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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

August 1, 2016

Number: **2016-0055**
Release Date: 9/30/2016

CONEX-120128-16

UIL: 4980H.00-00

The Honorable Johnny Isakson,
United States Senator
One Overton Park, Suite 970
3625 Cumberland Boulevard
Atlanta, GA 30339

Attention:

Dear Senator Isakson:

I am responding to an email from your office dated June 21, 2016, about a concern raised by your constituent, [REDACTED] retired from the public sector and then worked full time (40 or more hours per week) in the private sector until January 1, 2016. [REDACTED] wrote that at that time due to the Affordable Care Act, his private sector employer adopted a policy restricting certain employees from working more than 28 hours of service a week. [REDACTED] questioned whether the Affordable Care Act requires the policy his employer has adopted.

While we cannot comment on the specifics of [REDACTED] situation, I understand that some employers may have decided to restrict the number of hours employees may work to limit the number of its full-time employees. Section 4980H of the Internal Revenue Code, as added by the Affordable Care Act, defines a full-time employee solely based on that employee's hours of service and requires an applicable large employer to provide minimum essential health coverage to at least 95 percent of its full-time employees. However, the provision does not take into account other employees who do not work a minimum number of hours of service, regardless of the reason.

Section 4980H provides that an applicable large employer may be required to pay an assessable payment if it does not offer health coverage to its full-time employees, and at least one full-time employee purchases coverage through the applicable Exchange and receives the premium tax credit. Section 4980H(c)(4) provides that an employee is a "full-time employee" for this purpose if the employee averages at least 30 hours of service per week during a given month. Section 4980H(c)(2) provides that an

“applicable large employer” generally is an employer who employed more than 50 full-time employees (or full-time equivalents) during the preceding calendar year.

Section 4980H provides for two assessable payments. An applicable large employer could potentially be required to pay one (but not both) of these payments in any given calendar month, in the following circumstances:

- Section 4980H(a) may apply if an applicable large employer fails to offer minimum essential health coverage to at least 95 percent of its full-time employees and one of its full-time employees receives the premium tax credit for coverage purchased through the applicable Exchange. If this type of assessable payment applies, the annual payment is \$2,000 (adjusted annually) multiplied by the total number of the employer’s full-time employees (with certain adjustments).
- Section 4980H(b) may apply if the applicable large employer offers minimum essential health coverage to at least 95 percent of its full-time employees, but one or more full-time employees purchases coverage through the applicable Exchange and receives the premium tax credit under section 36B. If this type of assessable payment applies, the annual payment is \$3,000 (adjusted annually) multiplied by the total number of the employer’s full-time employees who receive the premium tax credit (with certain adjustments).

As stated, to avoid the potential application of the assessable payment under section 4980H(a), an applicable large employer must offer minimum essential coverage to at least 95 percent of its full-time employees. For purposes of meeting the 95 percent threshold, all full-time employees are included, regardless of whether the full-time employee has other coverage or has access to other coverage.

In contrast, potential application of the assessable payment under section 4980H(b) relates only to those full-time employees entitled to a premium tax credit under section 36B, and an employee generally would not be eligible for a premium tax credit if the employee had other coverage not purchased on the applicable Exchange, or if the employer had made the employee and the employee’s dependents an affordable offer of minimum essential coverage providing minimum value.

As stated above, the potential for an assessable payment under section 4980H relates only to applicable large employers, generally meaning employers that had 50 or more full-time employees during the previous calendar year. In addition, the potential for an assessable payment under section 4980H relates only to the applicable large employer’s offers of coverage (or lack of offers of coverage) to its full-time employees.

My office only addresses matters related to the Internal Revenue Code and cannot provide information on other potentially applicable laws. I understand that your office also has contacted the U.S. Department of Labor (DOL) regarding concerns. The DOL may be able to provide you with additional information about other

federal laws within its jurisdiction, such as the Employee Retirement Income Security Act of 1974.

I hope this information is helpful. If you have questions, please contact me at
or at .

Sincerely,

Victoria A. Judson
Associate Chief Counsel
(Tax Exempt and Government Entities)