Doesn't any tax say who has to pay?

The IRS says the entity providing health coverage is liable for the Cadillac tax. That would be the employer for health savings account (HSAs) and Archer medical savings accounts (MSAs). But for health coverage provided for an insured group health plan, the coverage provider is the health insurance issuer.

When there's any doubt, the provider is defined as "the person that administers the plan benefits." Now, the IRS wants comments on how to determine who actually administers the benefits. It could be the person performing the day-to-day functions of the plan, a third-party administrator, or someone identified in the plan document. Any takers?

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