Notice 2015-16

STOP THE HIT

May 14, 2015

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

Re: Notice 2017-16 – Section 4980I—Excise Tax on High Cost Employer-Sponsored Health Coverage

On behalf of the Stop the HIT Coalition, composed of 36 employer groups and trade associations representing millions of employees and the self-employed, we write to urge Treasury and the Internal Revenue Service (IRS) to exempt the cost of Section 9010 – the annual fee on health insurance providers (the small business health insurance tax or HIT) – from the calculation for Section 4980I – the Excise Tax on High Cost Employer-Sponsored Health Coverage (Cadillac tax).

The Cadillac tax will hit small businesses particularly hard, because small businesses are subject to increased health insurance plan requirements, higher health insurance administrative costs, and a new, escalating tax on health insurance products that all put upward pressure on small group health insurance premiums. These new burdens are discriminatory because they negatively impact small businesses, but do not apply to larger businesses that are able to self-insure.

The small business health insurance tax (HIT) will push businesses closer to the Cadillac tax thresholds

The Cadillac tax is not the first tax on health insurance contained in the Affordable Care Act (ACA). Beginning in 2014, the small business health insurance tax (HIT) began impacting fully-insured health insurance plans, the products that small businesses purchase to insure their employees. The Congressional Budget Office (CBO) and Centers for Medicare and Medicaid Services (CMS) Office of the Actuary have said that this tax will be passed along in the form of higher premiums.

This original excise tax on health insurance products collected $7 billion in 2014. The tax increased by 40 percent to $11 billion this year. In 2011, The Joint Committee on Taxation (JCT) estimated that the HIT will increase premiums by an average of $350-$400, or 2.0%-2.5% of premiums, for a family of four in the year 2016. Examination of insurance company filings for 2015 indicate that many small business consumers will be paying even more than that.

According to a small group health insurance rate filing in Michigan, a family of four will pay $537 in increased premiums due to the HIT in 2015.[1] According to a small group health insurance filing in Oregon, a family of four will pay $570 in increased premiums due to the HIT in 2015.[2] While the tax is having a significant impact this year, the impact will be even more consequential in future years.

In 2018, the year that the Cadillac tax begins, the HIT will collect $14.3 billion, more than double the first year total. In 2025, CBO estimates the HIT will collect $20 billion, nearly double the total collected this year.[3] The tax is indexed to premium growth, which has historically grown faster than inflation. The Cadillac tax, on the other hand, is indexed at a much lower threshold (initially adjusted Consumer Price Index (CPI) growth plus 1 percent for two years, and then only adjusted to CPI growth), ultimately resulting in the HIT pushing more and more businesses closer to the Cadillac tax thresholds.

Without some sort of regulatory relief, the HIT will push more businesses closer to or above the Cadillac tax thresholds of $10,200 for employee-only plans and $27,500 for "other-than-employee-only" plans (employee-plus-one and family plans).

The small business health insurance tax (HIT) should be exempted from Cadillac tax threshold calculation

If and when a business is subject to the Cadillac tax, that tax liability does not count (or double-count) against the business. In other words, the Cadillac tax liability is not subject again to the Cadillac tax, avoiding one form of double taxation. Page 11 of the Notice states:

"2. Specific Rules under § 4980I - Section 4980I also includes additional calculation rules for determining the cost of applicable coverage.

(1) § 4980I Tax Not Included in Cost. Section 4980I(d)(2)(A) provides that the cost of applicable coverage under § 4980I does not take into account 'any portion of the cost of such coverage which is attributable to the tax imposed under this section.'"

Similarly, the HIT should be excluded from the premium thresholds of the Cadillac tax. Otherwise, businesses will be double taxed for their health insurance. This solution would consistently avoid double taxation, and provide some relief for small businesses from the Cadillac tax. Thank you for considering the HIT exclusion.

Sincerely,

Stop the HIT Coalition

[1] *UnitedHealthcare 2015 rate filing - $11.18/member/month*
[2] *Lifewise Health Plan of Oregon 2015 rate filing - $11.87/member/month*
[3] *CBO Updated Budget (Table 4-3, page 99): - https://www.cbo.gov/sites/default/files/cbofiles/attachments/49892-Outlook2015.pdf*