

(viii) *Special rule for the first year the fee is in effect.* Notwithstanding paragraph (c)(2)(i) of this section, for a plan year beginning before July 11, 2012, and ending on or after October 1, 2012, a plan sponsor may determine the average number of lives covered under the plan for the plan year using any reasonable method.

(3) *Applicable dollar amount.* For a plan year ending on or after October 1, 2012, and before October 1, 2013, the applicable dollar amount is \$1. For a plan year ending on or after October 1, 2013, and before October 1, 2014, the applicable dollar amount is \$2. For any plan year ending in any Federal fiscal year beginning on or after October 1, 2014, the applicable dollar amount is equal to the sum of—

(i) The applicable dollar amount for the plan year ending in the previous Federal fiscal year; plus

(ii) The amount equal to the product of—

(A) The applicable dollar amount for the plan year ending in the previous Federal fiscal year; and

(B) The percentage increase in the projected per capita amount of the National Health Expenditures most recently released by the Department of Health and Human Services before the beginning of the Federal fiscal year.

(4) *Examples.* The following examples illustrate the principle of paragraph (c)(3) of this section.

Example 1. (Calendar year plan). (i) Plan Sponsor C maintains Plan X which has a calendar year plan year; the plan continues in operation for the entire calendar years 2012 through 2019. Plan X is an applicable self-insured health plan, within the meaning of § 46.4376-1(b)(1), and Plan Sponsor C is liable for the fee imposed by section 4376, determined in accordance with these regulations, beginning with the 2012 plan year—the plan year beginning January 1, 2012, and ending December 31, 2012—and ending with the 2018 plan year—the plan year beginning January 1, 2018, and ending December 31, 2018. In accordance with § 40.6071(a)-1(c) of this chapter:

(i) The first Form 720 that must be filed to report and pay the fee imposed by section 4376 for Plan X covers the 2012 plan year (January 1, 2012, through December 31, 2012) and must be filed no later than July 31, 2013, and the fee reported on this form must be calculated by multiplying the average number lives by \$1 (the applicable dollar amount in effect for plans with plan years beginning

on or after October 1, 2012, and before October 1, 2013); and

(ii) The last Form 720 that must be filed to report and pay the fee imposed by section 4376 for Plan X covers the 2018 plan year (January 1, 2018, through December 31, 2018) and must be filed no later than July 31, 2019, and the fee reported on this form must be calculated using the applicable dollar amount in effect for plan years ending on or after October 1, 2018, and before October 1, 2019.

Example 2. (Fiscal year plan). (i) Plan Sponsor B maintains Plan W, which has a fiscal year plan year ending on July 31; the plan continues in operation for the entire fiscal year plan years from August 1, 2012, through July 31, 2019. Plan W is an applicable self-insured health plan, within the meaning of § 46.4376-1(b)(1), and Plan Sponsor B is liable for the fee imposed by section 4376, determined in accordance with these regulations, beginning with the 2012 plan year—the plan year beginning on August 1, 2012, and ending on July 31, 2013—and ending with the 2018 plan year—plan year beginning on August 1, 2018, and ending July 31, 2019. In accordance with § 40.6071(a)-1(c) of this chapter:

(i) The first Form 720 that must be filed to report and pay the fee imposed by section 4376 for Plan X covers the 2012 plan year (August 1, 2012, through July 31, 2013) and must be filed no later than July 31, 2014, and the fee reported on this form must be calculated by multiplying the average number lives by \$1 (the applicable dollar amount in effect for plans with plan years beginning on or after October 1, 2012, and before October 1, 2013); and

(iii) The last Form 720 that must be filed to report and pay the fee imposed by section 4376 for Plan X covers the 2018 plan year (August 1, 2018, through July 31, 2019) and must be filed no later than July 31, 2020, and the fee must be calculated using the applicable dollar amount in effect for plan years ending on or after October 1, 2018, and before October 1, 2019.

(d) *Effective/Applicability date.* This section applies for plan years that end on or after October 1, 2012, and before October 1, 2019.

§ 46.4377-1 Definitions and special rules.

(a) *Definitions.* The following definitions apply for purposes of sections 4375 and 4376 and §§ 46.4375-1 and 46.4376-1.

(1) *Accident and health coverage.* The term *accident and health coverage* means any coverage that, if provided by an insurance policy, would cause such policy to be a specified health insurance policy (as defined in section

4375(c) and § 46.4375-1(b)(1)). Accident and health coverage also includes coverage for an active employee, a former employee, or a qualifying beneficiary that is continuation coverage required under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) or similar continuation coverage under other federal law or under state law.

(2) *Individual residing in the United States*—(i) The term *individual residing in the United States* means an individual with a place of abode in the United States.

(ii) *Determination of place of abode.* For purposes of paragraph (a)(2) of this section, an issuer or a plan sponsor may rely on the most recent address on file with the issuer or plan sponsor and may treat the primary insured and the primary insured's spouse, dependents, or other beneficiaries covered by the policy as having the same place of abode. For this purpose, the primary insured is the individual covered by the policy whose eligibility for coverage was not due to that individual's status as the spouse, dependent, or other beneficiary of another covered individual.

(3) *United States.* The term *United States* includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands, and any other possession of the United States.

(4) *Federal fiscal year.* The term *Federal fiscal year* means the year beginning on October 1 and ending on the following September 30.

(b) *Treatment of exempt governmental programs*—(1) *In general.* The fees imposed by sections 4375 and 4376 do not apply to any covered life under an exempt governmental program as defined in paragraph (b)(2) of this section.

(2) *Exempt governmental program.* For purposes of this section, *exempt governmental program* means any—

(i) Insurance program established under title XVIII of the Social Security Act;

(ii) Medical assistance program established by title XIX or XXI of the Social Security Act;

(iii) Program established by Federal law for providing medical care (other than through insurance policies) to individuals (or their spouses and dependents) by reason of such individuals

being (or having been) members of the Armed Forces of the United States; and

(iv) Program established by Federal law for providing medical care (other than through insurance policies) to members of Indian tribes (as defined in section 4(d) of the Indian Health Care Improvement Act).

(c) *Effective/Applicability date.* This section applies to all policy and plan years that end on or after October 1, 2012, and before October 1, 2019.

Subpart D—Excise Tax on Obligations Not in Registered Form

§ 46.4701-1 Tax on issuer of registration-required obligation not in registered form.

(a) *In general.* Section 4701 imposes a tax (determined under paragraph (c) of this section) on any person (referred to as the issuer) who issues an obligation that—

(1) Is a registration-required obligation, and

(2) Is not issued in registered form.

(b) *Definitions*—(1) *Person.* The term “person” includes all governmental entities.

(2) *Obligation.* The term “obligation” includes bonds debentures, notes, certificates and other evidences of indebtedness regardless of how denominated.

(3) *Registration-required obligation.* The term “registration-required obligation” has the same meaning as when used in section 163(f) (and the regulations thereunder) which relates to the denial of a deduction for interest on certain obligations not in registered form. However, the term “registration-required obligation” does not include any obligation which would otherwise be exempt from Federal income tax under section 103(a) or any other provision of law.

(4) *Registered form.* The term “registered form” has the same meaning as when used in section 103(j) (and the regulations thereunder) which relates to obligations which must be in registered form to be tax-exempt.

(5) *Issuer.* Except as provided in § 1.163-5T(d) (relating to pass-through certificates) and § 1.163-5T(e) (relating to REMICs), the “issuer” is the person