WHAT EVERY COLLEGE CFO NEEDS TO KNOW ABOUT KEY ACA ENACTMENTS FOR 2016 AND BEYOND

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EMPLOYER MANDATE "PLAY OR PAY PENALTIES" FOR 2015 TO BE ASSESSED IN 2016

Reviewing the Basics of the Employer Mandate

- “Applicable large employers” required to offer substantially all full-time employees, and their children, coverage under a group health plan that provides minimum essential coverage (MEC), and is affordable and offers minimum value coverage.
- Otherwise employer may be assessed significant financial penalties.

“The Sledgehammer Penalty”

- If the Employer fails to offer MEC to substantially all of its full-time employees and at least one full-time employee obtains health coverage through a federal or state exchange and receives a tax credit or subsidy, then the employer must pay a penalty.
- Penalty is equivalent to $2,000 per year for every full-time employee in excess of 30 employees (in excess of 80 for 2015 only).

“The Flyswatter Penalty”

- Even if the employer offers MEC to its full-time employees, if such coverage is <u>unaffordable</u> or does not provide <u>minimum value</u>, then employer may be assessed a penalty.
- Penalty is equivalent to $3,000 per year for each employee who obtains coverage through the exchange and is eligible for a tax subsidy or credit.

Recordkeeping Challenges

- Tracking and managing employee hours and identifying your full-time employees
- Managing eligibility and enrollment for health benefits
- Cost analysis and managing health benefit options

- Health Benefit Options
  - Offering full-time employees coverage, even if not affordable or minimum value, can avoid the costly “Sledgehammer Penalty”.
  - Consider and weigh the financial costs of offering affordable minimum value coverage to avoid the “Flyswatter Penalties.”

Assessment and Appeal of Employer Penalties

- Employer will receive a notice from the IRS if one or more of its employees obtains coverage through the exchange, and is eligible for a tax credit or subsidy.
- This will occur after the due date for individual tax returns and employer newly required IRS information returns.
- Employer will have 90 days from the date of the notice to request an appeal and submit information to support the appeal.

NEW IRS REPORTING FOR 2015 DUE IN EARLY 2016

- Designed to facilitate and enforce the individual mandate and the employer mandate
- Requires detailed monthly information about employer sponsored health plans and employees
- Reported to the IRS and individual employees

Code Section 6056 Reporting for All Applicable Large Employers

- Required for all employers with at least 50 full-time equivalent employees.
- Applies regardless of whether the employer offers a self-insured plan, a fully-insured plan, or no health plan.
- Used by the IRS to determine whether the employer should be assessed Play or Pay penalties.

- Required information includes data about the employer, its workforce, its health plans, if any, and details about its health coverage, including the cost of coverage offered to each full-time employee, and months when each employee was covered.

IRS Forms to be used

- Employers will use Form 1095-C (information returns) and Form 1094-C (IRS transmittal) for both Sections 6055 and 6056 information reporting.
- The forms are available on the IRS website at:

  http://www.irs.gov/pub/irs-pdf/f1095c.pdf

  http://www.irs.gov/pub/irs-pdf/f1094c.pdf

Timetable for Reporting

- First IRS information returns due February 29, 2016 for paper returns, and March 31, 2016 if filed electronically.
- First employee statements due by February 1, 2016 (Generally due by January 31, but delayed until February 1 next year because 1/31 falls on a Sunday.)

Code Section 6055 Reporting for Insurers and for Employers with Self-Insured Health Plans ("MEC Reporting")

- Annual information returns to be filed with the IRS, and individual statements provided to employees.
- Health insurer to file for fully insured plans. Plan sponsor to file for self-insured plans.
- Used by the IRS to determine whether individuals have qualifying MEC health insurance each month to enforce the ACA individual mandate.

- Information required for all individuals covered under the health plan:
  - Name, address, and tax identification number (TIN) for each covered employee and all other covered individuals (dependents, spouse)
  - Dates when each individual was covered during the calendar year
  - Portion of the premium (if any) required to be paid by the employee

IRS Forms to be used

- Single transmittal form to file all of the returns for a year with IRS.
- Employers use Form 1094-C (transmittal) and Form 1095-C (return). Insurers use Forms 1094-B and 1095-B, respectively.
- Due dates same as for Section 6056 reporting.

Significant Penalties May Be Assessed for Failure to Timely Comply

- New law enacted June 29, 2015 significantly increases penalties for failure to file and timely provide returns and statements under Sections 6055 and 6056 to $250 for each return, up to an annual maximum of $3 million (effective December 31, 2015).
- For reports filed in 2016 only, penalties will not be assessed if the employer made a “good faith effort” to comply.

THE "CADILLAC PLAN TAX" EFFECTIVE JANUARY 1, 2018

What We Know About the Cadillac Plan Tax

- The ACA established an excise tax on “high cost employer-sponsored health coverage” beginning in 2018.
- 40% excise tax on the amount by which the “aggregate cost” of an employee’s coverage exceeds specified limits.
- Cost limit currently set for 2018 at $10,200 for self-only coverage and $27,500 for “other than self only” coverage.
- Applies to health coverage whether paid by the employer, the employee or both.

There Is Much We Don't Yet Know About the Cadillac Plan Tax

- No regulations have yet been issued for the Cadillac Tax.
- The IRS has issued two "Notices" to "initiate and inform" the process of developing regulations.
- The Notices propose possible approaches to establishing regulations and invite public comment.
- The Notices provide insights into future regulations, but expressly are not guidance that can be relied on.

<u>Cadillac Tax 101</u> – IRS Notice 2015-16 issued February 16, 2015

- Notes that the 40% excise tax is imposed on any "excess benefit" provided to an employee based on the aggregate cost of "applicable coverage" for an employee.
- Focused on 3 issues.

Issue #1: What "Applicable Coverage" is included in calculating the costs of employer-sponsored health coverage

- Group health plans
- Health Flexible Spending Accounts (FSAs) including employee pre-tax contributions
- Health Savings Accounts (HSAs)
- On site medical clinics (possible *de minimus* exclusions)
- Retiree coverage
- Health Reimbursement Arrangements (HRAs)
- Wellness programs (in some cases)

What is <u>not</u> included in "Applicable Coverage"

- Accident only or disability insurance
- General liability or automobile liability insurance
- Workers' compensation
- Long term care coverage
- Excepted benefits such as limited scope vision or dental plans

Issue #2: How to calculate the cost of "Applicable Coverage"

- Based on "rules similar to" those used to determine COBRA premiums
- Sum of the cost of all coverage in which an employee is enrolled

Issue #3: Applicable Dollar Limit

- Two tiers for “self-only” coverage and “other than self only” coverage
- Possible options to adjust for high-risk professions, non-Medicare retirees, and inflation rate
- Excise tax on “excess benefit” assessed on monthly basis

Cadillac Tax 102 – IRS Notice 2015-52 issued July 30, 2015

- The second IRS Notice addressed options on three additional issues, and again invited public comment.

Issue #4: Who Pays the Cadillac Tax?

- Tax payable by the “coverage provider” to be one of three entities:
  - Health insurer for fully insured plans
  - Employer for HSA and HRA contributions
  - “Person who administers the plan” for other coverage, including self-funded plans and health FSAs
- Who is the person who administers the plan? Two proposals: 1) person responsible for day-to-day administration or 2) person with ultimate administrative authority for the plan.

Issue #5: Allocating the Cadillac Tax among Applicable Taxpayers

- Often there will be multiple coverage providers and multiple health benefits during the same period.
- Employer calculates the tax for each employee, allocates to each coverage provider, and notifies the liable provider and the IRS of tax amount due.

Issue #6: How the Cadillac Tax is Reported and Paid

- No specific guidance as yet on timing for reporting or payment of the tax.
- Possibly paid using IRS Form 720 Excise Tax Return.

What Next?

- Lack of regulations and variety of options being considered makes planning difficult.
- Consider strategy that would reduce the cost of “applicable coverage”.
- But caution: Cutting back health insurance benefits could trigger employer Play or Pay Penalties if not minimum value.
- Consider option to restrict employer contributions and salary deferrals to FSAs, HSAs and other account based plans.
- Stay tuned to issuance of IRS regulations and/or legislative amendments to the Cadillac Tax.

QUESTIONS/COMMENTS?