

IRS Clarifies Form W-2 Reporting Obligations for Employer-Provided Health Coverage

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The IRS has issued Notice 2012-9 to provide new guidance (and modify prior guidance) on employers' obligations to report health coverage costs on Form W-2.

Background

As part of health care reform, Congress added Section 6051(a)(14) to the Internal Revenue Code to require that employers report the cost of health coverage provided to employees. This information is to be reported on Form W-2. The IRS previously issued Notice 2011-28, which provided [interim guidance and solicited comments about the new requirement](#). Last week the IRS issued Notice 2012-9, which clarifies certain aspects of the prior guidance, responds to comments submitted to the IRS, and effectively replaces and supersedes Notice 2011-28.

Highlights of new notice

Notice 2012-9 contains 39 questions and answers, which address specific questions about calculating the reportable amount. The new guidance includes the following highlights:

- **Effective date.** Reporting the cost of employer-provided health coverage on Form W-2 is mandatory (with some exceptions, as noted below) starting with coverage provided in 2012. Form W-2s for calendar year 2012 must be furnished to employees by the end of January 2013.
- **Exempt (for now) employers.** Employers that are tribally chartered corporations, which are wholly owned by a Native American tribal government that is recognized by the federal government, need not comply with the reporting requirement until further guidance is issued. Also exempt from the new reporting requirement, pending further guidance, are employers that file fewer than 250 Forms W-2 for the preceding calendar year. Notice 2012-9 repeated the prior notice's exclusion for coverage under a self-insured group health plan that is not subject to any federal COBRA rules (such as a church plan), coverage provided by the United States, or any State or political subdivision, to military personnel or their families, as well as the cost of coverage under a multiemployer plan.
- **No change in tax treatment.** The Notice reiterates that the purpose of W-2 reporting is to inform employees of the cost of their healthcare coverage, and will not cause those amounts to become taxable.
- **Exempt coverage.** A new example in the Notice clarifies that the reporting requirement does not apply to certain types of coverage, such as coverage under a health flexible spending account (FSA) when contributions only occur through the salary reduction elections of employees.
- **On-site clinic, EAP and wellness coverage.** Coverage under an on-site clinic, employee assistance program ("EAP") or wellness program is required to be reported only if the clinic, EAP or program is subject to COBRA and the employer charges COBRA participants for continued coverage.
- **Terminated employees.** Employees who terminate employment prior to year end may request an employer to provide a W-2, and employers are obligated to comply within 30 days. Notice 2012-9 provides that the employer is not required to report health coverage on a W-2 being provided to an employee who has requested a Form before the end of the calendar year. Stated another way, reporting of health coverage for a Form W-2 issued with respect to 2012 will only apply to those Forms issued in 2013 for the 2012 calendar year.
- **Current reliance for voluntary early compliance.** W-2 reporting of the cost of health coverage is voluntary for the 2011 calendar year (with W-2s due by the end of January 2012). Although the guidance is applicable to reporting coverage in 2012, employers who voluntarily report for 2011 may rely on the guidance provided in Notice 2012

Action steps

Although mandatory reporting on Form W-2 is a year away, the time for action is now. Employers should now (or very soon) begin discussions with their payroll departments (or outside payroll service providers) and create a schedule of what information is needed, who will provide it, and who will take the lead in overseeing all tasks, so that compliance with the reporting requirement does not slide to the end of the year, and become an overwhelming endeavor. Also, the penalty for noncompliance can be significant — as much as \$200 per failed W-2, up to a maximum of \$3 million per year.

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