



October 1, 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:

Mortgage Bankers Association ("MBA") is pleased to have the opportunity to comment on Notice 2015-52 concerning Section 49801 – Excise Tax on High Cost Employer-Sponsored Health Coverage. MBA appreciates the Service's efforts to address many of the complexities of Section 49801 (the Cadillac Tax). However, the proposed regulations and Notices 2015-52 and 16 make clear that the Cadillac Tax will impose expense and administrative burdens that will overwhelm all but the largest employers.

MBA represents over 2,300 organizations that are engaged in the real estate finance industry. Many of our members are small businesses—independent mortgage bankers, community banks, and industry service providers—that are likely to have limited human resources staff, particularly those with the skills required to effectively implement the proposed regulations. The costs and burdens represented by the regulations are likely to result in a reduction of employee benefits. MBA itself has an in-house human resources department and in-house counsel but will have to engage consultants to help us comply with the Cadillac Tax.

MBA's overarching recommendation to the Service is to choose implementation structures that reduce complexity and minimize cost to employers.

Annual Reporting. 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 the Notice. This would give employers and providers the opportunity to reconcile their records before filing the information returns and payment.

Option for Employers to Pay Tax Directly. 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

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.

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). For employers, this is patently unfair. We recommend that either the Service allow employers to pay the tax directly in order to avoid this multiple taxation, or the Service exclude the reimbursement from the provider's taxable income, or that 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.

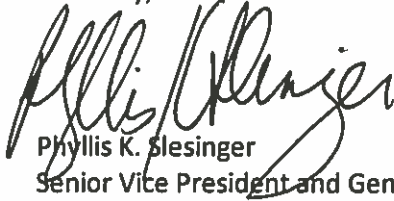
Allowed Period for Calculations. Under Section V.B, the Service requests comments concerning the time needed to perform the calculations under Section 4980I. We would recommend 120 days after the end of the calendar year. As stated in the Notice, most self-insured plans have a 90 run-out period for claims, 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.

FSAs and HSAs. 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 Age and Gender 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 closing, MBA greatly appreciates the Service's efforts to clarify the requirements under Section 49801. MBA strongly urges the Service to minimize the impact of the regulatory regime on employers, especially small employers, by simplifying the compliance processes and forms as much as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Phyllis K. Slesinger". The signature is fluid and cursive, with the first name "Phyllis" being more prominent than the last name "Slesinger".

Phyllis K. Slesinger

Senior Vice President and General Counsel