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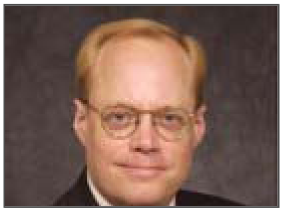

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Was Obamacare's Cadillac Tax Misrepresented?

Of all the taxes in the ironically named Affordable Care Act, none is more onerous than the so-called Cadillac tax. It is a big tax too, a whopping 40% on top of all other federal taxes. What’s more, it is an excise tax, one of the most dreaded kinds of taxes there is. It is a rifle shot tax that is supposed to discourage something very specific.

And it now looks likely to apply to more and more people, and to more and more plans. In that sense, it is a kind of rifle shot that has turned into a shotgun blast. You may not have noticed this tax or even heard of it. After all, it has a delayed effective date, not kicking in until 2018. That delayed effective date did *exactly* what it was supposed to do.

It prevented people from focusing on it when the law was enacted in 2010. Who worries about a tax that we won’t see for 8 years? In 2010, neither the public nor Congress seemed concerned. Yet now the tax has become another embarrassment. What does it do?

It targets plans that are overly generous employer-provided health care plans. No, that doesn't just mean for executives. In fact, it mostly appears to hit union plans, for they often negotiate for rich benefits and may be willing to take lower cash wages as a trade-off. Unions seems likely to be hard hit because they often negotiate generous health benefits. Why is that bad?

Apparently because 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 than in the past. 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. These thresholds are indexed to inflation.

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. 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 it. And it seems almost dastardly now, a real bait and switch.

You have probably seen some of the recent video clips of Jonathan Gruber of MIT, who has spoken irreverently about the Cadillac tax, including this gem in 2011: "It turns out politically, it's really hard to get rid of. And the only way we could get rid of it was first by mislabeling it, calling it a tax on insurance plans rather than a tax on people, when we all know it's a tax on people who hold those insurance plans." You can watch the full remarks here.

When Mr. Gruber talked of the Cadillac Tax as "clever" and as exploiting the public's "lack of economic understanding," it was not entirely clear who he was deriding. Yet a reasonable interpretation of the repeated remarks is that he was deriding voters, not Mr. Obama's administration or Congress. Mr. Gruber also noted that the tax was phased in precisely because drawing out the impact into the future would attract less political flak. That can hardly be a surprise.

No one seems to know Mr. Gruber now. In fact, House Minority Leader Nancy Pelosi says that she doesn't even "know who he is." She isn't the only one with Gruber amnesia. And so far, the stonewalling seems to be working.

The tax is projected to collect $80 billion between 2018 and 2023. However, many excise tax figures turn out not to be remotely close to correct. 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. Why would employers want to offer generous health insurance that triggers a 40% excise tax that they must pay and that they cannot deduct?

Surely any rational employer will not do this. Less generous coverage will be provided, period. Of course, it is possible that some employers will buck this trend. For example, one might anticipate that public employers such as cities employing union workers may be among them. In a curious twist, that may mean that American taxpayers will carry the burden of the tax. Various projections are already coming in about the cost in major cities like New York.

The result in large part is likely to higher costs for employees, higher deductibles, and other add-ons that will harm employees. That goes directly contrary to what proponents of the Affordable Care Act–including the President–represented. Like your tax, keep your tax?

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.