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November 8, 2013

By Electronic Submission

CC:PA:LPD:PR (REG-136630-12)

Internal Revenue Service
Room 5205, PO Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans; Proposed Rule

To Whom It May Concern:

The Church Alliance is pleased to comment on the proposed rule from the Internal Revenue Service (“IRS”) regarding Information Reporting by Applicable Large Employers on Health Insurance Coverage Offered Under Employer-Sponsored Plans (“Proposed Rule”). The Church Alliance represents numerous church health plans and their hundreds of thousands of participating church employers across the United States and submits this comment on their behalf.

The Church Alliance commends the federal agencies for their diligent work in rulemaking under the Patient Protection and Affordable Care Act (“PPACA”). The Church Alliance also commends the IRS for publishing the Proposed Rule in a timely manner to help employers understand their obligations regarding information reporting on health coverage of employees under the PPACA in 2015 and after. The Proposed Rule is important to church plans and their participating employers. The unique structure of church health plans, the varied nature of the structures of the organizations that maintain and fund them and the need to prevent excessive entanglement of the federal government in religion necessitate that the IRS make clear that the final version of the Proposed Rule should apply at the level of the local church, rather than the denominational level, particularly so in the case of ministers.¹ Applying the Proposed Rule at the “church plan” or

¹ For purposes of this comment, “denomination” refers to the national or highest level of a church in the case of a hierarchical church, or a convention or association of churches in the case of congregational churches. A “local church” refers to a local church, parish, mosque, temple, synagogue or other local place of worship. Some denominations also have intermediate organizations, often regional, such as, conferences, presbyteries, synods, or dioceses; these are called “intermediate organizations”. Finally, a “minister” refers to a priest, rabbi, imam or other religious leader of a church.

denominational level could lead to significant unintended consequences and undue burden on entire denominations.

I. Background on the Church Alliance

The Church Alliance is an organization composed of the chief executives of thirty-eight church benefit boards, covering mainline and evangelical Protestant denominations, two branches of Judaism, and Catholic schools and institutions. The members of the Church Alliance currently provide affordable and comprehensive health benefits to approximately one million Americans.

II. Background on Church Plans

For over 100 years, many denominations have established and maintained health and pension benefit organizations or boards. Through these denominational organizations, local churches are able to offer health and pension benefits to ministers and lay church employees in a cost effective manner. Equally as important, these national denominational church plans are able to take advantage of “economies of scale,” allowing individual local churches and their ministers and lay employees to purchase health care coverage for less than it would cost to purchase similar coverage through the small group or individual insurance markets. This approach has allowed thousands of small local churches, many in rural or disadvantaged areas, to provide benefits to ministers and lay employees. In addition, as ministers and other plan participants move from one local church or to another, they can retain their existing health and pension benefits.

III. Information Reporting Reliance on Section 4980H(c)(2)

Under section 6056 of the Internal Revenue Code (“Code”), the Proposed Rule requires that “applicable large employers”, as defined in Code section 4980H(c)(2), file returns at the time prescribed by the Secretary of the Treasury (“Secretary”) with respect to each full-time employee and furnish a statement to each full-time employee by January 31 of the calendar year following the calendar year for which the return must be filed. The Proposed Rule specifies certain information that must be reported on the Code section 6056 return and related statement, and authorizes the Secretary to require additional information and determine the form of the return.

The Proposed Rule incorporates the definition of “applicable large employer” from Code section 4980H(c)(2) and the regulations thereunder, specifically Shared Responsibility for Employers Regarding Health Coverage; Proposed Rule (“Shared Responsibility Rule”).

Under the Shared Responsibility Rule “common law employers” with 50 or more full-time equivalent employees, i.e., applicable large employers, must provide their full-time employees with health coverage that is affordable, i.e., coverage that does not cost employees more than 9.5% of their household income (based on the lowest cost employee-only coverage option), and provides minimum value, i.e., a plan that has a 60% or better actuarial value.

The Church Alliance submitted a comment letter to the Shared Responsibility Rule dated March 18, 2013, a copy of which can be found at http://www.church-alliance.org/sites/default/files/images/u2/Church_Alliance_Comment_Letter_on_Employer_Shared_Responsibility_NPRM_AQH.pdf.

In its comment on the Shared Responsibility Rule, the Church Alliance urged the IRS to treat the local church as the common law employer of ministers for purposes of the Shared Responsibility Rule in all denominations. This outcome is supported by many facts and circumstances, as well as a long history of past practice. Moreover, it is necessitated by the Establishment and Free Exercise Clauses of the First Amendment to the U.S. Constitution to prevent excessive entanglement in ecclesiastical policies of a church. See, e.g., *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. ____ (2012).

The Shared Responsibility Rule relies on the common law standard to determine who is a minister's employer. As a consequence of each denomination's polity, ministers do not always fit neatly into the traditional common law employer-employee relationship. Because a denomination or an intermediate organization, e.g., through a bishop or an ecclesiastical court, can sometimes exercise some control over ministers serving as "employees" of local churches as a matter of church doctrine, the Church Alliance hopes that the IRS will make clear that the local church should be considered the common law employer of ministers and lay employees for purposes of the Proposed Rule.

Given that the Proposed Rule defines applicable large employer in the same manner as Code section 4980H(c)(2) and the Shared Responsibility Rule, the Church Alliance urges a similar application for churches, conventions and associations of churches and church plans under the Proposed Rule. As such, the Church Alliance reiterates the need for the local church to be treated as the "common law employer" for purposes of determining application of both the Shared Responsibility Rule and the Proposed Rule.

Moreover, the Church Alliance respectfully requests that the IRS make clear that the Proposed Rule should be applied at the local church (local employer) level, not at the denominational level or the level of the intermediate organizations. In other words, the "Person Responsible for Section 6056 Reporting" under section XII of the Proposed Rule should include a provision for churches and conventions and association of churches that does not assign the Section 6056 Reporting responsibility to the denomination or intermediate organization for all local churches. Such a provision is necessary for churches to have some certainty, given that a church or convention or association of churches is deemed the "employer", under Code section 414(e)(3)(C) of the Code, for purposes of ministers and employees at certain organizations being eligible to participate in employer group health plan coverage, through a multiple employer church plan, established or maintained by a church or convention or association of churches. Denominations and intermediate organizations might still be the party responsible for Section 6056 Reporting for those organizations' own "common law" employees if the organizations themselves are applicable large employers.

The Church Alliance suggests that the church plan administrator, i.e., the church or convention or association of churches or the church benefit board, should not be the party required to perform the section 6056 reporting for all employees of applicable large employers participating in the church plan. In many circumstances the church plan administrator will have no knowledge of or information about the employees of participating employers or about whether coverage was offered to all full-time employees or the cost to employees.

In addition, while the church plan administrator may be subject to Code section 6055 reporting under the related Information Reporting of Minimum Essential Coverage (REG-132455-11) for

all covered employees, dependents and beneficiaries in the church plan, the Church Alliance also requests some flexibility with respect to the application of the section 6055 reporting requirement to a specific entity within a church or convention or association of churches, because church structures very greatly often based on religious beliefs.

IV. Church Plan Flexibility

In addition, the Church Alliance suggests that the Proposed Rule be applied with some flexibility, similarly to the contemplated approach for multiemployer plans described in section XII.B of the preamble to the Proposed Rule. Local churches and other church-related employers participating in a multiple employer church plan should be responsible for the section 6056 reporting, but should be allowed to make arrangements with their church plan administrator to provide bifurcated section 6056 reporting where it may be beneficial or reduce the burden of section 6056 reporting, or to delegate or assign the section 6056 reporting tasks to one or more organizations in the church or convention or association of churches.

V. Conclusion

For the reasons explained herein, and those explained further in its March 18, 2013 comment, the Church Alliance recommends that the IRS impose the section 6056 reporting requirements on local churches and other local church-related employers as the party required to report with respect to ministers and other employees. The Church Alliance recommends that the IRS consider allowing church plan administrators some flexibility under the Proposed Rule vis-à-vis participating local churches similar to that it is considering for multiemployer plans. Similar to the situation under the Shared Responsibility Rule, if a denomination or its intermediate organizations were deemed the common law employer of ministers or other employees of local churches under the Proposed Rule, significant adverse unintended consequences could result.

We would welcome the opportunity to discuss our recommendations with the IRS at your convenience. Please feel free to contact the undersigned at 202-661-3882 if you have any questions or wish to discuss this matter further.

Sincerely,



Stephen H. Cooper
Government Affairs Counselor, K&L Gates
On Behalf of the Church Alliance