Sander Levin
12th District, Michigan

Congress of the United States
House of Representatives

Mr. Douglas Shulman, Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW Room 3241
Washington, D. C. 20224

Dear Commissioner Shulman:

The Mackinac Center for Public Policy (Mackinac Center), located in Michigan, is a well-known and very visible tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code. The Mackinac Center's stated mission is "to conduct scholarly research and analysis of state of Michigan public policy issues related to the budget and fiscal responsibility, and communicate the results to Michigan citizens."

As required by federal tax law, the Mackinac Center annually files Internal Revenue Service (IRS) Form 990 (Return of Organization Exempt from Income Tax). On its 2010 IRS Form 990, the Mackinac Center answered "no" to the question, "Did the organization engage in lobbying activities?" As described below, I am concerned about the response to this question.

Last year, when the state legislature was considering legislation to modify health insurance for public employees, Mackinac Center staff exchanged a series of emails with the Chairman of the Michigan State] House Education Committee, Representative Tom McMillan, regarding these legislative efforts and longer-term legislative goals. These emails (copy attached), now part of the public record, indicate back and forth discussion on the specifics of the pending legislation. These emails also include detailed discussions about the merits of a "hard cap" on school districts' health insurance expenditures as compared to a mandated 80/20 split in insurance costs between districts and employees. Mackinac Center staff advocated for a "hard cap" on the employers' share of insurance premiums, while also making suggestions about how legislation could ensure that co-pays and deductibles do not dilute the 20% employee portion of the 80/20 split being considered.

In addition, the emails contain additional statements that illustrate a long-term plan to lobby. Specifically, the emails state:

> "The political environment has changed. Assuming House Repubs don't lose their majority, this doesn't have to be the last bite at the apple."

> "Our goal is outlaw government collective bargaining in Michigan, which in practical terms means no more MEA."

I value the work of charitable, educational, and other tax-exempt organizations described in Section 501(c)(3) of the Code , and I believe it is appropriate that our tax code incentivize their work.

These organizations are permitted to engage in lobbying activities provided that they are not a substantial part of the organization's activities. These organizations also are required to file annually IRS Form 990. This return clearly asks whether an organization engages in lobbying activities and requests additional information on such activities in the appropriate schedule ((Schedule C, Part II).

I also believe it is my responsibility as a senior Member of the Ways and Means Committee to ensure provisions of the Code are being complied with by all organizations regardless of their particular orientation.

Therefore, in light of the information stated above, I respectfully request that the IRS review this matter and take appropriate actions to ensure that the Mackinac Center is in full compliance with federal tax law.

Sincerely,

Sander Levin

Sander Levin

Here it is.

----- Forwarded Message ----
From: TOM MCMILLIN <tom_mcmillin@sbcglobal.net>
To: "Van Beek, Michael" <VanBeek@mackinac.org>
Cc: Jack McHugh <mchugh@mackinac.org>; Pat Wright <Wright@mackinac.org>; Mike hohauser <m_hohauser@yahoo.com>; Ken Braun <braun@mackinac.org>
Sent: Wed, June 8, 2011 9:39:42 AM
Subject: Re: off the record

there's been discussion about this - we'd specify that this kind of reimbursement would count toward the 80% and not the 20%.

From: "Van Beek, Michael" <VanBeek@mackinac.org>
To: TOM MCMILLIN <tom_mcmillin@sbcglobal.net>; "McHugh, Jack" <McHugh@Mackinac.org>; "Hohman, James M." <Hohman@mackinac.org>
Cc: "Braun, Kenneth M." <Braun@mackinac.org>; "Wright, Patrick J." <Wright@mackinac.org>
Sent: Wed, June 8, 2011 9:30:55 AM
Subject: RE: off the record

One thought that just occurred to Hohman and I when discussing this issue: there is a chance for a trap if the 20 percent employee contribution includes co-pays and deductibles. The trap is that some employers pay for their employee's deductibles and co-pays; in fact, I know that some districts set up RX co-pay funds to reimburse school employees for their co-pays and others pay part of their employee's deductible (this is a net gain for the district since they pay lower premiums, but they save nearly as much as they could if the employees paid the entire co-pay/deductible). If districts move to higher deductibles and higher co-pays but then just pay for those costs themselves (and be sure this is what the MEA will try to get them to do), they'll get a lower premium, potentially meet the 20 percent requirement and not save nearly as much had their employees just pay 20 percent of the premium.

Mike

From: TOM MCMILLIN [mailto:tom_mcmillin@sbcglobal.net]
Sent: Monday, June 06, 2011 11:05 PM
To: McHugh, Jack; Hohman, James M.
Cc: Van Beek, Michael; Braun, Kenneth M.; Wright, Patrick J.
Subject: Re: off the record

thank you all very much.

as chair of the committee, i'm wrestling with how much to dig in my heals and say "hard cap or nothing"....maybe i should lighten up a bit.

From: "McHugh, Jack" <McHugh@Mackinac.org>
To: TOM MCMILLIN <tom_mcmillin@sbcglobal.net>; "Hohman, James M." <Hohman@mackinac.org>
Cc: "Van Beek, Michael" <VanBeek@mackinac.org>; "Braun, Kenneth M." <Braun@mackinac.org>; "Wright, Patrick J." <Wright@mackinac.org>
Sent: Mon, June 6, 2011 10:45:56 PM
Subject: RE: off the record

Hohman just called me and here's what the two of us thought was right, subject to amendment if anyone has any better ideas.

Tom McMillin is right that a hard cap is better than 80/20, especially when leadership starts playing fancy games with the latter. James gives his best chapter-and-verse reason below.

HOWEVER, unlike a year ago, when I was *extremely* uncomfortable about the deal with the MEA devil that House Republicans capitulated to on the 3 percent, on this I am much more relaxed, for a couple reasons:

1. If school boards and their local union want to weasel out of any of these restrictions, they can always just raise salaries. But, school boards really *are* under tremendous budget pressure, and even with a gimmicked 80/20, the Legislature gives them an extra tool to wring concessions. That's worthwhile.

2. The political environment has changed. Assuming House Repubs don't lose their majority, this doesn't have to be the last bite at this apple.

IOW, this one is not worth going to the wall over. Hohman doesn't disagree. But here's his argument that the hard cap is better anyway:

From: Hohman, James M.
Subject: RE: off the record - why hard cap is better

My first impression is that messing around with copays and deductibles muddies the waters. If someone chips a tooth and gets 2 months of brand-name Vicodin his colleagues will get back a percent of their premium next year. And on the taxpayer scorecard, I don't see there being much gains here in the short-term.

That said, this seems to be a way to get more people economizing on plans and that's where the money is. It'll give some benefit to districts that aren't offering cadillac plans.

I don't see how this would do so in a way that's superior to the cap.

I don't know about the local governments, but school districts have been playing the copay and deductible games instead of cutting off their liabilities for the increasing cost of this benefit.

From: TOM MCMILLIN [mailto:tom_mcmillin@sbcglobal.net]
Sent: Monday, June 06, 2011 7:10 PM
To: Hohman, James M.; McHugh, Jack
Cc: Van Beek, Michael; Braun, Kenneth M.; Wright, Patrick J.
Subject: off the record

off the record - i've got some intel re: apparent direction leadership would like to see all this go.

the main thing i'd like your thoughts on are:

they want the 20% of the 80/20 to include co-pays and deductibles...somehow.

i just can't see this working at all - too confusing and i'm sure there would be ways to game the system.

somehow come up with some kind of "average" deductible paid by each group, i guess...and i guess "average" co-pays. I know the intent is to not discourage high deductibles and co-pays...

and i'm serious...this is something the boys upstairs seem to really like. my ability to impact this discussion could be assisted by hearing your thoughts..soon (and again, this is off the record - ok?)

From: "Hohman, James M." <Hohman@mackinac.org>
To: TOM MCMILLIN <tom_mcmillin@sbcglobal.net>; "McHugh, Jack" <McHugh@Mackinac.org>
Cc: "Van Beek, Michael" <VanBeek@mackinac.org>; "Braun, Kenneth M." <Braun@mackinac.org>; "Wright, Patrick J." <Wright@mackinac.org>
Sent: Wed, June 1, 2011 4:54:22 PM
Subject: RE: MESSA is state's largest VEBA! (And beware OPEB "VEBA")

Depends. Could be done simply or elaborately. Might not even need a value on it—just "employer's average benefits costs do not exceed private-sector averages published by the Employer Cost for Employee Compensation division of the BLS for the East North Central Division of the Midwest Region". If the local government wants to exercise the option, they'd have to present evidence that their compensation is in line to, say, the state treasurer.

It would favor governments that had a good portion of part-time employees with none of the optional benefits, but that's not necessarily a bad thing.

From: TOM MCMILLIN [mailto:tom_mcmillin@sbcglobal.net]
Sent: Wednesday, June 01, 2011 4:31 PM
To: Hohman, James M.; McHugh, Jack
Cc: Van Beek, Michael; Braun, Kenneth M.
Subject: Re: MESSA is state's largest VEBA! (And beware OPEB "VEBA")

do you think this can be put into a bill(s) effectively?

"provided that the employer's total cost of benefits — supplemental pay, paid leave, insurance, and retirement benefits (OPEB included) — was less than the private-sector average of $14,000 per employee."

From: "Hohman, James M." <Hohman@mackinac.org>
To: TOM MCMILLIN <tom_mcmillin@sbcglobal.net>; "McHugh, Jack" <McHugh@Mackinac.org>
Cc: "Van Beek, Michael" <VanBeek@mackinac.org>; "Braun, Kenneth M." <Braun@mackinac.org>

Sent: Wed, June 1, 2011 4:21:28 PM
Subject: RE: MESSA is state's largest VEBA! (And beware OPEB "VEBA")

I agree with Van Beek. As to whether savings are just going to be dumped into salaries, I think that in conjunction with falling property tax revenues and less money from the state, the 80-20 and cap might actually be used to fix some of the benefits problems. The 80-20 rule is going to save some money while having the problems you highlight.

I wouldn't be opposed to an opt-out or even the use of either-or provided that the employer's total cost of benefits — supplemental pay, paid leave, insurance, and retirement benefits (OPEB included) — was less than the private-sector average of $14,000 per employee. (that's when including access to benefits.) Provided that the local government's benefits overall are in balance, I really don't care whether one group of employees is raking in the big bucks on benefits at the expense of another. I just don't want it to be at the expense of the taxpayer.

James

From: TOM MCMILLIN [mailto:tom_mcmillin@sbcglobal.net]
Sent: Wednesday, June 01, 2011 11:53 AM
To: McHugh, Jack
Cc: Van Beek, Michael; Hohman, James M.; Braun, Kenneth M.
Subject: Re: MESSA is state's largest VEBA! (And beware OPEB "VEBA")

the fear in the legislature is that, with just an 80/20, that when the current contract expires and this provision kicks in, they'll either:

A. make any plans that already aren't cadillac, cadillac plans with no deductibles and co-pays; so the 20% covers everything or

B. increase salaries to offset the 20%, so no net savings.

there's talk of doing both a hard cap & 20%; or of doing hard cap OR 20% and letting locals decide which one.

the VEBA-Dearborn model works with a hard cap, but maybe not so well with 80/20. Some are concerned that low paid workers are going to get hit hard with either of these...and the 80/20 that came from the Senate allows 20% overall -- so it can be higher than 20% for higher paid employees and less for lower paid employees....though, a $30k employee getting a $20k healthcare wouldn't get much sympathy from me if they have to pay $4k for the benefit.

also the "opt-out" for 2/3 board vote for municipalities is not being met with much support in the House GOP (which i'm glad, because i don't quite understand why we'd allow an opt-out).

From: "McHugh, Jack" <McHugh@Mackinac.org>
To: TOM MCMILLIN <tom_mcmillin@sbcglobal.net>
Cc: "Van Beek, Michael" <VanBeek@mackinac.org>; "Hohman, James M." <Hohman@mackinac.org>; "Braun, Kenneth M." <Braun@mackinac.org>
Sent: Wed, June 1, 2011 11:29:22 AM
Subject: RE: MESSA is state's largest VEBA! (And beware OPEB "VEBA")

I personally think 20 percent is OK, because it changes the employee incentives (and we *do* believe in incentives!)

But a hard cap is OK too.

Do we care who runs the operation? Maybe, for this reason: **Our goal is outlaw government collective bargaining in Michigan, which in practical terms means no more MEA.**

I'm reminded of our calls to eliminate ISDs (and Ruth's work to expose them): The legislature keeps giving them more things to do, making it ever more difficult to abolish them.

jm

From: TOM MCMILLIN [mailto:tom_mcmillin@sbcglobal.net]
Sent: Wednesday, June 01, 2011 11:20 AM
To: McHugh, Jack
Cc: Hohman, James M.; Van Beek, Michael; Braun, Kenneth M.
Subject: Re: MESSA is state's largest VEBA! (And beware OPEB "VEBA")

yeah - speaker's office was reminding me of that this week.

with a hard cap, i think the issue goes away...if done right.

i would love to hear opinions from you all re: how the legislation would best be done.

From: "McHugh, Jack" <McHugh@Mackinac.org>
To: TOM MCMILLIN <tom_mcmillin@sbcglobal.net>
Cc: "Hohman, James M." <Hohman@mackinac.org>; "Van Beek, Michael" <VanBeek@mackinac.org>; "Braun, Kenneth M." <Braun@mackinac.org>
Sent: Wed, June 1, 2011 10:48:10 AM
Subject: MESSA is state's largest VEBA! (And beware OPEB "VEBA")

Mike Van Beek helpfully passes along the advisory that MESSA is a VEBA. :-)

This does not appear objectionable because it applies only to current employees, not retirees. If it gets applied to OPEBs then it become a purely bogus taxpayer-looting scheme. Here's how James Hohman characterized that:

"For the Detroit Three, I think the VEBA went through because there were some assets there to turn over to the UAW who would then be responsible for making retiree health cuts. The state doesn't have squat. The only thing they can do is turn it over to a VEBA is a contractual promises to pay something into the trust. That turns the OPEB non-liability into a real one. 'VEBA' is something that they can claim victory for doing even if they leave the state in a worse situation."

JM

Volume #50, Report #106, Article #2--Tuesday, May 31, 2011

V.E.B.A. ISSUE CROPS UP IN 80/20, DOLLAR CAP DEBATE

How an 80/20 split or dollar cap on health insurance costs would play out when employees are covered under a Voluntary Employee Beneficiary Association (VEBA) was the latest twist in the debate over public employee benefits on Tuesday.

As the House Oversight, Reform and Ethics Committee continues to review SJR C, HB 4572 and SB 7, which rearrange how much public employees are expected to contribute toward their health care costs, Rep. Tom McMillin (R-Rochester Hills) said he wanted the panel to make sure either proposal wouldn't adversely affect VEBAs that are currently in place. A VEBA is a trust fund that covers the costs of health insurance.

Senate Majority Floor Leader Arlan Meekhof (R-West Olive) told lawmakers he is working on a substitute for SB 7 that would incorporate the VEBA issue, but wouldn't force local governments to put their employees under such arrangement. But VEBAs are a smart way of controlling the cost to the taxpayers for public employee health care benefits, he said.

Sen. Arlan Meekhof (R-West Olive) is one of the Republican lawmakers looking to keep VEBAs a viable option for local governments.

As lawmakers debate whether to require a cost sharing mechanism that puts 20 percent of the health care premium on employees, or whether to go with a dollar cap on expenses employers incur, Mr. Meekhof emphasized that VEBAs are in essence a cap system because local governments are paying a fixed cost and employees have more of an awareness for the real costs of their health benefits.

"This is one of the tools that is creative, and I'd like this committee to think of this as one of the best practices," he said, adding that the recently passed K-12 schools budget could be amended to reflect using a VEBA as an official best practice.

If the Legislature moves forward with the 80/20 model, that could pose immediate concerns, said Tim Spink, plan administrator for the AFL-CIO Public Employee Trust. Mr. Spink told lawmakers about the groundbreaking VEBA recently created between Dearborn Public Schools and the Dearborn Federation of Teachers.

The school district got the benefit of contributing a set amount to the VEBA for the next three years, while employees have more control over their health care benefits because the union administers the plan, Mr. Spink said.

"Instead of bargaining benefits, the schools and the unions bargain a dollar amount," he said.

Dearborn essentially is under a hard dollar cap right now because it pays out a fixed amount each year as described in the contract (with medical inflation taken into account for future years).

But an 80/20 law would require employees to pick up more of their health care costs without acknowledging the savings created by negotiating the VEBA, Mr. Spink said.

It was also clear from testimony that some view the 80/20 measure as simply splitting up an ever-growing pie as health care costs continue to rise.

There were also further concerns expressed about both proposals and their effect on self-funded governmental units such as Southwestern Michigan College.

College President David Matthews told the committee the school's employees already pay about 24 percent of their health care costs, but the 80/20 model would preclude counting what employees spend at the point of usage. The bill would penalize his school and provide a disincentive to pass the costs of using health care services directly to employees, Mr. Matthews said.

Community colleges should either be exempt from the legislation or the bill should allow all employee contributions to count toward the 20 percent total, he said.

The committee also heard from Ottawa County Administrator Al Vanderberg and Park Township Supervisor Jerry Felix, who testified that the legislation would stymie local communities from finding innovative solutions to meet their health care needs and address costs.

Mr. Vanderberg said the county went with a high deductible health savings account that has saved money, whereas an 80/20 plan would not produce long-term savings.

And Russ Claggett, employee relations director for Battle Creek, said both bills would mean significant cost increases for employees, which is one of the reasons there is a renewed interest to renegotiate the labor contract before July 1.

For example, employees currently pay about $780 a year for health insurance but for a family plan under the 80/20 model the employee would pay $4,029 a year and $7,200 under the $13,000 dollar cap, Mr. Claggett said.

Mr. McMillin said employees would still have the option of negotiating less expensive health care plans instead of "Cadillac" benefits.

The committee will take more testimony on the measures at a meeting next week, Mr. McMillin said, but he wasn't sure whether a final vote would take place then or not.

The legislation won support from Americans For Prosperity and the Small Business Association of Michigan, which did not speak on the bills.