



May 13, 2015

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

**Re: IRS Notice 2015-16 – Excise Tax on High Cost Employer-Sponsored Health Coverage**

The California State Association of Counties (CSAC) appreciates the opportunity to share our comments and concerns regarding Notice 2015-16, Section 49801 – Excise Tax on High Cost Employer-Sponsored Health Coverage.

CSAC represents all 58 counties in California before the State Legislature, administrative agencies and the federal government. The following comments are based upon the technical input provided by our member counties. They are summary in nature as our understanding is that this Notice is the first step in a formal process that will ultimately lead to regulations; however, California's counties are concerned that the issued notice regarding the excise tax illustrates an impending significant financial and administrative burden on local governments.

**Excise tax indexing formula.** The dollar level triggering the excise tax increases only in relation to the Consumer Price Index (CPI), which grows at a significantly slower rate compared to medical costs and health care cost inflation. Since 1999, the cost of healthcare has experienced a nine percent inflation rate **annually**. As actual medical trend far exceeds the excise tax indexing formula, many counties will exceed the excise tax thresholds almost immediately and continue to be subject to the tax going forward based on current health care cost trends. Payment of the excise tax by our counties and their residents would understandably reduce funding for essential local services such as health and public safety.

We would additionally note that the excise tax is currently defined as a single threshold for all employers – there is limited consideration of geography or demographics within those excise tax thresholds as well as a lack of attention to the fact that such factors are highly impactful to medical costs. As a result, a substantial burden will be placed on those California counties where the cost of medical care exceeds that of other regions.

**Types of Coverage Included.** The inclusion of several types of coverage in the calculation of the excise tax seems to unfairly penalize certain groups of public employees. Including contributions to Retiree Health Reimbursement Accounts (HRA) in the formula will burden employees that have agreed to trade their traditional retiree medical plan for these plans; such contributions are made on behalf of active employees to pay for medical coverage post-retirement. It appears the excise tax applies to such plans, although the contributions will not be used until the employees retire. Thus, the

cost of the HRA plans as well as the cost of the employees' current health coverage are included in the excise tax calculation and will result in a dual cost that will likely require counties to terminate such programs that are intended to prefund retiree benefit costs. Additionally, including pre-tax medical flexible spending account (FSA) contributions in the excise tax calculation could also lead to counties reconsidering their offering of these programs, disproportionately increasing employee costs and impacting multiple bargaining agreements between counties and county employees. Our counties have taken significant steps to modernize health care plans and costs for our employees and including such contributions in the calculation of the excise tax seems to be inconsistent with the original intent of the Affordable Care Act itself.

**Calculation of the Excise Tax.** Many aspects of the calculation of the excise tax remain unclear and we would urge the adoption of regulations that clearly identify who will be responsible for calculating and paying the excise tax for the following programs:

- **Insured health plans**
  - (a) Will this be calculated by the carrier and be included in the premium?
  - (b) Will the carrier be responsible for paying the tax?
  - (c) Will the carrier separate the regular premium from the excise tax so that employees can still pay the regular premium before tax?
- **Self-insured health plans**
- **HRAs and FSAs**
  - (a) How will they be counted?
- **Self-insured dental**
- **Single-Employer Trust**
  - (a) Who is responsible for reporting?

Counties remain unclear as to how the excise tax will be calculated if an employee is enrolled in numerous programs or who would be responsible for calculating the total amount that is subject to that tax when multiple programs are involved.

While these are just a sample of the myriad issues regarding the administration and calculation of the excise tax and its effect on our 58 counties, CSAC looks forward to working further with the Internal Revenue Service and other stakeholders on future comments and suggestions as the process moves forward. Thank you for your consideration of these comments. Please contact Faith Conley (CSAC) at [fconley@counties.org](mailto:fconley@counties.org) or (916) 650-8117 with any questions.

Sincerely,



Faith Conley  
Legislative Representative