UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

STATE OF INDIANA, et al., Plaintiffs, v. INTERNAL REVENUE SERVICE, et al., Defendants.	)	CASE NO. 1:13-cv-1612-WTL-TAB

PLAINTIFF SCHOOL CORPORATIONS'
MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56 and S.D. Ind. L.R. 7-1 and 56-1, the 39 public school corporation plaintiffs (the "Schools"), by counsel, respectfully move for summary judgment on Count I of the Amended Complaint, and, in support thereof, state as follows:

1. A goal of the Patient Protection & Affordable Care Act ("ACA") is to make affordable health coverage accessible to most Americans. One tool it uses to advance that goal is the concept of the American Health Benefit Exchange, which is the vehicle through which individuals who do not participate in employer-sponsored insurance can shop for and purchase insurance. The ACA directs the states to establish these Exchanges, but provides that the Secretary for the Department of Health & Human Services shall establish the Exchange for a state that elects not to establish one.

2. The ACA makes tax credits, called "premium assistance credits" available to taxpayers who purchase one or more qualified health plans "offered in the individual market within a State which cover the taxpayer, the taxpayer's spouse, or any dependent . . . of the taxpayer and which were enrolled in through an Exchange established by the State under [§] 1311 of the [ACA]." 26 U.S.C. § 36B(b)(2)(A). The credit is available for any "coverage

month," which is defined as any month in which "the taxpayer, the taxpayer's spouse, or dependent of the taxpayer is covered by a qualified health plan . . . that was enrolled in through an Exchange established by the State under section 1311 of the [ACA]." 26 U.S.C. § 36B(c)(2)(A)(i).

3. The defendants, through a rule adopted by the Internal Revenue Service, have made the premium assistance credits available to any taxpayer who purchases insurance through any Exchange, regardless of whether the Exchange was established by a state or by the federal government through the Secretary of the Department of Health & Human Services (the "IRS Rule"). This materially changes the scope and application of the ACA because the employer mandate penalties apply only if an employee of an otherwise covered large employer (defined as 50 or more employees working more than 30 hours per week on average) receives a premium assistance credit, *see* 26 U.S.C. § 4980H(a)-(c), which but for the IRS Rule would be available for coverage purchased through a state-established Exchange.

4. Indiana did not establish an Exchange; instead, the federal HealthCare.gov Exchange is the Exchange for Indiana. Thus, but for the IRS Rule, the employer mandate penalties would not apply in Indiana, and more specifically to the Schools. The impact of the IRS Rule on the Schools is real and substantial. To avoid the draconian penalties set forth in the employer mandate, the Schools, which generally cannot afford to offer health insurance to all categories of employees (*e.g.*, instructional aides, cafeteria workers, bus drives, extracurricular advisors and coaches), have restricted several positions to fewer than 30 hours per week to keep those positions beyond the reach of the ACA's employer mandate. While this approach hampers the delivery of the Schools' educational services, the Schools have no other feasible alternative.

5. The IRS Rule was adopted in violation of the Administrative Procedure Act and is unlawful. It must be invalidated.

6. In support of their motion, the Schools rely upon their accompanying brief in support and a separately bound appendix of exhibits, which are incorporated by reference herein.

WHEREFORE, the plaintiff public school corporations, by counsel, respectfully request that this Court grant summary judgment in their favor and invalidate the IRS Rule.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2014, a copy of the foregoing "Plaintiff School Corporations' Motion for Summary Judgment" was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's Electronic filing system. Parties may access this filing through the Court's system.

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