



*Submitted via email to [Notice.comments@irs counsel.treas.gov](mailto:Notice.comments@irs counsel.treas.gov) (Notice 2015-16)*

May 15, 2015

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

Re: Notice 2015-16

Dear Sir/Madam:

The City of Minneapolis is writing to comment on Notice 2015-16 regarding the proposed rules on the Excise Tax on High Cost Employer-Sponsored Health Care Coverage.

#### BACKGROUND

The City of Minneapolis is the largest city in the state of Minnesota. The City sponsors a comprehensive employee benefits program, including a medical plan that provides affordable, minimum essential coverage. The medical plan is integrated with a Health Reimbursement Arrangement Plan. The City also sponsors a separate dental plan, a health care flexible spending account (FSA) and an employee assistance program (EAP). The medical plan currently covers approximately 4,000 active employees and 500 former employers (retirees and COBRA participants). 92% of City employees are union-represented, 42% are age 50 and older, and the majority of employees are in the fire, police and public works departments.

#### OUR CONCERNs

We are concerned that due to collective bargaining and statutory requirements, local government employers in the State of Minnesota may bear excessive financial burdens under the excise tax. For example, Minnesota law requires local government to keep retirees under age 65 and their dependents in the same pool as active employees for purposes of premiums rates and plan benefits. State law also requires local governments to continue coverage for ex-spouses indefinitely, and in most cases, without additional premium contributions and to provide subsidized medical coverage until age 65 to disabled police officers and firefighters.

The City of Minneapolis supports efforts and comments to reduce the disproportionate impact of the excise tax on local governments and to minimize the administrative burden on employers in complying with Section 4980I.

#### COMMENTS

The City of Minneapolis supports the comments submitted by the National League of Cities. In addition, there are some key areas where the excise tax is likely to impact the City of Minneapolis – primarily in regards to treatment of limited scope plans and EAPs, retirees, treatment of HRAs, and the adjustment for high risk professions.

#### Treatment of Limited Scope Plans, and EAPs

##### *Limited Scope Dental and Vision Benefits*

We encourage the exercise of the Department's regulatory authority to implement an approach under which self-insured limited scope dental and vision coverage that qualified as an excepted benefit pursuant to the recently issued regulations under § 9831 would be excluded from applicable coverage for purposes of § 4980I.

##### *Employee Assistance Programs (EAPs)*

We encourage the exercise of the Department's regulatory authority to implement an approach under which EAPs that qualified as an excepted benefit pursuant to the recently issued regulations under § 9831 would be excluded from applicable coverage for purposes of § 4980I.

## **Determination of Cost of Applicable Coverage**

### *Mandatory aggregation by benefit package*

Benefit packages should be considered similar and thus aggregated based upon the primary major medical coverage plan options without regard to the employee's HRA, HSA, or FSA accounts. The Department should utilize employers' open enrollment health plan materials as the presumption for determination of sufficient similarity for the purpose of mandatory aggregation. The enrollment and/or participation in a FSA, HSA or HRA would not impact the similarity of the benefit packages for purposes of mandatory aggregation.

### *Permissive Disaggregation*

The City does not have a preference for one approach over the other approach. If the specific standard disaggregation approach is adopted, wellness program completion should be one of the included criteria.

### *Retirees*

The City is required by state law to pool retirees (under age 65) and their dependents in the same group as active employees for purposes of establishing premiums and coverage. This legal requirement results in a higher active employee premium than if the two groups were rated separately. Therefore, the active employee premium is more susceptible to being subject to the excise tax. We encourage the Department to allow a deduction in the amount of the retiree subsidy from the active premium rate when determining the cost of applicable coverage.

The Department has also asked whether additional guidance would be beneficial under Code Section 4980I(d)(2)(A), which provides that "the plan may elect to treat a retired employee who has not attained the age of 65 and a retired employee who has attained the age of 65 as similarly situated beneficiaries." As noted, Minnesota state law mandates benefit continuation for retirees. This is a significant issue and concern and we encourage the Department to allow a plan to average the cost of employer-sponsored coverage for pre-Medicare retirees with the cost of similar coverage for retirees who are entitled to benefits under Medicare (where such employer-sponsored coverage may be limited to a Medicare supplement plan).

### *HRAs*

We encourage the Department to issue guidance permitting employers to determine the cost of coverage for HRAs by using a contribution approach that only takes into account the amounts made newly available to a participant each year. This approach treats HRAs similar to HSAs. The following proposed approaches are not recommended:

- Permitting employers to determine the cost of coverage by adding together all claims and administrative expenses attributable to HRAs for a particular period (separately for each level of coverage if the employer allocation differs by employee election, such as allocating \$1,000 to the accounts of employees electing self-only coverage and allocating \$2,000 to the accounts of employees electing family coverage) and dividing that sum by the number of employees covered for that period (at that level of coverage); and
- Permitting or requiring employers to use the actuarial basis method to determine the cost of coverage under an HRA.

These methods are more complicated and will be administratively burdensome for employers and could result in great cost variability from year to year.

Comments are also requested on whether the potential approaches described for purposes of determining the cost of applicable HRA coverage under § 4980I should apply for purposes of determining the COBRA applicable HRA premium. We recommend that when a monthly HRA contribution amount is determined for a 12-month determination period, and is determined before the beginning of such period, the actual monthly HRA contribution amount should be the amount used for purposes of determining the COBRA applicable premium.

### **Adjustments for High-Risk Professions**

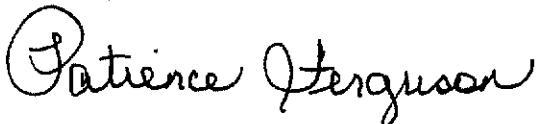
We support the issuance of further guidance on what constitutes an "employee engaged in a high-risk profession." We suggest that the Department specify in that guidance that public works employees and municipal utility workers qualify as individuals in the "construction" trade because they utilize heavy machinery, work in dangerous environments (e.g., roadways, elevated heights, and confined spaces that contain toxic gases and other hazardous materials), work during inclement weather (e.g., snow storms and hurricanes), and are sometimes required to work with electrical current.

In determining whether the majority of employees covered by a plan are engaged in a high-risk profession, we suggest the majority should be based on number of employees in high-risk professions covered by the primary coverage/major medical coverage plan as a percentage of the total number of employee covered by the employer at the beginning of the plan year.

Retirees will often have worked in the high-risk profession for more than one employer. In this situation, a safe harbor should provide that the employer could rely on a statement signed by the retired employee attesting to at least 20 years work experience.

Thank you for considering our comments. If you have any questions or would like to discuss these comments further, please do not hesitate to Joyce Traver, 612-673-3120 or [joyce.traver@minneapolismn.gov](mailto:joyce.traver@minneapolismn.gov).

Sincerely,

A handwritten signature in black ink that reads "Patience Ferguson". The signature is fluid and cursive, with "Patience" on the first line and "Ferguson" on the second line.

Patience Ferguson  
Chief Human Resource Officer