



May 7, 2015

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

Re: Notice 2015-16 Comments

To Whom It May Concern:

The American Society of Association Executives (ASAE) appreciates the opportunity to share our comments and concerns regarding Notice 2015-16, Section 49801 – Excise Tax on High Cost Employer-Sponsored Health Coverage. ASAE is a section 501(c)(6) individual membership organization of more than 22,000 association executives and industry partners representing nearly 12,000 tax-exempt organizations. Our members manage leading trade associations, professional societies, and voluntary organizations across the United States and in 50 countries around the globe. We advocate for associations so that they may continue to fulfill their important missions and improve the quality of life in the United States and abroad.

We appreciate the IRS's decision to seek comments well in advance of the effective date of the Excise Tax, since many employers have already begun to make decisions about their group health plans and other benefits in anticipation of the effective date.

Overall, we note that the Section 49801 is complex. The proposed processes suggested in the Notice reflect this complexity; unfortunately, the proposed processes are likely to create an administrative nightmare for employers and others who have responsibilities under Section 49801.

For example, under Section III of the Notice, the calculation of the applicable cost of coverage is not limited to the per person cost of group medical insurance. While the group medical cost is easily determinable, either by looking at the monthly invoice from the carrier for a fully insured plan or by calculating the COBRA rate for a self-insured plan, Section III would require the addition of several other costs paid by employers and employees, such as Health FSAs, HSAs and specified disease or illness plans which are excluded from gross income (such as AFLAC plans). These additional costs are usually not administered through the same vendor as the group medical insurance. While the group medical coverage may not by itself exceed the aggregate cost limit that triggers the tax, the combined costs may exceed the limit. In that case, it is not clear which vendor is responsible for paying the excise tax. It is not clear which party will be responsible for any errors in making the calculations. It is also not clear

whether carry-over amounts in FSA, HSA and other such accounts would be applicable to the current period.

In addition, for all of the costs used in calculating the applicable cost of coverage, there is tremendous variability within each costs depending on the choices made by the employee, and these costs and the resulting tax must be calculated monthly. No one vendor will have access to all of the information, and the complexity of the calculation represents a significant burden and cost to employers. If the benefits vendors are responsible for remitting the tax, the vendors will undoubtedly pass the administrative and tax cost to the employer. It is also possible that, since no one vendor's program might be responsible for exceeding the statutory limit, all of the vendors could refuse to remit the tax.

We also note that the aggregation and disaggregation rules add to the complexity. We urge the IRS to consider simplifying these rules.

In addition, it is unusual for benefits costs to change monthly. For this reason, we would recommend that the calculation only be performed once per year after the end of the year, and that payment of the excise tax be required only once per year. The IRS should also clarify which party is responsible for the calculation, collection and remittance of the tax, and that other parties are not jointly and severally liable for any errors or non-payment.

In summary, we believe that there will be significant unintended consequences of this complexity:

1. Significantly increased compliance costs to employers. Many employers, especially small employers like many associations, do not have the internal resources to perform the calculations, and will have to retain consultants to do this work, and the vendors will likely increase their fees to employers to account for their increased costs to comply.
2. A reduction in benefits under group medical plans in order to contain costs (including increases in deductibles, co-pays, and out-of-pocket expenses), which will be detrimental to employees. Employers will not willingly pay the excise tax, and will take whatever steps are necessary to reduce benefits costs. This will cost employees and their families to spend more of their scarce resources on co-pays and deductibles, which disproportionately affects lower-earning workers.
3. Elimination of other benefit plans that are included in the calculation of the aggregate cost, which will be detrimental to employees. Dental care, vision care, Health FSAs, HSAs and AFLAC-type plans are voluntary benefits that are often offered at the employee's own cost, and the employer simply acts as an administrative pass-through for the convenience of the employee. Employers will be less likely to offer these voluntary benefits if they are included in the aggregate cost calculation. This will cost employees and their families to spend more of their scarce resources on these benefits or to forego these benefits, which disproportionately affects lower-earning workers.
4. A significant decrease in the expected revenue that the excise is projected to raise. As noted above, employers will aggressively seek to limit their liability for the excise tax by reducing or eliminating benefits.
5. A significant decrease in the choices available to employees to meet the financial and benefit needs of their families. As employers seek to reduce costs to avoid the tax, it is reasonable to

expect that lower cost and lower coverage plans will become the only plans offered to employees.

To help alleviate this complexity, we recommend that the IRS exercise its regulatory authority to completely exclude from applicable coverage all limited scope dental and vision benefits as suggested in Section III.G of the Notice. We also recommend that the 2% administrative fee that is often added to the medical premium for the calculation of the COBRA rate be excluded from applicable coverage.

We note that Section V.3 of the Notice requests comments regarding whether the IRS should provide an age and gender adjustment to the statutory limit. While we are concerned that such an adjustment would add to the complexity of the calculation, we note that the Affordable Care Act permits the medical premiums for older workers to be up to three times higher than the youngest workers. Without an adjustment, an employer could be penalized for hiring and retaining older workers or workers whose premiums are higher due to their gender. This adjustment is even more critical for small employers, like many associations, which already pay higher small-group rates for coverage. We would recommend that the IRS investigate whether there is a simple way to apply such an adjustment.

We also applaud the IRS's request for comments on any other issues under Section 49801. We respectfully submit the following comments:

1. The IRS should consider the elimination of the excise tax. As noted above, the excise tax incentivizes employers to reduce benefits, which disproportionately affects lower-income employees and their families, and is detrimental to all employees.
2. Section 49801 should be revised to limit the calculation of applicable costs to the costs of the group medical coverage plus any employer contributions to HSA or other such accounts. This revision would greatly simplify the calculation of the aggregate cost.
3. Section 49801 should be revised to state that the employer is responsible for the remittance of the excise tax. This revision would remove the confusion related to which vendor would be responsible for the payment of the excise tax.
4. Employee contributions (pre-tax or otherwise) to FSA, HSA or other such accounts should be excluded from the calculation of applicable costs. Employees should not be penalized for choosing to set aside part of their wages to cover their anticipated health care expenses. These contributions are often the only way that lower income employees can ensure that they have money to pay co-pays and deductibles when they need it. Thus, if employers are compelled to eliminate these programs to avoid the excise tax, lower-income employees and their families will be disproportionately affected.
5. The statutory dollar limit should be indexed to the increase in the annual cost of healthcare versus the cost-of-living adjustment. The cost of healthcare has been increasing at a greater rate than the overall cost of living for many years.
6. The statutory limit should be adjusted for locations that have an average higher cost of medical care.

7. The statutory limit should not apply to group medical plans which are equivalent to the *platinum or gold level coverage offered on the applicable state or federal exchange*. This safe harbor will help employers which can afford to do so to maintain better coverage for their employees and their families, and increase the attractiveness of these plans on the federal and state exchanges.

Sincerely,

Robert M. Skelton
Chief Administrative Officer