

COMMERCIAL INSURANCE

EMPLOYEE BENEFITS

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## Q&A FROM ASSUREX GLOBAL WEBINAR

### 2017 REGULATORY WRAP-UP AND A LOOK FORWARD TO 2018

DECEMBER 21, 2017

**Q.** I still don't understand if transportation benefits are eligible to be taken on a pre-tax basis?

**A.** Most qualified transportation fringe benefits, other than bicycle reimbursements, will continue to be excluded from employee income. This means the value of the employer-provided benefit will not appear as taxable income on the employee's Form W-2 (unless provided for bicycle reimbursement beginning in 2018). In addition, employers may continue to give employees the option to make pre-tax elections for qualified transportation fringe benefits such as a transit pass (pre-tax elections have never been allowed for bicycle reimbursements and are not allowed going forward).

However, beginning in 2018, employers may no longer deduct the value of a qualified transportation fringe benefit provided by the employer to an employee, except for bicycle reimbursement. While employers may deduct the costs of bicycle reimbursements provided to their employees, all other qualified transportation fringe benefits may not be deducted from the employer's taxable income.

**Q.** I thought 4980 applied to ALEs who had at least 50 FTE; but this states 100. We have exactly 50 FTE, and we've ALWAYS been told we have to file our 1094 and 1095. This is the first I've ever heard 100. Can you clarify?

**A.** For 2015 only, reporting on Form 1094-C and 1095-Cs was required for all applicable large employers (50 or more FTEs), but most employers with 50-99 FTEs were not subject to any penalties under §4980H even if compliant coverage was not offered.

**Q.** If the individual mandate is removed, will 1095 reporting still be needed?

**A.** While it wouldn't be necessary to report actual coverage under plans providing minimum essential coverage, it would still be necessary to report offer of coverage information (Part II, Lines 14-16 of Form 1095-C) for purposes of enforcing the employer mandate.



If we just realized that our total employee count was off for our 2016 1094 reporting (entered total number included PT), can we still file a correction?

A. There doesn't appear to be a time limit on making corrections. The instructions indicate that "a corrected return should be filed as soon as possible after an error is discovered." NOTE - the total employee count reported in Part III, Column (c) should include ALL employees (full-time and part-time).

Q. Is the Cadillac tax threshold amounts the \$'s before or after employee contribution?

A. When calculating the cost of coverage for purposes of determining the Cadillac Tax, it is necessary to consider the total cost, including both the employer and employee contribution. Early guidance considers using a process similar to determining the applicable COBRA premium amount.

Q. Our employees waive coverage and we have a waiver on file. Does that save us from the penalties?

So long as an employer "offered" coverage to 95% (or 70% in 2015) of full-time employees, it doesn't matter how many actually enrolled, there is no penalty risk under 4980H(a).

Q. What is the Cadillac Tax?

A. The so-called "Cadillac tax" is a 40% non-deductible excise tax on a portion of the cost of high-cost health coverage. The tax was delayed through 2019, and therefore is not applicable until 2020. The tax applies to the amount by which the monthly cost of employer-sponsored coverage exceeds an annual threshold amount (indexed, but starting at \$10,200 for self-only coverage / \$27,500 for coverage other than self-only). The tax will be paid by the insurer for fully-insured plans and by the employer for self-funded plans. That being the case, rates for fully-insured plans would likely be affected. We have not received much guidance on exactly what types of coverage would need to be included (e.g. medical plans, dental/vision plans, FSAs, HSAs/HRAs) when calculating the cost of coverage, and exactly how the excise tax would be determined. We will get further guidance prior to the tax going into effect.

Q. For the Cadillac tax, FSA account, are you talking about the amount of contribution from employees on a pre-tax basis?

It's not clear yet whether or not the cost of coverage would include health FSA contributions, and if so, whether it would consider only employer contributions or both employee and employer contributions.

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**Q.** The non-calendar year plan transitional relief is applicable ONLY if the company has an ERISA plan in place, right?

**A.** Not necessarily. Employers with non-calendar year plans that are not subject to ERISA might also qualify. Employers with 100 or more FTEs may qualify for non-calendar year §4980H transition relief for the months prior to the 2015 plan year if the following requirements were met:

1. The non-calendar plan year must have been in place as of Dec 27, 2012 and not changed to a date later in the year since then. Ideally there would be a plan document setting forth the plan year.

2. The plan must meet one of the following "significant percentage tests":

- Have 1/4 of all employees covered on any date within the 12 months prior to Feb 9, 2014; OR
- Have offered coverage to at least 1/3 of all employees during the most recent open enrollment prior to Feb 9, 2014; OR
- Have 1/3 of all full-time employees covered on any date within the 12 months prior to Feb 9, 2014; OR
- Have offered coverage to at least 1/2 of all full-time employees during the most recent open enrollment prior to Feb 9, 2014.

3. The plan must have offered minimum essential coverage to at least 70% of full-time employees (and their dependents) no later than the first day of the 2015 plan year to avoid a penalty under §4980H(a), and minimum value, affordable coverage to all full-time employees the first day of the 2015 plan year to avoid a penalty under §4980H(b).

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