

Notice 2015-16

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INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS®

HAROLD A. SCHAITBERGER
General President

THOMAS H. MILLER
General Secretary-Treasurer

Submitted by email to Notice.comments@irscounsel.tres.gov

May 15, 2015

CC:PA:LPD:PR (Notice 2015-2016)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice 2015-16

Secretary Lew and Commissioner Koskinen:

The below comments are in reference to Treasury Notice 2015-16 - Excise Tax on High Cost Employer-Sponsored Health Coverage. The International Association of Fire Fighters represents more than 300,000 professional fire fighters and emergency medical personnel, working in every state in the nation. IAFF members, like other public sector workers, are covered by unique and varying health care packages that include self-insured, self-administered as well as fully-insured healthcare coverage.

While the IAFF has broad concerns about the impact of the Excise Tax on workers, we wish to focus on two aspects of the Notice that are of particular significance to the nation's professional fire fighters.

I. Determining Cost of Self-Insured Plans

Section IV of notice 2015-16, entitled Determination of Cost of Applicable Coverage, Treasury lays out a number of methods for determining how to calculate the actual cost of an employee's health plan so as to accurately apply the excise tax. Treasury refers to the statute's language outlining the determination of cost based on similar rules to those that apply for determining COBRA coverage. While acknowledging difficulties with determining cost for self-insured plans the notice does outline two methods that could potentially be used to determine cost: an actuarial basis method and a past cost method. The IAFF believes neither of these two methods would accurately and adequately reflect the true cost of our members' health care, due to a variety of special circumstances.



Treasury also requests comments on the “feasibility” of alternate methods that could be used to determine the cost of coverage for self-insured plans that would be based on actual costs. Unfortunately, we are not aware of any reliable methodologies that can accurately reflect costs in a self-insured structure.

A fundamental difference between self-insured and fully-insured plans is that self-insured plans do not have premiums, which can be used as a legitimate proxy for actual cost. Instead, self-insured plans are funded by contributions, but these contributions are mere estimates that are subject to constant revision based on a variety of circumstances. Any methodology developed by Treasury for determining actual cost in a self-insured environment must be capable of addressing numerous variables:

- Many self-insured plans experience surpluses or unused contributions at the end of a plan year that can take the form of rate reductions in subsequent years, rate stabilizations or direct reimbursements. In all cases these forms of reimbursements would be credited in a different taxable year. If the excise tax is assessed based on estimates at the beginning of the year, or even throughout the year, Treasury would need to provide guidance on how they would make adjustments and potentially issue refunds if actual costs were lower than original estimates.
- In the fire service, it is not uncommon for there to be confusion about whether health care costs should be borne by the group health plan or the workers’ compensation system. A fire fighter may have their initial application for workers’ compensation denied, but then have that denial reversed on appeal several months later—often in another fiscal year. In such a scenario, the health plan’s costs would include the care provided to the fire fighter, even if such costs were later determined to have been the responsibility of the workers’ compensation system. Due to the nature of emergency response work, the cost of care for these injuries and illnesses that are subsequently determined to be job-related are often quite high and have a significant impact on the fund balance of self-insured plans. Treasury would need to provide guidance on how they would reconcile a potential excise tax paid by a health plan on costs that would be reimbursed in the future by workers’ compensation.
- Self-insured programs also can be required to identify and set aside claims reserves based on historical data that is actuarially determined, including “incurred but not reported” (IBNR) claims. These estimates may or may not be paid, but could include claims liabilities from one year that are paid in another. Treasury will need to provide guidance on how they will account for such contributions made to a group health plan.
- In public sector self-insured plans, it is not uncommon for contributions to be segregated into funds such as employee dollars, retiree dollars, and COBRA dollars. Treasury will need to provide guidance on how they will determine which of these funding sources are subject to the excise tax.

- Many municipal self-insured plans purchase reinsurance or stop loss insurance to cover expensive medical claims. In the case of aggregate stop loss insurance, payment is not received until the end of the calendar year if the self-insured program goes above the attachment point (the point at which the insurance kicks in and begins to pay the claim). Treasury will need to provide guidance on how to account for such reimbursement in assessing the excise tax as well as how they will account for reimbursements that were collected in a different tax year from a covered loss in a previous year.

The common point among these variables is that actual cost in public sector self-insured plans cannot be accurately determined using contributions or other good faith estimates. It is imperative that the excise tax be imposed only on actual cost, rather than a mere set of assumptions.

II. Adjustments for High Risk Professions

Section V of notice 2015-16, entitled Applicable Dollar Limit, seeks comment on applying the two different dollar thresholds described in the law. 26 USC 49801(b)(3)(C)(iv) states that a higher threshold applies to individuals “who participate in a plan sponsored by an employer the majority of whose employees covered by the plan are engaged in a high-risk profession...”. Among those professions specifically identified in the statute as eligible for the higher thresholds are “employees in fire protection activities” and “individuals who provide out-of-hospital emergency medical care (including emergency medical technicians, paramedics, and first-responders).” Taken together these two groups of workers comprise the vast majority of employees of fire departments.

While the clear intention of this provision is to cover fire fighters and other emergency responders under the higher threshold for high-risk occupations, the goal is undermined by the circumstance that most of these workers are enrolled in group health plans that include a much larger group of employees who are not in high-risk occupations. Typically, fire fighters participate in large municipal or even state health plans that include all public employees within that jurisdiction.

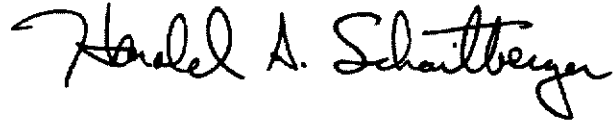
This provision of the law therefore contains a contradiction. By specifically naming them in the statute, Congress clearly intended fire fighters and emergency responders to be considered high-risk. But the “majority of employees” rule effectively bars those employees from taking advantage of a benefit expressly intended for them.

We urge Treasury to resolve this contradiction by enabling municipalities to segregate groups of employees by Department for purposes of assessing their health care costs. Municipal fire departments traditionally operate as quasi-independent entities, operating under special laws that govern recruitment, hiring, promotion, pay, compensation, and labor rights. It would therefore be administratively simple, and consistent with other employment practices, to place

fire department employees into a separate coverage group that would be eligible for the higher thresholds afforded to high-risk occupations.

The International Association of Fire Fighters appreciates the opportunity to comment on Notice 2015-16.

Sincerely,

A handwritten signature in black ink that reads "Harold A. Schaitberger". The signature is written in a cursive style with a large, stylized initial "H".

Harold A. Schaitberger
General President