MCG
Marsh Consulting Group

October 1, 2015

CC:PA:LPD:PR (Notice 2015-52)
Room 5201, Internal Revenue Service
P.O. Box 7608
Ben Franklin Station
Washington, D.C. 20046

Dear Sir or Madame:

RE: Comments Concerning Notice 2015-52

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 employers[1], 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 begins[3].

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

Notice 2015-52 invites public comments on the proposed regulations related to Section 4980I. This letter specifically addresses two areas:

- Allocation of Contributions to HSAs, Archer MSAs, FSAs, HRAs
- Age and gender adjustment to the dollar limit

[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*.

Allocation of Contributions to HSAs, Archer MSAs, FSAs, HRAs. The Department of Treasury (Treasury) and the Internal Revenue Service (IRS) are considering an approach under which contributions to account-based plans would be allocated on a pro-rata basis over the period to which the contribution relates (generally, the plan year), regardless of the timing of the contributions during the period. Treasury and IRS anticipate that this allocation rule would apply to HSAs, Archer MSAs, FSAs, and HRAs that are applicable coverage. It is MCG's contention however, that employee contributions to Archer MSAs, FSAs, and HSAs should be excluded from the excise tax calculations. For these account types, the employee may determine the amount of the contribution and for certain accounts, HSAs for example, may choose to make additional contributions independent of payroll deductions. The variables that exist in the amounts and frequency of employee contributions in addition to the potential for multiple sources of contributions made on behalf of the employee, make the inclusion of employee contributions in the excise tax calculations a significant, and in some cases impossible, administrative burden for the employer. **MCG recommends the exclusion of employee contributions and supports the pro-rata method of determining account-based employer contributions.**

Age and gender adjustment to the dollar limit. To compare the employer's premium cost with the national premium cost, it will be necessary to establish the age and gender characteristics of the national workforce. To determine the age and gender distribution of the national workforce, Treasury and IRS are considering using the Current Population Survey as summarized in Table A-8a, 14 Employed Persons and Employment-Population Ratios by Age and Sex, Seasonally Adjusted (Table A-8a), published annually by the Department of Labor Bureau of Labor Statistics. To determine the age and gender characteristics of a particular employer's population, Treasury and IRS are considering a requirement that an employer use the first day of the plan year as a snapshot date for determining the composition of the employee population. MCG agrees that the snapshot method is a clear and reasonable approach to making this determination. In addition we urge Treasury and IRS to give consideration to providing an additional adjustment on the basis of location. According to the 2014 Milliman Medical Index, geographical location has more impact on health care costs than age and gender, yet Section 4980I does not account for this variance. **MCG supports the use of the snapshot date for determining the composition of the employee population. In addition, MCG encourages Treasury and IRS to consider the geographic cost variables of healthcare, allowing for inclusion of such factors in the adjustment calculations.**

MCG submitted comments regarding Notice 2015-16 and would like to reiterate some of those:

- **MCG recommends that the Cadillac Tax apply only the employer-paid portions of applicable coverage.**
- **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.**
- **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.**

- **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,

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