HEALTH REIMBURSEMENT ACCOUNTS FOR SMALL EMPLOYERS

A new law allows small employers to provide a stand-alone employer-paid health reimbursement account plan to employees without incurring a tax penalty. This plan would help employees pay for insurance offered on an exchange without subjecting the employer to excise tax.

OVERVIEW

Beginning in 2017, employers with fewer than 50 employees will no longer have excise tax exposure for offering employees stand-alone health reimbursement accounts ("HRAs") and no group health insurance. A health reimbursement account set up for an employee allows for the payment of the employee's uninsured healthcare expenses and premiums. When not offered with a group health plan, an HRA has been subject to steep excise taxes that have affected small employers since July 1, 2015.

With the passage of the 21st Century Cures Act on December 13, 2016, however, employers with fewer than 50 employees that sponsor an HRA plan but no group health insurance, will no longer be subject to an excise tax of $100 per day for each employee. Rather, small employers are free to offer HRA plans without also providing additional group health insurance that is compliant with federal law.

REQUIREMENTS FOR AVOIDING EXCISE TAX

To protect against excise tax exposure, an employer with fewer than 50 employees that sponsors an HRA plan and no group health insurance must:

- Provide coverage under the same terms and conditions to all full-time employees who have completed 90 days of service and are at least age 25. Nonresident aliens, seasonal workers, and employees covered by a collective bargaining unit may be excluded from coverage.
- Fund the HRAs solely with employer contributions. Employees are not allowed to fund their HRA accounts with any salary reductions.
- Provide reimbursements only for qualified medical expenses.
- Limit reimbursements to $4,950 (or $10,000 if the arrangement also provides family coverage). These dollar limits are subject to adjustment by the government.

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Evelyn advises on employee benefits, ERISA, executive compensation, medical privacy, federal health reform and related tax law. She writes and speaks extensively and has authored "ERISA Liability," in the MCLE treatise *Massachusetts Employment Law*.

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SPECIAL EXEMPTION FROM TAX

The new law waives any excise tax exposure for any small employer that offered a stand-alone HRA Plan for employees and paid for all contributions to it prior to December 31, 2016.

NOTICE REQUIREMENTS

A small employer establishing an HRA Plan must notify each eligible employee in writing the following:

- The amount of the employer's contribution to the employee's account for the year.
- The requirement that the participant must report the amount of the account balance in the HRA Plan to any state exchange from which he or she gets health insurance, so that he or she may receive any advance payment of the premium assistance tax credit.
- The requirement that if the participant does not have minimum health coverage for any month, he or she may be subject to tax under the individual mandate for that month and reimbursements under the HRA Plan can be subject to income tax.

Failure to provide the applicable notice can subject the employer to a penalty of $50 per participant per incident, up to $2,500 in a calendar year for all failures.

HRA PLANS AND TAX SUBSIDIES

Employees receiving affordable coverage through an HRA will not be eligible for a premium assistance tax credit for any health insurance they purchase on an exchange.

CADILLAC TAX

Beginning in 2020, a 40% excise tax generally applies to employer-sponsored high cost health plans. The insurer pays the tax. The "Cadillac tax" could apply to small business HRA plans that report income on an employee's W-2 and provide high-cost benefits to employees. Since HRA plans are self-insured, the employer would pay any such tax. However, the coverage offered under an HRA plan can be limited to avoid the Cadillac tax.

BOTTOM LINE

The new law allows a small employer (with fewer than 50 employees) to avoid a tax penalty when providing a stand-alone employer-paid health reimbursement account plan to employees. The HRA plan would help employees pay for insurance offered on an exchange without subjecting the employer to excise tax.