

update

Compliance News for Staff Plans

December 22, 2015

2016 Appropriations Law Delays Three Affordable Care Act Taxes, Including the 40 Percent Excise Tax on High-Cost Health Plans

On December 18, 2015, President Obama signed into law the Consolidated Appropriations Act, 2016 to fund the federal government through 2016 and to extend certain expiring tax provisions. The law delays three taxes included in the Affordable Care Act: the 40 percent excise tax on high-cost plans, the health insurance tax and the medical device tax. This *Update* provides details about these taxes and the delays.

The Excise Tax

The new law includes three provisions affecting the Affordable Care Act's 40 percent excise tax on high-cost health plans, most notably a two-year delay, from 2018 to 2020. When this excise tax takes effect, it will be paid when the total cost of coverage exceeds a certain threshold. The tax will be paid on the amount by which the total cost of coverage exceeds this threshold. In addition to delaying the effective date of the tax, the law makes the excise tax deductible and calls for a study to determine how best to determine the age and gender adjustment that can result in an increase in the base threshold.

The Affordable Care Act had originally provided that the excise tax was *not* deductible. However, the Treasury Department and Internal Revenue Service (IRS) had raised significant issues regarding deductibility in Notice 2015-52. The Treasury Department and the IRS stated that insurers would likely experience an increase in taxable income as a result of the receipt of excise tax reimbursement from an insured employer-sponsored plan. Because the increase would not be offset by a deduction, the insurer would likely increase the amount charged to the plan to include not only the excise tax reimbursement, but an amount to account for the additional income tax the insurer would incur. Administrative issues with calculating this pass-through were significant, as well as the increase in costs to employer-sponsored plans. Consequently, Congress permanently changed the Affordable Care Act so that excise tax costs are now deductible. The law does not change the threshold levels or indexing for 2020. Absent further legislative changes, the threshold would likely be the 2018 amounts (\$10,200 for single coverage and \$27,500 for other than single coverage) indexed for the Consumer Price Index for All Urban Consumers (CPI-U) plus one in 2019, and the CPI-U in 2020.



New Law Highlights:

- The 40 percent excise tax on high-cost plans is delayed two years.
- The health insurance tax paid on insured plans is suspended for 2017.
- The medical device tax is suspended for 2016 and 2017.

¹ When the Act (Public Law 114-113) is available online it will be accessible from the [Government Publishing Office \(GPO\) website](#). The bill version of the law ([H.R.2029](#)) is on the GPO website.

The Health Insurance Tax

The health insurance tax, which took effect in 2014 and is paid by health insurance carriers on their insured business, will be suspended for one year (2017). The amount of the tax varies, but generally can be two to three percent of premiums. Consequently, employer-sponsored health plans will not have to pay the health insurance tax to carriers for their insured plans for 2017. This change does not affect self-insured plans.

The Medical Device Tax

The 2.3 percent medical device tax, which took effect in 2013, is suspended for two years (2016 and 2017).

What's Next?

The two-year delay in the excise tax gives Congress more time to devise a longer-term solution, including potentially amendment or repeal.

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