TAX TREATMENT OF HEALTH BENEFITS

BACKGROUND

The 40 percent "Cadillac Tax" on health benefits is slated to begin in 2020, but the American Health Care Act (AHCA), as passed by the U.S. House of Representatives, delays the effective date through 2025. As the Senate begins work to pass a reconciliation bill to repeal and replace major provisions of the Affordable Care Act, the fate of the "Cadillac Tax" is uncertain. The hope is the Senate will pursue a similar strategy to what occurred during the reconciliation debate in 2015, in which Senator Dean Heller (R-NV) offered an amendment to fully repeal the "Cadillac Tax" that garnered 90 votes of support and the final bill (ultimately vetoed by President Obama) included full and permanent repeal of the tax. Helpfully, in late March 2017, Senate Democratic Leader Chuck Schumer (D-NY) publically stated his support for members of the Democratic caucus to vote for repeal of the "Cadillac Tax".

The top concern at this time is the budgetary impact of delaying or repealing the tax. The reconciliation bill the Senate passes must reduce the deficit by the same amount as the bill the House passed (we are still awaiting the final CBO score). Several Republican Senators have stated their support for increasing the generosity of the premium tax credits and decreasing the severity of the Medicaid reforms included in the AHCA. These are expensive policies that might make it difficult to delay or repeal the "Cadillac Tax" and some of the other taxes that were repealed in the AHCA (including the 3.8 percent tax on net investment income of individuals, trusts, and estates, and the additional 0.9 percent Medicare tax on employees and self-employed individuals with income above a certain threshold).

Additionally, some in Congress (including Speaker of the House Paul Ryan (R-WI) and Ways and Means Committee Chairman Kevin Brady (R-TX)) have proposed a limit on employees' current exclusion from income tax for employer-sponsored health benefits. These proposals would "cap" the exclusion such that employees would be taxed on the cost of their health care benefits that exceeds the caps set by Congress. While the AHCA did not include a cap on the exclusion, some Republican Senators have suggested including a cap as a way to raise additional revenue to pay for enhanced premium tax credits for low-income Americans. Even if the cap on the exclusion does not arise during consideration of the ACA repeal and replace legislation, it is certain to be pursued during the subsequent overall tax reform effort. The Council and the Alliance to Fight the 40 | Don't Tax My Health Care have been working to achieve a full repeal of the 40 percent "Cadillac Tax" and prevent a cap on the employee exclusion.

TALKING POINTS: CADILLAC TAX

- The "Cadillac Tax" will force businesses to provide health plans with fewer benefits and higher deductibles in order to avoid the tax. Americans already feel their health care is too expensive and out of pocket costs are skyrocketing. With the looming "Cadillac Tax," workers will pay even more out of pocket for health services.

- The "Cadillac Tax" will ultimately affect *all* Americans with employer-sponsored health coverage. Because the tax is indexed to the consumer price index, which is lower than health care inflation, every year an increasing number of health plans will be subject to the tax.

- The "Cadillac Tax" penalizes employers for many factors that are out of their control. The tax unfairly targets employers that have a higher number of workers with chronic or serious diseases or those with larger families. Employers with locations in high-cost areas or in specific industries, such as manufacturing or law enforcement, are also inconsistently and inequitably affected by the 40 percent tax.

- We urge members of Congress to vote in favor of fully repealing the 40% tax.

TALKING POINTS: CAP ON THE EMPLOYEE EXCLUSION

- Capping the exclusion is a direct tax on employees and their health benefits, with the burden falling disproportionately on low and middle-income families.

- Capping the exclusion will result in higher deductibles and more out-of-pocket costs.

- Just like the unpopular 40% "Cadillac Tax," the tax cap targets those who work for employers that employ higher numbers of older workers, women, or those with larger families or family members with chronic or acute illnesses.