



The Boeing Company
P.O. Box 3707
Seattle, WA 98124-2207

September 24, 2015

RE: Notice 2015-52, Excise Tax on High Cost Employer-Sponsored Health Coverage

CC:PA:LPD:PR (Notice 2015-16)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Dear Commissioner Koskinen:

Thank you for the opportunity to comment on Internal Revenue Service Notice 2015-52, which was issued on July 30, 2015, regarding the excise tax on employer-sponsored health coverage under Internal Revenue Code (IRC) Section 4980I.

The Boeing Company (Boeing) provides high quality health coverage to nearly 500,000 individuals, including employees, retirees, and dependents, and spends over \$2.5 billion annually on health and insurance-related benefits. Boeing is committed to offering high-quality coverage and reducing health care costs through innovative delivery system reform, consumer-friendly plan designs, and industry-leading wellness programs. As an employer that largely self-insures its health plans, we voluntarily assume the risk for providing this coverage to our employees, retirees, and dependents.

IRC Section 4980I provides that if the aggregate cost of applicable employer-sponsored coverage provided to an employee exceeds a statutory dollar limit, the amount which exceeds such dollar limit is subject to a 40 percent excise tax. We appreciate the Internal Revenue Service (IRS) providing potential approaches regarding the assumptions to be relied upon for the purposes of assessing and calculating the excise tax on employer-sponsored health coverage (hereafter referred to as "the excise tax"). After reviewing the Notice, we are concerned about the potentially significant cost impact of this tax to companies like Boeing that offer self-insured health plans to their workforces nationwide. As the regulatory process continues, we look forward to working with the Department of the Treasury and the Internal Revenue Service to provide additional comments regarding the impact the non-deductible tax may have on our ability to offer competitive benefits to our workforce. Our comments on the areas outlined in IRS Notice 2015-52 that are of greatest concern and likely would have material impact on our workforce and company follow.

Cost of Applicable Coverage

Determination Period

For self-insured plans, the Notice describes an example in which "the cost of applicable coverage is determined based on a period ending at or before the beginning of the applicable calendar year." Boeing supports this position. In order to meet our obligations under Section 4980I in a timely manner, and manage the plan complexities that large employers such as Boeing face, having sufficient lead time to prepare the cost calculations is very important. We also support allowing each employer to choose the time period being used for the cost determination which best meets their business needs and allows for sufficient time to gather the large amounts of data that will be required in determining the cost of applicable coverage.



Boeing also suggests that the time period allotted between the end of the plan year and when the payment is made should be long enough to allow for retroactive adjustments that may be most accurately made in the months immediately following the end of the plan year. Boeing supports the proposed approach in the Notice with respect to payment of the excise tax on Form 720 and it would be sensible to align the payment timing similar to the PCORI fee which is due July 31.

Allocation of Contributions to HSAs, Archer MSAs, FSAs, HRAs

Boeing supports the proposed approach in the Notice with respect to these specific contribution types. To the extent such contributions need to be included in the cost of applicable employer-sponsored coverage, Boeing agrees with the proposal to allocate them on a pro-rata basis over the period to which the contributions relate (usually, the plan year). Because such contributions may be used over the course of the full plan year, it would be reasonable to allocate them proportionally over that period of time.

Person Liable for the Tax

Under the statute, each "coverage provider" is liable for any excise tax. IRC Section 4980I(c)(2) describes various types of coverage provider, including "the person that administers the plan benefits" for applicable employer-sponsored coverage that is neither health insurance coverage nor health savings account or Archer MSA contributions. This type of applicable employer-sponsored coverage would generally be self-insured coverage.

The Notice indicates that Treasury and IRS are considering two alternative approaches to determining the identity of "the person that administers the plan benefits" under IRC Section 4980I(c)(2)(C). Boeing does not support the first approach suggested in the Notice. This approach would appear to result in third-party administrators (TPAs) being liable for any excise tax for the vast majority of self-insured plans. As the Notice points out, this would lead to unnecessary complexity, especially for self-insured plans that feature multiple TPAs to administer different benefits under the same general coverage option. For example, for Boeing's high deductible plan, the IRS would receive separate payments from a medical administrator, a pharmacy benefit administrator, a mental health and substance abuse administrator, and the company itself (for Health Savings Account contributions). The IRS would assume a high degree of complexity since it would then be required to reconcile payment streams from a variety of separate entities-all with separate Tax Employer Identification Numbers- for a single benefit plan on behalf of an employer with a different Tax Employer Identification Number.

An additional complexity under this approach would be the apparent need for such TPAs to pass back to the employer sponsor the cost of any excise tax in the form of increased administrative service rates, which would presumably lead to some of the same "gross-up" complexities anticipated for employers sponsoring fully insured plans (discussed in Part V of the Notice).

Code Sec. 4980I(c)(2) defines "coverage provider" as each of the following:

- Health insurance coverage, the health insurance issuer
- HSAs and MSAs, the employer
- Other coverage (e.g., self-insured coverages), the person that administers the plan benefits

The statute does not purport to define "person that administers the plan benefits" nor explain the rationale for defining coverage provider differently for an HSA or MSA as compared to "other coverage". We believe the Treasury has the ability to interpret "the person that administers the plan benefits" to ensure the most flexibility to the employer providing the applicable employer-sponsored coverage.



Further, Code Sec. 414(g) defines the “plan administrator”, in the case of a single employer plan, as the person specifically designated by the plan and in the absence of a designation, the employer. Although employers often engage third party administrators (e.g., recordkeepers, insurers, TPAs, vendors, etc.) to assist in the administration of the various employer-sponsored coverages, ultimately the employer (or a subset of the employer named in the plan) remains the responsible administrator of such coverages. Therefore, we urge Treasury and the IRS to interpret “the person that administers the plan benefits” to be the employer, which is the second approach described in the Notice.

Boeing prefers the second approach described in the Notice because it would avoid some of the complexities described above under this second approach, “the [entity] that administers the plan benefits would be the [entity] 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 Notice contemplates that the relevant entity could be identified by way of the self-insured plan document. Boeing believes this would most likely be the entity identified in the plan document as the “plan administrator” (or similar term). This interpretation would allow for the identification of a single, internal entity that would be responsible for paying the tax on any self-insured plan, which is an easily administered approach.

Demographic Adjustment

Experience used to develop adjustment table

The notice indicates that when developing the adjustment tables used to calculate the demographic adjustment factor, claims experience in the FEHBP standard option will be used to establish the cost ratios by age/gender bracket. Boeing is concerned that using experience specific to the standard option will create skewed relativities that are not reflective of the true cost differences attributable to age/gender mix. The vast majority of the eligible FEHBP population is enrolled in either the Standard or Basic plan options, with the Basic plan having a less generous design and lower employee contributions. When multiple plan options such as these are offered to a population, significant selection may be expected, with higher cost/less healthy members often electing the richer option despite higher contributions since that option can be most cost effective for them overall.

For the FEHBP, members enrolled in the Standard plan option would be expected to be more costly, on average, than those enrolling in the Basic plan option as employees choose the best option for their situation. This selection could skew both the Standard option enrollment by age, and the cost relativity by age within the Standard plan. Since the statute indicates that the demographic adjustment should be reflective of the true expected cost differences associated with demographic differences, it would not be appropriate to develop the adjustment factors using only experience in the Standard plan option. Instead, claims experience for all self-insured plans offered under the FEHBP should be used to avoid the selection issues noted above.

Development of Group Ratios

The notice indicates that when calculating the ratios by age/gender band, the adjustment factor applied to the other than self-only coverage tier will reflect the expected costs associated with covered dependents. Since covered dependents will account for a substantial portion of costs in this tier, Boeing believes that it is appropriate and necessary to take their costs into account. The below example provides an illustration of how we have interpreted the methodology described in the notice for calculating the group ratio for the 30-34 year old male group, for the other than self-only coverage tier.



All data shown below reflects experience under the FEHBP standard option (consistent with the methodology outlined in the notice):

- Total number of 30-34 year old male employees enrolled in other than self-only coverage (A): 2,300
- Total number of dependents (of all ages/genders) covered by 30-34 year old male employees (B): 6,900
- Total claim cost for 30-34 year old male employees in other than self-only coverage (C): \$10,350,000
- Total claim cost for all dependents covered by 30-34 year old male employees (D): \$27,600,000
- Average cost for 30-34 year old male group for other than self-only coverage (E):
$$E = (C+D) / (A) = \$37,950,000 / 2,300 = \$16,500$$
- FEHBP average cost for other than self-only coverage (F): \$20,200
- Group ratio for 30-34 year old male employees enrolled in other than self-only coverage (G):
$$G = E/F = 0.82$$

Employer Aggregation

The Notice requests comments on the practical challenges of considering all employers treated as a single employer under subsections (b), (c), (m), or (o) of § 414 as a single employer for purposes of § 4980I, and how these aggregation rules will be applied when calculating and paying the excise tax.

Consistent with the statutory language, Boeing supports allowing flexibility for employers to consider the costs of coverage for all members of the controlled group when determining any excise tax liability. As described in our comment letter to Internal Revenue Service Notice 2015-16, Boeing recommends that when calculating the cost of coverage, employers should have flexibility to aggregate together the costs of all self-insured plans offered by an employer, and then apportioning these costs to each plan option based on the relative actuarial value of each plan option. It would be appropriate (and consistent with the law) to also allow cost for all subsidiaries to be included in the aggregation (and allocation by plan value) calculation. Under this approach, the demographic adjustment should also be reflective of all members of the controlled group.

However, practical challenges may exist that would make the approach outlined above unfeasible. For example, a parent company with “non-fully integrated” subsidiaries may not have sufficient detail on the subsidiary’s employee demographics and/or on the benefits offered by the subsidiaries (and their associated costs) to calculate any excise tax liability associated with these groups. For example, Boeing has many non-fully integrated subsidiaries that are on completely separate payroll, benefit and accounting platforms. Obtaining all information necessary to calculate and remit the tax may not be feasible.

In circumstances with employers with non-fully integrated subsidiaries, Boeing supports allowing flexibility for the excise tax calculations to be determined either for the control group as a whole, or separately for each individual member. If an employer elects to calculate the cost of coverage separately for each member of the controlled group, then the age/gender adjustment should also be calculated separately.

Regarding the identification of the taxpayer responsible for calculating and reporting the excess benefit and the identification of the employer liable for any penalty for failure to properly calculate the tax imposed, Boeing supports allowing flexibility for either each individual group member to be responsible for these items, or for the parent company to bear this responsibility. The calculations, reporting, and payment determination should be completed by the entity that is best positioned to complete these critical tasks. If the parent company lacks sufficient information about subsidiaries to be able to properly calculate the cost of coverage and applicable tax, it would be inappropriate to require the parent company to be responsible for completing these calculations (and to hold the parent company liable for any errors).



In conclusion, we appreciate that the Department of Treasury and the IRS recognize the potential significant costs that the excise tax creates for employers who are offering the coverage and benefits required by the Affordable Care Act and tailored to our workforce. We respectfully submit these comments and proposed approaches and look forward to providing additional details as the regulatory process proceeds. Should officials at the Department and IRS need any further information from Boeing on this important issue, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Tony Parasida". The signature is fluid and cursive, with the first name "Tony" and last name "Parasida" clearly distinguishable.

Tony Parasida
Senior Vice President, Human Resources and Administration

Cc: Timothy Keating, Senior Vice President, Government Operations
Stacey Dion, Vice President, Corporate Public Policy
Pamela French, Vice President, Compensation and Benefits