



INTERNATIONAL ASSOCIATION OF FIRE CHIEFS

Providing leadership for the fire and emergency services since 1873

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April 3, 2015

The Honorable John Koskinen, Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Comments to Notice 2015-16

Dear Commissioner Koskinen:

On behalf of the more than 11,000 chief fire and emergency medical services (EMS) officers of the International Association of Fire Chiefs (IAFC), thank you for the opportunity to comment on the development of the excise tax on high-cost, employer-sponsored health coverage. The IAFC is concerned that under the current structure of Section 49801(b)(3)(iv), which provides a higher coverage limit for employees engaged in “high-risk professions,” thousands of firefighters, EMS personnel, and other emergency first responders would be prevented from qualifying for a higher threshold for coverage value. The IAFC believes that the Internal Revenue Service (IRS) should permit all employees engaged in a high-risk profession to qualify for the higher coverage threshold, regardless of whether the majority of the employer’s employees participate in a high-risk profession.

Currently, the excise tax only affords a higher threshold for insurance value for high-risk professions if the majority of an employer’s employees participate in a high-risk profession. According to National Fire Protection Association, more than 1.1 million firefighters provide fire protection, emergency medical services, and other emergency services to their communities. These firefighters are employed on a full-time, part-time, and volunteer basis by more than 30,052 fire departments. The majority of these firefighters are employed by a government entity such as a township, city, county, state, or federal government. As a result, fire and emergency service personnel rarely represent a majority of a local or state government’s employees and thus would be unable to qualify for the excise tax’s higher threshold of coverage value for high-risk professions.

As you are likely well aware, firefighting is an inherently dangerous duty in which firefighters are exposed to a large variety of carcinogens, communicable diseases, hazardous chemicals, inclement weather conditions, and extremely high temperatures among other hazards. Due to these dangers, firefighters have an increased risk of occurrence for a variety of ailments including various types of cancer and cardiac conditions. These health concerns are prevalent in both active and retired firefighters, which is why many government entities offer a robust health insurance plan to active firefighters and retirees. While the value of these plans may exceed the threshold for applicability of the excise tax, it is important that all firefighters, both active and retired, qualify for the higher threshold for high-risk profession.

As the IRS continues to develop the excise tax’s final implementing regulations, the IAFC firmly believes that each employee participating in, or retired from, a high-risk profession should be permitted to qualify for a higher coverage value threshold, regardless of whether a majority of a government’s employees

participate in a high-risk profession. The IAFC is concerned that if the excise tax is implemented as it currently stands, it will fundamentally fail to provide a higher coverage value threshold for the high-risk professions it is intended to protect. The increased costs associated with the excise tax could force many local and state governments to curtail the benefits fire and emergency service personnel need due to their consistent exposure to human-made, environmental, and chemical hazards.

The IAFC offers the following recommendations for government entities determining whether an employee participates in a high-risk profession associated with the fire and emergency service:

- **Fire Protection:** If an employee is qualified to enter a response area which is considered “Imminently Dangerous to Life and Health (IDLH),” then he or she should be seen as participating in the fire protection profession. Additionally, fire departments should also be sure to include any employees who are authorized to enter an IDLH atmosphere, regardless of whether their current duties require entrance into an IDLH. As an example, it is not uncommon for a firefighter working in a public education role to be permitted to backfill for a firefighter responding to emergency calls in order to maintain minimum staffing levels. In this case, the firefighter could still enter an IDLH atmosphere, even though his or her day-to-day job does not regularly place him or her in an IDLH atmosphere.
- **Out-of-Hospital Emergency Medical Care:** If an employee is legally authorized to provide patient care or supervise a patient care provider, he or she should be considered as participating in the prehospital emergency medical care, high-risk profession.

While the IAFC largely agrees with the high-risk profession definitions established in Section 49801(b)(3)(iv), the IAFC is concerned that several fire and emergency service roles are ineligible to qualify for the higher coverage level threshold:

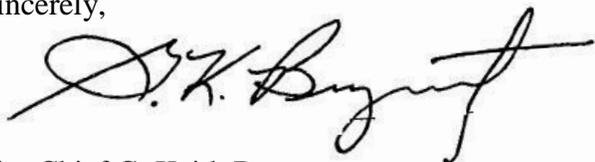
- **Industrial Fire Brigades:** Companies manufacturing volatile products such as chemicals and fuels often maintain private fire protection services, in addition to the local fire departments, which are known as industrial fire brigades. These industrial firefighters are often specifically trained on emergency response procedures for the specific hazards present at their place of employment. However, since these industrial firefighters are privately employed, they do not qualify as “fire protection” employees as defined in Section 3(y) of the Fair Labor Standards Act of 1938. Industrial firefighters should qualify for the high-risk profession threshold under the excise tax.
- **Single Role Hazardous Materials and Technical Rescue Responders:** The definition of “fire protection,” as established by Section 3(y) of the Fair Labor Standards Act of 1938 does not include hazardous materials responders and technical rescue responders who are not trained in fire suppression or legally responsible for fire protection. While these two disciplines are often combined with fire suppression responsibilities, there are some localities which do not combine the two roles with fire suppression. In these instances, the IRS should also permit single-role hazardous materials and technical rescue responders to qualify for the increased high-risk profession threshold for the excise tax.

Lastly, you have also requested recommendations on how to determine whether a retired employee has participated in a high-risk profession for 20 years. The IAFC recommends that when determining a firefighter’s length of service for the purpose of determining eligibility for classification as a high-risk

employee, the IRS consider a firefighter's total length of service in the fire service, rather than solely his or her length of service with the present employer. If a firefighter has served ten years with one fire department and then retires after serving ten years with a second fire department, the IRS should still classify that firefighter as having served the required 20 years in order to qualify for inclusion in the high-risk profession increased threshold. Furthermore, the IAFC recommends that the IRS expand this determination of eligibility to include firefighters who were granted medical retirement, regardless of their length of service. If a firefighter with ten years of service is granted medical retirement due to an injury or illness sustained in the line-of-duty, then he or she should be permitted to continue qualifying for the high-risk profession increased threshold; just as any other retiree would be similarly qualified.

Thank you again for your attention to this important issue and for your support of America's fire and emergency service. The IAFC looks forward to working with your office to ensure that the development and implementation of the excise tax is achieved in such a way as to protect the necessary medical benefits afforded to our nation's emergency responders. If you require any further information or clarification, please contact Evan Davis, IAFC government relations manager, at 703-537-4809.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Keith Bryant". The signature is fluid and cursive, with a prominent initial "G" and a long, sweeping tail.

Fire Chief G. Keith Bryant
President and Chairman of the Board

/ed