

Melissa S. Ketterer



March 16, 2015

Honorable Orrin Hatch  
Chairman, U.S. Senate Committee on Finance  
219 Dirksen Senate Office Building  
Washington, DC 20510

Re: Individual Income Tax Reform (Employee Benefits)

Dear Mr. Chairman,

I am writing to you regarding potential tax reform, with respect to voluntary employee pre-tax deductions to individual Health Savings Accounts as a part of the Affordable Care Act excise tax under §4980I of the Internal Revenue Code, and recent guidance issued by the Internal Revenue Service in Notice 2015-16.

As an individual, I am able to choose to participate in a High Deductible Health Plan and take advantage of a tax-preferred savings account, or Health Savings Account. Current tax regulations allow me to make an after tax contribution to my Health Savings Account, and gain preferential tax treatment via tax deduction on my annual tax return (Form 1040). I also have an option to request my employer deduct a pre-tax amount to deposit into my Health Savings Account, reducing my taxable income, and reporting this as part of my annual tax return.

Per IRS Notice 2015-16, Section 4980I(d)(2)(C) of the Internal Revenue Code will *include* my voluntary elective pre-tax contribution election to my Health Savings Account, and add this amount – of my entirely voluntary elective pre-tax contribution – as part of the excise tax calculation to determine the cost of “applicable coverage”.

This creates two issues for me as an individual taxpayer. First, by treating my voluntary elective pre-tax contribution as an employer contribution and includable in the excise tax calculation, you will be encouraging my employer to *not offer* this as an option in an effort to remain under the excise tax limits. As High Deductible Health Plans become more and more common, losing this flexibility has a effect to me and my family in both flexibility and in restricting what types of employer sponsored coverage may be offered in the future.

The second issue is that by including my voluntary elective pre-tax contribution in the excise tax calculation, you will be taxing Health Savings Accounts in two different ways, which is simply not fair, especially to the average taxpayer and my employer. My voluntary election of a benefit should not affect the cost of health care to determine an excise tax, and furthermore, my knowledge of the tax code should not be a factor in determining the tax treatment of Health Savings Account contributions. For example, if I know a voluntary elective pre-tax contribution to a Health Savings Account affects the cost of health care for my employer, I could choose to continue pre-tax contributions and subject my employer to that tax or I could choose to fund my Health Savings Account entirely by individual after tax contributions to help my employer avoid the excise tax. With a family maximum contribution to Health Savings Accounts of \$6,650, you are artificially increasing the cost of health insurance, and a Health Savings Account is not insurance, it is essentially cash.

I encourage you to review the tax treatment of Health Savings Accounts and as part of tax reform for employee benefits, to eliminate the inclusion of my voluntary elective pre-tax contribution as part of the ACA excise tax calculation.

Respectively yours,

A handwritten signature in black ink, appearing to read "Melissa S.", with a long horizontal flourish extending to the right.

Melissa S. Ketterer