



June 17, 2011

CC:PA:LPD:PR (Notice 2011-36)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: IRS Notice 2011-36

To Whom It May Concern:

On behalf of the National Small Business Association (NSBA), the nation's oldest small business advocacy group reaching more than 150,000 small businesses nationwide, thank you for the opportunity to submit the following in response to the Internal Revenue Service (IRS) request for comments on shared responsibility for employers regarding health coverage – Section 4980H of the Patient Protection and Affordable Care Act (PPACA) of 2010 [P.L. 111-148], as amended by the Health Care and Education Reconciliation Act of 2010 [P.L. 111-152].

Section 4980H of PPACA, also known as the “free-rider” provision, has been highly anticipated by the employer community. It is potentially one of the most difficult provisions of the law for many smaller businesses, requiring employers to continuously monitor and calculate whether or not they are applicable large employers or not. To be clear, while many employers know that they will safely be considered large employers year after year or not, many smaller employers that are regularly expanding and contracting will feel the administrative brunt of this provision.

For this reason, NSBA's comments will not focus on the machinations of the potential approaches identified by the IRS and under consideration for purposes of determining which employers are subject to the employer responsibility provisions and how penalties should be applied. Rather, our comments center on the unique burden the statute puts on small businesses in determining their status under the law. We respectfully request that pending regulations reflect this concern by providing targeted guidance to assist small businesses in complying with the law, as well as providing allowances for small businesses that seek to comply with the pending regulations.

Simple and Flexible Rules for Small Businesses:

While the employer free-rider provision focuses on identifying applicable large employers, NSBA believes pending rules defining large employers should be sensitive to the requirements the rule will place on small businesses that are near the 50-employee threshold.

For example, employers that fluctuate between approximately 40-60 employees will be faced with unprecedented challenges that require continuous monitoring of their employment levels and the types of employees to ensure they are in compliance with Section 4980H. Every minute taken to perform these frequent tasks is time and resources taken away from running the business.

NSBA suggest that pending rules on Section 4980H be in plain English and easily applied by a small-business owner that might not have the time or expertise to decipher these new and very complex requirements. Furthermore, NSBA encourages the agency to contemplate the types of available resources that could be established to support small businesses in order to ensure they remain in compliance with the pending rules.

Good Faith Compliance and Allowance

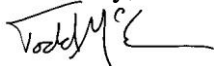
NSBA is concerned that the enforcement component of Section 4980H could be devastating for small businesses that operate in good faith but may have reported their employee's status incorrectly, subsequently making them liable for penalties that could theoretically date several years.

For example, if an employer made a good faith effort in calculating their employees and mistakenly reported their business as not being an applicable large employer, then their business could be required to pay back penalties. NSBA supports limiting the number of forgone years an employer operating in good faith is liable to pay in back penalties. Conceivably, an employer could conduct themselves as non-applicable large business but be responsible for several years of penalties compounded by interest, which could provide a devastating blow to an employer's finances and ability to maintain a viable business.

NSBA encourages the agency to explore safe harbors that can be established to protect small businesses operating in good faith and limit the penalties applied to them both on a per penalty basis and with respect to the period of time the IRS could look back on an employer's reporting history.

Thank you for the opportunity to provide comments on the NLRB proposed rules governing notification of employee rights under the NLRA. Please feel free to contact me with further questions.

Sincerely,



Todd O. McCracken
President