Statement of

The Brink's Company

House Committee on Ways and Means

Subcommittee on Oversight

"Tax-Related Provisions in the President's Health Care Law"

March 5, 2013

Chairman Boustany, Ranking Member Lewis and Members of the Subcommittee:

The Brink's Company ("Brink's"), formerly known as The Pittston Company, is pleased to submit this written statement for the record in connection with this important hearing. Brink's is a global leader in security-related services for banks, retailers and a variety of other commercial and governmental customers. Brink's provides retirement health care benefits for eligible former employees of its former U.S. coal operation. Retirement benefits related to its former coal operations include medical benefits provided by the Pittston Coal Group Companies Employee Benefit Plan to UMWA Represented Employees.

Overview of Brink's Concern: The Patient Protection and Affordable Care Act ("PPACA") will impose an excise tax on benefits established by the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"). Brink's is concerned that this tax, dubbed the "Cadillac Tax," could adversely affect the retiree health benefits for certain mine workers. We believe that this outcome was unintended and will have severe consequences for the coal industry and those formerly in the coal industry who are obligated to continue the health benefits, and we urge the Ways and Means Committee to remedy this unfortunate outcome in the coming months as it undertakes tax reform.

Background

Section 4980I of the PPACA imposes a "Cadillac Tax" equal to 40 percent on "excess health benefits." Excess benefits are defined as the amount that exceeds the annual limitation of $10,200 for self-only coverage and $27,500 for family coverage.[1] For retirees and workers in high risk professions such as miners, firefighters and longshoremen, the annual limitations are $11,850 for self-only coverage and $30,950 for family coverage.[2] As its name suggests, the tax was intended to affect only the most generous of health care benefits, and encourage employers to rein in such coverage to below the applicable limits to avoid paying the tax.

Congress, however, failed to consider the impact of this tax on benefits plans required pursuant to the Coal Act, which fixes mandatory levels of health benefits (and in some cases death benefits) provided to retirees who were age and service eligible as of February 1, 1993, and who actually

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1 See IRC Section 4980I(b)(3)(C)(i)(I) and (II) as amended by 1401 of the Reconciliation Act.

2 See IRC Section 4980I(b)(3)(C)(ii)(I) and (II) as amended by section 1401 of the Reconciliation Act.

retired by September 30, 1994. These benefits, guaranteed under section 9711 of the Internal Revenue Code, also require responsible employers to provide and pay for these benefits for life. Although, under certain circumstances, employers are permitted to adopt cost containment and managed care programs, the level of benefits provided to retirees and dependents covered by the Coal Act are fixed by law, and may not be changed by any employer.[3]

In 2006, the Coal Act was amended to add section 9704(j) to the Internal Revenue Code to provide specific relief to companies to allow them to prepay their premium liability. The statute specifically allowed for prepayment if:

1) the assigned operator (or a related person) made contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for employment during the period covered by a 1988 agreement and is not a 1988 agreement operator;
2) the assigned operator and all related persons are not actively engaged in the production of coal as of July 1, 2005; and
3) the assigned operator was, as of July 20, 1992, a member of a controlled group of corporations the common parent of which is publicly traded.

Under this provision, in order for the relief from liability to apply, the payment by the assigned operator must have been no less than the present value of the total premium liability of the assigned operator (or related persons or their assignees), as determined by the operator's enrolled actuary. Of course, since no Cadillac Tax existed at the time, and because benefit levels could not be changed, companies that prepaid their obligations never calculated the cost of an additional excise tax into the payments.

Cadillac Tax Result

Because the health benefits provided by the Coal Act result in excess benefits under the threshold established for application of the excise tax on Cadillac health plans, those excess benefits are subject to the excise tax. While most employers have flexibility to modify their health plans in order to avoid the tax, the Coal Act fixes the health benefits by statute. Thus, because the benefits are fixed by statute, the employers affected by the Coal Act **cannot avoid** the Cadillac Tax even if they desired to change the benefits of the plans they offered. By law, those plans cannot change. In that respect, for companies that pre-paid their Coal Act obligations, the tax on their health benefits is particularly unfair. Ultimately, the Cadillac Tax is adversely impacting the very people the law was intended to help – both coal miners and the employers who have pre-paid for their care.

Conclusion

It seems apparent that Congress did not intend for the Cadillac Tax to have this effect on the coal mining industry and its retirees. Brink's believes it would be helpful for the Ways and Means Committee to conduct a full review of the Cadillac Tax provision as it undertakes tax reform to

[3] IRC 9711(a)

correct for any such unintended negative consequences. Brinks stands ready to assist the Ways and Means Committee in addressing this provision and determining how best to achieve Congress' goals without unintentionally harming this sector of the economy.