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)
  - 2022: 46%
  - 2027: 70%
- 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

<table>
<thead>
<tr>
<th>Plan</th>
<th>Actives</th>
<th>Non-Medicare Retirees</th>
<th>Medicare Retirees</th>
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<td></td>
<td>Low Trend</td>
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## Project the Liability

### All Active Plans

#### Single Employer Basis, 2-Tier Rating

#### Total All Coverage Tiers

### Active Population

#### Aggregate Excise Tax

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Enrollment</th>
<th>Projected Total Cost @ Low Trend</th>
<th>Projected Annual Excise Tax</th>
<th>Projected Total Cost @ Medium Trend</th>
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# Project the Liability

## All Retiree Plans

**Single Employer Basis, 2-Tier Rating**

### Total All Coverage Tiers

#### Qualified Retiree Population (Non-Medicare Retiree)

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Enrollment</th>
<th>Projected Total Cost @ Low Trend</th>
<th>Expected Annual Excise Tax</th>
<th>Projected Total Cost @ Medium Trend</th>
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<th>Projected Total Cost @ High Trend</th>
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#### Non-Qualified Retiree Population (Medicare Retiree)

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<th>Enrollment</th>
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<th>Expected Annual Excise Tax</th>
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#### Total Retiree Population

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<td>$852,923,170</td>
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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

### Cost of HRA Contribution and HDHP

- **$11,100 cap**
- **$3,900 annual HRA**
- **$6,000 annual plan cost**

![Cost Diagram](Image)

<table>
<thead>
<tr>
<th>HDHP Cost</th>
<th>HRA Contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>$6,000</td>
<td>$3,900</td>
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</table>
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
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.