

Notice 2015-16
LEGAL PROCESSING DIVISION
PUBLICATION & REGULATIONS BRANCH
Oneida Tribe of Indians of Wisconsin
BUSINESS COMMITTEE



Oneidas bringing several hundred bags of corn to Washington's starving army at Valley Forge, after the colonists had consistently refused to aid them.

MAY 22 2015



UGWA DEMOLUM YATEHE
Because of the help of this Oneida Chief in cementing a friendship between the six nations and the colony of Pennsylvania, a new nation, the United States was made possible.

P.O. Box 365 • Oneida, WI 54155

Telephone: 920-869-4364 • Fax: 920-869-4040

May 15, 15

The Honorable John Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue NW
Washington, D.C. 20044

Re: Notice 2015-16, Excise Tax on High-Cost Employer Sponsored Health Coverage

Dear Commissioner Koskinen:

On behalf of the Oneida Tribe of Wisconsin, I write in response to IRS Notice 2015-16 seeking comments on Section 4980I of the Internal Revenue Code (IRC). This section, which was added to the IRC by the Affordable Care Act, would place a 40 percent excise tax on high cost employer-sponsored health plans.

For the reasons explained below, it would be inappropriate to levy this excise tax on federally recognized Indian Tribes, businesses run by federally recognized tribe or employees of Tribally run businesses.

1) Sovereign Tribal Nations Enjoy A Unique Relationship With The United States.

Federally recognized Native American tribes hold a special status in our country. As sovereign entities, we hold independent jurisdiction over our people, land and resources. However, the United States has historically entered into treaties with tribes in exchange for certain benefits—none as important as the right to federally funded healthcare.

Despite the promises made to our people, healthcare has been dramatically underfunded—both historically and in modern times. As a result, Native American populations have lower health indicators than virtually any other sub-population in the United States.

In recent years however, Tribal governments have stepped in to fill the void. At Oneida, we have been fortunate enough to have a number of successful Tribally owned enterprises. Through these businesses, the Tribe provides a generous health care package for all our employees. This plan

not only helps Tribal members supplement the meager benefits provided by the Indian Health Service, it also helps the Tribal business attract top notch talent to our business.

If the excise tax is applied to Tribal governments, Oneida Nation of Wisconsin expects our tax liabilities to go up by millions of dollars each year. While the tax liability may be the same for other similarly sized employers, the impact on our Tribal government and the federal taxpayer are unique.

As the Oneida's tax burden increases, the ability to invest in the well being of our people declines. Oneida citizens rely on our government to provide healthcare, social services, emergency services, and other essential government functions. The Oneida government in turn relies on federal support when our Tribally owned businesses fall short of meeting the need of our 17,000 members. Furthermore, taxing benefits for non-Tribal members dis-incentivize top talent from coming to Tribal businesses and Tribal lands, making it even more difficult for Native run businesses and governments to prosper. Consequently a tax on Oneida businesses may in fact result in a net loss for the federal taxpayer and will, without question, result in a reduced Tribal contribution to the health benefits of our Tribal members.

2) Tribal Health Benefits Should Be Treated As Military Health Benefits.

IRC 4980I(d)(1)(E) implies that military health benefits do not qualify as "applicable, employer sponsored coverage." Presumably Congress exempted this class of employees because taxing these benefits would be tantamount to one arm of the government taxing another.

Tribal health benefits must be viewed in the same light.

Health benefits provided by Tribal government owned businesses make up an integral part of the Tribal healthcare system. Absent these benefits, the underlying Indian Health Service system would collapse under its own weight. Health indicators would likely diminish federal appropriations would skyrocket, and the Government may further open itself to liability for failure to meet its trust obligations to Tribal members.

Like mandatory health benefits for members of the armed services, treaty and trust obligations require the Federal Government to cover substantial portions of the cost of health care for Native Americans. Taxing health benefits provided by Tribal businesses would only shift greater costs onto the Indian Health Service and appropriated funds. The results would be catastrophic for both Tribal members and federal taxpayers, and could easily be avoided by simply exempting Tribally owned business from Section 4980I excise taxes.

3) The Affordable Care Act Clarifies Treatment of Tribal Health Benefits.

Section 9021 of the Affordable Care Act provides the Internal Revenue Service with a new level of clarity on how to treat health benefits provided by Tribal governments. While the provision is most directly applicable to misguided attempts by the IRS to treat government-provided health

benefits as taxable income, the provision should also be used to guide the IRS on how to implement the excise tax on high cost employer sponsored health coverage.

By the narrowest interpretation, Section 9021 directs the IRS to exclude "coverage under accident or health insurance" from taxable income calculations. But when legislative history and Congressional intent are considered, the meaning of the provision is abundantly clear: healthcare benefits provided by Tribal governments, businesses and organizations should not be subject to taxes.

Considering Congressional intent and the cannon of Indian law, the more liberal interpretation of Section 9021 is merited and appropriate.

Conclusion

Oneida appreciates the opportunity to provide comments in advance of the official rulemaking process, and I commend the IRS for seeking input from all interested parties. To conclude, health care provided by the United States to our Tribal members, many of whom now participate in our employee sponsored health plans, has traditionally been of very poor quality. It is not that we are offering a "Cadillac" plan—we just pay premium prices for modest benefits because of the high cost of healthcare in our area and the severe needs of our people. I stand ready and willing to work with you to ensure that Tribal governments and Tribal businesses are treated fairly throughout this process, and I hope you will join me in this effort. Thank you again for your consideration.

Yaw^kó,

Cristina Danforth
Cristina Danforth,
Chairwoman, Oneida Tribe of Wisconsin