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CLIENT ALERT

Employee Benefits Update

February 2015

New IRS Guidance on Premium Reimbursement Plans

Over the last couple of years, the IRS has struggled with whether an employer can use a Health Reimbursement Account (HRA) or other form of employer payment plan to pay premiums directly (or reimburse employees for premiums they pay) for individual health insurance policies instead of offering its employees a group health plan. The IRS has taken the position that an employer cannot reimburse employees on a pre tax **or after tax** basis for individual health insurance premiums. If the employer does, the IRS does not tax the benefit. Instead it considers the reimbursement arrangement a medical plan which does not comply with the market reforms of the Affordable Care Act (ACA) and can assess a \$100 per day penalty for each employee who receives reimbursement (up to a maximum of \$36,500 per year).

The IRS has just issued new guidance (Notice 2015-17) which provides some relief for small employers.

- Employers with less than 50 full-time employees (including full-time equivalent employees) for 2014 will not be penalized for these types of premium payment arrangements in 2014. The relief will continue until June 30, 2015 for employers with under 50 full-time employees in 2015. There are special rules for determining full-time employees for these two years.
- An S Corporation can reimburse or pay for individual health insurance premiums for employees who are more than 2% shareholders until further guidance is provided (but at least until the end of 2015). As now, the premium is included in the 2% shareholder-employee's income and then he or she can deduct it on his or her personal tax return. The S Corporation can still **not** use a premium payment arrangement for individuals who are not 2% shareholders-employees.
- The IRS restates its earlier position that an employer can increase an employee's taxable wages in lieu of offering health insurance as long as the money is not tied in some way to the premiums. The Notice says that the employer can give the employees general information about the health insurance marketplace and the availability of premium tax credits.
- The ACA market reforms do not apply to health plans with less than two active employees. The IRS has said all along that HRAs (and other premium payment arrangements) can continue for retiree only plans. The Notice points out that an employer with only one employee can also continue a premium payment arrangement for that one employee. Be aware that the IRS is going to be on the lookout for employers claiming to have multiple one-person plans.

In addition, the Notice provides a way to integrate Medicare/TRICARE premium reimbursement plans with employer group plans. (TRICARE is the health care program for military personnel, retirees and their

dependents.) The Notice also states that it does not extend to stand-alone HRAs (or other arrangements) to reimburse employees for medical expenses other than insurance premiums.

Finally, there is one big caveat to all this. The Notice states that the IRS will continue to review these issues and may have further guidance in the future.

If you have any questions about this Alert, please feel free to call (919.781.4000) or e-mail your Wyrick Robbins contact or one of the following members of our Employee Benefits & Executive Compensation group: **Gray Hutchison** (ghutchison@wyrick.com) or **Richard Rogers** (rrogers@wyrick.com).

NOTICE: This Client Alert provides merely an overview and summary information regarding this IRS Notice. Please note that not all potential details and nuances have been addressed, and this Client Alert does not involve analysis of specific facts concerning your company or reach any conclusion with respect to any material federal tax issues for any specific taxpayer.