

Submitted via email to Notice.comments@irs.counsel.treas.gov

October 1, 2015

CC: PA: LPD: PR (Notice 2015-52)
Room 5203
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

RE: IRS NOTICE 2015-52: HIGH COST HEALTH COVERAGE EXCISE TAX

Dear Sir/Madam:

On behalf of the Association of Washington Cities ("AWC") and its 281 incorporated cities and towns, we are respectfully submitting these comments in response to Notice 2015-52 and in support of the development of regulatory guidance regarding the Excise Tax on High Cost Employer-Sponsored Health Coverage ("excise tax").

Background

Founded in 1933, the AWC is a private, non-profit, non-partisan corporation that represents Washington's cities and towns before the state legislature, the state executive branch and with regulatory agencies. Membership is voluntary. The AWC proudly maintains 100% participation of Washington's 281 cities and towns. In addition to legislative representation, the AWC provides educational training, technical assistance and member programs, including a large employee benefits pool insuring 36,000 members.

Our Concerns

The AWC is very concerned about the undue financial and administrative burdens the excise tax may place on local government employers in Washington State. While the tax does not take effect until 2018, Washington municipalities are disproportionately impacted by the excise tax due to statutory requirements mandating benefit coverage for certain groups of employees or former employees, such as early retirees and post age 65 public safety personnel. These statutory requirements make it very difficult for local government employers to make benefit changes that would allow them to fall below the threshold, thereby avoiding the tax.

Additionally, local governments of all sizes are administratively burdened with the complexity of implementing and reporting required in the proposed regulations, but the hardest hit are those of less than 50 employees who do not have dedicated human resource staff.

Local governments are still recovering from the economic recession, and have done so at a much slower rate than private sector employers. The AWC, and our national organization – the National League of Cities (NLC) – are concerned that a 40 percent excise tax on the value of high cost plans, especially those benefits which are inescapable due to state mandate, will further impede the economic recovery that many local governments continue to face.

The AWC supports efforts to reduce the disproportionate impact of the excise tax on local governments and to minimize the administrative burden on employers in calculating and reporting the tax.

Comments Relating to Notice 2015-52

1. Persons Liable for the §4980I Excise Tax [Section III]

A. Person that Administers the Plan Benefits [Section III.B]

The AWC supports the approach for identifying the person that administers the plan benefits, and therefore responsible for paying the excise tax, as the “person that has the ultimate authority or responsibility under the plan or arrangement with respect to the administration of the plan benefits (including final decisions on administrative matters), regardless of whether that person routinely exercises that authority or responsibility.” The AWC feels that this approach will allow self-insured employers, as well as municipalities who are members of the public employer health pool, better control the excise tax payment process. Additionally, this approach would avoid the “tax on tax” issue flagged by the IRS if TPAs, which are not typically tax-exempt, are made responsible for paying the excise tax.

2. Cost of Applicable Coverage [Section V]

A. Determination Period [Section V.B]

The AWC recommends that any payments, discounts, rebates or credits should be allocated on a *pro rata* basis for the “applicable calendar year,” i.e., the coverage period in which the rebate, discount, payment or credit is taken or made. These will then be used in determining the “cost of applicable coverage” for that calendar year. This approach will ensure that the excise tax is properly imposed on the true cost of that coverage.

B. Exclusion from Cost of Applicable Coverage of Amounts Attributable to the Excise Tax and the Income Tax Reimbursement Formula [Sections V.C & D]

The IRS correctly recognizes a significant “tax on tax issue” which will arise when the taxpayer is a taxable entity; for example, where a TPA of a self-insured employer or

health pool is made responsible for paying the excise tax. As already noted, that is one of the reasons we do not support the use of TPAs for that purpose.

C. Allocation of Contributions to HSAs, Archer MSAs, FSAs, and HRAs [Section V.E]

The IRS raises the question of how best to determine the cost of applicable coverage for various account-based arrangements, which cost is tied to employer and employee contributions. The AWC endorses the “safe harbors” proposed for the allocation of employer and employee contributions on a monthly *pro rata* basis regardless of when those contributions are made during the applicable calendar year. We also endorse the “safe harbor” whereby the cost of applicable coverage for the plan year would be the amount of an employee’s salary reduction without regard to any “carry-over” amounts. In so doing, we recognize the inherent complexity of calculating the cost of these account-based arrangements and how this complexity may discourage employers from offering them in the future.

3. Age and Gender Adjustment to the Dollar Limit [Section VI]

A. Determination of Age and Gender Distribution and the Development of Age and Gender Adjustment Tables [Section VI.A & B]

In general, the AWC agrees with the method proposed by the IRS to determine the age and gender distribution of an employer’s health plan enrollees in calculating the appropriate adjustments to the baseline per employee dollar limits for 2018. It is important to note that the Federal Employees Health Benefit Plan (FEHBP) standard option is trending well below the baseline amounts provided for in §4980I(b)(3), so that the national premium cost if based on the FEHBP may well produce a lower number than the specified baseline. In that case, each group premium cost should be further inflated by the consistent rate that would achieve a national premium in step 5 that is at least the specified baseline.

We also recommend that the IRS adopt a “snapshot” method for determining the age and gender characteristics of an employee population such that employers could establish their health plan age/gender enrollee profile on the first day of the plan year.

4. Notice and Payment [Section VII]

A. Notice of Calculation of Applicable Share of Excess Benefit [Section VII.A]

Consistent with our recommendation below as to the payment of the excise tax, we recommend that employers be required to provide the requisite notice under §4980I(c)(4)(A) to the “coverage provider” by no later than July 31 of the year following the “applicable calendar [taxable] year” for which the cost of coverage is determined. That should give local government employers or the health pool sufficient time to

calculate the cost of applicable coverage and the taxable “excess benefit” as well as the amount of the excise tax itself. As a result, employers or the health pool will have sufficient time to take into account any runout for account-based arrangements.

B. Payment of §4980I Excise Tax [Section VII.B]

We fully endorse the IRS suggestion to designate a single quarter for the payment of the excise tax similar to the PCORI fee payment. With employers required to comply with the notice requirement by July 31 in the year after the applicable calendar year, we recommend that the excise tax be paid with the filing of Form 720 for the third quarter of that year, or by no later than October 31 of that year.

Thank you for considering our comments. If you have any questions or would like to discuss these comments further, please do not hesitate to contact our Legislative Advocate Candice Bock or our Director of Member Pooling Programs Carol Wilmes at (360) 753-4137, candiceb@awcnet.org, or carolw@awcnet.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter B. King". The signature is fluid and cursive, with a small dot at the end.

Peter B. King
CEO

