

Notice 2015-16

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AMERICAN
FOREIGN
SERVICE
**PROTECTIVE
ASSOCIATION**

PAULA S. JAKUB, RHU
Executive Vice President

April 29, 2015

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

By electronic mail to notice.comments@irs.counsel.treas.gov

Comments on IRS Notice No. 2015-16

Dear Service Representative:

The American Foreign Service Protective Association ("AFSPA") appreciates this opportunity to comment on IRS Notice No. 2015-16. AFSPA is the employee organization carrier of the Foreign Service Benefit Plan ("FSBP"). The FSBP is a Federal Employees Health Benefits plan that is tailored to the unique needs of Foreign Service and other Executive Branch personnel. Our comments focus on the applicability of the high cost coverage excise tax to on-site medical clinics.

IRS Notice 2015-16 (pp. 8-9) explains that

[IRC] Section 49801(d)(1)(B)(i) [the high cost coverage excise tax provision] excludes from the definition of applicable coverage each of the excepted benefits listed in [IRC] § 9832(c)(1), other than the [IRC] § 9832(c)(1)(G) exception for on-site medical clinics. Accordingly, coverage provided through an on-site medical clinic generally is applicable coverage. Treasury and IRS, however, anticipate that the forthcoming proposed regulations will provide that applicable coverage does not include on-site medical clinics that offer only de minimis medical care to employees.

De minimis medical clinics according to Notice 2015-16 provide free first aid to current employees during working hours. The Service solicited public comments on whether this de minimis exception should be expanded. We suggest that it be expanded in two respects.

1. Federal law, 5 U.S.C. § 7901, authorizes the heads of federal departments and agencies to create by contract or otherwise "a health service program to promote and maintain the physical and mental fitness of employees under his jurisdiction." This statute further explains the scope of these programs is limited to

- 1) treatment of on-the-job illness and dental conditions requiring emergency attention;
- (2) preemployment and other examinations;
- (3) referral of employees to private physicians and dentists; and
- (4) preventive programs relating to health.

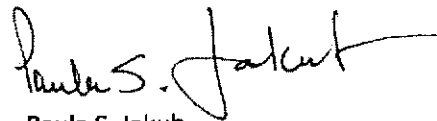
Prevention services often are offered to family members as well as employees. The services typically are provided by Federal Occupational Health, FOH is a non-appropriated Health and Human Services agency that provides occupational health and wellness services exclusively to federal employees. Source: <https://foh.hhs.gov/library/factsheets/Interagency.pdf> In order to avoid unintentionally subjecting the federal government and other responsible employers to this excise tax and to be consistent with the colloquy in Notice 2015-16 (p. 9), we suggest that the Service expand the exclusion from applicable coverage to include all four of these limited services and broadly construe "preventive services" to include screening tests, immunizations, allergy injections, and tobacco cessation programs at a minimum.

2. The U.S. State Department's Office of Medical Services ("MED") generally provides healthcare to U.S. government employees and their families who are assigned to U.S. embassies and consulates worldwide. MED's essential services go well beyond the limits that the Service is contemplating for this excise tax exclusion. Source: <http://www.state.gov/m/med/>

We urge the Service to exclude from the excise tax all employer sponsored health care facilities for expatriate employees because in contrast to the health care flexible spending accounts those essential services cannot be terminated in order to avoid the excise tax. Furthermore, creating an expatriate health clinic exemption from the excise tax finds support in the Expatriate Health Coverage Clarification Act of 2014 (Division M of the Consolidated and Further Continuing Appropriations Act, 2015).

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Paula S. Jakub", with a long horizontal flourish extending to the right.

Paula S. Jakub
CEO/Executive Vice President