

LEGAL UPDATES

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IRS Extends Deadline, Clarifies Effective Date for New Annual Limit on Healthcare Flexible Spending Account Contributions

On May 30, 2012, the Internal Revenue Service (IRS) issued new guidance (IRS Notice 2012-40 that will be published in June) that makes certain clarifications regarding the application of the January 1, 2013, effective date for non-calendar year Cafeteria Plans and provides an extended deadline to adopt amendments implementing the new contribution limit.

As we previously reported, effective January 1, 2013, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (together, the ACA) limits annual contributions to a healthcare flexible spending account offered under an Internal Revenue Code Section 125 Cafeteria Plan to a maximum of \$2,500 (See March 8, 2012, alert: “New Limits on Healthcare Flexible Spending Account Contributions”).

Most significant, the new guidance explains that the effective date for the new limit will be the first day of the first plan year beginning on or after January 1, 2013. Consequently, the effective date for calendar year plans will be January 1, 2013, and the first day of the plan year after January 1, 2013, for non-calendar year plans. The new guidance also extends the deadline to adopt amendments implementing the \$2,500 limit until December 31, 2014, clarifies that unused healthcare flexible spending account contributions for a plan year that are carried over into a grace period will not count against the new limit for the following plan year, and provides relief for contributions that exceed the limit because of a reasonable mistake – absent willful neglect – provided the mistake is corrected.

The new guidance brings welcome relief to some plan sponsors but may have come too late for others. Prior guidance required plans to adopt an amendment implementing the new limit before its effective date. In addition, the January 1, 2013, effective date caused sponsors of non-calendar year plans to consider options to comply with the new limit prior to the start of the plan year that includes January 1, 2013. Unfortunately, employers with non-calendar year Cafeteria Plans may have already considered the options without this new guidance, made decisions and adopted amendments to implement the new limit. Under this new guidance, such changes are unnecessary until the first plan year beginning after December 31, 2012.

What This Means to You

If your company offers a healthcare flexible spending account plan with an annual dollar limit in excess of \$2,500, your plan must be amended to adopt the new annual limit on or before December 31, 2014. Summary plan descriptions and other participant communications should be reviewed and updated as necessary in light of the required amendment. If your company sponsors a non-calendar year Cafeteria Plan that has implemented the new limit during its current plan year, no change is necessary. If your company sponsors a non-calendar year Cafeteria Plan that has not yet implemented the new limit, you may wait to implement the new limit until the first plan year beginning after December 31, 2012. Finally, because the new limit is a part of the ACA litigation that is pending before the U.S. Supreme Court, further changes may occur in response to the court's decision, which is expected to be released in June (See April 12, 2012, alert: "Plan Sponsors Should not Defer Until Court Rules on Healthcare Reform").

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