Notice 2015-16

MAY 19 2015

CC:PA:LPD:PR (Notice 2015-16)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Madam/Sir:

American Airlines is writing with comments on Notice 2015-16 (the Notice) issued by the Department of the Treasury and the Internal Revenue Service (collectively the IRS) regarding the excise tax on high-cost employer-sponsored health coverage under § 4980I of the Internal Revenue Code (IRC).

American Airlines employs over 120,000 employees, which makes it the largest employer of airline workers in the United States. American prides itself on the diversity of its workforce. The average age of American's workforce is 49; about seven years older than that of the U.S. workforce. In addition, collectively-bargained employees make up over 68% of American's workforce.

As a threshold matter, we would like to note that the application of the excise tax to collectively bargained plans will result in either an enormous administrative burden or excessive cost. The plan designs made available to collectively bargained employees are determined years in advance and employees who are covered by these arrangements often forgo higher salaries and other benefits in exchange for comprehensive health benefits. The health plans cannot be easily redesigned to avoid the application of the excise tax, and the cost of health coverage is already prohibitively expensive without factoring an additional 40% above the applicable threshold.

The simplest and most ideal solution would be for the agencies to create a blanket exception to the excise tax for collectively-bargained health plans. However, if the agencies do not believe they have the authority to create such an exception under the current statute, at a minimum, additional time should be given following the publication of final regulations to allow collectively bargained plans to be redesigned to avoid triggering the tax. For example, the application of the tax could be delayed until the current collective bargaining agreement expires.

Below, American Airlines will address its additional concerns about the IRS's proposed approach to IRC § 4980I, as detailed in the Notice. We also include recommendations which will diminish the erosion of U.S. workers' health care coverage and would also minimize the administrative cost and burden to employers that provide benefits to its employees.

1. **Adjustment of Thresholds for High Cost Employer-Sponsored Health Plans**
American Airlines is a socially responsible employer that makes every effort to recruit qualified employees regardless of their age, national origin, creed, sexual orientation or disability. While American will always maintain a high level of integrity in its recruitment and retention of employees, it believes that employers should not incur additional taxes when their accountable hiring practices are the primary cause of incurring the tax.

If the statutory definition of a high cost employer-sponsored plan is merely that stated in IRC § 4980I(b)(3)(C)(i) ($10,200 for individual coverage, and $27,500 for family coverage), it will result in placing employers who hire older or disabled workers at a competitive disadvantage. It is not clear whether the age and gender adjustment provided for in IRC § 4980I(b)(3)(C)(iii) will apply to American, but even if American does qualify, that adjustment will not fully account for increased costs associated with hiring older workers and will not address at all the costs associated with providing health coverage to disabled workers.

Because these workers will generate a larger volume of claims, many of which will be high cost claims, the cost of the Plan for purposes of the excise tax (which is based on the aggregate cost of claims as determined under COBRA) will be higher. Accordingly, the likelihood of triggering the excise tax will be higher. In contrast, a plan with the same plan design but participants who are younger and healthier and generate fewer claims will have a lower cost and will be less likely to trigger the excise tax. For that reason, , the law could result in making it generally more difficult for these workers to obtain employment in the future – despite the significant sanctions and penalties on employers who would do so.

American also believes that the final regulations under IRC § 4980I should support diversity, and provide some allowance in the definition of a high cost employer-sponsored plan so that employers are not inadvertently penalized for hiring older workers and workers with disabilities.

To that end, American Airlines would like to recommend that a **Safe Harbor definition of a high cost health plan** be incorporated in the regulations. Our suggestion is that the safe harbor would allow employer health plans that do not exceed a certain Actuarial Value (perhaps somewhere in the 80% to 85% range) to be exempt from the excise tax. Such an allowance still discourages excessively generous health plans.

Furthermore, it would not pose a burden to administer and would prevent employers with older and sicker employees from having to offer catastrophic health plans in order to avoid paying the 40% excise tax. Using Actuarial Value, as defined in the Affordable Care Act, as a benchmark for the safe harbor definition would create symmetry between employer-sponsored coverage and coverage available in state Marketplaces, thereby further increasing transparency for individuals about the costs and value of their health coverage.

We also believe that a safe harbor method such as this will remove a significant amount of controversy surrounding the high-cost health plan provision. However, if such a safe harbor approach would not harmonize with the existing rules on COBRA applicable premiums, American Airlines would still urge you to consider other alternatives which would not put companies with older workforces and disabled employees at a competitive disadvantage.

2. **Allow Self-Funded Dental and Vision Plans to Receive the Same Exception as Fully-Insured Plans**
   American Airlines strongly supports the approach suggested in the Notice that IRS exercise its regulatory authority under § 4980I(g) to exclude self-insured limited scope dental and vision coverage. National employers need the flexibility in how to fund and administer their health plan benefits. In many cases, it makes more sense for these employers to self-fund dental and vision plans. American Airlines believes that providing an exemption to stand-alone fully insured dental and vision plans while denying it to similarly situated self-funded plans is an arbitrary and impractical distinction.

   Because of the complexity of offering benefits to employees in every state in the U.S. and in Puerto Rico, American Airlines offers a dental plan that is self-funded. This allows American to provide consistent benefits to each of its employees under the auspices of ERISA's pre-emption of state mandates. Large multi-state employers, such as American, also rely on this in order to design their dental plans to better meet their employees' needs in a consistent platform.

   Providing an exemption to insured plans and denying it to self-funded plans would tend to steer employers toward fully-insured options that would increase costs and administrative burdens, and diminish their flexibility in meeting the needs of their employees. It would also have the practical effect of reducing benefits and/or raising costs to workers and their families.

   We urge the IRS to grant the same exemption to self-funded dental and vision plans that will be provided for under IRC § 4980I to fully-insured dental and vision plans.

American Airlines looks forward to working with the IRS in these matters and welcomes any opportunity to continue the discussion of these specific provisions related to IRC § 4980I.

Sincerely,

Adrienne Schneider

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American Airlines