



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

OFFICE OF THE CHIEF COUNSEL

April 27, 2021

Number: **2021-0011**
Release Date: 6/25/2021

GENIN-105520-21

UIL: 4980H.00-00

Dear _____ :

I am responding to your inquiry dated September 23, 2020, sent to Commissioner Charles P. Rettig. You explained that, based on an exemption in the Affordable Care Act (ACA) regarding the Hawaii Prepaid Health Care Act (HPHCA), you believe that employers in Hawaii are not subject to the ACA, including the employer shared responsibility provisions under Section 4980H of the Internal Revenue Code (Code). You asked for confirmation that the employer shared responsibility provisions under Section 4980H of the Code do not apply to employers in Hawaii.

Unfortunately, I cannot address your inquiry regarding a specific taxpayer. However, I have reviewed the facts provided and hope the following general information is helpful. Further, while the Department of Labor has jurisdiction over the Employee Retirement Income Security Act (ERISA), I can provide general information about ERISA preemption.

Generally, state laws that impose requirements on employer-sponsored health coverage are preempted by ERISA pursuant to ERISA Section 514. If a particular state law regarding employer-sponsored health coverage has an exemption from ERISA Section 514, then the state law may be applied to employers in the state. However, such an exemption does not prevent the application of federal law (including ERISA and the ACA), which may add additional requirements to employers in a state. In other words, if a particular state law regarding employer-sponsored health coverage is exempt from ERISA Section 514, then employers in the state may need to follow the requirements of the state law and the additional requirements of ERISA and the ACA.

Please note that an exemption from ERISA Section 514 generally applies to the version of a state law that existed as of the date of the exemption, and any amendments to the state law after such date may be preempted by ERISA.

Section 1560(b) of the ACA provides, “Nothing in this title (or an amendment made by this title) shall be construed to modify or limit the application of the exemption for Hawaii’s Prepaid Health Care Act (Haw. Rev. Stat. §§ 393-1 et seq.) as provided for under section 514(b)(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(5)).” Since the HPHCA and the ACA are separate rules, the exemption for the HPHCA under ERISA Section 514(b)(5) does not provide an exemption from the ACA.

Also, please note that Section 1332 of the ACA allows a state to apply for a waiver of certain provisions of the ACA, including the employer shared responsibility provisions under Section 4980H of the Code. See https://www.cms.gov/CCIIO/Programs-and-Initiatives/State-Innovation-Waivers/Section_1332_State_Innovation_Waivers-. If a state is granted a waiver under the Section 1332 process for a particular ACA provision, then the state would not be required to comply with such ACA provision in accordance with the provisions of the waiver.

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

Sincerely,

Denise Trujillo, Branch Chief
Health and Welfare Branch
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)