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

VIA Email to [Notice.comments@irs counsel.treas.gov](mailto:Notice.comments@irs counsel.treas.gov)

RE: Notice 2015-16, Section 4980I Excise Tax on High Cost Employer-Sponsored Health Coverage

Attention: Karen Levin

Dear Ms. Levin:

The National Association of Manufacturers (NAM) – the largest manufacturing association in the United States representing manufacturers in every industrial sector and in all 50 states – appreciates the opportunity to provide comments on proposed guidance implementing the new excise tax on high cost employer-sponsored health coverage under Section 4980I, which was included in the Affordable Care Act (ACA).<sup>1</sup>

### Overview

The vast majority of manufacturers in the United States – including 97 percent of NAM member companies – voluntarily offer health benefits to attract a skilled workforce, and because they believe it is the right thing to do for their employees. During the debate on health care reform, manufacturers strongly supported proposals to reduce soaring health care costs, improve the efficiency of the current system and enhance the quality of care.

In contrast, the NAM opposed many provisions that would increase costs for manufacturers and their employees. In particular, the NAM opposed the new excise tax on employer-provided health coverage. Unfortunately, this new excise tax – to be levied on health coverage plans beginning in 2018 – will increase costs for manufacturers that provide health care benefits and, in many cases, for the employees covered by these plans.

Even before this new tax is imposed, manufacturers already are concerned by health coverage costs. Indeed, in a recent NAM Survey, 70 percent of respondents cited rising health care/insurance costs as a primary business challenge. In many cases, this additional tax burden will force employers to reduce or modify health coverage they currently provide to their

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<sup>1</sup> Pub. L. No. 111-152

workforce. Although referred to as the “Cadillac tax” because it targets generous employee benefit packages, it is more aptly described as an employee benefits tax since it will apply to most employee benefit plans within a few years. According to Towers Watson, the tax will hit 48 percent of businesses when it goes into effect in 2018, increasing to 82 percent by 2023.<sup>[1]</sup>

The manufacturing sector, in particular, will be hit hard by the tax. In 2014, the average cost of an employee benefits package for employees in the manufacturing sector was \$26,114, slightly lower than the \$27,500 threshold that will trigger the tax for family coverage in 2018. Indeed, forecasting this data forward, the typical employee benefits package in the manufacturing sector would meet that threshold in 2016 (with total average benefits costs of roughly \$27,544). In 2018, this figure would grow to \$29,051, and assuming a similar growth rate over the coming years, total benefits costs would surpass \$35,000 by 2025. Assuming two percent inflation, the excise tax threshold would rise from \$27,500 in 2018 to \$32,221 in 2025. Left in place, this tax would affect nearly every employee benefits package in the manufacturing sector within the next decade.

While the NAM will continue to pursue opportunities to repeal this new excise tax, we recognize the challenges facing employers in planning ahead in the event the tax goes into effect. Our members have a critical need for guidance from the Internal Revenue Service (IRS) and Treasury on the potential implementation of the tax as they plan for their longer term health coverage costs. Thus, the NAM appreciates the opportunity to comment on a number of different areas covered in Notice 2015-16.

### **Definition of Applicable Coverage**

In drafting guidance on the definition of applicable coverage, we urge the IRS and Treasury to draft rules that, at a minimum, exempt the value of the coverage attributable to the minimum benefits package mandated by the ACA. Similarly, employee benefits plans provided by employers for their retirees, which are exempt from many provisions of the ACA, should be excluded from the definition of applicable coverage. In addition, outlined below are our recommendations on the tax treatment of specific benefits offered to employees.

#### *Health Savings Accounts (HSAs)*

Manufacturers believe that both employer contributions and employee pre-tax contributions to health savings accounts (HSAs) should be excluded from the definition of “applicable coverage.” HSAs, coupled with high-deductible health plans (HDHPs), give employers a better idea of actual health care costs, making them more knowledgeable consumers of healthcare services and promoting the use of more cost-effective plans. Many employers encourage employees to use HSAs to help save for future medical expenses by making contributions to these plans. Including HSA contributions in applicable coverage would discourage employer and employee participation in these plans. Moreover, since employers have no control over the amount employees contribute to their HSAs, employers would have no way of knowing if an individual employee’s coverage would be subject to the tax. Further, any guidance should recognize the distinction between the insurance component and the savings component due to the potential variation in contributions. An employee may choose to save more in a given year in anticipation of a major procedure or medical expense, or an expectation of lower wages from

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<sup>[1]</sup> Towers Watson (2014).

which to contribute in another year. In this instance, taxing responsible behavior is clearly the wrong signal to send to individuals.

#### *On-site Medical Clinics*

Many manufacturers recognize the value of providing on-site medical clinics for their employees, both from a work place safety and a productivity perspective. Similarly, employees value this benefit as a convenient and cost-effective way to address their health problems and promote wellness. While the Notice suggests that clinics only providing "de minimis" medical care to employees will not be considered applicable employer-sponsored coverage, the NAM believes that all on-site medical clinics, including on-site pharmacies, should be excluded from the definition of applicable coverage.

In contrast, including the services provided by on-site clinics in the excise tax calculation will discourage positive behavior by both the employer and the employee in controlling health costs. In most instances, while there may be financial incentives, such as no or reduced co-payments, there is no requirement that an employee use only the on-site clinic for the services provided. If the costs of on-site clinic services are included in the actuarial value of the overall insurance coverage, this would also impact individuals who may not use the clinics.

Another challenge raised by the inclusion of on-site clinics is the very nature of how services are provided and the financial arrangement of those services by the manufacturer. For example, is the clinic run by a third party or by company employees? Does the clinic submit claims for reimbursement by an insurer? Which, if any, administrative costs of the clinic are included in the calculation of the threshold amount under the excise tax? Are capital expenditures included as part of the cost of the services provided?

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

For many NAM members, self-insured dental and vision plans are a core component of employees' health benefit packages. The NAM strongly supports language in the Notice suggesting that limited scope, self-insured dental and vision plans will be treated in the same manner as insured dental and vision plans, and not considered applicable employer-sponsored coverage.

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

Similarly, the NAM believes that employee assistance programs (EAPs) and employer-sponsored wellness programs, including employee physicals, (and the cost of plans set up to administer them, e.g. Health Reimbursement Accounts (HRAs)) should be excluded from the definition of applicable coverage. These programs enable employees to develop and maintain a healthy lifestyle and provide assistance to employees in dealing with challenges in their personal lives. For employers, these programs translate into a healthier and more productive work force. Including these important employer initiatives in the definition of applicable coverage could trigger additional costs that would discourage employers from providing these valued benefits.

Further complicating the inclusion of EAPs is the aggregation of costs for the services covered by the plan that may or may not be health-related. Many EAP offerings include marriage counseling, occupational counseling, financial counseling, legal counsel, and other services that

are not associated with health coverage at all. Most of this coverage would have to be disaggregated so they could be excluded from the threshold amount subject to the excise tax. The NAM believes such a requirement would be onerous and unmanageable to the point of discouraging the use of EAPs.

### **Calculating and Collecting the Tax**

The NAM also urges the IRS to issue clear and specific guidance on how to calculate the excise tax. While the statute makes reference to calculations under COBRA, the rules for calculating COBRA costs are vague. Two employers with the identical employee populations, plans and claims can have different COBRA rates based on how their actuary determines the rate.

Manufacturers also need clear, flexible and workable guidance on how the tax will be collected. Some commentators suggest that if an employer has to pay the tax, and if the employer uses multiple vendors (such as separate vendors for medical services and prescriptions), the amount of the tax would have to be apportioned to each vendor and then paid to the government by the vendor, not the company. Similarly, employers who sponsor the health plans subject to the tax should have the flexibility to remit the tax payments directly to the IRS or to use their third party administrators to remit the tax.

The NAM also urges you to consider the incidence of the tax. While the statute imposes the tax on the insurance company or, in the case of self-insured plans, on the employer, in many cases the tax will be passed on to employers or the employees. Since the tax is not a deductible business expense, the effective tax rate on the cost of a plan above the threshold amount could be as high as 61 percent.

### **Applying Thresholds**

Manufacturers are committed to sponsoring benefit programs that maintain the appropriate balance of quality care and shared financial responsibility. In order to achieve these goals, employers need flexibility in plan design. In drafting guidance on the application of thresholds, we urge you to give employers as much flexibility as possible to provide tailored, cost-effective plans to employees.

### *Adjustments for High-Risk Professions*

The NAM supports the concept of adjusted thresholds for individuals with higher health care costs for reasons beyond their control. In addition, any rules should not create or foster situations where employers are forced to make changes to plan designs to prevent workforce or personnel issues.

### *Demographic Adjustments*

The NAM also supports establishing a safe harbor that appropriately adjusts the dollar limit thresholds for employee populations with different demographics than the national average, in order to mitigate the impact on employers with mature workforces. Any safe harbor should provide simple calculation that will not require employers to expend significant resources on an actuarial analysis of their population.

## Conclusion

In addition to the issues above, it is important to note that employers need adequate time to implement the long-term benefits strategies and negotiate related contracts needed to comply with forthcoming guidance. Given the timeframes required, we strongly encourage the IRS to utilize its transition relief authority. Similarly, it is critically important that any guidance allow employers the flexibility to structure their employee benefits programs to fit the demands of their business, and the needs and expectations of their workforces.

Manufacturers historically have led the business community in providing generous health benefits to their employees and are committed to continuing this tradition in the future. At the same time, the burden of providing health coverage already represents a major challenge for the industry. In promulgating regulations, we urge you to minimize the impact of the tax on health care coverage and promote employer-sponsored health care coverage for employees and their families. We also encourage you to consider the impact of the tax on the broader economy. Increased health care costs will translate to an increase in the marginal cost of hiring additional workers, thus discouraging job creation and economic growth.

Thank you in advance for considering our comments. If you have any questions, please feel free to contact me at (202) 637-3077 or [dcoleman@nam.org](mailto:dcoleman@nam.org).

Sincerely,

A handwritten signature in black ink that reads "Dorothy Coleman". The signature is fluid and cursive, with "Dorothy" on the top line and "Coleman" on the bottom line.

Dorothy Coleman