

SEP 18 2015



September 17, 2015

Karen Levin
Office of Associate Chief Counsel
CC:PA:LPD:PR (Notice 2015-52)
Room 5203
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044

Re: Notice 2015-52 Comments

Dear Ms. Levin:

We are pleased to submit our comments to Notice 2015-52 concerning Section 49801 – Excise Tax on High Cost Employer-Sponsored Health Coverage. We appreciate the Service's efforts to bring a measure of clarity to Section 49801 (the Cadillac tax). However, as the proposed regulations reflect, the Cadillac tax will be an expensive, time consuming administrative nightmare for employers.

ASAE represents over 22,000 association professionals and individuals who serve the association community. Most of our members work in small organizations of less than 50 employees which are unlikely to have dedicated human resources and compliance staff with the skills required to effectively implement the proposed regulations. The costs and burdens represented by the regulations will diminish the resources available to support our members' missions, and will likely result in a reduction of benefits to their staffs.

We suggest that the Service consider administratively mandating that all reporting should be made annually. Many of the options that the Service is considering in this Notice note that the information needed to perform the various calculations may only be available after the end of the calendar year. If the tax calculations must be reported on a monthly basis, and then be subject to adjustment retroactively, the result will be a tremendous administrative expense and burden on employers and providers. It would be much simpler for the Service and for taxpayers if the filing could be made once after the end of the calendar year, consistent with the payment method suggested by the Service in Section VII.B of this Notice. This would give employers and providers the opportunity to reconcile their records before filing the information returns and payment.

We also suggest that the Service offer an option that would allow employers to file the necessary information returns and pay the tax without involving the providers. As we previously noted in our comments to Notice 2015-16, since the tax is not limited to the medical insurance premiums, each employer may have several providers subject to a share of the tax because of the employer's benefits choices. If, as the Service proposes, the employer has to file a monthly information return and provide that information to each provider along with the provider's allocable share of the calculated tax, the number of filings and chances for errors multiply quickly.

Under Section V.B, the Service requests comments concerning the time needed to perform the calculations under Section 4980I. We would recommend 120 days after the end of the calendar year. As stated in the Notice, most self-insured plans have a 90 run-out period for claims, which may impact the actual costs of coverage. In addition, smaller employers may be challenged to amass the data quickly, especially with other state and federal filings due at the same time.

In Section V.C., the Service states that when a provider is reimbursed by an employer for the Cadillac tax, the reimbursement will be taxable income to the provider. The provider will naturally seek to recover the income tax it would then have to pay on the reimbursement from the employer, thus creating an income tax on the Cadillac tax. The notice also points out that this additional charge could also be included in the applicable cost of coverage, leading to an even higher Cadillac tax owed (and more income tax). We recommend that either the Service exclude the reimbursement from the provider's taxable income, or that the Service allow employers to pay the tax directly in order to avoid this multiple taxation. If the Service persists in taxing the tax, we support excluding the income tax reimbursement from the applicable cost of coverage and support creating a standard marginal tax rate used to calculate the tax gross-up. Any other method of calculating the actual tax gross-up by each provider is too cumbersome for all parties.

In Section V.E., the Service is considering an approach under which contributions to account-based plans, such as FSAs and HSAs, would be allocated on a pro rata basis over the plan year. We recommend that the Service adopt this approach, which will help minimize the complexity of the monthly reports. Similarly, we support the safe harbor proposed in Section V.F. concerning FSA carry-over amounts. Section VI of the Notice addressing possible ways of calculating the Age and Gender Adjustment to the Cadillac tax's dollars limits under Section 4980I(b)(3). We support requiring the employer to use the first day of the plan year as the snapshot date for determining the composition of its employee population. We also support the use of the FEHBP standard option as the baseline for determining the adjustment. We are concerned however, that the calculations required by an employer are going to be unduly burdensome and complex. In turn, employers will likely have to engage consultants and experts to assist in the calculations, thus adding to the administrative burden and expense.

Also, there are timing issues to consider. Employers need to make their benefit choices at least 60-90 days prior to the beginning of their plan year, which is commonly, but not always, January 1. In order to effectively manage against the Cadillac tax, the Service would have to provide the adjustment for the coming January 1 plan year no later than September 30 of the prior year. In practical terms, the adjustment would have to be based on premium costs for the year ending the prior December 31, which would represent a lag of a year in the data supporting the adjustment. We also ask that the Service consider transitional relief for those employers with plan years that do not begin on January 1.

In conclusion, we appreciate the Service's efforts to clarify the requirements under Section 4980I, and strongly urge the Service to minimize the impact on employers, especially small employers, by simplifying the compliance processes and forms as much as possible.

Sincerely,

Robert M. Skelton
Chief Administrative Officer