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CLIENT ALERT

Employee Benefits Update

January 6, 2016

Year-End Employee Benefits Update

Congress and the federal government agencies responsible for employee benefits were busy in the last weeks of 2015. Below is a summary of that activity.

DELAY IN THE "CADILLAC TAX" - The Affordable Care Act ("**ACA**") includes a "**Cadillac Tax**" which is a 40% excise tax on the cost of employer-sponsored health coverage provided to an employee that exceeds a statutory dollar limit.

The Consolidated Appropriations Act, 2016, which became law on December 18, 2015, delays the effective date of the Cadillac Tax from 2018 to 2020 and changes it from a nondeductible to a deductible tax. The tax is payable by employers sponsoring self-funded health plans and insurers providing insured coverage. It is anticipated that the cost of this tax (when it becomes effective) will be passed on to employers and employees in the form of higher costs and/or premiums.

DELAY IN ACA REPORTING - The due dates for information reporting required under Code Sections 6055 and 6056 for 2015 have been delayed by IRS Notice 2016-4. Health insurance carriers and employers with self-insured health plans use Form 1095-B (and transmittal Form 1094-B) to report information on minimum essential coverage provided during the prior year. Applicable large employers ("**ALEs**") use Form 1095-C (and transmittal Form 1094-C) to report information on health coverage offered (or not offered) to full-time employees.

- The due date for providing Forms 1095-B and 1095-C to individuals has been extended from February 1, 2016 to March 31, 2016.
- The due date for providing Forms 1095-B and 1095-C and the transmittal Forms 1094-B and 1094-C to the IRS **via paper** has been extended from February 29, 2016 to May 31, 2016.
- The due date for providing Forms 1095-B and 1095-C and the transmittal Forms 1094-B and 1094-C to the IRS **electronically** has been extended from March 31, 2016 to June 30, 2016. Groups that file 250 or more returns are required to file electronically.

This extension is only for the 2015 reporting year and the normal due dates will apply for 2016 and later years. The IRS encourages employers and other reporting entities to furnish statements and file the information returns as soon as they are ready.

ACA MARKET REFORM GUIDANCE - IRS Notice 2015-87 provides guidance on the application of the ACA health care market reforms to employer-provided health plans and on a number of other ACA related issues, including:

- Confirmation that a retiree-only Health Reimbursement Arrangement (“**HRA**”) can be a stand-alone plan. However, a HRA for current employees may continue only if it is integrated with another group health plan or if it can only be used to reimburse (or pay directly) premiums for individual market coverage consisting solely of excepted benefits (such as dental or vision coverage).
- A HRA is not integrated with an employer health plan (and therefore does not comply with the ACA market reforms) if it reimburses medical expenses of an employee’s spouse and/or dependents who are **not** covered under the employer health plan. Transition relief is available.
- Guidance on how to calculate the amount an employee is required to pay toward the cost of employee-only coverage. If this cost is not affordable (i.e., is more than 9.5% of household income (indexed for inflation) or one of the permitted alternatives), the employer may be subject to the ACA shared responsibility penalties.
- The affordability threshold increases from 9.5% to 9.56% for 2015 plan years and to 9.66% for 2016 plan years.
- The flex credit an employee gets under a flexible benefit plan reduces the employee’s required contribution if the credit can only be applied toward the cost of minimum essential health coverage and/or can only be used for medical care. However, the credit will count as an employee contribution (and therefore make the plan less affordable) if it can be paid in cash or used to pay for non-health benefits (called a “**non-health flex contribution**”). Under a transition rule, employers will be allowed to reduce the employee required contribution by a non-health flex contribution for plan years beginning before January 1, 2017.
- An unconditional opt-out arrangement (that is, an arrangement in which an employee receives a cash payment if he/she waives health coverage without any other meaningful requirement related to the provision of health care to employees, such as providing proof of coverage under a spouse’s health plan) will result in the cash payment being treated as an additional required employee contribution (making it more difficult to show that the coverage is affordable). Transitional relief applies to opt-out arrangements adopted before December 16, 2015.

If you have any questions, feel free to call (919.781.4000) or e-mail your Wyrick Robbins contact or one of the following members of our Employee Benefits & Executive Compensation group: **Gray Hutchison** (ghutchison@wyrick.com) or **Richard Rogers** (rrogers@wyrick.com).

NOTICE: This Client Alert provides merely an overview and summary information regarding the legislation and the notices. Please note that not all potential details and nuances have been addressed and that this Client Alert does not involve analysis of specific facts concerning your company or reach any conclusion with respect to any material federal tax issues for any specific taxpayer.