CADILLAC TAX DELAYED

JANUARY 2018

SPENDING RESOLUTION AFFECTS ACA TAXES

OVERVIEW

On Jan. 22, 2018, President Donald Trump signed into law a short-term continuing spending resolution to end the government shutdown and continue funding through Feb. 8, 2018. The continuing resolution impacts three taxes and fees under the Affordable Care Act (ACA).

Specifically, the continuing resolution:

- Delays implementation of the Cadillac tax on high-cost group health coverage until 2022;
- Provides an additional one-year moratorium on the health insurance providers fee for 2019 (although the fee continues to apply for 2018); and
- Extends the moratorium on the medical device excise tax for an additional two years, through 2019.

ACTION STEPS

Employers should be aware of the evolving applicability of existing ACA taxes and fees so that they know how the ACA affects their bottom lines. Lawley will continue to keep you informed of changes.

Cadillac Tax Delayed

The ACA imposes a 40 percent excise tax on high-cost group health coverage, also known as the “Cadillac tax.” This provision taxes the amount, if any, by which the monthly cost of an employee's applicable employer-sponsored health coverage exceeds the annual limitation (called the employee’s excess benefit). The tax amount for each employee’s coverage will be calculated by the employer and paid by the coverage provider who provided the coverage.

Although originally intended to take effect in 2013, the Cadillac tax was immediately delayed until 2018 following the ACA's enactment. A federal budget bill enacted for 2016 further delayed implementation of this tax until 2020, and also:

- Removed a provision prohibiting the Cadillac tax from being deducted as a business expense; and
- Required a study to be conducted on the age and gender adjustment to the annual limit.

The continuing resolution delays implementation of the Cadillac tax for an additional two years, until 2022.

There is some indication that this additional delay will lead to an eventual repeal of the Cadillac tax provision altogether. Over the past several years, a number of bills have been introduced into Congress to repeal this tax. Although President Trump has not directly indicated that he intends to repeal the Cadillac tax, he has stated that repealing and replacing the ACA is a key goal for his administration.

Moratorium on the Providers Fee

Beginning in 2014, the ACA imposed an annual, nondeductible fee on the health insurance sector, allocated across the industry according to market share. This health insurance providers fee, which is treated as an excise tax, is required to be paid by Sept. 30 of each calendar year. The first fees were due Sept. 30, 2014.

The 2016 federal budget suspended collection of the health insurance providers fee for the 2017 calendar year. Thus, health insurance issuers were not required to pay these fees for 2017. However, this moratorium expired at the end of 2017.

The continuing resolution provides an additional one-year moratorium on the health insurance providers fee for the 2019 calendar year. However, the continuing resolution specifically declines to extend the moratorium through 2018. **Therefore, the fee continues to apply for the 2018 calendar year**.

Employers are not directly subject to the health insurance providers fee. However, in many cases, providers of insured plans have been passing the cost of the fee on to the employers sponsoring the coverage. As a result, this one-year moratorium may result in significant savings for some employers on their health insurance rates.

Moratorium on the Medical Devices Tax

The ACA also imposes a 2.3 percent excise tax on the sales price of certain medical devices, effective beginning in 2013. Generally, the manufacturer or importer of a taxable medical device is responsible for reporting and paying this tax to the IRS.

The 2016 federal budget suspended collection of the medical devices tax for two years, in 2016 and 2017. As a result, this tax did not apply to sales made between Jan. 1, 2016, and Dec. 31, 2017.

The continuing resolution extended this moratorium for an additional two years, through the 2019 calendar year. The continuing resolution provides that this additional delay applies to sales made after Dec. 31, 2017. Therefore, as a result of both moratoriums, **the medical devices tax will not apply to any sales made between Jan. 1, 2016, and Dec. 31, 2019**.