

January 2012

## Revised Guidance on Health Insurance Reporting Requirements for Employers

The IRS has provided modified guidance on the information-reporting requirement for employer-sponsored health insurance coverage contained in the 2010 Patient Protection and Affordable Care Act (“Healthcare Reform Act”).

### Background

The Healthcare Reform Act originally required information reporting by employers with respect to employer-sponsored health insurance coverage for tax years beginning on or after January 1, 2011. The Act generally requires that the cost of applicable health insurance coverage be reported to employees on Form W-2.

Original IRS guidance made the new reporting requirement optional for all employers for the 2011 Form W-2 (which will typically be provided to employees by the end of January 2012). The IRS then issued additional guidance further extending the Healthcare Reform Act’s health insurance coverage information-reporting requirements for small employers through at least 2012 (or until further guidance is issued by the IRS, if later). That guidance came as welcome relief, since small employers won’t be required to report the cost of health insurance coverage on tax forms required to be provided to employees until January 2014 - at the earliest.

Under the Healthcare Reform Act, a “small employer” is one who files fewer than 250 W-2 forms. Accompanying guidance was also provided for larger employers who are subject to the information-reporting requirements for the 2012 Form W-2 (and to those who choose to voluntarily comply with the reporting requirements in either 2011 or 2012).

### Current Guidance

The new interim guidance, found in IRS Notice 2012-9, modifies the prior guidance with respect to the following:

- Explains further the application of the interim relief from the reporting requirements for

employers filing fewer than 250 Forms W-2 for the preceding calendar year;

- Clarifies the application of the reporting requirements to related employers not using a common paymaster;
- Adds a new example that demonstrates that the reporting requirement doesn’t apply to coverage under a health flexible spending arrangement (“FSA”) if contributions occur only through employee salary reduction elections;
- Clarifies that the standard for determining whether coverage under a dental or vision plan is subject to the reporting requirement is based upon the same standard for determining whether the coverage is subject to the rules set forth in the regulations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and
- Explains that the reporting requirement doesn’t apply to the cost of coverage includable in income under tax code Section 105(h) or to payments or reimbursements of health insurance premiums for a 2% shareholder-employee of an S corporation who is required to include the premium payments in gross income.

The Notice includes other provisions relating to COBRA health care coverage, payments of coverage under employee assistance plans, health reimbursement accounts, and reportable amounts provided by a third-party sick pay provider. The new guidance is generally applicable beginning with 2012 Forms W-2. Employers may rely on Notice 2012-9 if they voluntarily chose to report the cost of coverage on 2011

Forms W-2 even though such reporting isn’t required for 2011.



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