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Utah State Legislature

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March 18, 2013

The Honorable Jacob J. Lew, Secretary
United States Department of The Treasury
CC:PA:LPD:PR(REG-138006-12)
Internal Revenue Service, room 5203
POB 7604, Ben Franklin Station
Washington, DC

Re: Comment to Proposed Rule REG-138006-12

Dear Mr. Secretary:

As President of the Senate and Speaker of the House of Representatives for Utah, we write to comment on the proposed federal rule "Shared Responsibility for Employers Regarding Health Coverage" (Proposed Rule) published in the Federal Register on January 2, 2013. The Proposed Rule generally provides that an applicable large employer is subject to an assessable penalty if either: (1) the employer fails to offer to its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage and any full-time employee is certified as having received a premium tax credit or cost-sharing reduction; or (2) the employer offers its full-time employees (and their dependents) the opportunity to enroll in minimum essential coverage and one or more full-time employees receives a premium tax credit or cost sharing reduction. The Proposed Rule defines a full-time employee as an employee who is employed on average at least 30 hours of service per week (Proposed Rule 54.4980H-1).

We appreciate the opportunity to comment on the Proposed Rule. The Proposed Rule has significant impact on all three branches of Utah's state government - the executive branch, the judicial branch, and the legislative branch, as well as its political subdivisions, including; cities, towns, counties, and special service districts. The comments in this letter however, will focus on the potential impact of the Proposed Rule on the legislative branch in Utah.

- I. **The Proposed Rule should provide guidance to state governments on which state government entities will be treated as a single employer for the purpose of determining applicable large employer status.**

Section 4980H of the Internal Revenue Code requires that entities treated as a single employer under Subsections 414(b), (c), (m), or (o) be treated as a single employer for the purpose of determining applicable large employer status. These subsections apply primarily to corporations and provide that employees of a corporation that is a part of a "controlled group of corporations" (defined in Section 1563 in reference to stock ownership) or employees of partnerships or proprietorships that are "under common control" shall be treated as employees of a single entity. 26 U.S.C. § 414(b), (c). The Proposed Rule defers (Reserve) on the application of the relevant aggregation sections to government agencies, and ask government agencies to "rely on a reasonable, good faith interpretation" of the applicable sections "in determining whether a person or group of persons is an applicable large employer."

The Proposed Rule should provide specific guidance on the application of aggregation rules to state governments, specifically as to the treatment of different branches, departments, divisions, and offices in the state as single or separate employers for the purpose of determining applicable large employer status, especially in light of state constitutions and statutes providing for separation of powers between branches and division of responsibilities and authority among various state government entities. The Proposed Rule should also give specific guidance as to the treatment of political subdivisions under the aggregation rules, including cities, counties, and other local districts that technically derive their authority from the state legislature but for practical purposes operate autonomously.

II. The Proposed Rule should provide guidance regarding the definition of "seasonal employee" for the purpose of the look-back measurement period.

The Proposed Rule should provide guidance on which employees are considered "seasonal employees" for purposes of the look-back measurement period. The proposed regulations simply defer (Reserve) on the question of seasonal employees and instruct an employer to rely on a reasonable, good-faith interpretation of the term.

The Proposed Rule should specify which aspects—hours worked, days worked, regularity, or some other aspect—of an employee's service qualifies that employee as a seasonal rather than full-time equivalent, variable-hour, or part-time employee. The Utah Legislature regularly employs nearly 200 employees in a variety of positions during the 45-day legislative session each year. Those employees include secretaries, security officers, pages, public relations representatives, clerks, and other essential

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staff. Most work for 40 hours per week or more on average during the 45-day legislative session while others are "on-call" employees whose hours are unpredictable. Almost all of these employees are not employed by the Legislature in any capacity during times when the Legislature is not in session. Many legislative employees are individuals who have never before worked for the state legislature, while others are regularly hired each session in the same job capacity.

Any adopted regulation that defines seasonal employee should not count as full-time equivalent employees those employees who work for brief periods, such as 45 days, especially those employed for a particular fixed-term government function, such as a part-time legislative session. The Utah Legislature, by constitution, is a part-time body for which "no annual general session . . . may exceed 45 calendar days, excluding federal holidays." Utah Const. Article VI, Section 16. While some legislative staff members are employed in year-round positions, much of the essential legislative workforce is comprised of employees who, while taking on the characteristics of full-time employees during the legislative session, likely cannot support themselves on wages earned during the legislative session alone, and as a consequence, likely maintain other, more permanent employment. These employees should not be considered full-time employees or full-time equivalents of the legislature for the purpose of administering non-salary benefits.

We appreciate the opportunity to respond to the Proposed Rule, however we are concerned with the decision to defer (Reserve) clarification of the look-back measurement period and the calculation of full-time employees and seasonal employees for government employers. Government employers need time to plan for the budget impact of offering minimum essential coverage to employees who may not be currently eligible for minimum essential coverage. Government employers also need time to make any needed changes before penalties are applied.

Sincerely;


Wayne Niederhauser
President Utah State Senate


Rebecca Lockhart
Speaker of the House of Representatives