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IRS MAKES W-2 REPORTING OF COST OF HEALTH COVERAGE OPTIONAL FOR 2011

On October 12, 2010, the IRS released Notice 2010-69, which provides interim relief from the Affordable Care Act ("ACA") requirement that the cost of coverage under employer-sponsored group health plans be reported on Forms W-2 provided to employees. According to the Notice, such W-2 reporting will now be *optional* for 2011, but will be *required* for 2012. This interim relief is designed to give employers additional time to adjust their payroll systems and update procedures to comply with the new reporting requirement.

Even before the ACA was enacted, an employer was required to report (on Form W-2) the amount contributed by the employer to an employee's health savings account ("HSA") or Archer medical savings account ("MSA"). There was no requirement, however, to include any information on the W-2 concerning the cost of employer-sponsored health coverage (which is generally a non-taxable benefit). Consequently, many employees have no idea how much their employer is spending on their behalf to provide health coverage, and few employees are aware of the total cost of such coverage.

The ACA adds to the list of information that must be reported on Form W-2 the "aggregate cost" of "applicable employer-sponsored coverage." Prior to Notice 2010-69, this new reporting requirement was scheduled to be effective for the 2011 tax year (i.e., employers would have had to report this information on Forms W-2 issued in early 2012).

For purposes of this new reporting requirement, "applicable employer-sponsored coverage" includes coverage under group health plans that provide medical, prescription drug, dental, or vision benefits. It does *not* include coverage for long-term care, accidents, or disability income insurance. Nor does it include coverage that applies only to a specified disease or illness, hospital indemnity insurance, or other fixed indemnity insurance. Significantly, employer-sponsored coverage does not include any "flexible spending account" ("FSA") under a cafeteria plan. And it does not include employer contributions to an HSA or MSA (as these are already required to be reported on Form W-2).

The "aggregate cost" of health coverage is to be determined under rules similar to those that apply in determining the cost of COBRA continuation coverage. It therefore includes both the employer *and* employee portions of the cost of such coverage. If an employee participates in more than one health plan, the employer need only report the total cost of

coverage under all such plans.

As noted above, Notice 2010-69 provides that this new reporting requirement is not mandatory for Forms W-2 issued for the 2011 tax year. Accordingly, an employer will not be treated as failing to meet the reporting requirement for 2011 - and will not be subject to any penalties for failing to meet that requirement - merely because it does not report the aggregate cost of employer-sponsored coverage on W-2s issued for 2011.

The Notice provides that the IRS anticipates issuing guidance on this reporting requirement before the end of 2010. The IRS has also issued a "draft" of the 2011 Form W-2, indicating that, if an employer *chooses* to report the cost of employer-sponsored coverage for 2011, it should do so in Box 12, using Code "DD."

Although the value of employer-sponsored health coverage will eventually be reportable on Form W-2, this reporting will be for information purposes only. Absent a violation by a self-funded health plan of the Tax Code's income-based nondiscrimination rules (under Section 105(h)), employer-provided health care coverage continues to be a tax-free benefit for employees.

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