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March 18, 2013

CC:PA:LPD:PR (REG-138006-12)  
Room 5203, Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Submitted electronically via [regulations.gov](http://regulations.gov)

Re: REG-138006-12: *Shared Responsibility for Employers Regarding Health Coverage*

The International Association of Amusement Parks and Attractions (IAAPA) is the largest trade association for permanently situated amusement facilities and attractions. IAAPA represents more than 4,000 facility, supplier, and individual members in the U.S. Member facilities include amusement and theme parks, waterparks, attractions, family-entertainment centers, arcades, zoos, aquariums, museums, science centers, resorts, and casinos. Our membership ranges from very large, multi-location facilities to small, single-site, family-owned operations.

IAAPA appreciates the opportunity to comment on the Internal Revenue Service's proposed regulations on *Shared Responsibility for Employers Regarding Health Coverage* (REG-13006-12).

### **Measurement/Stability**

As stated in IAAPA's response to the *Request for Comments on Shared Responsibility for Employers Regarding Health Coverage*, and on the Departments of Labor, Health and Human Services, and the Treasury's *Frequently-Asked-Questions from Employers Regarding Automatic Enrollment, Employer Shared Responsibility, and Waiting Periods*, and IRS Notice 2012-58, the attractions industry is pleased with the measurement/stability concept that the IRS has put forward.

As we said in our previous comments, IAAPA strongly supports an up to 12-month measurement/stability period process for purposes of determining the status of employees who are not hired as full-time. We also support the use of administrative periods of up to 90 days to allow an employer to average hours, educate employees, and distribute and collect enrollment forms. The vast majority of employees in the attractions industry do not work in a central office location, so the distribution and collection of forms can be a challenge.

We appreciate the proposal to allow employers the flexibility to begin measurement or stability periods in a way that aligns with a business's existing payroll periods.

### **Rehired Employees**

IAAPA is pleased the IRS provided the additional clarification on rehired employees that the industry requested in IRS Notice 2012-58. IAAPA maintains the number of hours worked by an employee during the first employment period may not be indicative of the hours he or she can expect to work in future employment periods. Since the majority of seasonal employees are young people, it would not be uncommon for a seasonal employee to consistently work more than 30 hours per week one season, but due to course work or an internship only be able to work 10-20 hours the next.

While ideally the industry would like all re-hired variable hour employees to be considered "new employees" to ease the administrative burden of counting and averaging hours under the measurement/stability process, IAAPA understands the IRS's concern that this could potentially lead to abusive termination and re-hiring practices. To prevent this situation, perhaps the proposal could be modified to apply to employees who are terminated for cause, as opposed to those who resign on their own volition, or who are laid off because the demand for seasonal workers has ended. Unemployment benefits are frequently only permitted for workers who have separated from their employers under certain circumstances, so this is not unprecedented.

If the IRS does not want to differentiate among the reasons an employee would separate from an employer, IAAPA requests the period for which no hours of service is credited be lowered to 20 weeks.

### **Definition of Seasonal Employee**

IAAPA members rely heavily on seasonal employees, as many amusement facilities operate only part of the year. Each full-time, permanent position within an amusement park or attraction is augmented by approximately ten temporary seasonal positions during peak summer months. These temporary seasonal employees are often young people in their first jobs, retirees, school teachers, or others who enjoy supplementing their income during the summer months.

While integral to our members' operations, for the most part, our industry's seasonal workers are hired for a short, temporary period of time with a very different set of expectations and responsibilities from their full-time permanent employee counterparts. While some may change their status to become full-time permanent employees, for the vast majority, the expectation of both the employee and employer is that the employment situation is temporary and will end when the season ends. We are proud of the employment opportunities that the attractions industry provides, but it is important for the IRS to recognize that a seasonal workforce is accompanied by unique administrative challenges which cannot be ignored in the implementation of the Patient Protection and Affordable Care Act (PPACA).

IAAPA appreciates the ability for employers to use a “reasonable, good faith interpretation” of the term “seasonal worker” for the purposes of this proposal, and through 2014. We encourage the Administration to adopt a permanent good-faith standard that recognizes that the seasonality some industries regularly extends beyond 120 days. As such, we encourage the Administration to adopt the definition that is currently used in the non-discrimination rules, which includes seasonal employment of less than seven months. See Treas. Reg. §1.105-11(c)(2)(iii)(C).

### **Affordability Safe Harbor**

IAAPA is pleased the department has offered several options employers can use to determine if their plan meets the minimum value standards. The ability to look at an employee’s current wages (“rate of pay safe harbor”) will be helpful, especially in the case of new hires, or promoted employees. Some facilities, for logistical or other reasons, would prefer to use the general rule which states an employee’s premium contribution for self-only coverage cannot exceed 9.5% of the employee’s household income. Others may want to use the Form W-2 or federal poverty line safe harbors. IAAPA requests the agencies grant employers the flexibility to determine which method is appropriate for their businesses.

IAAPA would like the IRS to address how the rate of pay safe harbor would work in the case of tipped employees, and suggests that in these cases, federal minimum wage be used as the assumed “rate of pay”.

### **Specific Exclusion for Minors, etc.**

If an exemption for seasonal employees (as discussed above) is not adopted, we urge adoption of exceptions to the definition of “full-time employee” that are consistent with the Patient Protection and Affordable Care Act’s goal of making coverage available without creating additional costs and administrative challenges associated with offering coverage to specific types of employees who don’t need or expect it:

- Medicare and TRICARE beneficiaries.
- Non-resident aliens.
- Minors and young adults.

In almost all cases, children aged 18 and under have health coverage through some source already. As we requested in our response to IRS Notice 2012-58, a safe harbor should be created so employers do not have to offer health insurance coverage to employees under age 18. In many cases, these individuals are unable to enter into a contractual relationship such as enrolling in health insurance.

Furthermore, since the proposed rule requires an employer to offer dependent coverage to parents, seasonal employers should not have to offer those aged 19 to 26 coverage (or alternatively, only to those who indicate they don’t have access to other coverage). IAAPA would also appreciate guidance as to how to treat seasonal and variable hour

employees upon their 19<sup>th</sup> or 26<sup>th</sup> birthdays—does the measurement/stability process begin on the employee's birthday?

The practical impact, absent such exceptions, would be to track and average hours through measurement/stability, and perhaps make an offer of coverage that would more often than not be refused. The administrative burden and cost of tracking these employees would be high, relative to these workers' wages; employers may need to manage these costs by hiring fewer workers.

IAAPA applauds the IRS for seeking input from stakeholders and promulgating the forthcoming rules in a timely and transparent fashion, and thanks them for the opportunity to offer comments on the proposed regulation.

If you need additional information, or if I can answer any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in cursive script that reads "Randy Davis".

Randall Davis  
Senior Vice President, Safety & Advocacy