

IRS Grants Transition Relief for Small Employers, S Corps, and Medicare/TRICARE Arrangements Who Reimbursed Individual Health Insurance (1-1-2014 through 6-30-2015)

IRS Notice 2015-17 – Feb. 18, 2015 (Available at <http://www.irs.gov/pub/irs-drop/n-15-17.pdf>)

SUMMARY: IRS Notice 2015-17 elaborates on the IRS position that, subject to narrow exceptions, an employer violates Health reform’s annual dollar limit and preventive services mandates by reimbursing or paying employee premiums for individual health insurance.

Highlights Include:

- **Temporary Transition Relief for Non-“applicable large employers” ALEs.** The IRS will not impose excise taxes otherwise assessable under Code § 4980H for employer payment plans maintained in 2014 or the first six months of 2015 (i.e. through June 30, 2015) for employers that are not “applicable large employers” (ALE) for those periods. Employers eligible for the relief are also excused from the requirement to self-report these violations on Form 8928. Importantly, the Notice relief does not apply to stand-alone HRAs or other arrangements to reimburse any expenses other than insurance premiums. (Note: the Notice does not extend relief to employers with between 50-100 FTEs. It also appears that the IRS does expect ALEs with employer payment plans to file Form 8928 for violations.)
- **Relief Pending Guidance for Certain S Corporation Arrangements.** The Notice also addresses “2% shareholder-employee healthcare arrangements,” under which a Subchapter S corporation pays for or reimburses premiums for individual health insurance coverage for a “2% shareholder” (a term of art that generally means employees who are considered to own more than 2% of the corporation’s stock), where the payment or reimbursement is included in income and the premiums are deductible by the 2% shareholder-employee under Code § 162(l) (see our article for background). Pending the issuance of additional guidance on these arrangements, the Notice provides that an S corporation will not be subject to Code § 4980D or required to file Form 8928 solely as a result of having a 2% shareholder-employee health care arrangement.
- **Medicare Premium Reimbursement Arrangements.** For purposes of complying with the annual limit and preventive services mandates, the Notice permits an employer’s reimbursement of Medicare Part B or Part D premiums to be integrated with another group health plan offered by the employer, but only if—
 - The employer offers a group health plan (other than the premium reimbursement arrangement) to the employee that does not consist solely of excepted benefits and offers coverage providing minimum value;
 - The employee participating in the premium reimbursement is actually enrolled in Medicare Parts A and B;
 - Premium reimbursement is available only to employees who are enrolled in Medicare Part A and Part B or Part D; and

NOTE: This article is written to provide you with information about the Affordable Health Care Act. Do not apply this general information to your specific situation without additional details. Be aware that the tax laws contain varying effective dates and numerous limitations and exceptions that cannot be summarized easily. For details and guidance in applying the tax rules to your individual circumstances, please contact us.

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- Reimbursement is limited to Medicare Part B or Part D premiums and premiums for excepted benefits, including Medigap premiums.
- **TRICARE-Related HRAs.** The Notice also permits an HRA that pays or reimburses medical expenses for employees covered by TRICARE to be integrated with another group health plan offered by the employer for purposes of complying with the annual dollar limit and preventive services mandates. (As background, HRAs generally must be integrated with a group health plan to satisfy the annual limit prohibition—see our article—and integration with TRICARE is not available because TRICARE is not a group health plan.) However, this relief is available only if—
 - The employer offers a group health plan (other than the HRA) to the employee that does not consist solely of excepted benefits and offers coverage providing minimum value;
 - The employee participating in the HRA is actually enrolled in TRICARE;
 - The HRA is available only to employees who are enrolled in TRICARE; and
 - Reimbursement is limited to cost-sharing and excepted benefits, including TRICARE supplemental premiums.
- **Increasing Employees' Taxable Compensation.** The Notice confirms that an employer may increase an employee's taxable compensation, not conditioned on the purchase of health coverage, without creating an employer payment plan (or any group health plan at all). [EBIA Comment: No surprises here. But it is not particularly helpful for employers seeking to provide the same "dollars" to employees to purchase coverage elsewhere (e.g., through an Exchange), because the tax advantages of employer-provided health care are lost.]
- **After-Tax Employer Payment Plans Are Subject to Excise Tax.** The Notice reiterates the IRS's position (expressed in the FAQs cited above) that an employer's payment or reimbursement of employees' individual health insurance premiums is a group health plan subject to the market reforms even if the payments or reimbursements are made on an after-tax basis. [EBIA Comment: In response to some suggestions that the compliance issue could be avoided by reimbursing individual premiums with after-tax compensation, the IRS has made it very clear that an after-tax approach does not work.]

If you would like more information on the Affordable Care Act, please contact a member of our dedicated Health Care Reform team at (888) 388-1040.