

DAVID VITTER
LOUISIANA

DEPUTY WHIP

Small Business and Entrepreneurship
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Judiciary

Immigration, Refugees and
Border Security Subcommittee
Deputy Chairman

Banking, Housing, and Urban Affairs

United States Senate

WASHINGTON, DC 20510

WASHINGTON, D.C.

Hart Senate Office Building
Suite SH-516
Washington, DC 20510
(202) 224-4623
Fax: (202) 228-5061

BATON ROUGE

858 Convention Street
Baton Rouge, LA 70802
(225) 383-0331
Fax: (225) 383-0952

Website with
E-Mail Access: vitter.senate.gov

September 17, 2015

Hon. Jacob J. Lew
Secretary of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Lew:

It has come to my attention that a ruling by the Internal Revenue Service has now led to the imposition of extreme penalties on small businesses that use pre-tax dollars to assist their individual employees in the purchase of health insurance policies on the individual health insurance market.

More specifically, the IRS, in a seemingly arbitrary ruling in September 2013 (IRS Notice 2013-54), issued guidance dictating that employers that do not offer a group health plan, but instead provide tax preferred dollars through a Health Reimbursement Arrangement (HRA) to their employees to pay health insurance premiums or other direct medical expenses, will be fined \$100 per day, per employee, under section 4980D of the Internal Revenue Code. Over the course of a year, that equates to \$36,500 per employee, up to a \$500,000 yearly total. Beginning on July 1 of this year, this rule took effect.

Surely you understand the important role of American small businesses as job creators and the damaging impact this rule has on those businesses as they struggle to survive. Many small businesses, especially entrepreneurial startups, have fewer than 10 employees and cannot afford to provide full health insurance benefits. Nevertheless, while they may not be subject to the Affordable Care Act's employer mandate, they do want to provide some level of help to their employees to offset rising health care costs. This IRS prohibition, and the imposition of such an unreasonable penalty, eliminates this possibility.

It is also worth noting that this penalty is extremely unfair to small business relative to larger companies and enterprises. The imposition of a \$36,500 penalty per employee on a small business is vastly more punitive than the penalty, per employee, imposed on large companies that do not fulfill the requirements of the ACA's employer mandate to offer health care insurance.

Secretary Lew, you were asked in the House of Representatives about this rule earlier this year and indicated you were open to revisiting the issue, stating "Our objective and the objective of the Affordable Care Act is to make sure that affordable healthcare is available to all, and I believe that the provisions that you're referring to are not consistent with that." The Treasury

ACADIANA

2201 KALISTE SALOOM ROAD
SUITE 201
LAFAYETTE, LA 70508
(337) 993-9502
FAX: (337) 993-9567

CENTRAL LOUISIANA

6501 COLISEUM BOULEVARD
SUITE 700-A
ALEXANDRIA, LA 71303
(318) 448-0169
FAX: (318) 448-0189

NORTHEAST LOUISIANA

1651 LOUISVILLE AVENUE
SUITE 148
MONROE, LA 71201
(318) 325-8120
FAX: (318) 325-9165

NORTHWEST LOUISIANA

920 PIERREMONT ROAD
SUITE 113
SHREVEPORT, LA 71106
(318) 861-0437
FAX: (318) 861-4865

SOUTHEAST LOUISIANA

2800 VETERANS BOULEVARD
SUITE 201
METAIRIE, LA 70002
(504) 589-2753
FAX: (504) 589-2607

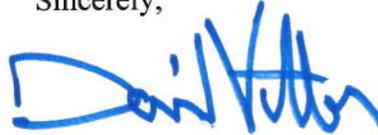
SOUTHWEST LOUISIANA

949 RYAN STREET
SUITE E
LAKE CHARLES, LA 70601
(337) 436-0453
FAX: (337) 436-3163

Department did, in fact, delay implementation of the rule, but as of July 1 it is now in effect and the damage is being done.

The IRS prohibition is grossly unfair to working families and to small business. Furthermore, it is contrary to the very spirit of healthcare reform. I cannot believe that the President intended to punish small business employers much more severely, simply for helping their workers. Therefore, I urge you to take action, in the spirit of commonsense improvement, and quickly review the rule and end its continued promulgation, in accordance with your authority.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Vitter". The signature is stylized and cursive.

David Vitter
U.S. Senator