



May 31, 2013

CC:PA:LPD:PR (REG-118315-12)
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Attention: Treasury REG-118315-12.

Submitted electronically via www.regulations.gov

Dear Sir or Madam:

The National Retail Federation (NRF) appreciates the opportunity to submit comments on the potential taxation of health insurance providers' fee or tax under the Affordable Care Act (ACA). This question was addressed under the Notice of Proposed Rulemaking (NPRM) published by the IRS on March 4, 2013.

It is generally understood (including specifically by the Congressional Budget Office) that all or most of the health insurance provider fee will be passed on to the premium payer, whether employer or individual. The NPRM solicits comments on whether the amount of the health insurance provider fee recaptured by the health insurance provider in the form of higher health insurance premiums should be recognized as income for the health insurance provider and hence be taxable. We believe it should not be recognized as income to the extent neutrally passed on.

In essence, application, payment and recovery of the health insurance provider fee should be considered a single integrated transaction. We note that the health insurance provider fee is not deductible by the health insurance provider. Instead, the health insurance provider serves as a neutral pass-through, with neither gain nor loss. To do otherwise would essentially tax the health insurance provider tax.

Even if there is a punitive intent (as directed against health insurance providers) in application of the fee, recognizing receipt of the fee as income would not accomplish

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National Retail Federation
May 31, 2013
Page 2

this objective. Rather, it will only further increase health insurance premiums and consequently disadvantage purchasers of health insurance coverage, whether employer or individual. The future affordability of health insurance premiums is a crucial concern for NRF and ultimately for us all.

We urge the IRS and Treasury Department to reject the possible interpretation of the ACA to recognize receipt of the health insurance provider fee as taxable income. This position would be fully consistent with well-established tax policy.

Thank you for allowing NRF to comment on this proposed rulemaking. We look forward to continuing to provide input as the regulatory process continues. Retail and chain restaurants share the Administration's interest in ensuring that the ACA is implemented in the least burdensome manner possible.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Neil Trautwein". The signature is fluid and cursive, with a prominent flourish at the end.

E. Neil Trautwein
Vice President, Employee Benefits Policy Counsel
National Retail Federation