

September 15, 2015

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

Re: Notice 2015-52

To Whom It May Concern:

DuPage Credit Union is pleased to submit these comments in response to the notice of proposed Excise Tax on High Cost Employer-Sponsored Health Coverage.

Statement of Interest

Founded in 1956 by a small group of educators, DuPage Credit Union has grown from serving an initial roster of 12 Members to serving over 34,000 Members. We employ over 120 FTEs on an annual basis.

Inclusion of FSA/HSA/HRA contributions count

The proposed rule indicates that the Affordable Care Act (ACA) will impose a 40 percent nondeductible tax on employer-sponsored coverage above established value thresholds of \$10,200 for employee-only coverage and \$27,500 for family coverage. After 2018, the IRS indicates these thresholds will be indexed for inflation. Further, Notice 2015-52 also proposed that "the cost of applicable coverage of an FSA for any plan year would be the greater of the amount of an employee's salary reduction or the total reimbursements under the FSA."

A 2015 analysis by the Kaiser Family Foundation shows, assuming:

- annual premium increases of 5 percent; and
- including plan premiums plus ER contributions to HSAs and HRAs

Based on the above assumptions in 2018, 16 percent of US employers would have at least one health plan exceeding the \$10,200 Cadillac tax threshold for single-only coverage. And if contributions to FSAs are included under the threshold, then 26 percent of employers would exceed that threshold.

This would impact DuPage Credit Union today, since our lowest cost, by-no-means-a-cadillac-plan, plan costs \$6,228.00 per year. As a small employer, we do not benefit from lower premium costs as compared to employers with larger populations. DuPage Credit Union has little to no control over the premium increases it receives each year. On average, we've experienced annual premium increases from 8-10%. One or two bad years, and even our lowest cost plan will meet or exceed the proposed threshold. Add to that the allowable \$2,550.00 FSA contribution, and our plan premium is skyrocketing.

Furthermore, since FSAs, HSAs, and other defined contribution health plans are counted toward the excise tax threshold, it seems inevitable that employers may stop offering these types of

benefits to keep their programs affordable and/or reduce the benefits offered under a traditional indemnity plan. This would have an unfortunate impact on employees, as these special accounts serve as a tool to shoulder excessive healthcare costs.

Responsibility for the tax

The ACA provides that the "coverage provider" is liable for any applicable excise tax and is dependent upon the type of coverage provided. It's clear that for insured health coverage, the insurer is liable, and that for HSA contributions made by the employer, the employer is liable. However, beyond those definitions, the determinations are undefined. Further, it seems evident that regardless of who becomes liable for said tax, excise taxes will ultimately be passed on to employees in the form of higher cost-sharing, making the "care" that we provide as a requirement of the "Affordable Care Act" no longer "affordable."

Overall administrative burden

Notice 2015-52 has requested comments on many items, such as Age and Gender Adjustment, Calculation of Applicable Share of Excess Benefit, and Payment of the Excise Tax. Suffice it to say the time to track age and gender against the national data would be burdensome for a small employer. Another unintended consequence could be discrimination in hiring practices by other employers.

Conclusion

DuPage Credit Union believes that the IRS' proposed rules will have an adverse effect on employers and employees as a whole. It is our belief the threshold amount is significantly too low and that including contributions to savings accounts drastically decreases the benefits those accounts provide. Insurance premium rates continue to rise and employers continue to see premiums skyrocket despite their efforts to maintain reasonably good plans with affordable premiums. With health insurance, however, you don't always get what you pay for. Premiums are often reflective of the group's experience and employer size, NOT the type of plan that is offered. So to simply base the tax on premium will mistakenly classify many "non-Cadillac" plans as "Cadillac." As such, perhaps consider basing the tax instead on "Cadillac-type" benefits a plan provides ("low" or no deductible, "low" or no co-pays, etc.) as opposed to simply on plan premiums.

Thank you for your consideration of these comments.

Respectfully yours,

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