

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Submitted electronically to:
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CC:PA:LPD:PR (Notice 2010-44)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re Notice 2010-44

Dear Friends,

I am writing on behalf of the National Coordinating Committee for Multiemployer Plans (the NCCMP), to comment on Notice 2010-44, which provides guidance on the small-employer tax credit in section 45R of the Internal Revenue Code (the Code), as added by the Affordable Care Act. Specifically, I am writing to request confirmation that this tax credit is available during the transition period prior to 2014 to otherwise-eligible small employers that provide health insurance coverage through a multiemployer plan.

As you know, the NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately twenty-six million workers, retirees, and their families who rely on multiemployer plans for their health and other benefits, including over ten million of those whose retirement benefits are provided by multiemployer defined benefit pension plans. The NCCMP's purpose is to assure an environment in which multiemployer plans can most effectively continue their vital role in providing benefits to working men and women who work in industries characterized by highly mobile workforces. The NCCMP is a nonprofit, non-partisan organization, with members, plans, and plan sponsors in every major segment of the multiemployer plan universe, including in the airline, automotive, building and construction, entertainment, health care, hospitality, longshore, manufacturing, mining, retail, food production sales and distribution, building services and trucking industries.

Background. Multiemployer health and welfare plans are trust funds established under collective bargaining agreements between the union or unions representing employees and two or more employers. Independent of any employer or union, the trust funds are structured to meet the standards of the Taft-Hartley Act and managed by labor-management boards of trustees on which both sides have equal representation. They are subject to ERISA, and use tax exempt

VEBAs under Code section 501(c)(3) to hold their assets. Those assets are made up of employer and employee contributions, investment earnings and insurance contracts or other similar service-provider agreements that the plan enters into in order to provide health benefits.¹

As noted above, multiemployer plans cover people working for small employers in industries where job mobility tends to be prevalent, such as construction, trucking, longshore, food production, distribution and retail sales, and entertainment. It has been estimated that over 90% of all contributing employers are quite small, employing fewer than 20 employees. Except for the economies of scale provided by multiemployer plans, these companies would generally be unable to provide benefits comparable to their larger competitors. The multiemployer approach makes it possible for employees who move from job to job to aggregate their service in the industry in order to qualify for stable health coverage, and for the employers to pool pro-rata contributions that they make, even on people who have only fleeting employment with them, so that coverage is affordable. Typically, the employers contribute to the fund at a rate established through collective bargaining, such as \$5/hour or \$200/week. The trustees determine the eligibility rules and coverage, and arrange for the benefits to be provided. It is rare to encounter explicit employee contributions to a multiemployer health fund, even for family coverage, with the exception of retiree and COBRA premiums.

1. Multiemployer Plans as Qualifying Arrangements under Section 45R

We recommend that coverage provided through a multiemployer plan be treated as “health insurance coverage under a qualifying arrangement” for purposes of the tax credit, even though the employers’ payments are made through the multiemployer plan rather than directly to a commercial insurance company. From the employers’ perspective, they are buying health “insurance” coverage for their employees when they make the payments to the health fund that they agreed to under the collective bargaining agreement. The main difference, to the employer, is that the multiemployer fund pools contributions and beneficiaries to achieve economies of scale, so that each employer can afford much better coverage than it could offer independently.

The NCCMP believes that the employers’ health fund contributions should be considered insurance premiums for this purpose, whether the multiemployer fund’s benefits are insured or self-insured. Again, from the small contributing employers’ point of view, there is no difference. Multiemployer plan trustees, as ERISA fiduciaries, may decide to self-insure part or all of the benefits they provide if they determine that is more efficient and cost effective than contracting with commercial insurance companies. Where that is not the case, they buy insurance for the coverage. The fact that the fund trustees decide to use the most economical vehicle for providing coverage should not affect the employers’ right to take the tax credit.

2. Premiums for Health Insurance Coverage Paid by the Employer

The amounts contributed by the employers to a multiemployer health plan are used to pay for health coverage (plus plan administrative costs), but because those contributions are pooled to finance coverage for the group, no given employee’s coverage can be attributed directly to

¹ Funds also own operating assets, such as desks, computers, etc.

specific payments made by any identifiable employer. Put another way, all of the employers contribute, as a group, to finance health coverage for all of the employees who qualify for it under the multiemployer plan. Accordingly, the NCCMP recommends that the amounts employers contribute to such a fund be treated as the premiums paid by them for their employees' health insurance, subject to adjustment as described below.

3. Identifying Premiums for Health Insurance Coverage

Some multiemployer health and welfare funds provide welfare-type benefits in addition to health insurance, such as life insurance or short- or long-term disability benefits. The fund determines each year what share of its benefit-budget will be used for each type of coverage. In such a case, we recommend that the guidance clarify that an employer contributing to a multiemployer health plan can rely on information provided by the plan to determine what percentage of its fund contributions are for health insurance, so that the appropriate amount is used in the formula for determining the amount of the credit.

Thank you for your consideration of our comments. We believe our recommendations are fully consistent with the intent of the law and will provide access to employers who do the right thing in providing health benefits coverage to their employees.

I will be happy to provide any further information that may be helpful to you in this connection and welcome the opportunity to elaborate further on any issues which you require further clarification.

Respectfully Submitted,



Randy G. DeFrehn
Executive Director