League of California Cities

Trading in the Cadillac for the OPEB Free Prius
The Dilemma of the ACA Excise Tax and the Impact on Plan Cost and OPEB Liability

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Agenda

- What is the Excise Tax – “Cadillac tax”
  - Implementation Date
  - Projected Amount, methods of computing caps and exceptions
  - Benefits to be Included
- Why is it a critical source of recovering Federal Tax Revenue and is not going away
- Projecting the date and amount of impact
- Methods to Address the Excise Tax
  - Sample Designs
  - Utilizing Health Savings Accounts or Health Reimbursement Arrangements
- How to Implement Changes to the Collectively Bargained Agreements
- Why make these changes
- When should these issues be addressed with labor groups
- What needs to be included in Memorandum of Understanding

Specifics of Tax

- Implementation Date; January 1, 2022
- Specific Amounts Indexed to Effective Date: (Chained CPI – U)
  - Active Employees
    - Self-Only $11,100 annually $ 925 monthly
    - Other than Self-Only 30,000 2,500
  - Non Medicare Retirees
    - Self-Only 12,950 1,079
    - Other than Self-Only 33,850 2,821
  - Medicare Retirees same as Actives
- Percent of US Employer based plans that will exceed the maximum: (based on Segal client sample of Public Employers)
  - 202246%
  - 202770%
- Chained CPI-U increases at approximately one half of the historic medical plan trend

What is Included in the Excise Tax

- The cost/premium of health insurance coverage
- For self-insured plans includes the administrative cost of the plan
- Total benefits to be included in the calculation
  - Medical insurance
  - Prescription coverage
  - Flexible Spending Accounts
  - Health Savings Accounts
  - Health Reimbursement Accounts
- Calculations are made on a per employee and per retiree basis. Amounts will vary by employee or retiree
- Self-Insured plan sponsor is responsible for remitting the tax
- Fully insured plans would be assessed the excise tax, and, presumably add it to the total premium charged
- Regulations are necessary to answer several questions about the calculation and implementation of the tax
- Further deferral of the tax would take legislation. Regulations cannot remove the tax or set the amount to zero

Exceptions to the Limit

- Higher amounts for First Responders and Construction Workers
  - Consider whether fire and safety personnel should be segregated into separate plans or rates
  - Test the impact on the remaining group of this segregation
- Jointly Trusted Plans Multi-Employer Plans
  - May use the Other Than Self-Only Limit for all plan levels
  - Several JPAs have determined that they will take advantage of this exception, however
    - The rule was written for private employer, ERISA plans covered under the Taft-Hartley Act
    - Consideration should be given to making application to the Department of Labor for exception provided
    - Participation in the JPA is included in the MOU
    - The Board of the JPA has joint representation of management and labor
- Medicare Participants – Retiree may use Active Employee Amounts
  - Consider eliminating any implicit subsidies between Active Plans and Non-Medicare Plans and
  - Implicit subsidies between Medicare eligible retiree plans and Non-Medicare plans

Why Cap on Excludable Income from Health Insurance is Essential

Congressional Budget Office - Joint Committee on Taxation

- Projected loss of federal tax revenue 2014 to 2023 - *Billions of Dollars*

• Non-taxable portion of Social Security and Railroad Retirement	$ 414
• Capitol gains on assets transferred at death	644
• Mortgage interest	1,098
• Net pension contributions and earnings	1,999
• Employer sponsored health insurance	3,360

Projecting the Year and Amount of the Liability

- Important to project when the plans will cross over the allowable amounts
- It is not a matter of ***whether*** plans will cross over the allowable cap but ***when***
- Indexing of the cap is far below the project trends for the increase in medical cost
- Projecting the year and amount of the potential liability allows the sponsor to plan and prepare alternatives and make changes
- The amount of the excess over the cap will increase each year due to the disparity in the increases in cap versus medical trend

Project the Year of Impact

Summary

Plan	Actives			Non-Medicare Retirees			Medicare Retirees		
	Low Trend	Medium Trend	High Trend	Low Trend	Medium Trend	High Trend	Low Trend	Medium Trend	High Trend
EUTF									
90/10 PPO	2023	2022	2022	*	2025	2024	*	*	*
80/20 PPO	*	2025	2023						
75/25 PPO	*	*	*						
HMO	2022	2022	2022						
Comprehensive HMO	*	2024	2023	2025	2023	2023	*	*	*
Standard HMO	*	*	*						

Project the Liability

All Active Plans

Single Employer Basis, 2-Tier Rating

Total All Coverage Tiers

Active Population

Aggregate Excise Tax

Calendar Year	Enrollment	Projected Total Cost @ Low Trend	Expected Annual Excise Tax	Projected Total Cost @ Medium Trend	Expected Annual Excise Tax	Projected Total Cost @ High Trend	Expected Annual Excise Tax
2022	50,929	$700,752,388	**$927,197**	$754,958,137	**$2,977,014**	$812,249,459	**$5,988,744**
2023	50,929	$745,425,413	**$1,838,386**	$818,185,700	**$5,623,492**	$896,519,891	**$15,294,912**
2024	50,929	$792,949,632	**$3,595,544**	$886,712,095	**$9,520,882**	$989,537,141	**$34,156,886**
2025	50,929	$843,507,219	**$5,484,039**	$960,981,683	**$22,702,239**	$1,092,209,469	**$57,258,542**
2026	50,929	$897,292,001	**$7,806,094**	$1,041,476,110	**$38,263,296**	$1,205,539,484	**$83,983,128**

Project the Liability

All Retiree Plans

Single Employer Basis, 2-Tier Rating

Total All Coverage Tiers

Qualified Retiree Population (Non-Medicare Retiree)

Aggregate Excise Tax

Calendar Year	Enrollment	Projected Total Cost @ Low Trend	Expected Annual Excise Tax	Projected Total Cost @ Medium Trend	Expected Annual Excise Tax	Projected Total Cost @ High Trend	Expected Annual Excise Tax
2022	6,788	$132,446,192	**$0**	$140,055,334	**$0**	$147,950,469	**$0**
2023	6,788	$140,939,540	**$0**	$151,837,712	**$550**	$163,356,020	**$435,727**
2024	6,788	$149,978,017	**$0**	$164,611,807	**$258,617**	$180,366,230	**$2,164,179**
2025	6,788	$159,596,639	**$13,281**	$178,461,130	**$1,403,269**	$199,148,295	**$7,449,093**
2026	6,788	$169,832,674	**$130,122**	$193,476,232	**$3,818,639**	$219,886,837	**$14,347,895**

Non-Qualified Retiree Population (Medicare Retiree)

Aggregate Excise Tax

Calendar Year	Enrollment	Projected Total Cost @ Low Trend	Expected Annual Excise Tax	Projected Total Cost @ Medium Trend	Expected Annual Excise Tax	Projected Total Cost @ High Trend	Expected Annual Excise Tax
2022	39,327	$381,389,992	**$0**	$403,302,546	**$0**	$426,038,743	**$0**
2023	39,327	$405,822,153	**$0**	$437,204,414	**$0**	$470,372,524	**$0**
2024	39,327	$431,820,914	**$0**	$473,957,634	**$0**	$519,321,323	**$0**
2025	39,327	$459,486,813	**$0**	$513,802,144	**$0**	$573,365,715	**$0**
2026	39,327	$488,926,848	**$0**	$556,998,088	**$0**	$633,036,333	**$0**

Total Retiree Population

Aggregate Excise Tax

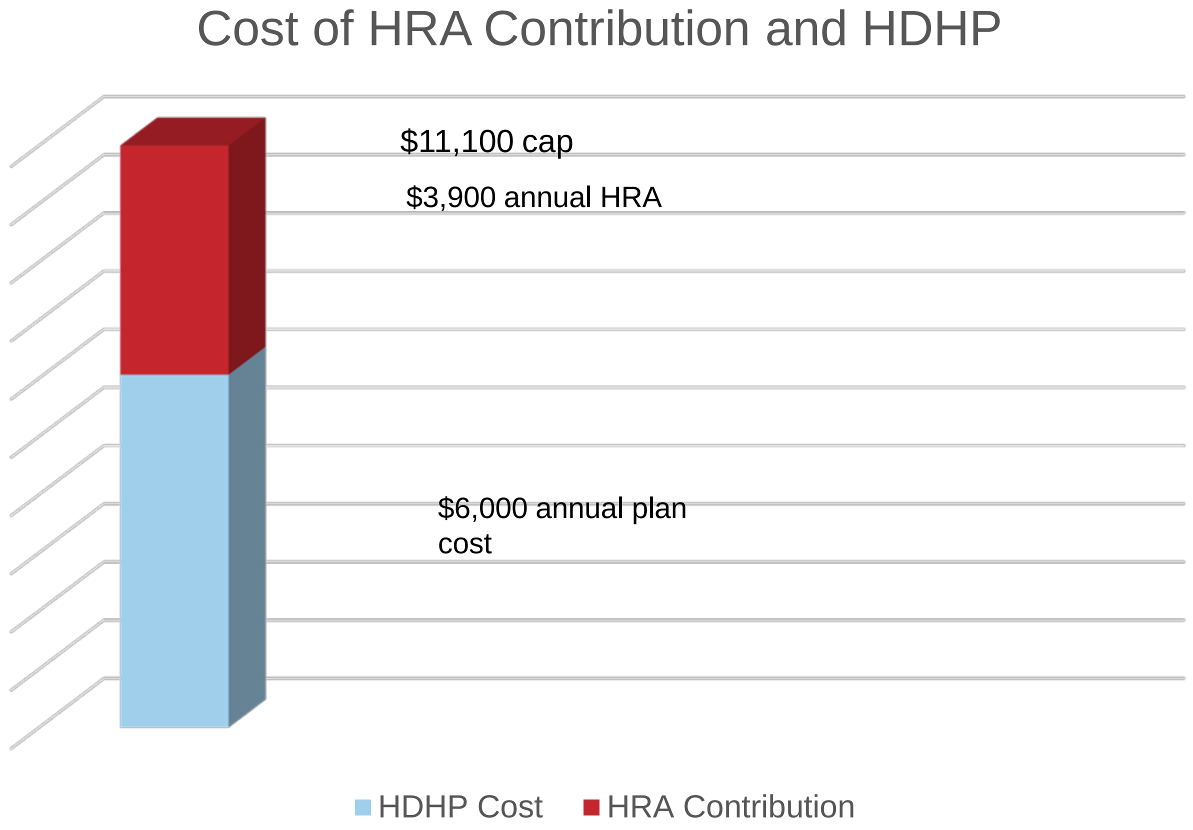
Calendar Year	Enrollment	Projected Total Cost @ Low Trend	Expected Annual Excise Tax	Projected Total Cost @ Medium Trend	Expected Annual Excise Tax	Projected Total Cost @ High Trend	Expected Annual Excise Tax
2022	46,115	$513,836,184	**$0**	$543,357,880	**$0**	$573,989,212	**$0**
2023	46,115	$546,761,693	**$0**	$589,042,127	**$550**	$633,728,544	**$435,727**
2024	46,115	$581,798,930	**$0**	$638,569,441	**$258,617**	$699,687,553	**$2,164,179**
2025	46,115	$619,083,452	**$13,281**	$692,263,275	**$1,403,269**	$772,514,010	**$7,449,093**
2026	46,115	$658,759,522	**$130,122**	$750,474,320	**$3,818,639**	$852,923,170	**$14,347,895**

Sample Design Changes to Address Tax

- Lower plan of benefits
  - Increase Maximum Out-of-Pocket Limits to keep pace with inflation and with the annual increases in the Affordable Care Act allowable maximums
  - Decrease the reimbursement percentages for Out-of-Network providers and lower the charge basis, or Usual, Customary and Reasonable limits for Non-Network Providers
  - Consider limiting benefits to In-Network providers, only
  - Review the availability of narrow or exclusive network offered from some of the health systems, such as Dignity, Sutter, and Adventist plus many other regional hospital systems
  - Drill down on the pharmacy benefits and utilize aggressive cost management techniques for prescription benefits
  - Consider providing defined contribution plan for retirees at amounts below the cap

Balancing Benefits, Contributions and the Cap

- Review using the combination of plan benefits and defined contribution accounts to maintain cost below the cap
- Example:
  - Design a High Deductible Health Plan (HDHP) to reduce plan cost well below the cap
  - Create either a Health Savings Account or Health Reimbursement Account and fund the difference between the cap and the cost of the HDHP into the HRA or HSA
  - Each year subtract the current employer contribution from the cost of cap less the plan cost and fund the difference into the HRA or HSA



Other Design Considerations

- Convert retiree benefits into a defined contribution plan funded into an HRA
- Eliminate employer sponsored retiree plans and in-lieu thereof, enroll retirees in Association Plan, Covered California or individual Medicare Advantage Plans funded from the HRA balance
- HRA's funded throughout the employee's career and fully funded by retirement have no OPEB liability
- Establish a 50 State Medicare Advantage PPO plan for retirees
  - Cost for these plans is universally below the caps establish for the near term of the Excise Tax

How to Implement Changes to the Collectively Bargained Agreements

- Need an understanding of whether or not any collective bargaining requirements exists, if any ……

  - Unrepresented Employees
  - Represented Employees
  - Future Retirees
  - Current Retirees

- What collective bargaining requirement applies?

  - Collective Bargaining Agreements
  - Public Employment Relations Board (PERB)
  - Salary Resolutions
  - Case Law

Why make these changes

- Collective Bargaining Agreements are normally multi-year agreements ranging from 2- 4 years

  - If the Cadillac Tax is implemented in 2022, contracts opening in 2019 may be affected
  - Once the contract is closed and/or has a zipper clause, the employer will not be able to negotiate changes until AFTER the tax is implemented if the collective bargaining agreement goes beyond 2022
  - Any changes that are to be negotiated would happen after the employer has completed their analysis and decided on a recommended path as discussed earlier and that process takes time even before negotiations can start
  - If no changes are made then the status quo language in the collective bargaining agreement continues and if it is silent as to the Cadillac Tax, then 100% of the cost will be charged to the employer and employees will have no incentive to be good and responsible consumers

When should these issues be addressed with labor groups

- Employers should begin analysis and come to a recommended strategy at least 9 – 12 months prior to the expiration of the collective bargaining groups

- If possible, prior to the start of negotiations employers may consider informational or other education forum as part of that process for the workforce to have the same understanding of the issues and impacts to the agency related to the Cadillac Tax so that it is a shared interest to it

- For represented employees written proposals should be thoroughly vetted prior to the first day of the negotiations

- For unrepresented employees or employees under a salary resolution should follow the same timeline to the extent possible as the represented negotiations

What needs to be included in Memorandum of Understanding

- Key is to get contract language developed and thoroughly vetted by the start of negotiations. Such language may include:

  - Premium Sharing: Update cost sharing language to include the amount of the Cadillac Tax as part of the cost sharing formula
  - No Employer Contribution: Inclusion of language that includes clear language that the employer shall not make any contributions towards plans that employees choose that are subject to excise Cadillac Tax and shall be borne 100% by the employee
  - Reopener: Reopener that requires the parties to meet and confer over the impacts over the Cadillac Tax up to and including going through the impasse process if necessary