

Notice 2015-16

MAY 19 2015



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
OFFICE OF THE STATE EMPLOYER
LANSING

MARIE L. WAALKES
DIRECTOR

May 14, 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

To Whom It May Concern:

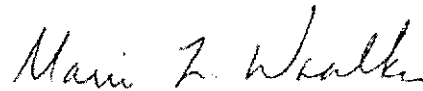
As director of Michigan's Office of the State Employer, I offer the following comments in response to the request in IRS Notice 2015-16 on the Excise Tax on High-Cost Employer-Sponsored Health Coverage. I appreciate the chance to comment on both Notice 2015-16 and the future notice referenced therein before regulations are proposed. While I recognize the complexity of implementing the tax, I strongly encourage that clarity and finality be provided as soon as possible to allow necessary planning. Given various complexities, including the need to collectively bargain well before the implementation date for the tax, this advance notice is crucial for employers. Although the notice requested comments on several issues, I will limit my remarks to areas of interest in the state's role as an employer.

- **III.A--In General.** § 49801(d)(3) includes "any former employee, surviving spouse, or other primary insured individual" in the definition of employee. Clarification should be provided on whether excise tax payments can arise based on various enrollees through COBRA coverage (e.g., ex-spouses, aged-out adult children, etc.).
- **III.B--Health FSAs.** § 49801(d) includes health FSAs contributions in the cost-coverage calculation. Employee participation in FSA offerings varies widely. Having up to \$2,550 in unpredictable coverage costs will encourage employers to curtail availability of FSAs to remain below the dollar limit, although employees will still face increased need for FSAs. To the extent that statutory language may require including health FSA contributions, aggregating costs as is done in determining group-health-plan cost, authorizing limited FSAs covering only dental and vision expenses, and other possibilities should be considered to allow FSAs' ongoing viability.
- **III.F--Dental and Vision Benefits.** The state supports the proposed equitable treatment of insured and self-insured plans.

- **IV.A.2–Retirees.** § 4980I(d)(2)(A) authorizes treating all retirees as similarly situated. While the state supports efforts to make continued provision of medical coverage to retirees under 65 more economically feasible, concrete guidance on when and how this would be permitted is needed—particularly since offerings and plan design among the groups can differ substantially.
- **V.C.2–High-Risk Professions.** Employees covered by different collective bargaining agreements with different plan terms and *cost-sharing structures* may be sufficiently similar to allow treatment as a single plan or separate plans. The state supports specific guidance and standards in regulations to determine the meaning of a plan for determining majority-membership status.

Employers must plan for potential excise-tax liabilities now without final regulatory guidance, particularly in the public sector where budgets face *unique constraints* and must be set well in advance. While employers and employees work to contain cost growth, statutory ambiguities complicate planning and the collective bargaining process. Negotiations are underway for union contracts that could unintentionally and avoidably expose the state to liability under §4980I absent more concrete guidance. The state encourages the timely completion of the rulemaking process to allow all parties needed time to adapt to these complex changes.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marie L. Waalkes". The signature is fluid and cursive, with the first name "Marie" and last name "Waalkes" clearly distinguishable.

Marie L. Waalkes, Director