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OFFICE OF THE CHIEF COUNSEL

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The Honorable Justin Amash  
Member, U.S. House of Representatives  
110 Michigan Street NW, Suite 460  
Grand Rapids, MI 49503

Attention:

Dear Representative Amash:

I am responding to your inquiry dated January 13, 2016, on behalf of your constituent about the application of Notice 2015-17 to health coverage S corporations provide. Your constituent wrote about how Notice 2015-17 relates to S Corporation healthcare arrangements for 2-percent shareholder employees and S Corporations with only one participant in a health insurance plan.

Notice 2015-17, 2015-14 IRB 845, provides transition relief to small employers from the excise tax under section 4980D of the Internal Revenue Code for violations of the Affordable Care Act market reforms resulting from the employer paying premiums for the individual health insurance policies of employees. That transition relief ended on June 30, 2015. The notice also provided specific guidance for S corporations that did not end on June 30, 2015.

Question and Answer 2 of the notice provides guidance on the application of the rules to S corporation healthcare arrangements for 2-percent shareholder-employees. The rules for health coverage provided by an S corporation depend on whether the coverage is being provided to an employee or to a 2-percent shareholder-employee. (For this purpose, a 2-percent S corporation shareholder is an S corporation shareholder who owns more than 2-percent of the corporation.) For 2-percent S corporation shareholder-employees, the notice says that no excise tax under section 4980D will be asserted for any failure to satisfy the market reforms by a 2-percent shareholder health care arrangement until other guidance is issued. The notice defines

a 2-percent shareholder health care arrangement as the payment by the S corporation of premiums for individual health insurance coverage covering the 2-percent shareholder that is included in the income of the shareholder and deducted under section 162(l) if all other eligibility criteria for deductibility are satisfied.

To date, the IRS has not issued any other guidance, so, as stated in Question and Answer 5, taxpayers may continue to rely on Notice 2008-1, 2008-2 IRB 1, for the tax treatment of the health coverage provided to a 2-percent shareholder-employee.

For an employee who is not a 2-percent shareholder, this special rule does not apply. However, Question and Answer 5 of Notice 2015-17, 2015-14 IRB 845, does include a discussion of the application of the market reforms in the case of a health plan with fewer than two participants who are current employees. As stated in the guidance:

Code § 9831(a)(2) provides that the market reforms do not apply to a group health plan that has fewer than two participants who are current employees on the first day of the plan year. Accordingly, an arrangement covering only a single employee (whether or not that employee is a 2-percent shareholder-employee) generally is not subject to the market reforms whether or not such a reimbursement arrangement otherwise constitutes a group health plan. If an S corporation maintains more than one such arrangement for different employees (whether or not 2-percent shareholder-employees), however, all such arrangements are treated as a single arrangement covering more than one employee so that the exception in Code § 9831(a)(2) does not apply. For this purpose, if both a non-2-percent shareholder employee of the S corporation and a 2-percent shareholder employee of the S corporation are receiving reimbursements for individual premiums, the arrangement would be considered a group health plan for more than one current employee. However, if an employee is covered under a reimbursement arrangement with other-than-self-only coverage (such as family coverage) and another employee is covered by that same coverage as a spouse or dependent of the first employee, the arrangement would be considered to cover only the one employee.

The rules relating to group health plans with fewer than two participants who are current employees is a permanent rule. I have enclosed a copy of Notice 2015-17 for your information.

I hope this information is helpful. If you have any questions, please call me at  
or at .

Sincerely,

Christine Ellison, Acting Chief,  
Health and Welfare Branch,  
Office of Associate Chief Counsel  
(Tax Exempt and Government Entities)

Enclosure