

Notice 2015-16

Powering Forward Together. MAY 19 2015



Jim Tracy
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6201 S Street
Sacramento, California 95817

May 15, 2015

Mr. John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington D.C. 20224

Attention: IRS Notice 2015-16

Dear Commissioner Koskinen

The Sacramento Municipal Utility District (SMUD) appreciates the opportunity to comment on the Internal Revenue Service (IRS) Notice on the "Excise Tax on High Cost Employer-Sponsored Health Coverage," or so-called "Cadillac Tax" under §4980I of the Internal Revenue Code (Code) added by the Affordable Care Act (ACA).¹

Background

§4980I of the Internal Revenue Code applies to taxable years beginning on January 1, 2018. Under the provision, if the aggregate cost of "applicable employer-sponsored covered" (applicable coverage) provided to an employee exceeds a statutory dollar limit, the excess is subject to a 40% excise tax.²

The provision sets two annual dollar limits for health coverage. The limits for 2018 are \$10,200 for self-only coverage and \$27,500 family coverage.³ These baselines are subject to adjustments that allow for an increase in these thresholds based on factors, including:

1. Actual cost increase of U.S. healthcare between 2010 and 2018 exceeds projected growth. In this scenario, the threshold amounts are adjusted by the Consumer Price Index-Urban (CPI-U), rounded to the nearest \$50;

¹ Section 4980I was added to the Internal Revenue Code by sections 9001 and 10901 of the Patient Protection and Affordable Care Act (enacted March 23, 2010) and was also amended by section 1401 of the Health Care and Education Reconciliation Act of 2010 (HCERA) (enacted March 30, 2010).

² 26 USCA §4980I(a)

³ 26 USCA §4980I(b)(3)



2. Age and gender characteristics of all employees of the employer as compared to such characteristics for the national workforce;
3. The covered individual has attained age 55 and is receiving employer-sponsored retiree health coverage and is non-Medicare eligible; and
4. A majority of employees covered by the employer plans are engaged in a high risk profession such as fire and safety, certain emergency medical care, construction (including repair and installation of electrical and telecommunication lines), mining, certain agriculture professions, forestry, and fishing industries.

The nondeductible tax is equal to 40% of the aggregate value that exceeds the threshold amount. The tax is paid by insurers and plan administrators, and could have an effective rate approaching 60% for employers. The excise tax will enact an unfair tax on previously tax-exempt entities, such as SMUD.

IRS Notice 2015-16 was issued on February 23, 2015. The notice provides guidance regarding what plans are covered and how to determine the cost of such plans. The Notice also invites comments on open issue on various employer fact patterns.

SMUD forecasts that 74% of SMUD employees are covered by plans that would immediately be subject to the excise tax in 2018. By the early 2020s, SMUD forecasts that 100% of our offered plans will be subject to the excise tax, based on the Consumer Price Index (CPI) escalation that will be applied to the threshold limit. SMUD forecasts that by 2018 100% of employees who provide coverage to their families will be subject to the excise tax. Only single, or single+1, employee plans will be excluded in the first years of the excise tax, amounting to just two of the existing twelve (six active employee, six retiree) health care plans offered by SMUD.

Key Issues & Recommendations

SMUD believes in providing quality health coverage to the entirety of its workforce. However, there are several critical issues with the “Cadillac tax” that will inhibit SMUD from providing such coverage. The tax unfairly penalizes employers who offer comprehensive health coverage to all employees and will force changes or reduction in such coverage. The tax is intended to impose costs on employers who offer comprehensive plans to only a limited number of employees. The implementation of the tax penalizes nearly all of the plans offered by SMUD. This penalty discourages employers, including SMUD, who wants to continue to provide quality comprehensive coverage to all of their employees, from doing so. SMUD plans are quality plans, but are not “excessive” plans as inferred by the use of an excise tax.



I. The threshold and selected CPI are too low.

The \$10,200 self-coverage and \$27,500 family coverage thresholds are simply far too low. SMUD offers all employees comprehensive health plans. When the “Cadillac Tax” first takes effect, only one of SMUD’s offered plans will be exempt. By the early 2020s, all of SMUD’s offered plans are forecasted to be subject the Excise Tax. For example, in 2018, SMUD forecasts an employee covering their family with the Kaiser Permanente HMO (an average plan) would be subject to the excise tax. The thresholds are not conducive to comprehensive health care plans, and the minimum thresholds must be adjusted upward to remove standard comprehensive plans from the Excise Tax.

Furthermore, the CPI used to calculate growing health care costs is too low as well. After only a few years of adjustment, SMUD forecasts all of our offered plans will be subject to the tax. This is an incongruous result. SMUD provides comprehensive health plans that offer employees quality benefits and help to control costs. As the costs of health-care stabilize in the next decade, fewer of SMUD’s offered plans should be subject to the excise tax, not more. The thresholds and CPI should be adjusted to account for health care plans that provide employees with quality care at a fair price.

II. Various pre-tax saving vehicles must be excluded when calculating the excise tax.

The “Cadillac Tax” includes pre-tax savings vehicles in the dollar assessments of the thresholds. These savings vehicles include: Flexible Spending Accounts (FSA), Health Savings Accounts (HSA), and Medicare Medical Savings Accounts (MSA). These savings vehicles are critical in helping employees pay for medical expenses and retain needed flexibility in their health care choices. These vehicles are not fixed costs liked premiums, but instead significantly contribute to keeping health care affordable. Including these savings vehicles in the same manner as other health benefits makes health care less affordable. Excluding the above pre-tax savings vehicles is especially important if threshold costs are not raised. These accounts allow employees to avoid high cost deductibles and weather both expected and unexpected events more easily. As employers begin offering high-deductible plans as a way to reduce their tax burden, these pre-tax savings vehicles will be vital to employees. Including pre-health saving vehicles when determining plan thresholds inequitably affects employees with chronic conditions. An employee may be able to successfully weather a one-time large medical expense, but ongoing expenses without the benefit of a comprehensive plan or effective pre-tax saving vehicles will simply increase employee’s health care costs and force employees to avoid necessary care.

Levying an Excise tax on pre-tax savings vehicles severely dis-incentivizes the use of these accounts. The Excise tax undermines careful planning and employee responsibility. Subjecting pre-tax accounts to a large excise tax undercuts healthcare affordability and



flexibility. Employees will be unfairly penalized, and will suffer a significant decrease in their health care coverage simply because they receive comprehensive coverage and options.

III. The Threshold Rules Do Not Sufficiently Account for Retiree Benefits

SMUD covers its existing workforce and a significant retiree population. Providing coverage beyond employment significantly raises SMUD's healthcare costs. Essentially, for each current employee, there is a retiree also receiving health care benefits. The costs of these two groups are pooled for risk mitigation purposes. SMUD believes that continuing to provide this coverage is essential to providing for the health of its entire workforce. Subjecting high-cost plans because they cover both employees and retirees is yet another inequitable result of the Excise Tax. The threshold amounts do not account for the additional cost of active retirees enrolled in pooled cost benefit plans. This calculation must take into account increased costs caused by providing quality retiree benefits.

Conclusions

The Excise Tax makes the Affordable Care Act a misnomer. SMUD has a small number of employees (approximately 2,000, of which, 1,650 are full time) and an equal number of qualifying retirees. In the first year of the excise tax's applicability, three-quarters of SMUD's workforce would be impacted by the tax. The Excise Tax does not make health care more affordable, nor is it carefully tailored to penalize only the companies that provide extensive plans to only a few employees. Instead, the tax broadly penalizes companies that are providing quality benefits to their workforces. The tax will add millions of dollars to medical costs, and in response, SMUD and other companies will be forced to reduce the benefits provided. These actions will negatively impact our workforce and workforces across the country.

We urge the IRS to reconsider the minimum thresholds, including pre-tax saving vehicles in threshold assessments, and not accounting for increased costs caused by retiree benefits in pooled health plans. Changing these assessments will significantly reduce the number workforce-wide plans that provide comprehensive, quality coverage to all employees from the Excise Tax. Increasing the thresholds and exempting pre-tax saving vehicles from the threshold calculations will encourage employers to continue providing quality health care options, instead of slashing benefits.

Sincerely,

/s/ Jim Tracy
Jim Tracy
Chief Financial Officer