

Under Obamacare, Does Everyone Drive A Cadillac?

Obamacare contains [many taxes](#) including the [Cadillac tax](#). A whopping 40% on top of other federal taxes, it is [increasingly under fire](#). It is an excise tax meant to discourage something specific. And an [analysis](#) from the Kaiser Family Foundation found that the tax will hit 26% of employers in 2018. Over the next decade, 42% will, projects the [study](#).

Starting in 2018, the tax kicks in when the total spending on a health plan, including employer and employee premium contributions, exceeds \$10,200 for individuals and \$27,500 for a family. Even contributions made to a health savings account or a flexible spending account are counted, so Cadillacs seem to be everywhere.

One survey showed that 62% of companies facing the 40% Cadillac tax are already changing coverage to avoid it. Conversely, only 2.5% of companies say they will pay it. Avoiding it usually means changing to higher deductible plans, reducing benefits, and shifting more costs to employees. Some employers may drop plans altogether, an ironic consequence of a law meant to expand coverage.



US President Barack Obama speaks about the Affordable Care Act, known as Obamacare, at Taylor Stratton Elementary School in Nashville, Tennessee, July 1, 2015. (Photo credit: SAUL LOEB/AFP/Getty Images)

And some surveys suggest that the situation is more dire than these percentages suggest. There is no question the law is prompting employers to pare down benefits. The Alliance to Fight the 40, a group that includes Cigna, Blue Cross, and Blue Shield, has sent a letter to Congress arguing that the tax hurts worker retention and could cause some to drop insurance coverage altogether. 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 de-emphasized the provision.

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 wages may now wish they hadn't. The law puts forceful pressure on employers to offer less-generous health insurance plans. In evaluating the dollar 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 and Archer medical savings accounts. 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.

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