# Vermont Legislative Joint Fiscal Office

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*ISSUE BRIEF*

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## The Excise Tax on High-Value Health Insurance Plans: The Cadillac Tax Revised Estimates

Following the release in April 2015 of JFO's Issue Brief on the excise tax on high-value health insurance plans, commonly called the Cadillac tax, the IRS released IRS Bulletin 2015-52 in July 2015 to accompany IRS Bulletin 2015-16 released in February 2015.[1] The Bulletins offer possible guidance on how to implement various adjustments that will affect excise tax liabilities. Final regulations will not be released for a number of months, leading to much uncertainty surrounding the tax liability for Vermonters. In addition, recent Congressional actions suggest Congress might modify or repeal the excise tax.

<u>Current estimates of the State of Vermont's potential tax liability as an employer are much lower than the April 2015 estimates.</u>

Based on plan premiums, enrollments, and assumptions as of early 2015, JFO had estimated the excise tax liability might be as high as $6.8 million for the State of Vermont as an employer in 2018; based on Vermont's share of CBO's nationwide estimate, the State's estimated tax liability was $5.5 million. The most recent estimates come from the Agency of Administration's (AoA's) report pursuant to Act 54 of 2015.[2] The estimates for 2018 for the State of Vermont as an employer range from about $360,000 to about $1.5 million; by 2027, they range from $28.7 million to $29.7 million. One method for age adjustment underlies the AoA estimates both with and without averaging premiums for two-adult, single parent with children, and family plans.

The April 2015 estimate was essentially a worst case estimate based on then-current information. How the adjustments will be implemented remains uncertain, but they will make a big difference.

<u>The various adjustments can lower the tax liability, but they cannot raise it</u>.

The two IRS Bulletins discuss four possible adjustments that could have significant impacts on the cost estimates.

[1] JFO Issue Brief, April 2015: http://www.leg.state.vt.us/jfo/issue_briefs_and_memos/Cadillac_Tax_Issue_Brief.pdf
IRS Bulletin 2015-52: https://www.irs.gov/pub/irs-drop/n-15-52.pdf
IRS Bulletin 2015-16: https://www.irs.gov/pub/irs-drop/n-15-16.pdf
[2] Public Employees' Health Benefits Report, http://hcr.vermont.gov/sites/hcr/files/2016/Public%20Employee%20Benefits%20Study%202015.pdf

- Age and gender adjustment

  The Affordable Care Act (ACA) includes an adjustment for the age and gender makeup of an employer's workforce relative to that of the national workforce. Both State of Vermont (SOV) employees and Vermont Education Health Initiative (VEHI) beneficiaries are older than the national average; the age adjustment would most likely lower the tax liability.

- "Aggregation," or averaging premiums for different types of other-than-self-only plans

  Averaging premiums for different types of other-than-self-only plans can lower the tax liability considerably. The State of Vermont (SOV), for example, offers its employees plans that cover two adults only that are less expensive than family plans, yet both are subject to the same threshold for the Cadillac tax. Averaging those premiums would lower the excise tax significantly. The ACA legislation did not offer clear guidance on aggregation; it was proposed in IRS Bulletin 2015-16.

- Employer-provided plans for retirees

  The IRS Bulletin issued in July proposed that employers may be able to average retiree coverage with active employee coverage if the two groups have the same plan. Some legal questions must be answered, but it appears that barriers would prevent such aggregation for SOV employees. Again, tax liability would fall if the two coverage types could be averaged. Premiums for state retirees with Medicare are much lower than those for active employees because Medicare usually provides primary coverage.

- Rates of health care cost growth

  Health care cost growth affects the thresholds for the excise tax in two ways. First, overall health care cost growth since the passage of the ACA in 2010 could raise the thresholds in 2018, but relatively low actual health care cost growth since 2010 and low projected cost growth over the next few years make that adjustment unlikely. Second, projections of health care cost growth in years beyond 2018 affect thresholds in future years and influence projections of future tax liabilities. Some projections of health care cost growth beyond 2018 are now a bit higher than was the case a year ago. Those slightly higher projections raise the thresholds and lower the future tax liability a bit.

<u>Political pressure to modify or repeal the excise tax creates greater uncertainty.</u>

Bipartisan support for modifying or repealing the excise tax seems to be gaining ground, but action on the excise tax could wait until 2017 when a new president might be more likely to accept changes to the law. In the meantime, the State of Vermont is bargaining a two-year contract that will include the first six months of 2018 when the excise tax will be in effect under current law. The Vermont Education Health Initiative, the health insurance buyer for most of Vermont's school employees, is already overhauling its array of plans for active employees to move toward plans with lower premiums and higher out-of-pocket costs. VEHI intends to introduce those new plans in 2018.