



AIR LINE PILOTS ASSOCIATION INTERNATIONAL

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October 1, 2015

VIA ELECTRONIC TRANSMISSION: Notice.comments@irs.counsel.treas.gov

CC:PA:LPD:PR (Notice 2015-52)

Room 5203

Internal Revenue Service

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

Re: Notice 2015-52

Section 4980I - Excise Tax on High Cost Employer-Sponsored Health Coverage

Ladies and Gentlemen:

The Air Line Pilots Association, International (ALPA) represents over 52,000 pilots who fly for 31 passenger and cargo airlines in the United States and Canada. ALPA submits these comments in response to the invitation to comment on issues addressed in Notice 2015-52. We appreciate the opportunity to provide our views on potential approaches to the additional issues under IRC § 4980I described in the Notice before they are incorporated in future regulations.

Persons Liable for the § 4980I Excise Tax

Internal Revenue Code (IRC) section 4980I(c)(1) provides that the coverage provider is liable for any applicable excise tax. The statute provides that the health insurance insurer is the coverage provider under an insured group health plan, and with respect to coverage under an HSA, the coverage provider is the employer. However, for all other applicable coverage, the coverage provider is "the person that administers the plan." This term is not defined under IRC § 4980I, and it is not used elsewhere in the Code.

Treasury and the IRS are considering two approaches to determining the identity of the "person that administers the plan," which is generally expected to be an entity rather than an individual under either approach. Under one approach, the person that administers the plan would be the person responsible for performing the day-to-day functions constituting administration of the plan, which for a self-insured plan, would usually be a third-party administrator. Under the second approach being considered, the person that administers the plan would be the person that has the ultimate authority or responsibility under the plan with respect to plan administration, regardless if that person routinely exercises that authority.

ALPA believes the second approach would be preferable for single-employer plans, and would simplify the payment of any excise tax. The plan document typically identifies the official plan administrator, usually the employer/plan sponsor, who then generally has the authority to delegate the day-to-day administration to one or more third-party administrators. By allowing the employer, as the official plan administrator, to be directly liable for payment of any excise tax due, it eliminates the need for reimbursements, and the related taxable income issues. As stated in Section V.C. of the Notice, if a person other than the employer is the coverage provider liable for the excise tax, that person may pass through all or part of the amount of the excise tax to the employer, and that just raises a variety of tax issues that could be avoided by allowing the employer to pay any excise tax due directly.

Cost of Applicable Coverage

Determination Period

Reiterating our comments to Notice 2015-16, it would be beneficial, particularly in the collective bargaining environment, for any liability under IRC § 4980I to be known well in advance of a taxable year. Advance knowledge of the potential liability will provide parties to a collective bargaining agreement the opportunity to negotiate changes that may be necessary to reduce the cost of the plan to avoid the excise tax. Therefore, ALPA strongly supports rules supporting the determination of the cost of applicable coverage in advance of the taxable year.

In a self-insured arrangement, if the actual cost of coverage for a taxable year turns out to be less than the cost determined in advance of the taxable year, the savings would be reflected in the cost of coverage for the following year. However, where that is not the case, the rules should allow for credits to be taken in the subsequent year for the overpayment of excise taxes, if any.

Exclusion from Cost of Applicable Coverage of Amounts Attributable to the Excise Tax

As contemplated in the Notice, if a person other than the employer is the coverage provider liable for the excise tax, that person will likely pass through all or part of the amount of the tax to the employer. For this reason, as previously stated in these comments, ALPA supports the approach of designating the employer, generally the plan administrator, as the person liable for the excise tax in the case of self-insured plans. This eliminates, at least with respect to self-insured plans, the taxable income issues associated with the pass-through of the excise tax.

With regard to insured plans, ALPA agrees that the excise tax reimbursement, and any associated income tax reimbursement, should be excluded from the cost of applicable coverage. The Notice anticipates that coverage providers would be permitted to exclude the amount of any excise tax or income tax reimbursement from the cost of applicable coverage only if it is separately billed and identified as attributable to the

cost of the excise tax. This raises the question of whether it is permitted, under ERISA, for such separately billed amounts to be paid from plan assets. While employment-based health benefits are generally paid directly by the employer from general assets, in some cases, voluntary employees' beneficiary associations (VEBAs) are established through collective bargaining with one-time, or on-going, employer contributions during the employees' employment to fund retiree health benefits. These retiree health plans may be sponsored by a board of trustees, designated as the official plan administrator, and benefits are paid solely from the VEBA assets. There may not be any funding independent of the VEBA plan assets that could be used for reimbursement of excise taxes or any associated income taxes. If Treasury and the IRS determine that such amounts must be separately billed to be excluded from the cost of coverage, guidance is needed to address the conditions under which these amounts may be paid from VEBA plan assets.

Allocation of Contributions to HSAs, FSAs and HRAs

ALPA previously submitted extensive comments to Notice 2015-16 in support of excluding from the cost of applicable coverage HSAs that are not group health plans, as well as HRAs and FSAs to the extent that they reimburse otherwise excepted benefits or coverage that is not applicable coverage. To the extent that HSAs, FSAs and HRAs are applicable coverage, ALPA concurs with the approach proposed to allocate contributions ratably over the period to which the contributions relate (generally the plan year) regardless of the actual timing of the contributions during the period.

ALPA also supports the proposed safe harbor to avoid the double-counting associated with FSA salary deferral amounts that are carried over from one year to the next into account in determining the cost of coverage in both years. To the extent not used to reimburse otherwise excepted benefits or coverage that is not applicable coverage, the cost of applicable coverage should be the amount of the salary deferral, without regard to any carryover amounts. While not discussed in the proposed approach, we believe this safe harbor should apply to HRA carryovers in the same fashion.

Interaction Between Provisions of IRC § 4980I and IRC § 4980H

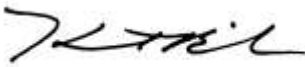
The Notice invited comments on circumstances in which the interaction between the provisions of IRC § 4980I and IRC § 4980H raise concerns.

The cost of applicable coverage is driven significantly more by geography and demographics of the group than by the generosity of the plan's design. In light of this, and the grossly inadequate adjustments to the applicable dollar limits under IRC § 4980I, it is conceivable that in the not too distant future, an employer's provision of the minimum value coverage mandated by IRC § 4980H will trigger the excise tax under IRC § 4980I. Employers will be forced to decide between paying a penalty for

not providing coverage or paying an excise tax for providing it. To avoid this eventuality, IRC § 4980I should include a safe harbor exempting from the excise tax a plan that provides only the required 60 percent minimum value.

ALPA appreciates the opportunity to participate in the process of developing regulatory guidance regarding the excise tax by submitting these comments. Any questions relating to these comments may be directed to Marian Tashjian at (703) 689-4129, or via email to marian.tashjian@alpa.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Binder', written in a cursive style.

F/O Kenneth Binder
Chairman, National Retirement & Insurance Committee
Air Line Pilots Association, International