



Legislation Text

File #: RES 19-328, **Version:** 2

Consideration of and action on a resolution authorizing representation in an IRS matter and delegating authority to execute Form 2848 IRS Power of Attorney.

Summary:

You may recall, on Saturday, August 10th, 2019, I attended a special meeting of the TML-Health Board of Trustees held in Dallas, Texas. The purpose of that meeting was to allow the Board of Trustees to take action on this matter. The Trustees unanimously voted to have the Pool absolve its affected members of the potential penalties and fees from the IRS stemming from the late filing of IRS Forms 1094-C and 1095-C for the 2016 and 2017 tax years. The message below comes from a model agenda item summary of this matter, as prepared by TML-Health Benefits Pool. It provides an excellent summary of the City of Deer Park's need to adopt this resolution and sign the IRS Power of Attorney form.

This memo explains the purpose of the resolution authorizing representation in the IRS matter concerning notice of proposed penalties for the late filing of IRS Forms 1094-C and 1095-C for the 2016 and 2017 federal tax years.

Background

In summary, TML IEBP was required to file forms 1094-B, 1095-B, with the IRS regarding health insurance coverage provided to Pool group employees. Forms 1094-B and 1095-B (the "B" Forms) are required to be filed by health insurance issuers and carriers to report information to the IRS and employees regarding provision of minimum essential coverage under the Affordable Care Act. A separate 1095-B is filed for each employee with the IRS, and a copy is provided to the employee. Form 1094-B reports summary information for the issuer/carrier and transmits the Forms 1095-B to the IRS. TML IEBP has timely filed "B" Forms as an "issuer" of coverage each year since 2015, and provided copies to all Pool groups' employees. Forms 1094-C and 1095-C (the "C" Forms) are required to be filed by employers with more than 50 full-time employees (Applicable Large Employers, or ALEs) to report information to the IRS about the ALE's offer of health coverage to its employees. As with the "B" Forms, a separate 1095-C is filed for each Pool ALE Member employee with the IRS, and a copy is provided to the employee. Form 1094-C reports summary information for the ALE and transmits the Forms 1095-C to the IRS. The "C" Forms are used to determine if the employer is required to make the employer shared responsibility payment under § 4980H of A.C.A., and the eligibility of employees for a "premium tax credit." TML IEBP filed "C" Forms for 2015 for all Pool ALE Members it identified as an ALE based on the number of employees enrolled in the benefit plan. However, due to an administrative error, TML IEBP did not file the forms for tax years 2016 or 2017 until the fall of 2018.

IRS Notices

Several Pool ALE groups received IRS notices in August 2018 stating that the group was required to file the "C" Forms for 2016. TML filed "C" Forms for each Pool ALE group for 2016 on October 29, 2018, and for tax year 2017 on November 13, 2018. ALE groups have started receiving letters proposing to issue a penalty for failure to timely file the "C" Forms for tax year 2017. No letters proposing penalties have been received to date for tax year 2016.

Action Needed from the City Council

TML MultiState IEBP (the "Pool") may have failed to timely file IRS Forms 1094-C and 1095-C (the "Tax Forms") for the 2016 and 2017 federal tax years on behalf of the City of Deer Park, related to the City of Deer Park's provision of minimum essential health coverage to its employees. The Board of Trustees of the Pool have agreed to resolve any proposed imposition of penalties and fines by the IRS for the late filing of the Tax Forms (the "Penalties") on behalf of all affected members of the Pool, including the City of Deer Park. The Pool has engaged the law firm of Mitchell, Williams, Selig, Gates & Woodyard, PLLC ("Mitchell Williams") to represent the Pool and its members before the IRS with respect to any such Penalties, and the Pool shall be solely responsible for all communication with and payment of Mitchell Williams with regard to such matter. In order for Mitchell Williams and its attorneys to communicate with the IRS regarding any Penalties proposed to be assessed against the City of Deer Park, an authorized official of the City of Deer Park must execute a Form 2848 IRS Power of Attorney authorizing the attorneys to represent the City of Deer Park before the IRS.

The proposed resolution authorizes the City of Deer Park to:

1. Engage Mitchell Williams to represent the City of Deer Park before the IRS with respect to resolving the proposed IRS Penalties that have been or may in the future be asserted against the City of Deer Park; and
2. Delegate Mayor Jerry L. Mouton, Jr. to execute a Form 2848 IRS Power of Attorney for the purpose of granting the attorneys listed therein the authority to represent the City of Deer Park before the IRS solely with respect any such proposed Penalties for tax years 2016 and 2017.

Fiscal/Budgetary Impact:

In adopting this Resolution, the City of Deer Park is ceding its potential financial liability with the IRS to TML-Health Benefits Pool.

Approval is recommended.