May 15, 2015

Submitted electronically via notice.comments@irscounsel.treas.gov

CC:PA:LPD:PR (Notice 2015-16)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Request for Comments re: **Notice 2015-16, Section 4980I – Excise Tax on High Cost Employer-Sponsored Health Coverage**

Dear Secretary Lew and Commissioner Koskinen:

On behalf of the National Association of Counties (NACo) and the 3,069 counties we serve, we respectfully submit comments on the Internal Revenue Service's (IRS) Notice 2015-16 on the potential approaches for Internal Revenue Code (IRC) Section 4980I – Excise Tax on High Cost Employer-Sponsored Health Coverage.

Founded in 1935, NACo is the only national organization that represents county governments in the United States and assists them in pursuing excellence in public service to produce healthy, vibrant, safe and resilient counties. A vital component for counties in this pursuit is a high quality workforce. One of the primary ways counties attract and maintain a quality workforce is by offering competitive healthcare benefits.

Therefore, we write to express our concerns with respect to section 4980I in general. **As a matter of policy, NACo opposes the taxation of employer-sponsored health coverage due to the significant impact it will have on county budgets.** We support a full legislative repeal of the excise tax and by commenting on this notice, NACo is not endorsing the implementation of the tax in any way. Should the U.S. Treasury Department and IRS move forward with developing the regulations, we urge that the most flexible approach be taken so that counties are not penalized for simply offering vital health benefits to public servants.

Counties Still Facing Budgetary Challenges

Many counties still face budgetary challenges that linger from the Great Recession. Only a small percentage of counties are back to pre-recession levels with respect to key economic indicators such as unemployment rates and median home prices.[1] Counties have limited options to raise revenue; many state legislatures have imposed limits on the authority of counties to raise property taxes and only in a few states do counties have the ability to impose other taxes like sales and income. These challenges would only be further compounded if counties are required to shoulder the additional financial burden of the excise tax on healthcare coverage provided to employees.

Counties provide health benefits to an estimated 2.5 million employees and nearly 2.4 million of their dependents.[2] For health insurance premiums alone, counties spend an estimated $20 billion to $24 billion annually.[3] Even though the federal regulations for the excise tax have not yet been released, many counties are currently assessing and analyzing how the excise tax may impact their county budget and health plans.

For example, Sonoma County, Calif., Pinellas County, Fla., and Ontario County, N.Y. have completed initial assessments and found their liability in the first year (2018) may be $3.4 million, $410,000 and $812,000, respectively.[4] Some counties such as Cochise County, Ariz., Genesee County, N.Y., and Greene County, N.Y. have found their liability will differ over time for various employee categories. Pinellas County, Fla. has approximately 7,477 enrollees in its health plan.[5] Their projected tax liability in 2018 is $410,000, but it is expected to increase to over $3 million by 2028.[6] This is only a snapshot of the impact on counties, and even though all have not conducted an assessment, the magnitude of the liability may be strongly affected by health insurance costs trend rates.

Excise Tax Impact on Counties Remains Uncertain

The early assessments by counties of the projected impact of the excise tax demonstrate that uncertainty remains around just how much of an impact it will have on county budgets and health plans. A county's tax liability and the magnitude of the liability may be strongly affected by health insurance costs trend

[1] Istrate, Emilia, Nicholas Lyell. County Economic Tracker 2014: Progress through Adversity. Washington, D.C.: National Association of Counties. Available at: http://www.naco.org/research/Pages/county-tracker-2014.aspx

[2] Istrate, Emilia, Kirk Heffelmire and Molly Longstreth. County Health Benefits Study 2014. Washington, D.C.: National Association of Counties. Available at: http://www.naco.org/research/Pages/county-health-benefits.aspx

[3] *Ibid.*

[4] St. Jean, Emmanuelle. Excise Tax on High-Cost Employer-Sponsored Health Coverage: What Counties Need to Know. Washington, D.C.: National Association of Counties. Available at: http://www.naco.org/newsroom/pubs/Documents/Health,%20Human%20Services%20and%20Justice/Excise%20Tax%20Publication%20FINAL.PDF

[5] *Ibid.*

[6] *Ibid.*

rates. These rates are influenced by factors such as price inflation, changes in cost due to government regulations on benefits and plans, utilization of medical services and new technology and treatments.[7]

Counties may observe that the total change in their health plan costs may be similar to the health care costs trend rates, but they are not the same. The change in health plan costs are determined by the group demographics, employee contributions, government taxes and fees, administration fees and changes to the benefits plan.[8] It is possible that in some years the net annual change in plan costs will differ from the health care cost trend rates. Some analyses even show that costs vary greatly by geography. A health plan in higher cost states like New York or Alaska will be more expensive than the same plan offered in a lower cost state.[9]

This is certainly contrary to the original intent of the excise tax since it was intended to target plans with overgenerous health benefits. But as noted, factors not related to benefits could very well determine whether a particular plan offered by counties to employees would exceed the thresholds set in section 4980I. This would result in counties being subject to the excise tax simply because they want to offer healthcare benefits as a part of a competitive compensation package for the public servants they hire. Since counties generally cannot compete with private sector wages and salaries, they must utilize other methods to attract and retain a quality workforce.

Accordingly, if the excise tax is implemented, we strongly encourage the U.S. Treasury Department and IRS to minimize to the greatest extent possible the varying and damaging impact of the tax by taking into account all factors beyond benefit levels that contribute to the cost of the coverage provided to county employees.

Counties Evaluating Measures to Address Excise Tax Impact

Counties across the country are not only looking into how the excise tax will potentially impact their budgets, absent any further implementation guidance; they are also evaluating measures they could take to minimize that impact. Being proactive in preparing for the excise tax for some counties is simply a matter of sound budgeting, but for others it's also a necessity. Some counties are currently in the process of working with their labor unions to make gradual plan design changes to control costs and address the county's excise tax liability.

There remains a real possibility of reducing the quality of health insurance in order to mitigate the impact of the excise tax. As a result, counties face losing one of the true competitive features used to attract

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[7] *Ibid.*

[8] *Ibid.*

[9] National Conference of State Legislators Private Sector Premium Tables by state. Available at: http://www.ncsl.org/research/health/health-insurance-premiums.aspx#Private%20Sector%20Premium%20Tables%20By%20State Protection

and maintain a quality workforce. Unfortunately, reductions are essentially what counties and their employees and family members are facing today.

We appreciate the opportunity to share our comments and concerns in response to Notice 2015-16. We will continue to seek a legislative repeal of the excise tax. But as you look to move forward on implementing the tax, we strongly urge you to use all available authority to minimize the unintended and highly detrimental consequences on county government and the constituents we represent.

We look forward to working together to address these concerns. If you have any questions, please free to contact Michael Belarmino, NACo Associate Legislative Director, at mbelarmino@naco.org or at 202.942.4254 or Brian Bowden, NACo Associate Legislative Director, at bbowden@naco.org or at 202.942.4275.

Sincerely,

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National Association of Counties