



May 6, 2015

CC:PA:LPD:PR (Notice 2015-16)
Room 5203, Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

To Whomever This Concerns:

RE: Comments Concerning Notice 2015-16

As the Consulting Actuary and President of Marsh Consulting Group (MCG), I am writing to you on behalf of the mid-size businesses we serve. Our clients, along with approximately 60 percent of all large employers¹, are threatened by Internal Revenue Code Section 4980I, the Affordable Care Act's (ACA's) so-called *Cadillac Tax*.

While intended to curb overly generous health care plans that, in theory, lead to overutilization and excess spending, the overarching effect of the Cadillac Tax will be to penalize employers who provide health insurance – even those whose plans are not *overly generous*. Since health care costs have been rising much faster than inflation, the Congressional Budget Office has estimated that the Cadillac Tax will affect about 16 percent of employer-sponsored health plans in 2018. ***Without changes to the law, the Cadillac Tax will affect 75 percent of employer-sponsored health plans by 2029***². In addition, as a direct result of the Cadillac Tax and other cost increases mandated by ACA, 92 percent of employers are planning to change their health insurance options by 2018, when the tax begins³.

If left unmodified the regulations driving the Cadillac Tax will trigger negative economic impacts.

Notice 2015-16 invites public comments on the proposed regulations related to Code 4980I. This letter specifically addresses three areas:

- The types of coverage that constitute applicable coverage subject to the Cadillac Tax
- Determining the cost of applicable coverage
- Applying the annual statutory dollar limits to the cost of applicable coverage

¹ Mercer (2013). *National Survey of Employer-Sponsored Health Plans*.

² Herring, B. and Lentz, L. K. (2013). What Can We Expect from the "Cadillac Tax" in 2018 and Beyond? *Inquiry*, Vol. 48, No. 4.

³ Towers Watson (2013). *Health Care Changes Ahead Survey*.



The types of coverage that constitute applicable coverage subject to the Cadillac Tax. Applicable coverage includes any group health plan made available by an employer to employees that is excludible from the employee's gross income. All costs of the coverage, whether paid by the employer or employee, are included in the calculation of the tax. We feel this unfairly taxes employers on their employees' contributions. The ACA sets up a paradox for employers. By requiring coverage of "essential health benefits," defining full-time as 30 hours a week, removing exclusions for pre-existing conditions, expanding the dependent child definition through age 25, eliminating lifetime and annual maximums, imposing Transitional Reinsurance and Patient-Centered Outcomes Research fees, etc., ACA directly increases the cost of health plans. Including the employees' share of the cost unfairly penalizes employers who are already challenged to control (a) total health care costs and (b) their corresponding employer subsidies. Employee contributions should not be included in the amount used to figure the Cadillac Tax as including them is an unfair representation of the true employer contribution, their influence on overall cost, or actual employer cost. If pre-tax employee contributions are troublesome in the overall federal revenue schematic, then Congress should target them directly rather than through a tax on employers. **MCG recommends that the Cadillac Tax apply only the employer-paid portions of applicable coverage.**

The statute expressly exempts certain types of employer-sponsored coverage from the Cadillac tax, including dental or vision insurance that is issued under a policy, certificate or contract of insurance that is separate from the group health plan. In most instances, whether coverage is insured or self-insured has not been relevant for purposes of the Cadillac Tax, including for purposes of identifying whether any particular coverage is applicable coverage. It seems clear that the intent is to exempt stand-alone dental and vision plans, whether insured or self-funded. **MCG urges Treasury and IRS to exercise their regulatory authority to propose an approach under which self-funded limited scope dental and vision coverage would be excluded from applicable coverage.**

Determining the cost of applicable coverage. For insured plans, the cost is based on the premiums. Determining the costs of applicable coverage under a self-insured plan is more complex. The Code offers two methods: the **actuarial basis method** and the **past cost method**. Regulatory details will need to provide clear and consistent guidelines for exactly which costs to include for each of these methods. Obtaining actuarial attestations should be considered for both methods. Employers can also look to actuarial methods of determining the cost of applicable coverage using actual costs – basing the cost of applicable coverage for a year on the actual cost paid by the self-insured plan to provide health coverage for that year. **MCG supports utilizing actuaries and actuarial attestations – just as actuarial attestations are currently used for CMS' Retiree Drug Subsidy Program – for determining the cost of applicable coverage for self-funded plans.**

Applying the annual statutory dollar limits to the cost of applicable coverage. Although health care plan expenses vary significantly by location and the health conditions of those covered, the Cadillac Tax does not account for this variation. Regionally, health care costs averaged over \$12,000 per employee in the West versus \$10,500 in the South⁴. Recent guidance allows for age and gender adjustments, but according to the 2014 Milliman Medical Index, these have less impact on health care costs than geographic location. For the majority of mid-size and large employers that self-fund their health care plans, health care premiums are directly affected by the previous medical claims of their employees. This means that employers with a higher morbidity risk profile (i.e., covering older males and/or younger females) will have more expensive health plans. Employers with disproportionately high health care expenses who wish

⁴ Mercer (2013). *National Survey of Employer-Sponsored Health Plans*.

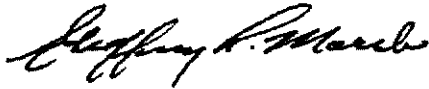
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to avoid the Cadillac Tax will be forced to downgrade their health plans, thus leaving employees with higher out-of-pocket costs. By setting arbitrary and uniform thresholds, the Cadillac Tax fails to take into account several elements that influence expenses. **MCG suggests that the Cadillac Tax apply only to platinum-level plans that exceed the monetary thresholds (\$10,200/\$27,500 in 2018).** Setting the threshold at "platinum" (actuarial value 90%), removes the unintended consequence of imposing the Cadillac Tax on a gold-level or silver-level plan with high costs based primarily on its geography or morbidity profile.

MCG appreciates your consideration. Please do not hesitate to contact me at (805) 239-9242 or GMarsh@MCGteam.com if you have any questions or if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey L. Marsh". The signature is fluid and cursive, with the first name "Geoffrey" being more prominent.

Geoffrey L. Marsh, ASA, MAAA
President & Consulting Actuary