Cadillac Tax Delayed to 2022 in Budget Deal

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By: Brian Gilmore, Lead Benefits Counsel, VP

The end of the budget deal showdown yesterday brought some welcome relief for employers: The Cadillac Tax has been delayed two more years to 2022.

As a reminder, President Obama signed into law at the end of 2015 a bill to delay the Cadillac Tax from its original 2018 effective date to 2020. That bill also made the 40% excise tax on high-cost coverage (typically referred to as the "Cadillac Tax") deductible for employers.

Cadillac Tax Effective Date Delayed to 2022
On Monday night, President Trump signed the continuing resolution to end the three-day government shutdown. The bill includes a two-year delay in the Cadillac Tax, further extending the effective date to 2022.

The Cadillac Tax would provide that health coverage exceeding a statutory dollar limit (generally a baseline of $10,200 for employee-only coverage, $27,500 for family coverage) be considered an "excess benefit." The excess benefit amount would be subject to a 40% (now deductible) excise tax paid by the employer (or by the insurance carrier, who would almost certainly pass that cost on to the employer).

There continues to be wide bipartisan support for repealing the Cadillac Tax. However, there is no consensus approach to replacing the lost revenue from full repeal. While it remains unlikely that the tax will ever fully take effect, the long planning process required to prepare for its effect will continue to make employers nervous each time the effective date closes in.

See our webinar The Cadillac Tax Part I: Fight the Future for full details on the Cadillac Tax.

Health Insurer Tax 2019 Moratorium
The ACA tax on fully insured health insurance policies has been eliminated for 2019 only.

The original Cadillac Tax delay bill included a similar provision providing a moratorium on the health insurer tax for 2017 only. That tax is back in effect for the current 2018 calendar year. Now it will return to a moratorium phase in 2019.

Medical Device Excise Tax Moratorium Extended to 2019
The bill also extends the previous two-year elimination on the medical device excise tax that ended as of the start of 2018. The moratorium is retroactive to the beginning of 2018 and runs through the end of 2019.

All three of these tax provisions are likely targets for full elimination or substantial increases to the delayed effective dates/moratoriums if the GOP returns to its ACA repeal/replace efforts in 2018.

What's Left to be Implemented Under the ACA?

- **Nondiscrimination Rules for Fully Insured Plans: Implementation Date Unknown—Pending Regulations**

With the two-year extension of the Cadillac Tax to 2022, the only other big-ticket ACA item yet to take effect is the fully insured plan nondiscrimination rules.

The ACA provides that insured group health plans will be subject to rules "similar to" the nondiscrimination requirements that have long applied to self-insured plans under Internal Revenue Code §105(h). The insured plan rules technically were to apply at the same time as the first wave of the ACA market reforms (the first plan year beginning on or after September 23, 2010).

However, the IRS issued Notice 2011-1 at the end of 2010, which provided that **employers are not required to comply with the new nondiscrimination rules for insured plans until the Departments issue regulations or other administrative guidance.** The DOL and HHS indicated their agreement with the IRS to delay enforcement. The Notice further states that any such guidance will not apply until plan years beginning a specified period after issuance (e.g., it may not apply until the first plan year beginning on or after six months following the regulatory issuance date).

In light of President Trump's first-day ACA executive order for the regulatory agencies to "waive, defer, grant exemption from, or delay the implementation of any provision or requirement of the [ACA] that would impose…a cost, fee, tax, penalty, or regulatory burden," it remains very unlikely that these fully insured plan nondiscrimination rules will take effect at any time during the Trump administration.

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