E.C.H.I.P.
Eastern Connecticut Health Insurance Program
376 Hartford Turnpike, Hampton, CT 06247

September 29, 2015

Karen Levin
Office of Associates Chief Counsel

RE: **Notice 2015-52**

This letter is in response to the IRS' request for guidance surrounding the administration of the Affordable Care Act's 2018 Excise Tax as it pertains to IRS Notice 2015-52. This letter also serves in support of the repeal of this tax.

The Notice is seeking guidance in the definition of administrator of the plan of benefits. We believe the person that administers the plan of benefits is the third party plan administrator. This entity receives the notice of claims, adjudicates the claims in accordance with the plan design, pays the claims, is responsible for the systems that track and pay claims, and is responsible for the network of providers. Defining the administrator as the employer, should consider the additional reporting requirements that would be placed on an employer. Employers would require staff dedicated to identifying and reporting on the variables this tax generates which could become problematic for those not able to dedicate staff strictly to managing ACA tax guidelines.

We advise that the Excise Tax period align with the policy year. Municipalities in the State of Connecticut align their policy period with their fiscal year, July. The employee benefit plans renew each policy year. The proposed tax is based upon the richness of the plan and the ultimate cost for that rich benefit. Each policy year the cost of the plan changes. Aligning the tax with that year's cost would make reporting the tax and accounting for the tax simpler and not require a melding of the plan designs and costs. The cost of the tax would be known at renewal, rather than involving a calculation to meld the two half year designs and costs.

If the tax period is based on the policy year, then the time to determine the tax could be shortened. The premiums for a plan are determined at the beginning of the policy year. The tax for a plan that reports on the policy year will be known shortly after the enrollment for the last month of the policy is known. There will be no need to perform a calculation accounting for portions of two years' worth of enrollment and plan costs. Assumed rebates for prescription drug, for example are calculated at the time of renewal and the rebates factored into the cost will align with the year they affected the premium costs.

There will be no need for months of delay to account for run-out or aligning the actual payments with the year they were incurred. Keeping the calculation and requirements for determining the tax as simple as possible will allow employers to report the tax quickly, efficiently, and without the excess cost of employing experts for assistance.

We understand that the Notice is requesting guidance for treatment of deposits to H.S.A., HRA, FSA and MSA account based plans and that pre-tax deposits to these accounts are defined as part of the taxable cost. The current proposed IRS guidance surrounding H.S.A, HRA and FSA accounts might be better served if employee deposits were excluded from the excise tax calculation. This seems to challenge the pre-tax advantages for those employees who are making contributions. We request that the IRS rethink the taxation of the employee portion of these deposits. By including the employee deposits into the accounts there is a great administrative burden created for employers. The employers have to provide a separate tax calculation for each employee, since the decision for deposits into the account are those of the employee. Each separate decision will define a different tax per employee. The value of the plan is not affected by the employee's decision to pre-fund future health accounts through their H.S.A account. We understand that the employer's deposit of funds into the account on the employees' behalf does add a value of benefit to the employees and therefore should be part of the tax as defined. The employer's ability to budget for health benefits costs will be diminished and the administrative work to calculate the tax will create additional work and costs for employers, both in time and need for systems updates.

The Northeast Region has some of the highest healthcare costs nationally. The Affordable Care Act proposes a 40% Excise Tax penalty for plan costs exceeding thresholds of $10,200 single coverage and $27,500 for two person and family coverage in 2018. With many in Connecticut already facing these amounts today it is with certainty that the Connecticut Municipal market will meet or exceed these thresholds by 2018.

The impact of the Excise Tax will place further strain on town and school budgets already faced with year over year increases to cost, with no increase to their revenue lines. Much effort has been made in recent years to effectively and successfully negotiate High Deductible and Consumer Driven Health Plans through collective bargaining. The Excise Tax now looks to include the contributions/reimbursement calculations afforded through Health Savings Accounts (H.S.A.), Flexible Spending Accounts (F.S.A.) and Health Reimbursement Arrangements (H.R.A.) into the plan cost thresholds. The inclusion of these amounts further undermines the promotion of Consumer Driven Health Plans as a remedy to reduce health care costs.

The purpose and basis of the Affordable Care Act is to provide affordable health care for every American. Implementing the Excise Tax, in the Northeast Region specifically minimizes the ability to offer affordable health care and negates the understanding of consumer driven health.

Thank you for your consideration to the guidance outlined in this letter.

Regards,

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