

WNTS Insight



IRS issues new guidance on health care coverage information reporting

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The IRS on March 29 issued interim guidance (Notice 2011-28) addressing the informational reporting by employers that will be required on Form W-2 for the cost of employer-provided health insurance coverage. Notice 2011-28, in question-and-answer format, clarifies the rules and effective dates of the new reporting requirements. The IRS requests comments on all aspects of the interim guidance. The Notice is applicable until further guidance is issued.

The new reporting requirements generally will take effect with respect to Forms W-2 issued for 2012.

Background

Employers generally must prepare Form W-2, *Wage and Tax Statement*, for each employee, which also must be filed with the Social Security Administration. This form reports wages paid to the employee as well as Federal income, Social Security and Medicare (FICA) taxes withheld from those wages. Certain benefits also must be reported as informational items, including salary reduction contributions to deferred compensation plans and the value of group term life insurance in excess of \$50,000.

The Patient Protection and Affordable Care Act of 2010 (PPACA), enacted on March 23, 2010, added the requirement that employers disclose the total cost of employer-provided group health coverage for the employee on the Form W-2. Internal Revenue Code section 6051(a)(14), added by PPACA, requires every employer to report the total aggregate amount of each employee's health care coverage on the employee's Form W-2, subject to some exceptions.

Section 6051(a)(14), as enacted, requires employers to begin reporting the aggregate cost of health coverage for tax years beginning on or after January 1, 2011. However, IRS Notice 2010-69 extended the effective date until 2012. Thus, calendar-year taxpayers must include this information on each employee's Form W-2 for the 2012 tax year, which in most cases will be issued in January 2013. This delay affords employers additional time to make adjustments to their payroll systems

or implement procedures to insure future compliance with this reporting provision.

The New Guidance

Notice 2011-28 addresses several issues, including which employers are covered, methods for reporting the cost of coverage, the types of coverage included, calculation methods, and other considerations. The IRS reiterates that the reporting requirement is purely for informational purposes only and does not cause otherwise excludable employer-provided health coverage to become taxable.

Notice 2011-28 also provides additional transition relief further delaying the effective date for certain employers and with respect to certain types of employer-provided coverage. For instance, smaller employers that filed fewer than 250 2011 Forms W-2 are not required to report the cost of health coverage to employees for the 2012 tax year. This relief will continue until further guidance is issued.

Small employers that are not required to file W-2s electronically under section 6011(e) also are exempt from reporting the cost of health coverage until further guidance is issued.

Reporting the cost of coverage

The "aggregate reportable cost" of the employer-provided health coverage is reported on Form W-2 in box 12 using code DD. The purpose of the reporting provision on the Form W-2 is to provide cost-of-coverage information to employees. Notice 2011-28 clarifies that employers do not need to compile the total of the aggregate costs of health coverage on Form W-3, *Transmittal of Wage and Tax Statements*.

Calculating cost of coverage

The cost of coverage under a group health plan includes both the employer and employee portions of the coverage regardless of whether those costs were paid on a pre-tax or after-tax basis. The summation of

the applicable employer-sponsored coverage under a group health plan that must be reported on a Form W-2 consists of any coverage made available to the employee by an employer that is excludable from the employee's gross income under the section 106 exclusion for contributions by employers to accident and health plans or would be so excludable if it were employer-sponsored coverage within the meaning of section 106. For these purposes, a group health plan is a plan (including a self-insured plan) of, or contributed to or by, an employer or employee organization to provide health care to the employees, former employees, the employer, others in a business relationship with the employer, or their families, including members of a union who are not currently employees.

Observation: The aggregate reportable cost is not reduced by the amount, if any, of the cost of coverage that is included in the employee's gross income. This includes health care coverage amounts for domestic partners, an employee's child who is over age 26, as well as discriminatory excess reimbursements to highly compensated individuals paid under a self-insured plan that are included in gross income under section 105(h).

To calculate the aggregate cost reportable on Form W-2, employers must use the same rules as are used to calculate the premium for COBRA purposes. The Notice provides three methods for calculating the cost of coverage -- the COBRA applicable premium method, the premium charged method, and the modified COBRA premium method -- as well as rules for employers that charge employees a composite rate.

Exclusions

The Notice lists several exceptions from the informational reporting requirement for certain items of employer-provided health coverage. Significantly, an employer is not required to issue a Form W-2, including the aggregate reportable cost, to an individual as to whom the employer otherwise is not required to issue a Form W-2.

Observation: An employer that currently is providing retiree health care

coverage to former employees that is excluded under section 106 does not have to provide the retiree a Form W-2 to report the cost of health care coverage if there otherwise is not a W-2 reporting requirement with respect to the retiree. However, if an employer has a W-2 reporting requirement because the retiree is receiving other payments such as nonqualified deferred compensation or severance payments, the cost of coverage would have to be reported.

For reporting purposes, the cost of coverage does not include accident or disability insurance; supplemental coverage to liability insurance; liability insurance such as automobile insurance; worker's compensation; automobile medical payment insurance; credit-only insurance; or other similar coverage. Moreover, coverage only for a specified disease or illness or hospital indemnity is not subject to reporting. Other items that are not included in the aggregate reportable cost for the Form W-2 are amounts contributed to any Archer medical savings account or to a health savings account, or salary reduction elections with respect to flexible spending arrangements (FSAs). However, any amount of the health FSA that exceeds the salary reduction elected by the employee for the same plan year must be included in the aggregated reportable cost under section 6051(a)(14).

Other considerations for informational reporting

Various situations may arise that require varying aggregation methods. The new guidance addresses some of these scenarios and suggests that an employer may use a reasonable method of reporting the cost of coverage provided under a group health plan as long as that method is used consistently for all employees under the same plan. For instance, if an individual transfers to a new successor employer, both the predecessor and successor employers must report the aggregate reportable cost of coverage unless the successor issues one Form W-2 reflecting wages paid to the employee for the entire tax year.

In addition to the impact of mergers or acquisitions, employers must take into account the proportional share of any reportable health care costs incurred for an employee who commences, changes, or terminates

coverage during the year.

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