



Insurance and Benefits Trust / Committee Peace Officers Research Association of California

September 29, 2015

VIA REGISTERED E-MAIL

Submitted electronically to:

Notice.comments@irs.counsel.treas.gov

The Honorable John Koskinen
Commissioner
CC:PA:LPD:PR (Notice 2015-52)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044.

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

Dear Commissioner Koskinen:

The Insurance & Benefits Trust of the Peace Officers' Research Association of California (Trust) appreciates the opportunity to provide further comments on Notice 2015-16 as invited by the IRS in Notice 2015-52 recently issued by the Department of Treasury (Treasury) and the Internal Revenue Service (IRS). The Trust requests clarification and provides the following recommendations as to how Internal Revenue Code ("Code") § 4980I should be interpreted:

1. Multi-employer plans should be allowed to use a "composite rate" when determining the annual cost of coverage;
2. The higher applicable dollar limit for "high risk professions" should apply to plans where at least 51% of enrolled employees¹ fall within a broadly interpreted category of "law enforcement officers"; and
3. The annual applicable cost should be increased in years after 2018 based on the CPI-U index, but only as it relates to medical care commodities and medical care services.

¹ The term "employee" includes both active and retired employees.

Background

The Peace Officers Research Association of California (PORAC) is the sponsoring union of the Trust. PORAC represents over 66,000 rank and file law enforcement officers from the State of California. The Trust currently offers major medical benefit coverage through a fully insured plan that provides coverage to over 35,000 participants and beneficiaries. The Trust is a multi-employer plan (as set forth at section 3(37)(A) of the Employee Retirement Income Security Act of 1974 (ERISA) to which more than 100 California employers contribute.

1. Multi-employer plans should be allowed to use a “composite rate” when determining the annual cost of coverage.

As set out in Code section 4980I(b)(3)(B)(ii) the baseline amount to be used when calculating a multi-employer plan’s excise tax liability (as of 2018) will be \$27,500 per employee regardless of the type of coverage actually offered by the multi-employer plan (i.e. without regard to the plan’s separate costs for “self only” or “other than self only” coverage). What has yet to be determined is how a multi-employer plan will determine its annual cost per employee where tiered rates are offered.

We request that multi-employer plans be permitted to determine annual cost by using a “composite rate” calculated by:

- a. multiplying the annual cost of coverage for each tier (i.e. single coverage, two-party coverage and family coverage) by the number of employees enrolled in each tier;
- b. total cost in all tiers would be added together to arrive at a total annual cost; and
- c. this total annual cost would be divided by the total number of employees enrolled in the multi-employer plan, producing the total composite dollar cost of coverage per employee within the Plan.

This calculation is reflected in the following formula:

$$\begin{aligned} & ([\text{annual cost of “Single rate” plan}] \times [\text{total employees enrolled in “Single Rate” plan}]) \\ & \quad + \\ & ([\text{annual cost of “Two Party Rate” plan}] \times [\text{total employees enrolled in “Two Party Rate” plan}]) \\ & \quad + \\ & ([\text{annual cost of “Family Rate” plan}] \times [\text{total employees enrolled in “Family Rate” plan}]) \\ \text{Composite Rate} = & \frac{\hspace{15em}}{\text{Total Members}} \end{aligned}$$

In other words, all coverage under a multiemployer plan should be treated as other-than-self-only as set out in Notice 2015-16, sec. IV.A.2.(2). Disaggregation of self-only coverage is not required in the case of a multiemployer plan, because such plans do not provide self-only coverage for purposes of the excise tax. The Trust requests that regulations illustrate the treatment of multiemployer plans, such as through an example showing that multiemployer plans calculate costs using the other-than-self-only calculation rules and that the mandatory disaggregation rules for self-only coverage and

other-than-self-only coverage proposed by Treasury in Notice 2015-16 do not apply because all multiemployer coverage must be treated as other-than-self-only coverage. Plans would be permitted to calculate an aggregate (or a composite) cost, not separate costs for self-only coverage and other than self-only coverage.

2. The higher applicable dollar limit for “high risk professions” should apply to plans where at least 51% enrolled employees fall within a broadly interpreted category of “law enforcement officers.”

Code Section 4980I(b)(3)(C)(iv) provides a higher annual applicable cost amount for group health plans whose “majority” of covered employees are engaged in a high risk profession” which includes “law enforcement officers.”

In turn, Code Section 4980(f)(3) defines a “high risk profession” to include “law enforcement officer” as set out at section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (OCCSA). It states:

“law enforcement officer” means an individual involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency), including, but not limited to, police, corrections, probation, parole, and judicial officers;

The Trust’s members are mainly classified as “safety” with a smaller percentage as “non-safety”. A “safety” member is an employee whose occupation is enumerated at sections 830 through 832.17 of the California Penal Code (which includes but is not limited to City Police Officers, County Sheriffs, Detectives/Investigators, and Probation). Each classification qualifies as a “law enforcement officer” defined under section 1204 of OCCSA.

However, the Trust’s participants also include “non-safety” members whose employment does not fall within one of the enumerated job descriptions at Cal. Penal Code sections 830 through 832.17, but whose work involves assisting safety members in “crime and juvenile delinquency control or reduction, or enforcement of criminal laws.” These non-safety members hold such positions as Jailers, Dispatchers, Forensic Technicians, and Community Service Officers.

The Trust requests that “law enforcement officers” be interpreted broadly so that any employee whose duties are reasonably related to public safety (which includes but is not limited to the crime and juvenile delinquency control or reduction, or enforcement of the criminal laws (including juvenile delinquency)) effective January 1, 2015 will fall within the category of “high risk profession.”

Second, the Trust requests that the higher annual applicable cost apply to a group health plan where 51% or more of the employees enrolled in the plan are “law enforcement officers” (based on the interpretation above). Group health plans should be allowed to make this determination at any point during the plan year, provided the group health plan uses the same date for this determination each year.

3. The annual applicable cost should be increased in years after 2018 based on the CPI-U index, but only as it relates to medical care commodities and medical care services.

Notice 2015-16 briefly discusses the manner in which the IRS will increase the applicable dollar limits used for determining excise tax liability in years after 2018. Code Section 4980I(b)(3)(C)(v) indicates these amounts will be increased beginning with the 2019 calendar year at a rate equal to the Consumer Price Index for all urban consumers (CPI-U), plus 1%. For the 2020 calendar year, and thereafter, the increase will be equal to any increase noted in the baseline CPI-U index.

Using the baseline CPI-U for adjusting the limit on the excise tax is unduly limiting. Medical care commodities and medical care services are two data subsets of the baseline CPI-U index, which have historically outpaced the baseline CPI-U index by 300%. If the baseline index is used, the annual cost of coverage for nearly all plans will be unfairly skewed and exceed the applicable dollar limit, causing a significant majority of group health plans to become liable for the excise tax much sooner than if a more representative index was used.

We request that, instead of using the CPI-U index, only that portion of the CPI-U index related to medical care commodities and medical care services be the measuring stick to adjust annual applicable dollar amount in years after 2018. The calculation would be as follows:

$$\text{Medical Composite Rate} = \frac{\begin{array}{c} \text{[Medical care commodities CPI]} \\ + \\ \text{[Medical care services CPI]} \end{array}}{2} \times \text{[Prior Year Baseline]} = \text{[New Baseline]}$$

The 66,000 law enforcement officers that PORAC represents and for whom the Trust provides benefits appreciate the opportunity to comment on this most important matter. If we can be of any further assistance, please do not hesitate in contacting us.

Sincerely,



Shane Talbot,
Trustee, Insurance & Benefits Trust of PORAC
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