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May 4, 2015

Submitted via email to comments@irsconsult.treas.gov

Karen Levin
Office of Associate Chief Counsel
Tax Exempt and Government Entities
Internal Revenue Service
Washington, DC 20044

RE: IRS Notice 2015-16 (Request for Comments on Excise Tax on High Cost Employer Health Plans)

Dear Ms. Levin,

On behalf of the National Association of Professional insurance Agents (PIA)¹, I hereby submit the following comments regarding Notice 2015-16. While PIA agrees that controlling healthcare costs is important, PIA is concerned that the forthcoming excise tax will have a disparate impact on certain classes. The tax is intended to target only high cost employer-sponsored health plans, not moderate benefit plans. However, a Mercer survey recently estimated that it would impact 31% of employers in 2018 and 51% of employers by 2022, indicating the excise tax will have a much broader effect than Congress intended.² To this effect, PIA offers specific comments on Notice 2015-16 as suggestions to help stem unintended consequences of the law.

Determination of Similarly Situated Employees

1. Family Size

Notice 2015-16 indicated that the IRS is currently considering an approach by which those employees receiving other-than-self-only coverage would be considered similarly situated, independent of how many others are included in the coverage. A company may offer one plan for family coverage, but the cost of coverage can vary significantly based on workforce composition and whether the plan includes the employee plus one, the employee plus two, or family coverage. PIA believes that all employees on other-than-self-only coverage are not necessarily similarly situated. Consequently, PIA respectfully requests that the IRS provide further guidance as to whether an employer could have the option for permissive disaggregation based on family size and, if so, how the corresponding applicable coverage costs might be calculated.

¹ PIA is a national trade association founded in 1931, which represents member insurance agents in all 50 states, Puerto Rico, Guam, and the District of Columbia. PIA members are small business owners and insurance professionals who can be found across America.

² Mercer, "Employers At Risk for Hitting the Excise Tax Threshold" (Dec. 3, 2014) <http://ushealthnews.mercer.com/article/282/preparing-for-the-2018-excise-tax> (accessed April 14, 2015).



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2. Geographic Regions

A recent study by Milliman found that even when correcting for certain premium cost factors, such as age and gender, the excise tax will still impose a tax on moderate-benefit plans based on geographic location.³ The cost of health insurance coverage for similarly situated individuals varies significantly from state-to-state. So much so that if the cost of applicable coverage and dollar thresholds are applied in a “one-size-fits-all” manner across the country, in certain geographic areas moderate benefit plans will be subject to a tax, while in other areas no tax would apply even on overly generous plans. For example, the Milliman study found that in certain sample areas, such as San Francisco, California; Anchorage, Alaska; Atlantic City, New Jersey; and Charleston, South Carolina, among others, average gold level plans would be subject to an excise tax.⁴ PIA respectfully requests that the IRS consider and issue guidance on how geographic differences may be accounted for when calculating applicable coverage costs for similarly situated individuals.

Adjustments for Age and Gender

Section 49801(b)(3)(C)(iii) of the Internal Revenue Code (IRC) allows for the applicable threshold dollar amount to be modified by an age and gender adjustment. PIA maintains any rule for calculating dollar limit thresholds must take age and gender of the workforce into consideration to minimize disparate impacts. Research indicates that in the absence of adjustments for factors such as age and gender, there will be a disparate impact.⁵ PIA respectfully requests that the IRS provide further guidance on potential methods for calculating age and gender adjustments.

PIA appreciates the substantial effort that has gone into considering the most appropriate way to implement Section 4980I of the IRC, and we are grateful for the opportunity to provide the independent agent perspective on this important issue. Please contact me at jennwe@pianet.org or (703) 518-1344 with any questions or concerns. Thank you for your time and consideration.

Kind Regards,

Jennifer M. Webb, Esq.
Counsel & Director of Regulatory Affairs
National Association of Professional Insurance Agents

³ Milliman, “What does the ACA excise tax on high-cost plans actually tax?” (Dec. 9, 2014) http://www.nea.org/assets/docs/Milliman--What_Does_the_Excise_Tax_Actually_Tax.pdf (accessed April 14, 2015).

⁴ Id.

⁵ Id.