



300 New Jersey Avenue, NW
Suite 800
Washington, DC 20001

Telephone 202.872.1260
Facsimile 202.466.3509
Website brt.org

October 1, 2015

Submitted electronically via <http://regulations.gov/>

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

The Honorable John Koskinen

Commissioner

Internal Revenue Service

Room 5203

P.O. Box 7604

Ben Franklin Station

Washington, DC 20044

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Re: Notice 2015-52; Excise Tax on High Cost Employer-Sponsored Health Coverage

Dear Commissioner Koskinen:

Business Roundtable is an association of chief executive officers of leading U.S. companies. Together, our member companies employ nearly 16 million individuals and provide health care coverage to more than 40 million American workers, retirees and their families. Business Roundtable CEOs are committed to advancing public policies that will improve the quality, value and effectiveness of the U.S. health care system. We are pleased to have the opportunity to comment on the proposed Internal Revenue Service (IRS) guidance related to the Excise Tax on High Cost Employer-Sponsored Health Coverage (Notice 2015-52). We also wish to reiterate our comments on Notice 2015-16.

We are concerned that many of the provisions contained in the proposed guidance documents will have an adverse effect on the quality and value of employer-sponsored health care in the United States.

While the 40 percent tax was intended to lower health care costs, elements of the currently proposed tax will have the opposite effect. By taxing certain benefits that encourage health care consumers to improve their own health, participate in prevention and chronic care programs, and consume health care more wisely, the tax will discourage employers from offering these benefits.

We are increasingly concerned about the broad interpretation of the 40 percent tax. We ask that you reevaluate the positions taken in both of the proposed guidance documents and instead design the implementation of the tax in a way that does not discourage employers from continuing to innovate, demand marketplace improvements and sponsor plans that promote value in the use of important health care services.

Comments on Notice 2015-52

Persons Liable for the Tax

Notice 2015-52 offered two possible approaches for who is responsible for paying the tax: the coverage provider or the person that administers the plan benefits. We urge the Department of Treasury (Treasury) and IRS to adopt the second approach, “Person that Administers the Plan Benefits,” when finalizing requirements. This approach will make the employer responsible for assessing the value and payment of the tax; it is the most practical and least complicated option for administering the tax.

The direct pay method will be more streamlined. The enrollment of one employee in the health plan can result in many different third party administrators (TPAs). The employer is the common denominator and the only party that has a complete view of enrollments. The direct pay approach would allow the employer to conduct a single evaluation of whether the amount of the health benefits exceeds the threshold or not.

If the TPA is the taxpayer, the process becomes much more complex. The employer will need a formula for each TPA to understand its impact on the total excess tax or what specific percentage of the threshold amount will be attributed to each TPA. This will insert a new, complex process into end-of-the-year operations, which will increase the administrative burden on employers and possibly necessitate the hiring of additional staff.

Additionally, if the TPA is responsible for payment of the tax, employers will pay an additional surcharge on the excise tax. A reasonable estimate of this additional administrative cost is a ten percent upcharge. This additional cost does not further the intent of the tax, which was to curb excess health benefit offerings, encourage employers to engage employees in their own health and lower overall health care costs over time.

Determination Period

Notice 2015-52 states that Treasury and IRS anticipate that, for purposes of the excise tax, the taxable period will be the calendar year for all taxpayers and the determination period—the period of time for calculating any tax liability—would begin soon after the taxable period ends. Business Roundtable supports this as a real opportunity to align the W-2 reporting, 1095 reporting and the excise tax.

While we believe all these reporting requirements are overly burdensome and need additional revisions, aligning these processes would streamline end-of-year practices for many companies.

Threshold Amounts

As noted in footnote 8, Notice 2015-52 recognizes that an applicable large employer that fails to offer its full-time employees health coverage that is affordable and provides minimum value may be subject to an assessable payment. We noted in previous comments that health coverage providing not more than minimum value (or only slightly more than minimum value) may exceed the applicable dollar limit under this tax. Business Roundtable encourages Treasury and IRS to consider tying applicable threshold amounts to actuarial value. This would simplify and streamline the application of the tax. Plans and employers already have to determine and be aware of the actuarial value of each plan offering. In addition, tying threshold amounts to actuarial value is a better indicator of the underlying value of a benefit offering, rather than a dollar amount that may not take variations into account. By cross-walking the threshold dollar amounts to actuarial value, the implementation of the tax would be more streamlined and equitable.

Comments on Notice 2015-16

We would also like to reiterate some of our comments on Notice 2015-16. This proposal offered clarification about the implementation of the 40 percent tax, but we continue to believe that changes to this proposed guidance are necessary for the fair implementation of this tax. It is important that the implementation of the 40 percent tax stay true to its original intent—to reduce overall health care costs by offering reasonable benefits, engaging individuals in their health and encouraging thoughtful spending of health care dollars.

- Determination of Cost of Applicable Coverage – Neither of the currently available vehicles for calculating the value of coverage (COBRA or W-2) is acceptable, and we encourage Treasury and IRS to consider a calculation that would allow plan sponsors to use actuarial methods to create a benefit plan cost that more accurately represents the value of the plan and reduces the effects of variation in the average age of the workforce.
- Determination of Benefits Included in Applicable Coverage – The definition of “applicable coverage” should encompass major medical and prescription benefits but should exclude programs designed to engage employees in their health and health spending and should have the potential to lower overall health costs, such as:
 - Wellness programs;
 - On-site medical clinics;
 - Employee contributions to a health savings account (HSA), health reimbursement account (HRA) and flexible spending account (FSA); and

- Any benefit that can be treated as an “excepted benefit,” such as vision or dental benefits.
- Aggregation – Employers must have the flexibility to aggregate all plans or plan options offered to that employer’s employees and retirees in order to account for the variability in benefit offerings among employers. These plans may vary in cost but not in underlying value due to age, geography and other factors.
- Adjustments to Thresholds – The Federal Employees Health Benefits Plan (FEHBP) is not an accurate representation of the mix of employees in non-governmental health plans and, as such, is not the most effective methodology to use for age and gender adjustments to the threshold amount.
- Threshold Index – Tying the threshold index to the Consumer Price Index for All Urban Consumers (CPI-U) does not account for the expected increase in medical costs associated with increased utilization that may not be able to be controlled in certain workforces.
- Safe Harbor for Plans Meeting the Minimum Value Test – The *Affordable Care Act* (ACA) requires large employers to offer plans that meet “minimum value” requirements (60 percent actuarial value). If employers offer a plan just meeting minimum value, that employer should not be required to pay the tax if the value of those benefits exceeds the threshold.
- Effective Date of Final Rules – Treasury and IRS should consider a long-term transition period for the effective date prior to completion of final rules so employers can adjust benefits as necessary to comply with the tax. Plans with collectively bargained benefits will especially need time to comply with new requirements.

Conclusion

As sponsors of health care coverage for more than 40 million Americans, Business Roundtable members are deeply concerned about the impact of the current interpretation of the 40 percent tax on the ability of employers to offer health benefit coverage to employees. The new requirements do not take into account the value of alternative plan designs that promote wellness and prevention, encourage consumers to seek care from providers who offer the greatest value, and meet all the regulatory and benefit mandate requirements that could push a plan over the threshold. In addition, the cost and complexity of compliance should be considered when determining “applicable coverage.”

Employers need the flexibility to sponsor plans that encourage more efficient utilization of providers and services. Employees need the tools to select such providers and understand the value of wellness, chronic care management and preventive benefits. The tax, as currently interpreted, would create disincentives for both of these objectives.

We support the goal of ensuring that employers promote the health and wellbeing of their employee populations and encourage greater cost savings in the health care system.

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At the same time, we urge Treasury and IRS to consider broader changes to the proposed guidance documents, along with more thoughtful consideration of the long-term effect of many of the specific provisions included therein.

Sincerely,

A handwritten signature in black ink, appearing to read "G. W. L.", followed by a long horizontal line.

Gary Loveman
Chairman
Caesars Entertainment Corporation
Chair, Health and Retirement Committee
Business Roundtable