



## HEALTH REFORM ADVISORY PRACTICE

### Weekly Legislative Update



Dec. 8, 2017

## Large Task Looms for Senate and House to Marry Tax Bills

The tax-overhaul bill spent the week in conference committee where representatives from the House and Senate are attempting to marry the differences between the bills previously passed by each chamber. While neither bill makes significant changes to the tax treatment of most benefits, there are still some benefits-related differences that will need to be reconciled. Further, a slight threat remains that the committee's final package could make more significant changes.

In the meantime, several important healthcare topics affecting employee-benefit plan sponsors remain on the agenda before the end of the year, including a possible delay of some Affordable Care Act (ACA) taxes.

### Key Differences in the House and Senate Tax Bill

Despite initial concerns, neither the House nor Senate bill contained major changes for benefit plan sponsors. Conferees will, however, have to reach a consensus on several high-priority and high-cost items like the deductibility of state and local taxes, reductions in the corporate tax rate and taxation of pass-through entities like LLCs and S-corporations. The need to find money to offset these and other large tax breaks could lead to more extensive changes for plan sponsors in the final tax-overhaul proposal.

**Lockton comment:** Little about the conference committee's discussions is known to the public, so it is difficult to gauge the actual level of risk for plan sponsors. The uneasiness is exacerbated by the fact that whatever emerges from conference will be difficult to further amend. However, proposals like eliminating the tax exclusion for employer-provided health insurance, converting most 401(k) contributions to after-tax contributions and accelerating taxation of nonqualified, deferred compensation were all political losers early in the process. We suspect committee members will be sensitive to those politics and will be hesitant to risk final passage on adding these provisions into the committee's final proposal.

The need to find additional revenue may also impact how the conference committee approaches some of the other benefits-related differences between the two bills:

- **Dependent Care:** Beginning in 2022, the House bill eliminates the current provision allowing employees to save up to \$5,000 tax free for dependent-care expenses. The Senate bill does not change the current rule.
- **Education Assistance:** The House bill eliminates the current rule allowing employers to pay up to \$5,250 in tax-free education assistance. The House bill is effective beginning in 2018, and the Senate bill does not change the current rule.
- **Moving Expenses:** Current law permits employers to pay for an employee's job-related moving expenses tax free. The House bill eliminates this provision beginning in 2018, while the Senate eliminates it beginning in 2025.
- **Adoption Assistance:** In the House bill employees will pay taxes on employer-provided adoption assistance benefits, unlike under current law, which allows up to \$13,840 in pretax employer adoption assistance for 2018. The House bill is effective beginning in 2018, and the Senate bill does not change current law.

A final proposal is expected to emerge by the end of next week, though significant challenges in reconciliation of the two bills may make that an optimistic timeline. Nevertheless, it remains likely that a final package will be ready for the president's signature before Christmas.

### **Delay of ACA Taxes Still in Play but Losing Steam**

Congress continues to work on a package to delay several ACA taxes that impact benefit plan sponsors, including the Cadillac tax, health insurer tax (HIT) and medical device tax. The HIT and medical device tax go into effect in 2018 and have received the most attention from lawmakers.

**Lockton comment:** Lawmakers continue to see the Cadillac tax as less important to address immediately because it is not effective until 2020. Lockton and other members of the [Alliance to Fight the 40](#) have raised the need to eliminate or delay the tax soon because employers are already taking the tax into account when designing their benefit plans. While lawmakers on both sides of the aisle have been sympathetic, our impression is that they are waiting until 2018 to delay the Cadillac tax as part of a broader package, such as a broader health-reform overhaul or technical corrections to the current tax-reform proposal. The idea is that these other bills are more likely to pass if they include a delay of the unpopular Cadillac tax.

The contours of a final package are still being worked out with a delay of the medical device tax most likely to be included. Reports are some lawmakers believe repealing the HIT for 2018 will have little impact on health insurance premiums because 2018 rates incorporating the HIT are already set and cannot be changed.

**Lockton comment:** We understand many carriers have multiple sets of rates, some assuming the HIT will be in effect in 2018 and some assuming it will be further

delayed. Accordingly, we believe plan sponsors will see a savings in 2018 if the HIT is further delayed.

Proponents of delaying the ACA taxes hope to have a bill passed before recess begins on Dec. 22. However, the need to address other high-priority items like tax reform, Children's Health Insurance Program (CHIP) and government funding may mean ACA tax-delay discussions get pushed to 2018.

***Scott Behrens, JD***  
***Lockton Compliance Services***

---

Lockton Benefit Group | 444 West 47th Street | Suite 900 | Kansas City | MO | 64112

---

**Not Legal Advice:** Nothing in this Alert should be construed as legal advice. Lockton may not be considered your legal counsel and communications with Lockton's Compliance Services group are not privileged under the attorney-client privilege.

© 2017 Lockton Companies