Repeal or Reform the So-Called “Cadillac” Tax

What is the Tax?
The Affordable Care Act (ACA) created a new excise tax, commonly referred to as the Cadillac Tax, on certain high-end health care plans. The purported purpose of this tax was to discourage employers from offering health insurance plans with excessively rich benefits. Unless delayed, the tax will be applied starting in 2018, and is equal to 40 percent of the value of any coverage in excess of $10,200 for an individual and $27,500 for a family. The tax, required to be paid by the health plan itself (or in some cases the employer sponsoring an arrangement or its plan administrator), applies to current and retired employees and includes “any applicable employer-sponsored coverage.” To determine whether these cost thresholds are exceeded, an overly broad net is cast including many employer sponsored arrangements that actually promote efficient health care such as wellness program incentives and consumer-directed coverage arrangements such as flexible spending arrangements (FSAs), health reimbursement arrangements (HRAs), and health savings accounts (HSAs). It is these latter arrangements that we seek to exclude from the Cadillac Tax.

Revenue Implications:
Initially estimated to raise $120 billion over ten years during passage of the ACA, the most recent estimate was dramatically less – $87 billion over ten years. Much of the revenue generated is assumed to be a result of employers increasing wages to compensate for the downgrading of health plan offerings and not through payment of the tax itself. Experience has shown that employers do not automatically offer higher wages to offset a reduction of health benefits, making it unclear what the true tax revenue will be, but we anticipate that it will be far, far, less. Indeed, as the Excise Tax looms, many experts anticipate that, due to economic pressures, employers will reduce the value of their health care plans and not raise wages, thereby generating no new revenue.

Impact of the Tax on Consumer Directed Health Accounts (HSAs, FSAs, HRAs):
According to Internal Revenue Service (IRS) Notice 2015-16, the tax applies to employer and employee contributions to health Flexible Spending Arrangements (FSAs), employer contributions to Health Reimbursement Arrangements (HRAs), and employer and pre-tax employee contributions to Health Savings Accounts (HSAs). Including these contributions in the tax calculation will undermine the very options created to make health care more affordable, manageable, and predictable for American families. In an effort to avoid hitting the tax threshold, employers will be less likely to offer such benefits, benefits which help employees pay for their increasing share of out-of-pocket healthcare costs. Our detailed comment with respect to the IRS’ position is included as Appendix A.

Importance of FSAs, HRAs, and HSAs to Consumers:
A majority of employers currently sponsor consumer-directed arrangements for their employees. ECFC member companies assist in the administration of such arrangements for over 33 million employees and dependents. Approximately 103.5 million Americans benefit from consumer-directed accounts.1

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1 FSA counts extrapolated from U.S. Census Bureau statistics on number of employed, number of employers who offer FSAs, average enrollment statistics, and Visa research (conducted by C+R Research, July 2012). HRA statistics based on “U.S. Consumer-Driven Healthcare: Health Benefit Account Market Sizing”, Aite Group, November, 2013. HSA statistics from “2014 Year-End Devenir HSA Research Report”, February, 2015 (http://www.devenir.com/research/2014-year-end-devenir-hsa-market-research-report/). These counts aggregated and multiplied by 2.35, (HHS PCORI fee multiplier that determines the average number of lives covered under the plan for the plan year [169 Treas. Reg. §§ 46.4376-1(c)(2)(iv)(B) and (C)].)
Many more employers are moving toward higher deductible health plans or plans that increase the amount of cost sharing borne by employees. In addition, employers are taking action to reduce the costs of their health coverage, yet protect employees from higher out of pocket costs by moving to account-based, consumer-directed arrangements. This trend is seen on both state- and federally-facilitated exchanges, where much of the coverage available will have high deductibles and higher cost-sharing. Consequently, consumer-directed benefit arrangements, such as FSAs, HRAs and HSAs, are of increasing importance to American workers and their families.

These tools provide a means of financing health care costs incurred under health plans, particularly under high deductible health plans, and help many Americans afford critical health care procedures that might otherwise force them into bankruptcy.

Companies are increasing enrollment by 20% or more to their Consumer Directed Health Accounts. Over the last year, they report average cost trends of only 2% over that period. This is likely in part because participants in these accounts are more likely to exhibit cost-conscious behaviors and participate in wellness programs.

According to a 2014 survey conducted by Visa, Inc., 43 percent of the responders said they would probably/definitely cut back on medicines and treatments if they didn’t have an FSA. The type of treatments they would cut back on, in order of most to least, includes: doctor visits, vision, dental, over-the-counter (OTC) Medicines, prescriptions, and sick doctor visits. The study also indicated that the cut-backs are higher for people in lower to middle income brackets compared to those in higher income brackets.

**Impact of the Tax on the Marketplace and Consumers Overall:**

According to a 2014 study by the American Health Policy Institute, in 2018, the Excise Tax is anticipated to hit 17 percent of all American businesses and 38 percent of large employers. In addition, from 2018-2024 the Excise Tax could cost 12.1 million employees an average of $1,050 in higher payroll and income taxes per year if employers increase their taxable wages to offset a reduction of health benefits, thereby harming consumers and creating a net loss for them.

Statistics show the structure of the tax will eventually result in penalizing employers offering ANY health coverage and these penalties will likely be passed on to employees. Preliminary analysis shows that 48 percent of employers are likely to trigger the tax in 2018, and 82 percent could hit the threshold by 2023. Instead of having a tax that discourages overly generous health benefits, the tax will actually hit the majority of employer-sponsored health plans that average Americans receive.

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7 Visa Annual Consumer Survey on Behaviors, Perceptions, and Attitudes of FSAs., 2014.


With 42% of employers increasing employee cost sharing employees will face serious increases in their out of pocket exposure. To offset this exposure, the time is NOW to foster, not stunt, the growth of consumer directed arrangements. ¹⁰

**ECFC Recommendation:**
It is clear that the excise tax will have an adverse impact on millions of American businesses and consumers. Action must be taken now to counteract the unintended consequence of this provision. Consumer directed arrangements such as FSAs, HRAs, and HSAs help keep healthcare costs down and therefore should be exempted from this tax if it is not repealed. The tax should be repealed or revised to carve-out consumer directed arrangements.

Legislation to repeal the excise tax has already been introduced in the House of Representatives and has bipartisan support. We encourage support of H.R. 879 (Ax the Tax on Middle Class Americans’ Health Plans Act) and H.R. 2050 (Middle Class Health Benefits Tax Repeal Act of 2015) and support introduction of legislation to repeal the tax or reform the tax to exclude consumer directed accounts in the Senate.

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