



September 30, 2015

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

RE: Notice 2015-52
Submitted electronically to notice.comments@irsounsel.treas.gov

Dear Commissioner Koskinen:

Thank you for the opportunity to provide comments in response to the Internal Revenue Services' (IRS) Notice 2015-52 on the Excise Tax on High Cost Employer-Sponsored Health Coverage. I am writing on behalf of the Minnesota State Employee Group Insurance Program (SEGIP).

SEGIP provides insurance benefits to over 120,000 state employees, retirees and dependents. This program includes a self-insured medical plan, a self-insured dental plan, and optional coverages including a health flexible spending account (FSA), health reimbursement account (HRA), life insurance, disability insurance and long-term care insurance. SEGIP also provides a variety of innovative wellness programs that seek to ensure and improve the ongoing health of its members. SEGIP is a governmental plan that is not subject to ERISA.

Our comments on Notice 2015-52 fall into two main categories: the need to minimize administration burden on employers and the proposed methodology for calculating the age/gender adjustment to the excise tax thresholds.

Minimizing administrative burden

We strongly urge the IRS to implement the excise tax in a way that minimizes administrative burden on employers wherever possible. Specifically, the IRS should define "person that administers the plan benefits" in a way that avoids the need for complex arrangements and unnecessary transactions between an employer and the potentially numerous entities with whom the employer contracts to carry out different functions of its benefit plans. Under the law, the employer is responsible for calculating the tax, which makes sense because only the employer has access to all of the information about applicable coverages and the associated costs. It serves no logical purpose, however, to require a self-insured employer to calculate the tax and then allocate it among the entities that carry out benefit functions on its behalf, only to then be billed by those same entities for reimbursement of the tax payment,

potentially incurring extra costs on top of the 40 percent tax if the entity to be reimbursed would incur income tax liabilities as a result of the reimbursement. Defining the term “person that administers the plan benefits” to include self-insured employers is a simple way to achieve the purpose of the tax while avoiding unnecessary administrative complexity and additional costs to employers. In other words, the IRS should interpret the statute in a way that achieves the purpose of the tax with the least possible administrative burden.

With regard to specific issues on which the IRS has solicited comment in Notice 2015-52, our recommendation to minimize employer burden includes the following:

- **Definition of “person that administers the plan benefits” (section III.B of the Notice):** As noted above, defining this term in a way that includes self-insured employers would minimize administrative complexity and costs. This leads us to recommend that the IRS take the second approach described in section III.B of Notice 2015-52, defining the term to include the “person that has the ultimate authority or responsibility under the plan....” The regulations should clearly state that in the case of a self-insured employer plan, that “person” is the employer. Since day-to-day functions of administering plan benefits may be split across many entities (e.g., one entity responsible for enrollment, and another responsible for claims processing) approaches that attempt to define “person that administers the plan benefits” based on functions performed are not workable for purposes of the excise tax, nor are they necessary to achieve the aims of the law.
- **Determination period for calculating the value of benefits (section V.B of the Notice):** Wherever feasible, the IRS should minimize the administrative complexity of determining the value of benefits by relying on straightforward methods that use information that is readily available to employers, predictable, determined in advance of a plan year, and that does not require after-the-fact adjustments. For example, COBRA premiums are determined in advance and are a good measure of the value of coverage; likewise, employee contributions to FSAs are also determined in advance of a plan year. On the other hand, calculating the cost of applicable coverage using a method that requires after-the fact calculations based on actual claims experience (or reimbursement requests, in the case of FSAs) and run-out periods (and back-end settlement payments with carriers or health care providers that take place many months or even more than a year later) would make the tax less predictable for employers and much more complicated to administer, without providing any clear advantages in terms of achieving the purpose of the tax.
- **Exclusion from cost of applicable coverage of amounts attributable to the excise tax, and income tax reimbursement formula (Sections V.C and V.D):** As noted earlier, we believe that the complexities related to accounting for pass-through of the tax are unnecessary in the case of self-insured employers. Defining “person that administers the plan” to include self-insured employers would reduce administrative burden for employers and avoid any problems, complexities, or extra costs related to tax pass-through, at least for self-insured plans.
- **Allocation of contributions to HSAs, Archer MSAs, FSAs, HRAs (Section V.E):** We agree with the suggested approach of allocating contributions to account-based plans on a pro rata basis over the plan year. This approach is consistent with our recommended strategy of minimizing administrative burden and complexity for employers. We also support the IRS’ suggested approach to include amounts contributed to these accounts in the year the contribution was made, which will eliminate

the need for any special regulatory provisions related to accounting for amounts carried over from year to year.

- **Notice of calculation of applicable share of excess benefit (Section VII.A):** Notice 2015-52 points out the potential complexities involved with making corrections in the event of calculation errors that could have cascading effects on numerous entities that an employer contracts with for various functions and components of its health-related benefits. This is another example where defining “person that administers the plan benefits” will have important impacts on administrative burden. If defined to include self-insured employers as suggested above, the complexities associated with correcting calculation errors will be eliminated (falling on the employer alone rather than the potentially numerous entities that perform functions related to its benefit plans), without damaging the IRS’ ability to implement the law in the spirit in which it was intended.

Age and gender adjustment:

Our comments related to the proposed methodology for the age and gender adjustment to the excise tax thresholds concern both the data sources and the methodology for calculating the adjustment:

- **Data source for national age and gender distribution (Section VI.A):** We recommend that the IRS consult with experts at the Census Bureau or other experts in the use of the Current Population Survey (CPS) data – such as the experts at the University of Minnesota’s State Health Access Data Assistance Center (SHADAC) -- to develop age/gender distribution tables that are more customized to the issues surrounding appropriate adjustment of the excise tax thresholds than CPS Table A-8a.
 - First, we note that the description of Table A-8a in Notice 2015-52 does not appear to be accurate – the version of the table that we were able to find on the Census Bureau’s website¹ does not provide distributions by 5-year age bands, nor does it provide detailed distributions up to age 75 and over.
 - In addition, the data in the table represent employed persons, not employed persons with employer-sponsored health insurance coverage which would be a more appropriate comparison.
 - The CPS’s Annual Social and Economic Supplement (ASEC) includes questions that allow for differentiation of the age and gender distribution of workers with self-only coverage and other than self-only coverage; since the IRS intends to develop separate adjustments by type of coverage, it would be appropriate to take these differences in age/gender distributions by type of coverage into consideration. (We note, however, that health care cost differences due to age and gender are most relevant in light of an employer’s entire covered population, not just the characteristics of employees. Information on the age/gender distribution of the entire population covered by employer health insurance is also available from the CPS ASEC.)
 - Analysis to develop the appropriate 5-year age bands, and to do so separately for employees with self-only and other than self-only coverage, would be relatively straightforward; we believe it is important enough that the IRS should work with outside experts on the use of CPS data to make sure that the analysis it uses to make the age/gender adjustments is the best available, rather than relying on publicly available summary tables that were not developed for this purpose.

¹ <http://www.bls.gov/web/empsit/cpseea08a.htm> , accessed September 23, 2015.

- **Data source for employer-specific age and gender distribution (Section VI.A):**
 - We believe it is appropriate to allow employers to use the age/gender distribution of their employee population (or their entire covered population – see comment above) as of the first day of the plan year; this would be consistent with the principle of minimizing administrative burden on employers.
 - It is possible that this “snapshot” based on the first day of the plan year would not be accurate for employers with significant seasonal variation in their workforces. Therefore, we recommend providing an additional option for employers to calculate the age/gender distribution using all member months in the prior plan year (it is known and can be planned for in advance, rather than after the fact).
 - Calculating the age/gender distribution on a total member months basis would automatically weight the results so that they are representative of the average age/gender distribution in the plan over the course of the year. Providing this option to employers would have the advantage of being more accurate (albeit more complex) than the point-in-time snapshot, as well as being impossible to “game” through the selection of time period or other specific date for the point-in-time snapshot.
- **Methodology for calculation of age/gender adjustment (Section VII.B):**
 - In step 3, we agree that it is reasonable to calculate the group ratios less frequently than annually, since they are unlikely to change much over short periods of time. In addition, if it is known that the same ratios will remain in effect for multiple years, employers will be able to better predict and plan for the impact of the tax.
 - Consistent with the comments on Section VI.A above, we suggest that in step 5 the “fraction of employees in the national workforce” in each age/gender cell be developed using data specific to the population that has self-only coverage vs other than self-only coverage, since age/gender distributions most likely vary across singles vs families, and the data to do so are already collected by the Census Bureau.
 - In step 7 of the proposed adjustment method, we suggest that the adjustment be calculated using a ratio of the employer’s premium cost to the national premium cost, rather than the arithmetic difference. For example, if the employer’s premium cost for self-only coverage (calculated in step 6) is \$11,000 and the national premium cost (calculated in step 5) is \$8,000, the method we suggest would lead to an adjustment of 37.5% (or \$3,825 based on the 2018 threshold of \$10,200); the method described in the Notice would lead to an adjustment of \$3,000. We believe that a proportional adjustment is more appropriate.

Thank you for your consideration of these comments. If you have any questions, you may contact me at 651 259-3732 or via email at julie.sonier@state.mn.us.

Sincerely,



Julie J. Sonier
Director, Employee Insurance Division